No. 21-1533

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

LATASHA HOLLOWAY, *et al.*,

Plaintiffs/Appellees,

v.

CITY OF VIRGINIA BEACH, *et al.*,

Defendants/Appellants.

On Appeal from the United States District Court
for the Eastern District of Virginia, Norfolk Division

APPELLEES' RESPONSE BRIEF

J. Gerald Hebert
J. GERALD HEBERT P.C.
191 Somervelle St. No. 405
Alexandria, VA 22304
(703) 628-4673

Annabelle E. Harless
CAMPAIGN LEGAL CENTER
55 W. Monroe St., Ste. 1905
Chicago, IL 60603
(312) 312-2885

Mark P. Gaber
Robert N. Weiner
Christopher D. Lamar
CAMPAIGN LEGAL CENTER
1101 14th St. NW, Ste. 400
Washington, DC 20005
(202) 736-2200

Counsel for Plaintiffs/Appellees

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Pages**

Regulations & Statutes

Other Materials:

STATEMENT OF ISSUES

1. Does the City's obligation to obtain preclearance of the remedial plan under the Virginia Voting Rights Act moot its appeal?

2. Does a member of a minority coalition have standing to bring a Section 2 claim?

3. When read in "the broadest possible scope," does Section 2 allow minority communities to jointly seek relief?

4. Did the district court correctly conclude that Virginia Beach violated Section 2 after finding extensive qualitative and quantitative evidence that the minority coalition's votes are being diluted?

5. Upon finding that an election system violates Section 2, is an injunction requiring Defendants to enact a non-dilutive map improper?

INTRODUCTION

Virginia's most populous city has long used an at-large election system that dilutes the voting strength of its large and growing population of Black, Hispanic, and Asian-American voters. To be elected at-large, city council candidates must campaign across all 249 squares miles of Virginia Beach and compete for the votes of all of the City's approximately 450,000 eligible voters. Even when minority-preferred candidates muster the resources to launch such an onerous campaign, they most often lose because the City's white majority votes together to block these candidates. Virginia Beach's long-silenced minority voters have sought to reform this dilutive scheme for decades. But much like the results of the electoral system itself, the city council has ignored the City's cohesive minority community.

Plaintiffs brought this Voting Rights Act lawsuit seeking to vindicate their

right to have an equal opportunity to elect city councilmembers. After years of litigation and remedial proceedings, Virginia Beach's minority voters have prevailed and finally obtained the basic electoral equality they are due. This Court should not disturb that achievement.

STATEMENT OF THE CASE

I. Factual Background

Plaintiffs established at trial that Virginia Beach's electoral system dilutes the ability of Black, Hispanic, and Asian-American voters (the "Minority Community") to elect candidates of their choice to the City Council.

Responding to the U.S. Supreme Court's ruling that the City's prior electoral system was unconstitutionally dilutive, in 1966 Virginia Beach adopted a new at-large election system with new problems. JA1155. To elect the City's eleven councilmembers in its nonpartisan elections, "[f]our [councilmembers] are elected at-large without regard to residence, and seven are elected at-large but must reside, respectively, one in each of seven residency districts" that are considered "designated or numbered posts." JA1151, 1155. Under this system, "all at-large candidates [must] campaign across 249 squares miles" of Virginia Beach for the votes of "450,000 eligible voters" instead of only voters in a specific district. JA1156.

The at-large system enables the City's white majority to vote together to block

the growing Minority Community from electing its preferred candidates. Between 1990 and 2020, Virginia Beach's minority voting-age population increased from approximately 21% to 38.5%, SJA258, with "[e]ach of the constituent groups … increas[ing] during that period while the white population fell." JA1154. But the at-large system prevents the Minority Community from translating its increasing population into representation. Since 1966, zero Hispanic candidates, "five Black City Council candidates (Aaron Rouse, Sabrina Wooten, Dr. Amelia Ross-Hammond, Louisa M. Strayhorn, and John L. Perry) and one Asian-American candidate (Ron A. Villanueva) have been elected to the City Council." JA1151.[1] The City's first minority candidate was not elected until 1986, *see* JA1166, 1704, and when the district court issued its liability determination, "no Black councilmember had ever been reelected," JA1155.

The district court found that minority-preferred candidates routinely lose to white-preferred candidates in the City's at-large system. JA1155. From 2008-2018, the City held seven elections and "only 16 out of 74 candidates were Black. Of the 22 winners, only three were Black." JA1155-56. Despite accounting for nearly 40% of the population, the "Minority Community elected a candidate of choice in only

[1] Defendants claim the district court clearly erred in finding that former councilmember Rita Belitto was not Latina. Br. at 7, n.3. However, evidence in the record shows that her ethnicity was not clear. JA1262. And even if it were, going from six minority victors to seven is immaterial.

one of the seven (14%) elections" for city council during this period. JA1155. At the same time, "94% of the white community's preferred candidates were successful." JA1218. The recent election of minority-preferred candidates Wooten and Rouse occurred in 2018 only after this litigation began, and the district court concluded they won because of atypically high support from the City's white voters and campaign contributors. JA1168. The district court additionally concluded that minority candidates fare no better for other citywide elected offices. JA1168.

Virginia Beach's dilutive election system and the discrimination minority voters face impedes their effective participation in the political process. The district court concluded that the "Commonwealth of Virginia and the City of Virginia Beach have long established histories of racial discrimination that have affected the Minority Community." JA1160. Significant disparities continue between the City's white majority and each component of the Minority Community "with regard to per capita income, the poverty rate for individuals, the percentage with SNAP assistance, median home values, … the percentage of 18-64 year-olds with no health insurance," and adverse "educational outcomes" due in part to lasting school segregation. JA1161. One ongoing example is Burton Station, a historically Black neighborhood that has long "lacked basic sewer and water infrastructure." JA1173. Despite the Minority Community's decades of advocacy, the City "only started to work on the sewer and water project for Burton Station in the past five years." JA1173. The

district court also found that Virginia Beach's non-white immigrant populations "face adverse treatment unlike that of their white counterparts" such as "generalized hostility towards immigrants" in "housing discrimination" and employment. JA1166. City officials have targeted explicit derogatory comments at Asian-American residents. JA1163. And the City was forced to agree in a federal consent decree that its police hiring practices discriminated against minority candidates. JA1172.

Inequality and discrimination likewise infect the electoral process. The district court found the Minority Community faces discriminatory conditions in "[voter] registration, voter suppression, gerrymandering, and other forms of discrimination" in voting, such as disparate treatment in polling places. JA1160, 1165. Lasting negative effects of these conditions have contributed to the Minority Community's disproportionately low voter registration rates and turnout. JA1162, 1165-66.

The Minority Community has not taken this mistreatment sitting down. The Minority Community has "cooperated numerous times to change the City's method of elections and remedy the dilution of their votes under the at-large scheme." JA1163. In 2001, a "coalition of African Americans, Hispanics, Asians, and Indians [] advocated for the City to adopt single-member districts." JA1163. A cross-section of Minority Community leaders, including "Ron Villanueva, a Filipino-American and former Council member" and "Nonato Abrajano, a former leader of the City's

Filipino-American community," together formed the Virginia Beach Concerned Citizens Coalition and "urged the City Council to adopt single-member districts to help ensure equal representation." JA1163. The City declined those reforms. In 2011, the Minority Community again "propose[d] illustrative redistricting maps" of single-member districts, which the council still rejected despite one current councilmember admitting "the current system is flawed" because it "dilutes the voting strength of voters." JA1164.

In addition to this collective advocacy against the at-large system, the district court found that Black, Hispanic, and Asian-American residents have worked together to protest against City officials' racism and the City's maintenance of a confederate monument. JA1163-65. The Minority Community's "common interests" in expanding "housing and transportation" options galvanized the coalition, including supporting expanded "light rail while white[] [residents] opposed it." JA1165. And the coalition urged the City for nearly a decade to create a Minority Business Council that would account for "the shared history of economic and social discrimination in the Minority Community" and to conduct a disparity study, which the City agreed to do only after a Black resident offered to pay half the costs. JA1165, 1170-71. The study "showed a substantial disparity in the

participation of minority-owned businesses in [City] contracts."[2] JA1268.

II. Procedural Background

In October 2020, the district court held a six-day bench trial. After conducting "a searching practical evaluation of the past and present reality" and a "functional view of the political process," the court issued a 133-page order on March 31, 2021, finding that Defendant's at-large method for electing City Councilmembers violates Section 2. JA1194-95 (applying *Thornburg v. Gingles*, 478 U.S. 30 (1986)).

The district court found that Plaintiffs established the three *Gingles* preconditions for Section 2 liability. Plaintiffs satisfied the first *Gingles* precondition by submitting ten illustrative maps showing the Minority Community is "sufficiently large and geographically compact to constitute a majority in a single-member district." JA1195. Plaintiffs' illustrative plans established the ability to draw at least two majority-minority districts for the Minority Community that adhered to traditional redistricting criteria. *See* JA1196-98, 1308-32. Plaintiffs established the second and third *Gingles* preconditions because "there is strong evidence showing that the Minority Community is politically cohesive, based on quantitative voting

[2] Defendants assert that the disparity study showed that "the 'City had overutilized Asian-American owned business' in public contracting" and claim that "members of the Asian communities generally enjoy a socio-economic status comparable with, if not better than, that of whites." Br. at 7. But, as the district court concluded, "of the dollars the Asian community received, 86% … went to a *single* Asian business." JA1269.

patterns and qualitative evidence," but their preferred candidates usually lose because of "substantial evidence of white bloc voting in Virginia Beach Council elections." JA1236.

