



Potential Changes to City's Election System

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Outline

- History
- Current Election System
- Holloway Case History
- General Assembly Action
- Holloway Opinion & Order
- Options for Council
- Communication Plan
- Next Steps

History

1963 Modern City of Virginia Beach created by merger

- Post-merger, City's election system had 7 boroughs
- Six magisterial districts of Princess Anne County each elected one member by and from the district
- Former City of Virginia Beach became single district with five members elected by and from the district

1967 Dusch v. Davis SCOTUS case

- Resulted in 7-4 system that became foundational framework for current system
- Seven members reside in each of the seven districts; all seven elected at-large ("residence districts")
- Four members elected by and from the city at-large

1988 City adopted at-large election of mayor

- Previously chosen by City Council members

History

- 1990** Mayor's Commission recommended seven districts of equal population with one Council member elected from and by the voters of each district ("wards") (4 at-large, 11 total Council members)
- 1994** Referendum passed supporting equal population of districts and implementation of seven wards
 - City Council passed resolution asking General Assembly to change City Charter to require equal population and implement wards
- 1995** General Assembly granted equal population requirement for residence districts but declined to implement wards
 - Directed City to conduct another referendum in 1996
- 1996** Second referendum supported residence districts over wards
- 1997** U.S. District Court ruled City's election system did not violate §2 of VRA
- 2008** Local elections moved from May to November

Current Election System

- Existed in current form since 1996 (substantially same since 1967)
- Governed by City Charter §3.01 (enacted by General Assembly)
 - 11 members
 - 4 members (incl. mayor) elected at large (may reside anywhere in city)
 - 7 members elected at large (must reside in one of 7 districts)
 - Residence districts of approximately equal population
- District boundaries adjusted after each decennial census
- School Board elected using same method (City Charter §16.04)
 - Chair elected by members of School Board, not public
 - Chair does not have to be an at large member

Criticisms of Current Election System

- Historically, a primary critique: At-large election of all 11 members dilutes votes of minority groups
- Majority gets to elect all 11 members of Council
- Example
 - If Virginia Beach had 100 voters
 - 70 white, 20 Black, 5 Asian, 5 Hispanic
 - If voting was racially polarized, candidates supported by white majority would always win all 11 seats

