



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division**

**LATASHA HOLLOWAY, et al.,**

**Plaintiffs,**

**v.**

**CIVIL ACTION NO. 2:18-cv-69**

**CITY OF VIRGINIA BEACH,  
VIRGINIA, et al.,**

**Defendants.**

***ORDER***

Before the Court is Defendants' Renewed Motion to Bifurcate Trial, and its accompanying memorandum. ECF Nos. 132–133. Plaintiffs opposed the motion, and Defendants filed a reply. ECF Nos. 136, 140. Having been fully briefed, this matter is ripe for judicial determination.

On November 20, 2017, Plaintiffs initiated a suit against the City of Virginia Beach under Section 2 of the Voting Rights Act of 1965 (“VRA”). ECF Nos. 1, 62. Plaintiffs claim that the City of Virginia Beach’s at-large system of electing councilmembers dilutes the voting strength of Black, Latino, and Asian-American voters, and therefore prevents minority voters from having an equal opportunity in participating in the political process by electing representatives of their choice. ECF No. 62. To prove a voter dilution claim under Section 2 of the VRA, Plaintiffs must establish the following three preconditions: (1) the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the minority group is politically cohesive; and (3) the white majority votes sufficiently as a bloc to enable it to usually defeat the minority’s preferred candidate. *Thornburg v. Gingles*, 478 U.S. 30, 51 (1986). If Plaintiffs meet their burden of establishing the three *Gingles* preconditions, the Court then evaluates whether based on the totality of the circumstances, the minority vote is diluted in

contravention of Section 2. *Levy v. Lexington Cty., S.C.*, 589 F.3d 708, 713 (4th Cir. 2009). Trial is scheduled to commence on October 6, 2020. ECF No. 142.

On April 13, 2020, Defendants filed a Renewed Motion to Bifurcate Trial.<sup>1</sup> ECF Nos. 132–133. Defendants request separate trials for each phase of a Section 2 VRA claim– the *Gingles* preconditions phase and the totality of the circumstances phase. ECF No. 133 at 1–6. Defendants contend that the case is complex given the Plaintiffs’ multiracial-coalition theory, and that the parties will not be prejudiced by two trials. *Id.* at 6, 9–10. Defendants also contend that in the event Plaintiffs fail to meet the *Gingles* preconditions, the totality of circumstances inquiry will be rendered moot, and therefore judicial economy is served by two separate trials. *Id.*

Federal Rule of Civil Procedure 42(b) provides “[f]or convenience, to avoid prejudice, or to expedite and economize, the court may order a separate trial of one or more separate issues...” The decision whether to order separate trials, or bifurcate, is within the sound discretion of the district court. *Bowie v. Sorrell*, 209 F. 2d 49, 51 (4th Cir. 1953). The party seeking separate trials has the burden of showing that bifurcation is warranted. *Am. Sci. & Eng’g, Inc. v. Autoclear, LLC*, No. 2:07CV415, 2008 WL 11379925, at \*1 (E.D. Va. Sept. 22, 2008).

After considering the parties’ arguments and reviewing the record, the Court finds that Defendants have failed to meet their burden showing that bifurcation is warranted in this case. Section 2 VRA cases are commonly tried as a single trial. *See* ECF No. 133 (identifying only one

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<sup>1</sup> On May 31, 2019, Defendants filed their initial Motion to Bifurcate trial. ECF Nos. 79–80. Defendants’ motion was denied on the basis that Defendants failed to prove that bifurcation would serve the purposes of judicial economy and that the parties would not be prejudiced by separate trials. ECF No. 93. Because Defendants’ initial motion was filed prior to discovery, Defendants were given the option to renew their motion once discovery was complete. ECF No. 93. However, Defendants were ordered to file a renewed Motion to Bifurcate on or before September 17, 2019. *Id.* Defendants filed their renewed motion on April 13, 2020. ECF No. 132. While the Court questions the timeliness of Defendants’ renewed motion, the Court will proceed to address the motion on the merits.

Section 2 VRA case, out of several, where a motion to bifurcate was granted). Defendants have failed to demonstrate that the case before the Court should be tried differently.

The Court finds that bifurcating trial will neither be convenient, expeditious, nor will it avoid prejudice or lead to judicial economy. Fed. R. Civ. P. 42(b). The issues presented in this case fail to rise to a level of complexity to warrant bifurcation. Given the evidence in this case that are relevant to both the *Gingles* preconditions and the totality of the circumstances, it is more convenient and economically efficient to try the case in a single trial. A single trial will also allow the Court to effectively manage an ongoing docket and prevent any prejudice to Plaintiffs that may arise from any difficulty or delay in scheduling a second trial if necessary. *See Dietz v. Bouldin*, 136 S. Ct. 1885, 1892 (2016) (noting that district courts have the inherent authority to manage their dockets with a view toward the efficient and expedient resolution of cases). Furthermore, in addressing Defendants' concerns regarding the mootness of the totality of the circumstances inquiry if Plaintiffs fail to meet the three *Gingles* preconditions, the Court has the option of issuing a judgment on partial findings at the conclusion of the preconditions phase. *See* Fed. R. Civ. P. 52(c) ("If a party has been fully heard on an issue during a nonjury trial and the court finds against the party on that issue, the court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue."). Therefore, bifurcating the trial in this case is also unnecessary.

Accordingly, Defendants' Renewed Motion to Bifurcate Trial is **DENIED**.

The Clerk is **DIRECTED** to send a copy of this Order to counsel for the parties.

**IT IS SO ORDERED.**

Norfolk, Virginia  
June 9, 2020

  
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Raymond A. Jackson  
United States District Judge