The district court credited Plaintiffs' experts' analyses and testimony from Drs. Spencer and Lichtman showing that racially polarized voting drives city council elections. JA1210-26. Between 2008-2018, minority candidates won only three of fourteen elections, and the district court found special circumstances marked two of these victories. JA1232. Comparatively, the evidence showed that "94% of the white community's preferred candidates were successful" between 2008-2018. JA1232.

By contrast, the district court concluded that Defendants' expert Dr. Kidd was unqualified "as an expert in quantitative statistical methods or racial polarized voting" and generally that his "analysis does not match the record." JA1228. Bolstering Plaintiffs' quantitative analysis, the district court also found "substantial qualitative evidence showing that Hispanic, Black, and Asian communities are politically cohesive with respect to their shared political advocacy." JA1211.

The district court likewise concluded that the totality of circumstances supported a finding of Section 2 liability. JA1238-77. In particular, the court evaluated the nine factors that guide the totality analysis, enumerated in *Gingles*, 478 U.S. at 37-37, and concluded that "Plaintiffs provided sufficient evidence to show that each factor" suggested discrimination impeded the Minority Community from

electing preferred candidates. JA1238.

At the remedial stage, Plaintiffs submitted proposed remedial maps with ten single-member districts that Defendants conceded satisfy *Gingles* I "within the parameters of the Court's liability ruling, assumed to be legally and factually correct." SJA155. The district court appointed Dr. Bernard Grofman—a renowned expert whom both parties nominated—as special master to craft the remedial map. Dr. Grofman's plan, supported by 84 pages of analysis, creates three majority-minority districts where the Minority Community has an equal opportunity to elect their preferred candidates. SJA222-88, 342-58.

Dr. Grofman performed "independent reanalyses" of information relevant for "assessing minority opportunity to elect," including demographic patterns in the City, "the extent of racial bloc voting in the City[], levels of minority and non-minority political cohesion in elections, and the frequency of minority electoral loss." SJA225. Starting with the City's demographics, Dr. Grofman found that the "minority population in the City of Virginia Beach is geographically concentrated on the western edge of the city." SJA226. Per the most recent census data, he noted that Hispanic, Black, and Asian-American residents are 40.5% of the City's total population, and 33% of the City's citizen voting age population ("CVAP"). SJA228. Dr. Grofman concluded that "ten-district maps for the City Council … can 'naturally' create reasonably compact contiguous districts with high minority

population even with no attention to race simply because of the pattern of geographic concentration of minorities in the City" and that because "the minority population in Virginia Beach is sufficiently concentrated … drawing three 50%+ minority CVAP districts … can readily be done." SJA228.

Dr. Grofman next analyzed the extent of racially polarized voting in Virginia Beach, focusing on twelve elections from 2010-2018 that he reported in Table 2 of his initial report. SJA236, 229-45. Dr. Grofman found that "[o]f the eight elections shown in Table 2 where there is a minority candidate of choice, voting is polarized along racial lines in seven." SJA237. From his independent analysis that "parallels that in Judge Jackson's Opinion," Dr. Grofman concluded there was "essentially indisputable evidence of political cohesive patterns of voting for both White voters and for minority voters" SJA239-41; *accord* SJA239 (concluding "the minority community in Virginia Beach" is "*unquestionably politically cohesive* in support of minority candidates, while the White community in Virginia Beach is unquestionably politically cohesive in its opposition" (emphasis added)).

To support his conclusions, Dr. Grofman analyzed voter rankings of minority candidates, and the vote share received by candidates preferred by the Minority Community. *Id*. He found that minority voters rank minority candidates of choice much higher (1.0 rank) than do white voters (2.9 rank), and that "the average vote share of the minority candidate among minority voters is 65.5%. By contrast, the

average vote share of [those same candidates] among non-minority voters is only 24.9%." *Id*. Dr. Grofman determined that this pattern of minority cohesion was the case whether the focus is "on contests where the minority candidate of choice is a minority candidate" or "where a white candidate is the candidate of choice." SJA241. He likewise noted that the district court qualitatively supported its conclusions by "devot[ing] twenty pages … to the extensive evidence of sociologically and politically rooted commonality among Black, Hispanic, and Asian populations in Virginia Beach." SJA239.

Dr. Grofman then reaffirmed that despite the Minority Community's cohesion, white bloc voting usually defeats their preferred candidates. Analyzing the twelve City Council elections in Table 2 of his report, Dr. Grofman found that "minority candidates of choice regularly lose" in City Council elections absent special circumstances. SJA242. Because "there is a pattern of minority loss in five of eight elections [62.5%] with a minority candidate, and an expected pattern of minority loss in additional two future single seat elections" Dr. Grofman found "a pattern of actual or expected future minority loss in seven of eight [87.5%] of the elections in Table 2 where there is a minority candidate of choice." *Id*. However, Dr. Grofman clarified the "seven of eight" calculation actually "*understates* the degree to which the present electoral system has foreclosed minority opportunity to succeed in the electoral arena," for two reasons: (1) likely "two of the[] three instances of

minority success [are because] the minority candidate who won that election would have lost had there been fewer white candidates splitting the white vote," SJA244, and (2) minority candidates "are deterred from running for at-large elections in the city by their low chance of electoral success." SJA242.

The district court adopted Dr. Grofman's proposed remedial plan and entered a final order finding that Dr. Grofman's analysis further supports the court's Section 2 liability findings. SJA359-64.

III. Changes to Virginia Law

Virginia recently enacted two laws affecting Virginia Beach's electoral system: (1) HB2198 and (2) the Virginia Voting Rights Act ("VVRA"). HB2198 precludes at-large elections for residence districts, requiring seven of Virginia Beach's ten city council seats to be elected from single-member districts. Va. Code § 15.2-1400(F). The VVRA is similar to, but broader than, Section 2 of the federal VRA. Unlike the federal VRA, for example, minority voters need not show they could constitute a geographically compact majority of eligible voters in a single member district. *Id*. § 24.2-130(B). The City's attorney recognized as much in City Council meetings while this case was pending, noting: "[t]his likely means the plaintiffs in a state action will need not to rely on a coalition of minorities to satisfy the State's Voting Rights Act requirements," and the VVRA "takes away a number of the defenses" Defendants assert here. Doc. 25-2 at 40:1-14; 14:3-15:3.

SUMMARY OF THE ARGUMENT

After a six-day bench trial with numerous expert reports, a dozen fact witnesses, and voluminous documentary evidence, the district court correctly ruled that the City's at-large system unlawfully dilutes Plaintiffs' voting strength. Months of additional remedial proceedings—conducted by the appointed special master whom both parties nominated—reinforced that Plaintiffs proved their case. The district court and special master properly concluded that Virginia Beach's Minority Community is sufficiently large and compact to form majority-minority districts; is politically cohesive based on substantial quantitative and qualitative evidence that the coalition backs the same candidates and causes; and is stifled by the City's majority block of white voters who routinely oppose minority-preferred candidates. Under the totality of circumstances of Virginia Beach's inequality and discrimination, the district court ruled that Plaintiffs established the City's electoral system violated Section 2.

Defendants fail to justify a different conclusion. Defendants' jurisdictional arguments that this case is currently moot and that Plaintiffs lack standing to vindicate their own rights are without merit. Instead, Defendants ignore that their obligation to seek preclearance of the court-imposed remedial plan under the broader Virginia Voting Rights Act will moot their appeal. Their contention that the Voting Rights Act prohibits discrimination only against particular racial groups is contrary

to the plain text of Section 2 and the majority of cases interpreting it. Defendants' various attacks on the district court's detailed discussion of Section 2's elements misapprehends precedent, and disregards the clear error review standard by urging the Court to accept Defendants' (and their disqualified expert's) distorted view of the record. And Defendants' last-ditch argument that the district court improperly enjoined the City's dilutive election system and required a non-dilutive replacement is unavailing.

Following decades of dismissed collective advocacy, Virginia Beach's minority voters have won an equal opportunity at achieving representation on the City's governing council. The Court should affirm the district court's decision.

STANDARD OF REVIEW

The Court "review[s] judgments resulting from a bench trial under a mixed standard of review: factual findings may be reversed only if clearly erroneous, while conclusions of law are examined de novo." *Raleigh Wake Citizens Ass'n v. Wake Cty. Bd. of Elections*, 827 F.3d 333, 340 (4th Cir. 2016) (citation and quotations omitted). "If the district court's view of the evidence is plausible in light of the entire record, an appellate court may not reverse even if it is convinced that it would have weighed the evidence differently in the first instance." *Brnovich v. Democratic Nat'l Comm.*, 141 S. Ct. 2321, 2349 (2021) (citation omitted).

The Fourth Circuit applies deferential clear error review in vote dilution

matters. Because "[c]laims of vote dilution require trial courts to immerse themselves in the facts of each case, and to engage in 'an intensely local appraisal of the design and impact of the contested electoral mechanisms,'" the appellate court's "function is not to reweigh the evidence presented to the district court." *United States v. Charleston Cty., S.C.*, 365 F.3d 341, 349 (4th Cir. 2004) (quoting *Gingles*, 478 U.S. at 79). In "fact-intensive areas" where knowledge of local conditions is key, the Court "defer[s] to resident district courts, who have both knowledge of the local community and fact-finding expertise." *See United States v. 269 Acres, More or Less, Located in Beaufort Cty., S.C.*, 995 F.3d 152, 166 (4th Cir. 2021). To "preserve[] the benefit of the trial court's particular familiarity with the indigenous political reality," the Court simply determines whether "the district court's finding rested on substantial, credible evidence." *Charleston Cty*, 365 F.3d at 349. Moreover, in redistricting matters, the Court's "role in reviewing the district court's reliance on" or rejection of "expert testimony is limited." *Levy v. Lexington Cty., S.C.*, 589 F.3d 708, 719 (4th Cir. 2009).