At Large

All voters

Elect

All Council members

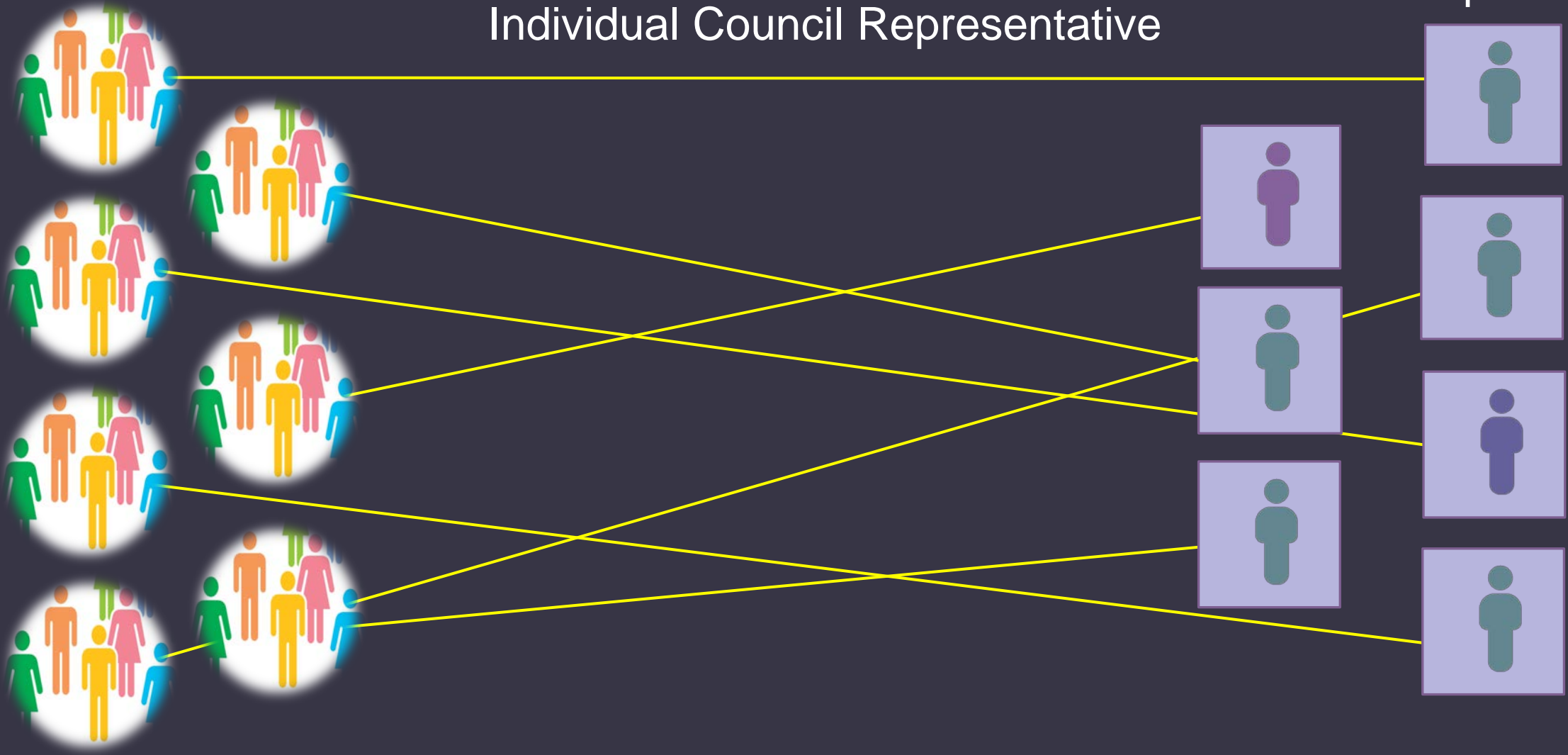


Ward System

Voting
Districts

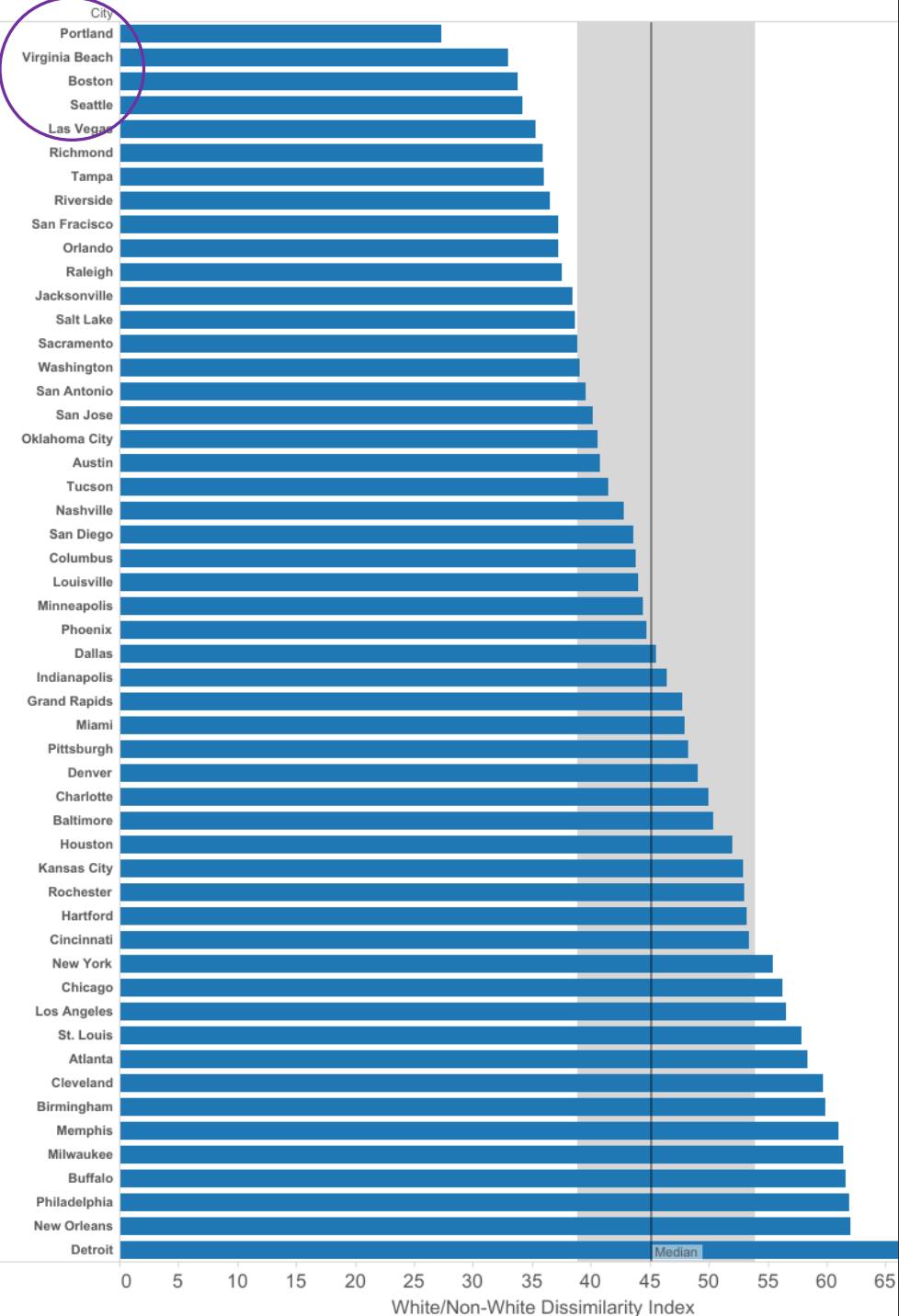
Voters in Each Ward Elect Their
Individual Council Representative