ARGUMENT

I. HB2198 did not moot this case but the City's obligation to obtain preclearance under the VVRA will moot this appeal.

HB2198 did not moot the case but the City's obligation to obtain preclearance under the VVRA will likely moot this appeal. A case becomes moot "when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the

outcome," which occurs "only when it is impossible for a court to grant any effectual relief whatever to the prevailing party." *Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (citations omitted). When a defendant claims its violative conduct ended "partway through litigation," it has "the heavy burden of persuading the court that it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *6th Cong. Dist. Republican Comm. v. Alcorn*, 913 F.3d 393, 407 (4th Cir. 2019) (citations, quotations, and alteration omitted). A change in law that leaves in place the defendants' "authority and capacity to repeat [the] alleged harm" does not moot the case. *Porter v. Clarke*, 852 F.3d 358, 364 (4th Cir. 2017) (citations and quotations omitted). A case is thus moot only if the defendant's changed conduct "afford[s] complete relief" for the injury. *United States v. City of Cambridge, Md.*, 799 F.2d 137, 140 (4th Cir. 1986).

A. HB2198 did not moot this case.

HB2198 did not moot this case. Plaintiffs seek "the implementation of an election system for the City Council that complies with Section 2" and "that all future elections for the City of Virginia Beach comply with Section 2[.]" JA0061. Although HB2198 converted seven of Virginia Beach's ten City Council districts from at-large to single-member districts, it left Plaintiffs' Section 2 injury unremedied in two key ways: (1) it did not address *how* the seven districts should be configured or require them to be drawn to provide minority voters an equal

opportunity to elect their preferred candidates, and (2) it left in place three dilutive at-large seats. Va. Code § 15.2-1400(F).

Because HB2198 does not require the seven "residency districts" to be reconfigured to comply with Section 2 and does not eliminate the remaining three at-large seats, Defendants' conformance fails to "afford complete relief." *City of Cambridge*, 799 F.2d at 140. Defendants do not contend they configured the preexisting "residency districts" to afford an equal opportunity for the Minority Community to elect its preferred candidates, nor could they. And they do not contend they eliminated the three at-large seats. Defendants' remaining "authority and capacity to repeat [the] alleged harm" to Plaintiffs' equal opportunity to elect their preferred candidates means HB2198 does not moot the case. *See Porter*, 852 F.3d at 364. Plaintiffs' injury is certainly "capable of repetition" and could "persist in future elections" at the City's discretion under HB2198. *See, e.g., Action NC v. Strach*, 216 F. Supp. 3d 597, 612 (M.D.N.C. 2016) (applying *Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1343 (11th Cir. 2014)).

B. This appeal will become moot upon the administrative approval of the remedial plan under the VVRA.

Defendants' use of the remedial map to comply with its separate VVRA obligations will moot their appeal once the plan is administratively approved. The VVRA, enacted after the district court entered its injunction, governs all Virginia redistricting and is more protective than Section 2. Unlike Section 2, it does not

require showing that the diluted minority voters are "geographically compact or concentrated in a locality," and thus does not require proof of a cohesive group of minority voters that exceed 50% in any number of districts. Va. Code § 24.2-130(B). The City attorney acknowledged this fact. Doc. 25-2 at 40:1-14.

To comply with the VVRA, the City must either (a) promulgate and publicly post its map for public comment, and face the possibility of a state court challenge to the plan, or (b) submit the plan for preclearance with the Virginia Attorney General. *See* Va. Code §§ 24.2-304.1, 24.2-129. Although the City has not yet undertaken its VVRA administrative review obligations, it must do so. The district court's remedial plan resolved Plaintiffs' federal VRA challenge but does not automatically satisfy the City's independent VVRA obligations, which are more onerous than its Section 2 obligations. The City must still obtain administrative approval to ensure that state law does not require a districting plan *more* solicitous of minority voting rights. Nothing in the VVRA excuses the City's dilatory non-compliance with its state-law mandate merely because a federal court has ordered a remedy for a distinct federal law violation. *See* Va. Code § 24.2-129.

The City must advance the remedial plan to satisfy its independent state-law obligations, which would moot the City's appeal over its federal law obligations. Given the VVRA's broader requirements, the City will not have the "authority and capacity to repeat [the] alleged harm" if the plan is precleared. *Porter*, 852 F.3d at

364. As this Court recognized when Section 5 of the federal VRA still required preclearance, administrative approval of a plan moots a challenge to the prior regime if the plan also resolves the Section 2 allegations. *See Fayetteville, Cumberland Cty. Black Democratic Caucus v. Cumberland Cty., N.C.*, 927 F.2d 595, 1991 WL 23590, at *3 (4th Cir. 1991).

The City's obligation to obtain preclearance under the VVRA counsels in favor of deferring resolution of this appeal until after the preclearance process. Doing so would preserve judicial economy and ensure that the Court does not unnecessarily expend resources when there may no longer be a live controversy.

II. Plaintiffs have standing.

Plaintiffs have standing to assert their Section 2 coalition claim. Defendants do not contest Plaintiffs' constitutional standing but argue they lack prudential standing to sue on behalf of the coalition because Plaintiffs are Black. Appellants' Am. Opening Br. ("Br.") at 19. Defendants' third-party prudential standing argument is in "tension with [the Court's] recent reaffirmation that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 126 (2014) (citations omitted).

Assuming prudential standing's viability, it is inapplicable here. Plaintiffs' Section 2 claims do not implicate third-party standing because they vindicate *their*

own injury as members of a single protected coalition of minority voters. *See* JA0100-01, 1183; s*ee also Kumar v. Frisco Indep. Sch. Dist.*, 476 F. Supp. 3d 439, 460 (E.D. Tex. 2020) (detailing that third-party standing is impertinent to coalition claims). Defendants' contrary arguments question the merits of the Minority Community's cohesiveness. "[T]he Court must be careful not to" accept Defendants' effort to "put[] the merits cart before the standing horse" on this question. *Cooksey v. Futrell*, 721 F.3d 226, 239 (4th Cir. 2013) (citations omitted). At the jurisdictional stage, the Court "must [instead] assume that on the merits the plaintiffs would be successful in their claims" that the coalition is cohesive and cognizable under Section 2 without being separated into its constituent parts. *See id.* (citation omitted). Defendants' standing argument is thus misplaced and incorrect.

III. The district court correctly ruled that Virginia Beach's electoral system violates Section 2 of the VRA.

The district court correctly concluded that Virginia Beach's electoral system violates Section 2. Defendants contend that minority coalition claims are not cognizable under Section 2, that the Virginia Beach Minority Community is not cohesive, that white voters do not usually defeat the preferred candidates of the Minority Community, and that the totality of circumstances do not justify a finding of vote dilution. The plain text of Section 2 and the weight of the authority foreclose Defendants' first argument, and Defendants do not prove the district court clearly erred in its factual findings under the second and third *Gingles* preconditions, or the

totality-of-circumstances. This Court should reject Defendants' arguments.

A. Section 2 recognizes minority group coalitions.

A coalition of two or more politically cohesive minority groups may seek relief under Section 2. Applying Section 2 to protect minority coalitions is "necessary and appropriate to ensure full protection of the Fourteenth and Fifteenth Amendments rights," because voting discrimination is just as problematic when it prejudices one minority group as when it harms several. *See Bush v. Vera*, 517 U.S. 952, 992 (1996) (O'Connor, J., concurring). Section 2's plain text permits minority coalition claims. So does the weight of persuasive authority in the Supreme Court and other circuits. Defendants' and *amicus*'s contrary arguments are without merit.

1. Section 2's plain text permits coalitional claims

Section 2's plain text authorizes coalition claims. Section 2, like other civil rights statutes, is "written in starkly broad terms," *see Bostock v. Clayton Cty., Georgia*, 140 S. Ct. 1731, 1753 (2020), and should be interpreted in "the broadest possible scope." *Chisom v. Roemer*, 501 U.S. 380, 403 (1991) (citation omitted). It empowers "any citizen" to challenge any "qualification or prerequisite to voting or standard, practice, or procedure" that discriminatorily "deni[es] or abridge[s]" the right to vote. 52 U.S.C. § 10301(a). Section 2's "broad language" does not limit its protections to a single minority group bringing claims seriatim; it instead reflects "Congress's presumed point to produce general coverage." *See Bostock*, 140 S. Ct.

at 1749 (internal quotation omitted).

Section 2(a) of the VRA prohibits any voting standard or practice that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color," or language-minority status. 52 U.S.C. §§ 10301(a), 10303(f). Section 2(b) sets forth how a violation of Section 2(a) is established, and notes that it applies to "a class of citizens protected by subsection (a)." *Id.* § 10301(b). The "class of citizens" to which Section 2(b) refers is not a singular minority group, but rather those "protected by subsection (a)"—*i.e.*, "any citizen" subject to a denial or abridgment of voting rights "on account of race or color, or" language-minority status. *Id.* Nothing in the text of Section 2 requires every member of the "class of citizens" to share the same race, as opposed to the same experience of being politically excluded "on account of race," whatever their race is. *Id.* Section 2 protects all minority voters and reading it to protect only one at a time defeats its broad textual mandate.

Defendants' strained statutory interpretation isolates "class" in subsection (b) to mean only a single harmed minority group. This reading improperly plucks "class" from its statutory context. *See Yates v. United States*, 574 U.S. 528, 537 (2015) (the "meaning of a word cannot be determined in isolation") (citation omitted)). "Class" instead means "[a] group of people … that have common characteristics or attributes," Black's Law Dictionary (11th ed. 2019), and refers to

the plural of "citizens" listed as protected groups in subsection (a): racial, ethnic, and language-minority citizens. Accordingly, "class of citizens" means the class members must merely share the common characteristics of being a Section 2 protected racial, ethnic, or language minority voter experiencing vote dilution. Reading "class of citizens" to include a combination of protected minority citizens accords with both the last antecedent grammatical rule, *see Barnhart v. Thomas*, 540 U.S. 20, 26 (2003), and the singular-plural canon of statutory interpretation, *see United States v. Haas*, 986 F.3d 467, 481 (4th Cir. 2021) (applying 1 U.S.C. § 1).

Defendants also contend that in referring to members of the class who have less opportunity than "other members of the electorate," Section 2 creates a "comparative test" between "Black voters with Asian and Hispanic voters" as well as white voters. Br. at 25. Under Defendants' newly invented interpretation, if a system dilutes Black *and* Hispanic voting power, then it dilutes neither because both are "equally" unable to elect their preferred candidates. This result is absurd. The comparison required by Section 2 is not among harmed minority groups, but between harmed minority voters protected by subsection (a) and unharmed "other members of the electorate"—in this case, Virginia Beach's majority of white voters.

2. The vast majority of courts have held that Section 2 protects coalition districts.

Consistent with the statute's plain text, the vast majority of courts to consider the issue have held that Section 2 permits coalition claims. While the Supreme Court

has not expressly resolved the issue, it has assumed that Section 2 allows coalition claims. *Growe v. Emison*, 507 U.S. 25, 41 (1993); *see also Bartlett v. Strickland*, 556 U.S. 1, 13-14 (2009) (plurality) (declining to address whether minority coalition claims are cognizable). In *Houston Lawyers' Association v. Attorney General of Texas*, the Court entertained a Section 2 challenge pursued by "a statewide organization composed of both Mexican-American and African-American residents." 501 U.S. 419, 421 (1991). Similarly, in *Wright v. Rockefeller*, the Court accepted that a coalition of Black and Puerto Rican voters brought a constitutional vote dilution challenge but rejected the merits. *See*, 376 U.S. 52, 54 (1964). The Supreme Court also recognizes coalition claims in the vote denial context. Just last term, the Court evaluated a coalition of Black, Hispanic, and Native American voters' Section 2 vote denial claims. *See Brnovich*, 141 S. Ct. at 2322.

Courts in the First, Second, Fifth, Ninth, and Eleventh Circuits expressly recognize that Section 2 protects minority voter coalitions.[3] The Fifth Circuit's

[3] *See, e.g.*, *Huot v. City of Lowell*, 280 F. Supp. 3d 228, 231 (D. Mass. 2017); *NAACP, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 379-80 (S.D.N.Y. 2020) (applying *Bridgeport Coal'n for Fair Representation v. City of Bridgeport*, 26 F.3d 271 (2d Cir. 1994)); *aff'd sub nom. Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021); *Campos v. City of Baytown, Tex.*, 840 F.2d 1240, 1244 (5th Cir. 1988); *Badillo v. City of Stockton, Cal.*, 956 F.2d 884 (9th Cir. 1992) (holding that factual record did not demonstrate the coalition's cohesion); *Concerned Citizens of Hardee Cty. v. Hardee Cty. Bd. of Comm'rs*, 906 F.2d 524, 526 (11th Cir. 1990) (same).

decision in *LULAC, Council No. 4386 v. Midland Independent School District*, in which a Black and Hispanic coalition challenged their at-large school board, illustrates the need for Section 2 coalitions. 812 F.2d 1494 (5th Cir. 1987) ("*LULAC I*").[4] Both groups in *LULAC I* suffered voting discrimination and resulting socioeconomic disparities, but even when they jointly tried to overcome these inequities, white-bloc voting in the at-large system consistently defeated their preferred candidates. *Id*. at 1496-99. Because the coalition experienced the same discriminatory vote dilution injury and had "common social, economic, and political interests which converge [to] make them a cohesive political group," they could jointly pursue their claims to achieve single-member districts. *Id.* at 1501-03. The district court rightly followed the overwhelming majority of persuasive authority to adopt coalition claims. JA1193.

Defendants urge this Court to depart from the majority rule, and instead follow the single outlier, the Sixth Circuit. *See Nixon v. Kent County*, 76 F.3d 1381 (6th Cir. 1996) (*en banc*). But the *Nixon* majority misinterpreted Section 2's text to reach its conclusion foreclosing coalition claims, detaching the word "class" from its context to mean a single racial group. *Id.* at 1386-87. This is contrary to the plain text, as

[4] Although the *en banc* court vacated the *LULAC I* panel decision on other grounds, *see* 829 F.2d 546 (5th Cir. 1987) (*en banc*), the Fifth Circuit has since reinforced the panel's ruling and adopted its reasoning to allow coalition claims. *See, e.g.*, *Brewer v. Ham*, 876 F.2d 448, 453 (5th Cir. 1989); *Campos*, 840 F.2d at 1244.

discussed *supra*. The Sixth Circuit's decision also depends on questionable "policy concerns," suggesting that even if there is proven discrimination against minority groups, "there is no basis for presuming such a finding regarding a group consisting of a mixture of both minorities." *Id.* at 1391. But as the *Nixon* dissenters emphasize, the more problematic "policy concern" is that rejecting coalition claims "requires the adoption of some sort of racial purity test" that is inconsistent with Section 2's goal to eliminate racial divisions in voting. *Id.* at 1401 (Keith, J., dissenting) (reasoning that if courts "are to make these [racial] distinctions, where will they end? Must a community that would be considered racially both Black and Hispanic be segregated from other Blacks who are not Hispanic?"). As the majority of courts acknowledge, two or more minority groups shouldering the same discriminatory injury should not preclude Section 2 relief.

3. Section 2's legislative history supports coalition claims.

Section 2's legislative history clarifies that Congress designed the statute to protect minority coalitions. This Court may "consult[] the understandings of the law's drafters as some (not always conclusive) evidence." *Bostock*, 140 S. Ct. at 1750. The Supreme Court often relies on Section 2's legislative history. *Brnovich*, 141 S. Ct. at 2332-33; *Gingles*, 478 U.S. at 43 & n.7.

The 1975 amendment to Section 2 added language-minority protections because Congress sought to address "pattern[s] of racial discrimination that ha[ve]

stunted … black and brown communities." S. Rep. No. 94-295, at 22-31 (1975). Congress knew that Texas, for example, had a substantial minority population "comprised primarily of Mexican Americans and blacks" and "has a long history of discriminating against members of both minority groups." *Id.* at 25. Congress sought to protect together all "racial or ethnic groups that had experienced appreciable prior discrimination in voting." *Salas v. Sw. Texas Junior Coll. Dist.*, 964 F.2d 1542, 1549 (5th Cir. 1992).

The 1982 amendment's legislative history also reinforced that minority groups, together, must have "a fair chance to participate" and "equal access to the process of electing their representatives." S. Rep. No. 97-417, at 36 (1982). Thus, if Congress meant to exclude coalitions, "Congress would have made it explicit in the statute, or at least some of the Members would have identified or mentioned it at some point in the unusually extensive legislative history of the 1982 amendment." *Chisom*, 501 U.S. at 396.

4. Defendants' policy and constitutional arguments against coalitions are without merit.

Defendants contend that applying Section 2 to protect coalitions, as its text and purpose requires, would lack administrability and inject excessive considerations of race. Not so.

First, Defendants' administrability objection is belied by three decades of evidence: with the exception of the Sixth Circuit, courts in all the other circuits to

consider the question have long applied Section 2 to protect minority coalitions. *See supra* n.3. Defendants' reliance on *Bartlett* for this point, Br. at 28, is misplaced because there the Court was concerned with abandoning the majority requirement of *Gingles* prong one, which it thought would leave jurisdictions uncertain of when Section 2 obligations might arise. 556 U.S. at 17. But no such administrability issue arises here; Plaintiffs do not advocate jettisoning the majority-minority requirement, but rather combining cohesive minority populations that together exceed a district's majority of eligible voters. Addition is not too steep an administrative hurdle.

Second, recognizing Section 2 coalition districts does not inject excessive consideration of race into redistricting. Coalition claims create no "assumption" of cohesive minority groups, as Defendants contend. Br. at 29. Rather, coalitions must, just like any other Section 2 claimant, *prove* their cohesion through quantitative and/or qualitative evidence. *Campos*, 840 F.2d at 1245. A key issue in *all* Section 2 claims is whether "the minority group as a whole" votes cohesively but are stifled because of white bloc voting. *See id.* Defendants' misplaced constitutional and administrability arguments would apply to single-race claims as much as to coalition claims.

Defendants' novel Equal Protection argument also asks the Court to stretch that doctrine beyond its bounds. In redistricting, the Equal Protection Clause narrowly proscribes circumstances where "race was the predominant factor

motivating the [redistricting] decision," *Cooper v. Harris*, 137 S. Ct. 1455, 1463-64 (2017), such that the map was devised "without regard for traditional districting principles and without sufficiently compelling justification," *Shaw v. Reno*, 509 U.S. 630, 642 (1993); *Cane v. Worcester Cty., Md.*, 35 F.3d 921, 927 n.6 (5th Cir. 1994) (constitutional concerns arise when district lines are only explainable by racial segregation). Defendants provide no authority for inflating this doctrine to support a categorical rule against coalition claims under a statute designed to prevent vote dilution. And the district court made careful factual determinations establishing that race did not predominate in any of the redistricting decisions here. JA1198-99.