Council
Representatives



Response to Criticism of System

- Historically - not possible to draw a majority-minority district for a single minority in Virginia Beach
 - Virginia Beach is one of most racially integrated (least segregated) larger cities in America
 - Minority communities are dispersed throughout city
 - Not feasible through 2010 redistricting process to draw a district in which a single minority would constitute a majority in that district
- Virginia Beach minority communities are not politically cohesive
 - Not accurate to say majority of Black, Asian and Hispanic voters prefer same candidates
 - Combining minority groups into districts would not advance candidates preferred by single minority
- Plaintiffs in Holloway case assert that Black, Asian and Hispanic voters in Virginia Beach are politically cohesive and that a combined minority-majority map would address vote dilution



America's Least Segregated Cities

Source: U.S. Census Bureau, White to Non-White Racial Dissimilarity Index [RACEDISPARITY], retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/RACEDISPARITY>, August 10, 2020 via CityObservatory.org.

Recent Developments Affecting the City's Election System

- Holloway et al. v. City of Virginia Beach Opinion & Order
 - Case filed in United States District Court in 2017
 - Trial October 6-14, 2020
 - Court's Opinion March 31, 2021
- 2021 Changes to Virginia Law
 - HB2198
 - HB1890/SB1395

Holloway v. City of Virginia Beach

- Plaintiffs Latasha Holloway and Georgia Allen
 - Now represented by Campaign Legal Center, a D.C. public interest law firm
- Key allegation – City’s at-large election system violates Section 2 of federal Voting Rights Act
 - Dilutes minority voting strength
 - Prevents a combined group of Black, Hispanic and Asian minority groups from electing candidates of their choice (“coalition” claim)
- City disputes facts alleged and legal assertions
- Bench trial October 6-14, 2020

Virginia House Bill 2198

Adopted by 2021 Virginia General Assembly

Notwithstanding any other provision of law, general or special, in a locality that imposes district-based or ward-based residency requirements for members of the governing body, the member elected from each district or ward shall be elected by the qualified voters of that district or ward and not by the locality at large.