In fact, coalition claims reduce racial distinctions. Allowing coalitions to sue advances Section 2's goal to address the lasting effects of discrimination without "produc[ing] boundaries [that] amplify[] divisions between" voting groups. *See Cooper*, 137 S. Ct. at 1469. Having an "arbitrary limitation" requiring minority groups to sue separately would discount that varying minority groups "face the same impediment to vote for their preferred candidates." JA1191-92. Coalition claims encourage cross-racial partnerships that will relieve any administrability and divisiveness concerns.[5] *See also United States v. Marengo Cty. Comm'n*, 731 F.2d

[5] Defendants additionally imply, based on an oblique citation to *City of Boerne v. Flores*, 521 U.S. 507, 519 (1997), that Congress lacks authority to protect the civil rights of minority coalitions. Br. at 26. Nothing in *City of Boerne* supports that implication. Rather, the Supreme Court in various contexts has applied

1546, 1567 (11th Cir. 1984) (Section 2 is "intended not to create race-conscious politics, but to remedy it where it already exists. The surest indication of race-conscious politics is a pattern of racially polarized voting.").

Coalition claims also do not "hijack[] Section 2 for partisan ends." Br. at 27. The opposite is true. Without Section 2's coalition claim protections, a jurisdiction could dilute its minority voters' political strength if they identify with multiple minority groups instead of one. Defendants' argument is particularly irrelevant here, as Defendants' councilmanic elections are nonpartisan. And Defendants' suggestion that evincing the coalition's "political cohesion" somehow makes this type of claim questionable, Br. at 24, is nonsensical—again, *all* Section 2 claims must prove minority political cohesion under the second *Gingles* precondition.

Finally, Defendants' reliance on *Bartlett* is misplaced because that Court explicitly did not address coalition districts. *See* 556 U.S. at 13-14. And its reasoning does not apply to minority coalitions. The *Bartlett* plurality was concerned that factually distinct *crossover* claims by minority *and white voters* would pose a "serious tension" with Section 2's racially polarized voting precondition. *Id.* at 15-16. That tension is not present for coalition claims, which require proof that a

---

antidiscrimination protections simultaneously to multiple minority groups. *See, e.g.*, *Bank of Am. Corp. v. City of Miami, Fla.*, 137 S. Ct. 1296, 1301 (2017) (allowing FHA claim by city on behalf of both Black and Latino mortgagors); *Brnovich*, 141 S. Ct. at 2322.

cohesive minority coalition is stifled by oppositional white-bloc voting.

Similarly, *Hall v. Virginia*, 385 F.3d 421 (4th Cir. 2004), does not proscribe coalition claims because it also concerned only an alleged crossover district including "black and white voters," not a minority coalition district. *Id.* at 430. Far from limiting Section 2 minority coalitions, the *Hall* court "noted that '[t]here are communities in which minority citizens are able to form coalitions with voters from other racial and ethnic groups'" and seek to enforce their rights. *Id.* at 431 n.13 (quoting *Georgia v. Ashcroft*, 539 U.S. 461, 483 (2003))). The Court's nuanced discussion of coalitions concluded that Section 2 does not "create an *entitlement* for minorities to form an alliance with [white crossover] voters in a district who do not share the same statutory disability as the protected class." *Id.* But the inverse of this observation is that Section 2 *does* recognize a claim when minority voters *can prove* they "form an alliance with other voters" who *do* "share the same statutory disability" of discriminatory vote dilution. *See id*. *Hall* reinforces that a coalition must be composed of cohesive, statutorily protected minority groups; it "does not stand for the proposition that minority groups cannot be combined." *See NAACP, Spring Valley Branch*, 462 F. Supp. 3d at 380 n.11.

The district court properly concluded that minority groups may advance coalition claims under Section 2, and that Plaintiffs satisfied *Gingles* prong one by showing alternative districting schemes in which minority voters would form

geographically compact majorities in single-member districts. Defendants do not contest that, if coalition districts are permitted, Plaintiffs satisfy *Gingles* prong one.[6]

B. The Minority Community satisfies the *Gingles* prong two political cohesion requirement.

The Minority Community established their political cohesion. *Gingles* prong two requires "[a] showing that a significant number of minority group members usually vote for the same candidates is one way of proving political cohesiveness necessary to a vote dilution claim." 478 U.S. at 56. Whether the *Gingles* preconditions are satisfied, like the "ultimate finding of votes dilution," is "a question of fact subject to the clearly-erroneous standard of Rule 52(a)." *Id.* at 78; *see also LULAC v. Clements* ("*LULAC II*"), 999 F.2d 831, 864 (5th Cir. 1993) (explaining that political cohesion is "a question of fact").

Although the minority group must be politically cohesive, Section 2 does not require a showing that the minority group votes as "an absolute monolith" for the same candidates. *See Ruiz v. City of Santa Maria*, 160 F.3d 543, 554 n.19 (9th Cir. 1998). And no particular form of evidence is required to establish political cohesion, as the district court may rely upon quantitative and/or qualitative evidence. *See*

[6] Defendants merely contend the court erred in finding "that Black voters alone can constitute a majority in even one single-member district." Br. at 22. However, Defendants' own expert stated this was possible. JA1212. It is not clear error for the district court to find the same.

Brewer, 876 F.2d at 453 ("[S]tatistical evidence is not the *sine qua non* to establishing cohesion"). This is because "*Gingles* ... suggests flexibility in the face of sparse data." *Lewis v. Alamance Cty., N.C.*, 99 F.3d 600, 621 (4th Cir. 1996) (quoting *Citizens for a Better Gretna v. City of Gretna,* 834 F.2d 496, 502 (5th Cir. 1987)).

The district court correctly concluded that the preponderance of the quantitative and qualitative evidence proved that the Minority Community is politically cohesive. JA1210-31. Defendants have not shown that this conclusion was clear error.

1. Quantitative evidence established cohesion.

The district court properly relied on quantitative expert testimony at trial and in the remedial phase to find that the Minority Community is politically cohesive, crediting Plaintiffs' experts Drs. Spencer and Lichtman, and discrediting the analysis of Defendants' expert Dr. Kidd. JA1215-31, 1243-44. Specifically, "[b]ased upon Dr. Spencer's credible analysis, the Court [found] that Plaintiffs provided sufficient evidence showing consistent minority cohesive voting for a minority-preferred candidate and that whites overwhelmingly vote for different candidates." JA1217.

Dr. Spencer measured political cohesion through three standard statistical methods: homogenous precinct analysis, ecological regression ("ER"), and ecological inference ("EI"). JA1216, 1230; *See, e.g.*, *Bone Shirt v. Hazeltine*, 461

F.3d 1011, 1020 (8th Cir. 2006) (collecting cases). Using the voting pattern data from Dr. Spencer's analysis, the district court examined a host of prior elections and concluded that the evidence proved minority cohesion in city council elections. JA1217-31. In particular, the district court found "strong evidence of minority voter cohesion in seven elections with nine minority candidates" from 2008 to 2018 as well as in five additional elections featuring white candidates preferred by the minority community. JA1224.[7]

The court also examined elections for offices other than city council—"exogenous" elections—to support its finding that the minority community votes cohesively. JA1225. In the 2008 presidential election, for example, "90% of voters from the Minority Community strongly preferred Barack Obama over John McCain, while about 65% of white voters strongly preferred McCain." JA1225. The numbers were similar in the 2012 election between Obama and Mitt Romney. JA1225. Ultimately, the district court found fourteen examples of minority vote cohesion in city council races since 2008 in addition to the examples from exogenous contests and concluded that "Plaintiffs have satisfied [their] burden and shown that the minority community is politically cohesive." JA1225.

[7] For example, in the 2008 at-large election, Ms. Allen (a Black woman) received 70% of the Minority Community's vote, but only 20% of the white vote. She lost to Ms. Wilson, the white-preferred candidate who received only 8% of the Minority Community's vote but 59% of the white vote. JA1218.

Dr. Spencer did not rely on any single statistical method of estimating voting behavior by race, but rather cautioned that all should be consulted and the limitations and patterns of each carefully weighed in drawing conclusions. JA386. In particular, he explained that Virginia Beach's Hispanic and Asian-American populations are too small to isolate reliable statistical estimates for each group's voting preferences. JA1216. But Dr. Spencer compensated for this limitation in his ER and EI analyses by using the accepted method of "estimat[ing] the joint preferences of non-white voters overall, as well as the individual preferences of Black voters and white voters." *Id*.; SJA285. Dr. Spencer found that Black voters exhibited similar voting preferences as the combined Minority Community, indicating cohesion among all groups. JA397, 1231. For some election contests, the EI and ER analyses estimated minor differences between the level of support of Black voters and combined minority voters, but Dr. Spencer described these perceived differences are immaterial. JA377, 1230-31. To explain, Dr. Spencer conducted a homogenous precinct analysis, which looks at the voting patterns in precincts with a heavy concentration of the relevant population. JA370-71, 1230-31, SJA230, 237-38. Dr. Spencer found that when comparing homogenous Black precincts to homogenous combined minority precincts, the candidate preferences were nearly the same, and exhibited strong cohesion. JA386-88, 404, 407-10, 1231. Moreover, Dr. Spencer testified that ER assumes a linear relationship between electoral results and the

concentration of minorities in precincts, but in this case the plotted data shows otherwise, *i.e.*, the model understates minority cohesion, and buttresses the homogenous precinct analysis that showed near equal cohesion levels. JA387-92, 1230. The district court credited Dr. Spencer's analysis and opinions and found that the Minority Community was cohesive, JA1215, 1230-31.

The district court likewise found that Dr. Grofman's further analysis, SJA237, reinforced "that the Minority Community is politically cohesive." SJA362. Dr. Grofman concluded that based on "high levels of demonstrated socio-economic cohesion and very high levels of minority electoral cohesion," SJA241, the Minority Community is "unquestionably politically cohesive in its support of minority candidates." SJA238, 285. He too concluded that this was confirmed by homogenous precinct analysis. SJA237-38 (noting that homogenous precinct comparison "of exactly th[e] sort" performed by Dr. Spencer "allows inferences about racially polarized voting patterns vis-à-vis the minority group as a whole").

Defendants contend that *Gingles* prong two requires Plaintiffs to show that "each group in the coalition is internally cohesive and that each group is cohesive with the others." Br. at 31. Defendants are incorrect on both fronts. The "key" Section 2 inquiry for coalition claims is whether "the minority group as a whole" is politically cohesive. *Campos*, 840 F.2d at 1245. Contrary to Defendants' repackaging, cohesion is "a question of fact," and neither plaintiffs nor the district

court are limited to the single cramped statistical framework Defendants propose. *See, e.g.*, *LULAC II*, 999 F.2d at 864.

The district court weighed the available evidence and concluded that Plaintiffs had overcome the limitations of statistical science by conducting additional comparative analysis that illustrated the Minority Community's cohesion, even if that analysis did not yield specific percentage estimates for Hispanic and Asian voters for particular election contests. This is on top of Plaintiffs' robust qualitative evidence of cohesion, discussed *infra* Part III.B.2. The legal requirement is to show cohesion, and if "statistical evidence is not a *sine qua non* to establishing cohesion," *Brewer*, 876 F.2d at 454, then it cannot be that the *specific type* of statistical evidence Defendants demand is the *sine qua non* of establishing cohesion. Cohesion is a factual question, and it is not clear error for the district court to conclude from the evidentiary record—including the quantitative and qualitative evidence and its determinations about which experts to credit—that the preponderance of the evidence demonstrated cohesive voting among the Minority Community. *See Campos*, 840 F.2d at 1247.

Defendants also seize upon a single out-of-context sentence, *see, e.g.*, Br. at 11, from Dr. Grofman's report where he concluded (as had Dr. Spencer) that "it is "mathematically impossible to derive the voting patterns for each minority group separately." SJA362. But Dr. Grofman explained that combining Hispanic, Black,

and Asian-American voters to estimate the coalition's preferences shows "clear and compelling evidence for racially polarized voting in Virginia Beach … and for political cohesion on the part of both the minority group and White voters in support for or opposition to minority candidates." SJA285. Dr. Grofman concluded, as did the district court (and as should this Court), that Defendants' argument relies "on misrepresent[ing] the legal authority to which they cite[.]" SJA362, n.5.

Core to Defendants' misrepresentation is *Brewer v. Ham*. While Defendants argue the Fifth Circuit prohibits combined minority coalition cohesion estimates, the court instead reaffirmed that "minority groups may be aggregated" for Section 2 claims. 876 F.2d at 453. The Fifth Circuit cautioned "against reaching conclusions about inter-minority cohesion absent a diligent inquiry into the political dynamics of the particular community," but it did not prohibit using aggregated statistical evidence to do so. *See id.* It simply rejected the coalition claim in that specific case because of evidentiary failures that are not present here.[8] Plaintiffs' experts, as well as Dr. Grofman, relied on thorough statistical analyses to measure cohesion among the Minority Community, whereas the plaintiffs in *Brewer* "presented no statistical evidence to support their claim." 876 F.2d at 453. The *Brewer* court recognized that

[8] *Amicus* cites *Growe*, 507 U.S. at 40, where a lack of cohesion was found, but in that case the district court had relied upon a law review article to support its finding. *Id.* Here, the district court conducted a searching inquiry of local political conditions in finding that the Minority Community is cohesive. JA1211-31.

because "statistical evidence is not a *sine qua non* to establishing cohesion," the plaintiffs could have put on "other [qualitative] evidence … sufficiently probative" of cohesion, but failed to do so. *Id.* at 453-54. As discussed *infra*, Plaintiffs presented exactly the types of qualitative evidence here that the *Brewer* court founding lacking.

Defendants—at trial and now—depend heavily on testimony of their unqualified and discredited expert, Dr. Quentin Kidd, to rebut Plaintiffs' quantitative evidence. The district court properly found Dr. Kidd's analysis unreliable and rejected it because he failed to conduct any statistical analysis and "admitted that he has never conducted an analysis of racially polarized voting in *any* jurisdiction." JA1228-29. Defendants do not contend otherwise; nowhere in their brief do they appeal the district court's conclusion that Dr. Kidd was "not [an expert] in quantitative statistical methods nor an expert in racially polarized voting" or the district court's finding that "Dr. Kidd's analysis, methodology, and findings are neither credible nor sufficient to rebut Dr. Spencer's findings." JA1228-29. Defendants have thus waived that argument. *See Grayson O Company v. Agadir Int'l LLC*, 856 F.3d 307, 316 (2017).

Instead of conducting proven statistical analyses, Dr. Kidd invented an algebraic theory purporting to show a lack of cohesion in the coalition—the same rejected theory Defendants deploy here and no court has before accepted. JA1228; Br. at 34-36. The district court and Dr. Grofman correctly discredited Dr. Kidd's

newly created theory and unsupported conclusion. JA1229-30; SJA285. As Dr. Grofman stated, Defendants' attempted algebraic "method of triangulation is not possible when we are trying to separately estimate the behavior of four groups, rather than just two groups." SJA284-85, n.41. This is because of a basic problem "pointed out by teachers in algebra classes, of having more unknowns than you have equations from which to estimate the values of these unknowns." *Id*. Because he lacked the necessary expertise, Dr. Kidd's shot-in-the-dark approach to measure voting behavior resulted in a nonsensical oversimplification. Rather than accepting Dr. Kidd's flawed methodology, the district court credited the explanation offered by Dr. Spencer, based on his credible, statistically acceptable analyses. JA1230-31.[9]

Dr. Kidd's inexperience also led to several other flawed quantitative analyses that Defendants parrot in this Court but the district court rightly rejected. For example, Defendants attempt to salvage Dr. Kidd's erroneous conclusion that a

[9] Defendants dwell on Dr. Spencer's testimony showing the non-linear curves best explained the small differences between Black and all minority support for certain candidates in the ecological regression model. Br. at 39. They contend that this does not explain those small differences in the ecological inference model, which they posit is not premised on linearity assumptions. Br. at 39-41. Defendants miss the forest for the trees. Dr. Spencer's analysis showed that the ecological regression model's conclusions—in light of the actual distribution of data—converged with the homogenous precinct analysis to show near identical cohesive support between Black voters and all minorities combined. JA404, 407-10, 1231. Holistically, all the quantitative methods pointed in one direction—a finding of cohesion—which the district court credited. JA1230-31. Defendants ask this Court to simply reweigh the evidence and draw different conclusions; that is not this Court's province.

candidate is only considered minority-preferred if they received 50%+1 votes. That view is both legally and factually unsound. Virginia Beach's councilmanic elections often involve multiple candidates for the same seat in which the winner receives less than 50%, *see* JA1230, JA1246, and minority-preferred candidates are not required to "achieve a threshold of 50% in a multi-candidate election," *see Lewis*, 99 F.3d at 613 n.10. Dr. Kidd's analysis compounded these errors by relying on flawed estimates of minority voter turnout. But courts have repeatedly held that cohesion should not be discounted because of low voter turnout. *See, e.g.*, *United States v. Blaine Cty., Mont.*, 363 F.3d 897, 910 (9th Cir. 2004). And even if such data were pertinent, Dr. Kidd's analysis was methodologically unhelpful in determining levels of turnout because he used "statewide, not Virginia Beach-specific, turnout data and he does not provide any statistical analysis to support [his] claim" of turnout rates. JA1242.

Undeterred by these shortcomings, Defendants ask this Court to accept Dr. Kidd's flawed theories and therefore reject Dr. Spencer's reliable statistical estimates of intra-coalition cohesion. Br. at 34-36. This invitation to second-guess the district court's conclusions and instead take the word of an unqualified witness improperly asks this Court to abandon its "limited" "role in reviewing the district court's reliance on … expert testimony," *Levy*, 589 F.3d at 719, which offers "singular deference to a trial court's judgments about the credibility of witnesses,"

Cooper, 137 S. Ct. at 1474. Defendants have not shown clear error.

Defendants finally contend that the district court "rewrote the standard of cohesion" to require Defendants to "disprove" cohesion. Br. at 37. Not so. The district court first analyzed Dr. Spencer's testimony and then turned to Dr. Kidd's testimony, which was "neither credible nor sufficient to rebut" Dr. Spencer, and thus Defendants presented no evidence that "disprove[s]" Plaintiffs' credible cohesion evidence. JA1229. The court did not morph the "standard of cohesion." It weighed the evidence before it and found Dr. Spencer's well-supported expert testimony on one side and an opinion of an unqualified expert who declined to "open[] the data file" to "run an independent analysis … because he 'didn't feel like it was needed'" on the other. JA1228. The district court correctly found that Plaintiffs met their burden with robust quantitative analyses and Defendants simply failed to show that the analysis was wrong.

2. Qualitative evidence established cohesion.

On top of Plaintiffs' quantitative evidence, the court found that qualitative evidence also demonstrates that Minority Community's political cohesion. To account for "the lack of available data" in certain Section 2 cases, *see Cane*, 35 F.3d at 925-26, qualitative evidence is "clearly relevant" in determining "whether the minority group is politically cohesive." *Sanchez v. Bond*, 875 F.2d 1488, 1494 (10th Cir. 1989); *see also De Grandy v. Wetherell*, 815 F. Supp. 1550, 1579 (N.D. Fla.