Also applicable to School Boards

Virginia Voting Rights Act (HB1890 & SB1395)

Adopted by 2021 Virginia General Assembly

An at-large method of election, including one that combines at-large elections with district- or ward-based elections, shall not be imposed or applied by the governing body of any locality in a manner that impairs the ability of members of a protected class, as defined in § 24.2-125, to elect candidates of its choice or its ability to influence the outcome of an election, as a result of the dilution or the abridgement of the rights of voters who are members of a protected class.

Establishes pre-clearance process with State Attorney General

Also applicable to School Boards

Combined Effect of 2021 General Assembly Actions

Even without Holloway case...

- Current system must change for 2022 election
- 7 residence districts become wards without further action by General Assembly
- Citizens will no longer elect all 11 City Council representatives
- Vote on single representative for their ward and at large seats including Mayor
- 3 at large districts under current system subject to potential later challenge in state court even if City prevails in appeal

Holloway v. City of Virginia Beach

- District Court's Opinion and Order (March 31, 2021) found that City's election system violates Section 2 and is unlawful:

By a preponderance of the evidence, Plaintiffs have demonstrated that the at-large system of elections for the Virginia Beach City Council denies Hispanics, African Americans, and Asians equal access to the electoral and political process, in contravention of Section 2 of the Voting Rights Act.
- Prohibits further elections under current system
- Court to determine appropriate remedy in future phase of litigation
- Court to award attorneys' fees and costs to Plaintiffs (subject to later determination of amount)

Holloway Case Status

- District court has thrown out current election system
- Plaintiffs preparing petition itemizing attorneys' fees and litigation costs per court's order
 - Seeking at least \$3.88 million
- City and Plaintiffs preparing for future hearings on remedy phase
- City has filed notice of appeal to preserve appellate option

Holloway Case Appellate Issues

- Whether minority groups may be combined to state claim under Section 2 as a matter of law
 - U.S. Supreme Court has not ruled on viability of “coalition” claims
 - Fourth Circuit has suggested, but not formally ruled, that it did not approve of “coalition” claims
 - Other circuits are split
- Whether those minority groups in Virginia Beach tend to support the same candidates as a matter of factual proof
- Standing, mootness and ripeness of Plaintiffs’ claims
- Other appellate considerations
 - Appellate outcomes involve high level of uncertainty; no outcome can be reliably predicted
 - Expensive and time consuming to reach final result even if favorable
 - Next general City Council election is November 2022; Candidates need to know system and districts early in 2022

Possible Remedies for Section 2 Violation

Change some or all at-large Council positions to ward or super ward seats. Residence districts function as at-large positions.

Residence District	Ward	Super Ward Larger geographical area within city that overlaps two or more wards
Each candidate must reside within the district	Each candidate must reside within geographical boundary of district they serve	Each candidate must reside within geographical boundary of district they serve
Elected by voters of the entire city	Elected solely by registered voters residing within that district	Elected solely by registered voters residing within that district