1992) (finding cohesive voting between Black and Latino voters in part through anecdotal testimony), *aff'd in relevant part Johnson v. De Grandy*, 512 U.S. 997 (1994). Such qualitative evidence shows a minority coalition has "common social, economic, and political interests which converge to make them a cohesive political group." *LULAC I*, 812 F.2d at 1501; *accord Concerned Citizens*, 906 F.2d at 526 (coalition must behave in a "politically cohesive manner"). Indeed, even without *any* statistical evidence, qualitative evidence can demonstrate cohesiveness. *See Arbor Hill Concerned Citizens Neighborhood Ass'n. v. Cty. Of Albany*, No. 03-CV-502, 2003 WL 21524820, at *8-10 (N.D.N.Y. July 7, 2003); *Marengo Cty. Comm'n*, 731 F.2d at 1567 nn.34 & 35 (explaining that "direct statistical analysis of the vote returns" is not required to show cohesion).

After reviewing the evidence and determining the credibility of witnesses, the district court found the Minority Community is cohesive because they "have a history of advocating for similar political and legal issues, and have similar experiences of discrimination." JA1210. The coalition has long advocated together in at least seven categories, seeking: (1) abandonment of the City's dilutive at-large system; (2) racial justice in 2003 and the removal of Confederate monuments in 2019; (3) creation of a Minority Business Council; (4) a disparity study; (5) housing reform; (6) improving public transportation; and (7) a range of reforms through the Virginia Beach Concerned Citizens Coalition, which includes Filipino-American

leaders and organizations. JA1211-15. Most of this evidence went unrebutted at trial, and this persistent collective advocacy further establishes the coalition's political cohesion and buttresses the statistical findings.

Defendants object that the district court credited this qualitative evidence in support of cohesion, contending that it "has no logical relation to vote dilution." Br. at 46. Defendants' conclusion is without merit. While quantitative evidence demonstrating "that a significant number of minority group members usually vote for the same candidates is *one way* of proving political cohesiveness," *Gingles*, 478 U.S. at 31 (emphasis added), it is not the *only* way. *See Luna v. Cty. of Kern*, 291 F. Supp. 3d 1088, 1125 (E.D. Cal. 2018) (collecting cases using qualitative evidence); *Marengo Cty. Comm'n*, 731 F.2d at 1567 nn.34 & 35. Because "statistical evidence is not a *sine qua non* to establishing cohesion," *Brewer*, 876 F.2d at 454, Plaintiffs presented ample nonstatistical "evidence [to] also establish this phenomenon," *Monroe v. City of Woodville, Miss.*, 881 F.2d 1327, 1331 (5th Cir. 1989). That qualitative evidence is valuable because "[t]he experiences and observations of individuals involved in the political process are clearly relevant to the question of whether the minority group is politically cohesive." *Sanchez*, 875 F.2d at 1494. To hold otherwise would be to render the VRA's protection against vote dilution bounded by the limits of statistical inference. Nothing in the text of the VRA compels that result, and courts must avoid applying *Gingles* prong two "mechanically" and

"without regard to the nature of the claim." *Voinovich v. Quilter*, 507 U.S. 146, 158 (1993).

Defendants' backup factual challenge to Plaintiffs' qualitative evidence asks this Court to draw different conclusions from the record than did the district court. Defendants isolate testimony from their witness labeling Filipino-American voters as conservative, and conclude that this somehow undercuts Plaintiffs' voluminous evidence of the coalition's collective action including Filipino-American residents. Br. at 44-45. The district court did not credit Defendants' cherrypicked testimony because the record belies it. JA1211-14, 1275-77. To begin, the point is irrelevant because City Council elections are nonpartisan. Additionally, the evidence showed that Filipino-American leaders and organizations have long advocated for reforms alongside the coalition through the Virginia Beach Concerned Citizens Coalition, including a change to the City's election system, among others. JA1211-14, 1243, 1255, 1266-1273, 1275-77. Defendants' additional argument that "all other examples" of qualitative cohesion were by Black residents only, Br. at 45, ignores the record of Hispanic, Black, and Asian-American residents advocating together on the seven categories discussed above. JA327, 1211-15, 1160-73.

While Defendants ask this Court to reweigh the evidence and reach a different conclusion, that is not this Court's role. Clear error review "extends not only to the district court's ultimate conclusion of vote dilution, but also to [any] 'finding[s] that

different pieces of evidence carry different probative values in the overall Section 2 investigation.'" *Wright v. Sumter Cty. Bd. of Elections and Registration*, 979 F.3d 1282, 1301 (2020) (quoting *Solomon v. Liberty Cty. Comm'rs*, 221 F.3d 1218, 1227 (11th Cir. 2000) (*en banc*)). This Court should respect the trial court's "particular familiarity with the indigenous political reality" if the Court's factual finding of cohesion is plausible. *Charleston Cty.*, 365 F.3d at 349. Here, the evidence far exceeds that threshold.

C. The district court did not clearly err in finding *Gingles* prong three satisfied.

The district court did not clearly err in finding that Plaintiffs established *Gingles* prong three. The third *Gingles* precondition asks whether the jurisdiction's white majority votes "sufficiently as a bloc to enable it … usually to defeat the minority's preferred candidate." 478 U.S. at 50-51. The "white bloc voting must 'normally' or 'generally' lead to the defeat of minority-preferred candidates." *Charleston Cty.*, 365 F.3d at 348. To make this determination, the court "identif[ies] those individuals who constitute minority-preferred candidates" and then "analyze[s] whether those candidates are usually defeated by majority White bloc voting;" *Levy*, 589 F.3d at 716, while considering whether "the success of a minority candidate can be attributed to special circumstances" and given less probative value. *Collins v. City of Norfolk, Va.*, 883 F.2d 1232, 1241 (4th Cir. 1989).

The district court found that minority-preferred candidates usually "lost City

Council elections between 2008-2018 due to white bloc voting," "while 94% of the white community's preferred candidates were successful" during the same stretch. JA1232. The court emphasized that under the City's racially polarized conditions, and special circumstances for certain races, minority-preferred candidates won at most five out of twelve probative elections, or just 42%. JA1233.

Additional findings supported the district court's conclusion that even this low success figure *understates* the City's severe dilutive conditions for four reasons. First, white residents overwhelmingly support white candidates: "in 11 of the 12 contests in which there were minority candidates, the white community ranked a white candidate first," and even given the atypical uptick in white crossover voting in 2018 "the average level of white support for minority candidates is around 25%." SJA240. Second, minority-preferred candidates win almost exclusively in the rare instances when they receive white support or where multiple white candidates sufficiently split white-bloc voting. SJA244, JA1232-34. Third, the evidence shows that Virginia Beach's white-bloc voting is at its apex in elections featuring non-white candidates preferred by the Minority Community, JA1232, 1235-36, SJA239, 242, and the district court properly gave these instances greater probative weight. *See Solomon*, 221 F.3d at 1227 (courts may assign "more probative value to elections that include minority candidates, than elections with only white candidates"); *Ruiz*, 160 F.3d at 552-53 (same). Fourth, because of the severity of white bloc voting,

potential minority-preferred candidates are deterred from even investing the resources needed to launch an at-large campaign in Virginia's largest city. SJA244, JA1245-47.

Finally, the district court correctly concluded that the more recent successes of minority-preferred candidates overcoming white-bloc voting are the result of special circumstances. The third *Gingles* precondition requires showing that the "the white majority votes sufficiently as a bloc to enable it—*in the absence of special circumstances* . . .— usually to defeat the minority's preferred candidate." 478 U.S. at 51 (emphasis added). Election successes during the pendency of litigation are considered special circumstances because they could "work[] a one-time advantage for [minority-preferred] candidates in the form of unusual organized political support by white leaders concerned to forestall single-member districting." *Id.* at 75-76. Or it could be that "minority successes [after the lawsuit was filed] … are sufficiently recent and, potentially, transitory to limit their probative value." *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1132 (3rd Cir. 1993). Either way, elections during the pendency of litigation are less probative for evaluating white bloc voting. *Collins*, 883 F.2d at 1242.

Because minority-preferred candidates in Virginia Beach started receiving enough white support to overcome polarized voting only after this lawsuit was filed, those elections are less probative of the third *Gingles* precondition. JA1232-33,

1248, 1262-65.[10] Of the three Black minority-preferred councilmanic candidates elected in the last decade, the district court found that "two of the three," Rouse and Wooten, "won their elections under special circumstances because their elections were after the instant lawsuit was filed and they had abnormally large support from white voters … as compared to" other minority-preferred candidates. JA1232-33, 1248, 1265.[11] Dr. Grofman also found that the third winning Black minority-preferred candidate was elected due to special circumstances. SJA242.

Defendants' vaguely assert that the district court failed to "probe further" the Rouse and Wooten elections and failed to "connect[] the pendency of this lawsuit to

[10] *Gingles* only discusses special circumstances in the context of the white-bloc voting analysis, so "court[s] may discount th[ose] election[s] as evidence weighing against the plaintiffs in analyzing the third prong of the *Gingles* test." Michael S. Taintor, *Section 2 of the Voting Rights Act, Special Circumstances, and Evidence of Equality*, 94 N.Y.U. L. Rev. 1767, 1771 (2019) (collecting cases).