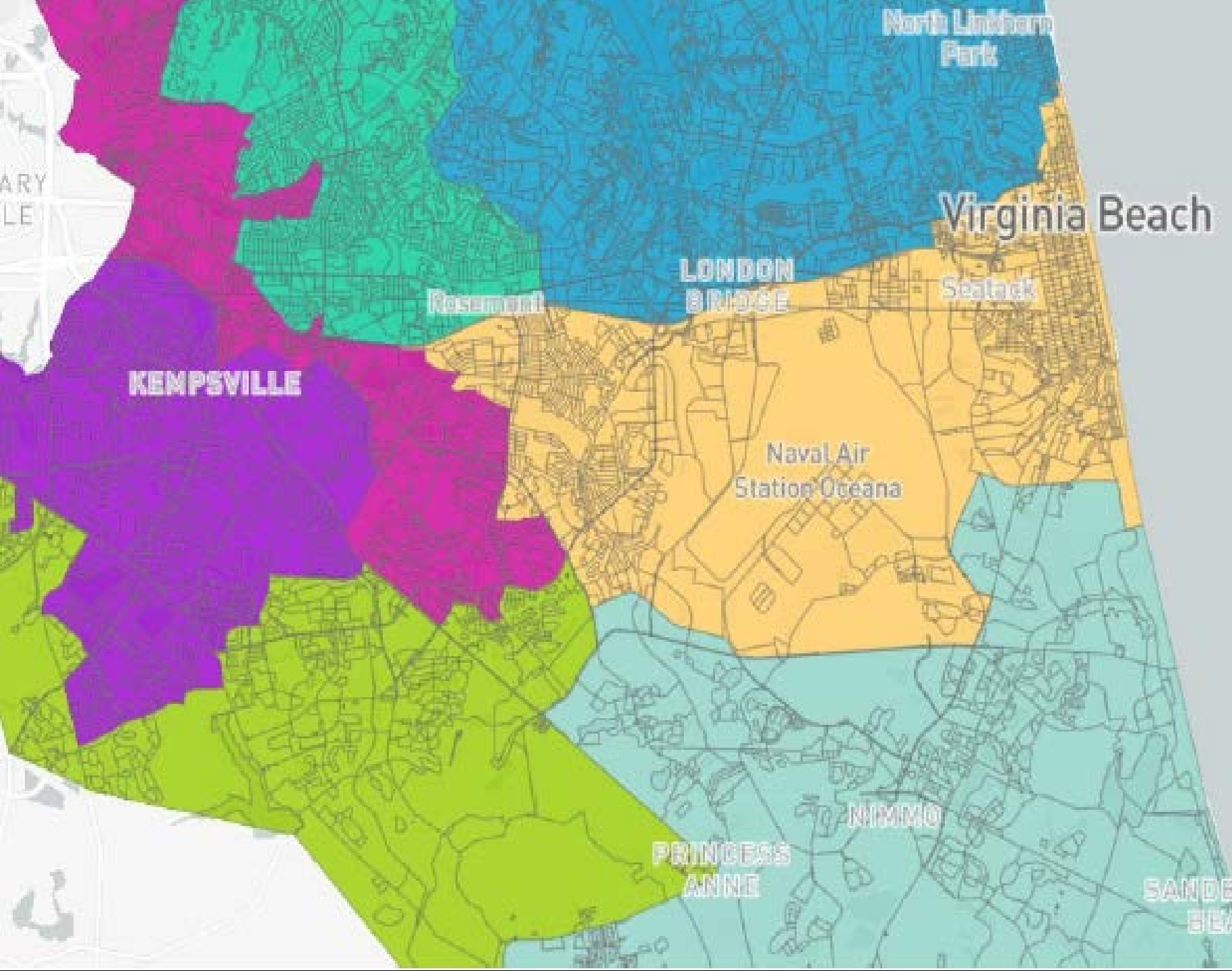
Minority populations can represent a greater proportion of a ward than entire city; therefore, greater ability to elect preferred candidate.

Plaintiffs: remedial plan should create at least two districts in which minority groups could elect preferred candidates (“opportunity districts”)