[11] For example, both Councilmembers Rouse and Wooten received unusually high and unprecedented support from white voters at the ballot box. JA1263-65, 1233, SJA240. They both also received atypical campaign contributions from white candidates and donors. JA1248, 1265. Councilmember Rouse was also listed on a slate of candidates supported by a prominent Republican organization, Friends of the Elephant, who "handed out sample ballots at one or more polling places with recommended candidates for office. These sample ballots were color coded, with one color for Black voters and another color for white voters." JA1248. Rouse was "included on sample ballots handed to Black voters, but not on the ones handed to white voters." *Id.* Additionally, his status as a well-known college and professional football player gave him immediate name recognition and an abnormal boost to his campaign. *See Gunn v. Chickasaw Cty., Miss.*, 1:92CV142-JAD, 1997 WL 33426761, *4 (N.D. Miss. Oct. 28, 1997) (being a professional athlete is a special circumstance). He was also endorsed by the governor of Virginia and U.S. Senator Warner, both very rare for a local city council election. JA2432-33.

the 2018 success of the two Black candidates." Br. at 48. That is incorrect. The district court, following the Fourth Circuit's analysis in *Collins*, thoroughly reviewed the Rouse and Wooten elections and found special circumstances. JA1232-33, 1248, 1265. Even if Defendants were right that Rouse and Wooten's mid-litigation election successes are not "suspicious," Br. at 46, that is irrelevant; special circumstances elections are those that have atypical results because they are mid-litigation even in "the absence of a conspiracy or an intent to moot this litigation." *See Collins v. City of Norfolk, Va.*, 816 F.2d 932, 938 (4th Cir. 1987). The district court appropriately found the Rouse and Wooten elections were less representative compared to elections prior to the lawsuit and therefore less probative for understanding the effects of white bloc voting.

As *Gingles* instructs, the district court accounted for all these circumstances bearing on racially polarized voting in Virginia Beach to conclude that Plaintiffs satisfied the third precondition. Defendants have not shown this was clear error.

D. The totality of circumstances weighs decisively in Plaintiffs' favor.

The district court correctly found that the totality of circumstances in Virginia Beach supported Section 2 liability. After plaintiffs establish the three *Gingles* preconditions, Section 2 requires a final conclusion that "based on the totality of circumstances," minority voters "have less opportunity than other members of the electorate to participate in the political process[.]" 52 U.S.C. § 10301(b). This

analysis considers nine non-exhaustive factors to evaluate conditions of discrimination and their relation to vote dilution in the jurisdiction. *Charleston Cty.*, 365 F.3d at 345. Where, as here, "a plaintiff established the *Gingles* prerequisites, that plaintiff is likely to succeed under the totality of the circumstances." *Baten v. McMaster*, 967 F.3d 345, 379 (4th Cir. 2020).

The district court conducted a "searching practical evaluation of the 'past and present reality'" of discrimination and inequality in Virginia Beach, *see Gingles*, 478 U.S. at 75 (citation omitted), and concluded that the totality of circumstances decisively favored Plaintiffs. *See* JA1159-74, 1237-77. Defendants do not dispute the extensive discriminatory conditions facing the Minority Community. Instead, they assert that the court failed to analyze each factor for "each of the coalitional constituencies" and claim that no Section 2 violation occurred because of their miscalculation that the Minority Community holds a proportional share of councilmanic seats. Br. at 49-51. Both arguments misapprehend Section 2 and the record.

First, the City cites no authority for its insistence that the district court must mechanically evaluate every Senate Factor for each component of the coalition. This is for good reason: the Supreme Court expressly rejects Defendants' approach because "there is no requirement that any particular number of [the Senate] factors be proved, or that a majority of them point one way or the other." *Gingles*, 478 U.S.

at 45 (citing S. Rep. No. 97-417, at 29); *see also Charleston Cty.*, 365 F.3d at 353 & n.4 (affirming the totality of circumstances favored plaintiffs, without proof of all factors); *Collins*, 883 F.2d at 1243 (same). This rule applies the same in Section 2 coalition cases. *See, e.g.*, *NAACP, Spring Valley Branch*, 462 F. Supp. 3d at 392 (evaluating coalition together under Senate Factors); *Campos v. City of Baytown*, 696 F. Supp. 1128, 1136 (S.D. Tex. 1987) (same). Adopting Defendants' stilted, check-the-boxes approach to the totality-of-circumstances analysis would transform it into "[a]n inflexible rule [that] would run counter to the textual command of § 2" and fail to account for "the demonstrated ingenuity of state and local governments in hobbling minority voting power." *De Grandy*, 512 U.S. at 1018.

Defendants are likewise factually incorrect that the district court failed to find discriminatory conditions affecting the entire coalition. The court emphasized that "[w]hile it is true that Asian, Hispanic, and Black communities have experienced different forms of discrimination, they have nonetheless experienced discrimination." JA1241. Concerning Senate Factor one, the court detailed the State's and the City's long history of discrimination against all minority residents, but specifically described animus "target[ing] minority immigrant communities." JA1240. The court found that the adverse "impact of discrimination is similar across all minority groups." JA1242. On Senate Factors two, three, and four, the court found racially polarized voting and discriminatory voting practices—such as the

City's "unusually large election districts and … single shot system" for voting and its "informal candidate-slating processes"—affected the entire Minority Community's voting strength. JA1243-47. The district court ruled that Black, Latino, and Asian-American residents face socio-economic disparities under factor five, such as having lower high school graduation rates, lower per capita income, higher poverty rates, lower voter registration rates, and worse healthcare conditions and educational outcomes compared to their white counterparts. JA1248-56.

The court uncovered racial appeals in political campaigns under factor six that prejudiced Black candidates as well as Delegate Kelly Fowler, Virginia Beach's state legislature representative who is a woman of Mexican and Filipino descent. JA1256-61. Each part of the coalition is underrepresented in Virginia Beach elections under factor seven: "since 1966," when the City enacted its at-large system, it "has elected only five Black Councilmembers and one Asian-American" and zero Hispanic candidates. JA1262. The court explained that the City is unresponsive to the needs of the entire coalition under factor eight, manifested in Virginia Beach's discriminatory hiring practices, disparate allocation of City resources, and longstanding refusal to heed the community's calls for a racial disparity study and establishing the Minority Business Council. JA1266-75. Finally, the court concluded that the City's justifications for its dilutive electoral system under factor nine were tenuous, particularly given the entire coalition's determined but unsuccessful

demands for reform. JA1275-77. Thus, even if Defendants' checklist approach applied, the district court satisfied it.

Second, after Defendants agreed that *three* opportunity-to-elect seats for the Minority Community would remedy the Section 2 violation, *see* SJA155, Defendants bizarrely argue now that *two* seats are proportional to the coalition's overall population in Virginia Beach and that such supposed proportionality "cuts heavily" against liability. Br. at 49. Defendants have miscalculated the percentages. Having minority councilmembers—whose elections were marked by special circumstances, *see supra* Part III.C—hold two-of-ten seats (20%) is simply not proportional to the minority coalition comprising 38.5% of the City's voting-age population. SJA258. In any event, the scant electoral success for minority candidates in Virginia Beach—six total over a half century—comes nowhere near the proportionality conditions emphasized in *Johnson v. De Grandy*. JA1262. It instead confirms the district court's detailed conclusion that the City's electoral system violates Section 2 under the totality of circumstances.

III. The District Court Appropriately Enjoined and Remedied the City's Dilutive System.

The district court's injunction of the City's dilutive electoral system is squarely within its authority under Rule 65. Defendants rely on out-of-circuit cases to challenge the injunction as merely an "obey the law" order, Opening Br. at 52, while overlooking that this Court has repeatedly approved injunctions in analogous

Section 2 cases that are materially indistinguishable from the order issued below. *See, e.g.*, *United States v. Charleston Cty., S.C.*, 316 F. Supp. 2d 268, 307 (D.S.C. 2003), *aff'd*, 365 F.3d 341 (4th Cir. 2004); *Collins*, 883 F.2d at 1244. As the Court has explained in other contexts, if the City "really intends to comply with the [statute], its future … conduct will in no way be inhibited by an injunction. It is to be noted that an injunction in this type of case is not a burdensome thing; it simply requires the [City] to obey the law." *Hodgson v. Approved Pers. Serv., Inc*., 529 F.2d 760, 764 (4th Cir. 1975) (citation and quotation omitted).

The district court's injunction and order devising an undiluted map appropriately provide Plaintiffs an "effective remedy for the claimed injury" and is well within its remedial authority. *See Hines v. Mayor & Town Council of Ahoskie*, 998 F.2d 1266, 1273 (4th Cir. 1993).

CONCLUSION

For the foregoing reasons, the Court should affirm the district court's decision.

Dated: February 7, 2022

Respectfully submitted,

J. Gerald Hebert
J. GERALD HEBERT P.C.
191 Somervelle St. No. 405
Alexandria, VA 22304
(703) 628-4673

Annabelle E. Harless
CAMPAIGN LEGAL CENTER
55 W. Monroe St., Ste. 1905
Chicago, IL 60603
(312) 312-2885

/s/ Mark P. Gaber
Mark P. Gaber
Robert N. Weiner
Christopher D. Lamar
CAMPAIGN LEGAL CENTER
1101 14th Street, NW, St. 400
Washington, D.C. 20005
(212) 736-2000

Attorneys for Plaintiffs/Appellees

CERTIFICATE OF COMPLIANCE

In accordance with Rules 27(d)(2)(C) of the Federal Rules of Appellate Procedure, the undersigned counsel for Appellees certifies that the foregoing is printed in 14 point typeface, in Times New Roman font, and, including footnotes, contains no more than 12,963 words.

/s/ Mark P. Gaber
Mark P. Gaber

Counsel for Plaintiffs/Appellees

CERTIFICATE OF SERVICE

I certify that on February 7, 2022, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

Dated: February 7, 2022

/s/ Mark P. Gaber
Mark P. Gaber

Counsel for Plaintiffs/Appellees