Settlement Proposal

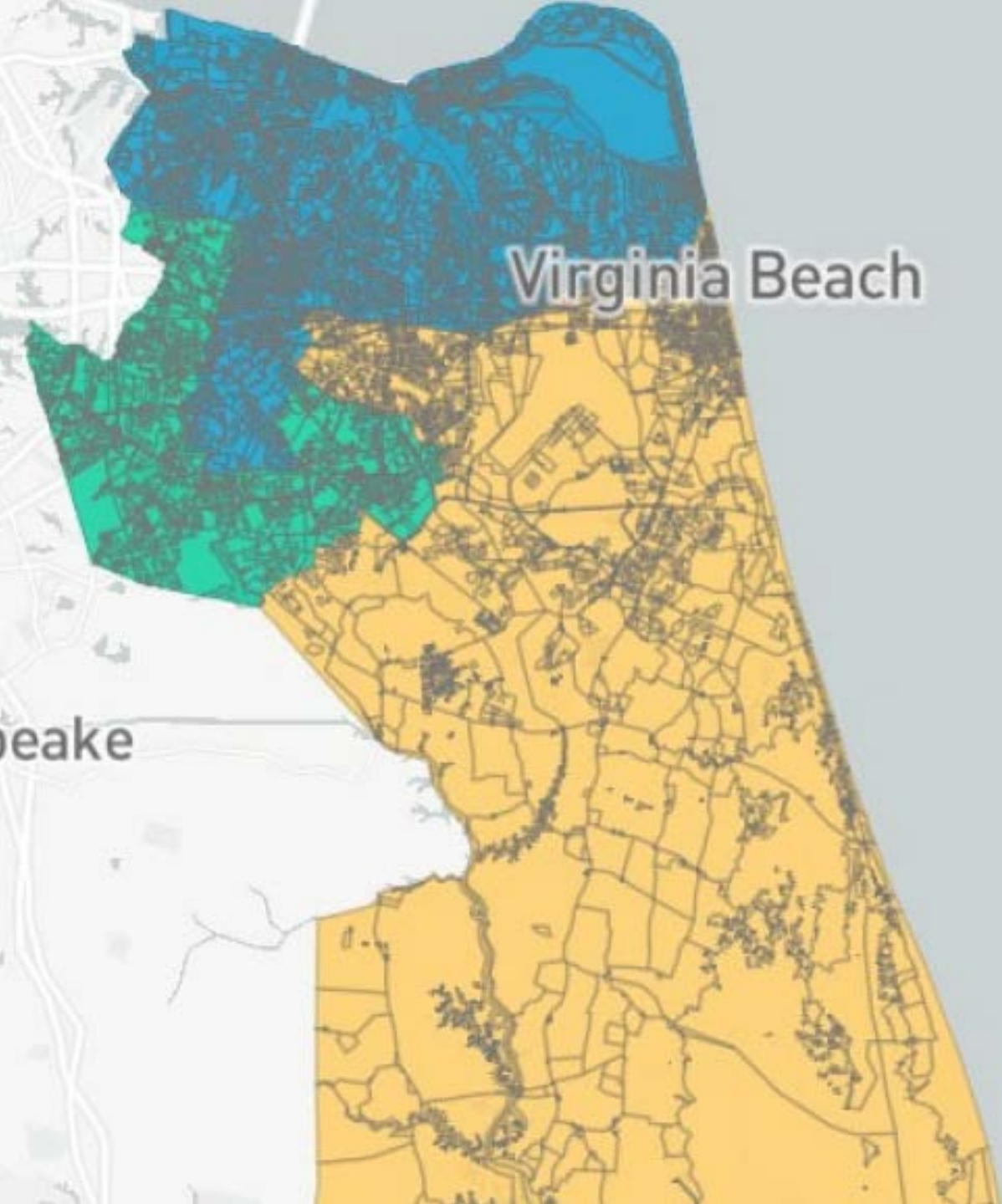
Note: Any settlement must be reviewed and approved by the district court, which will have authority over election system for at least 10 years

- **New 7-3-1 Election System**
 - 7 members, 1 residing in each of 7 districts (wards), elected only by voters residing in each ward
 - 3 members, 1 residing in each of 3 super wards, elected only by voters residing in each super ward
 - 1 mayor, elected at-large by all registered voters within the city
- **At least 3 of 10 districts drawn to create minority opportunity districts**
 - Current discussion focuses on 2 of 7 districts and 1 of 3 super ward
 - Parties must agree on joint plan (maps) or settlement fails
- **Plaintiffs' attorneys' fees and costs reduced to \$1.6M**
 - Pay within 11 days after court approval of consent decree and joint maps
 - Plaintiffs claim \$3.88M fees and costs to date, additional amounts accruing through remedial phase and appeal if settlement effort unsuccessful
- City retains right to appeal if settlement process not successfully concluded by July 15, 2021



7 Wards Concept Map

Note: This map is meant as a conceptual illustration of seven wards and does not necessarily reflect intended district lines.



3 Super Wards Concept Map

Note: This map is meant as a conceptual illustration of three super wards and does not necessarily reflect intended district lines.

Joint Plan (Maps) Process

**Initial settlement concept:
wait for 2020 Census data (fall
2021) before drawing final maps**

- Rationale: 2020 Census data is most accurate data and any maps must be adjusted using that data
- Challenge: Case is unresolved through the fall, imperiling appeal timeline if settlement fails

**Current settlement concept:
Draw final maps using 2015-19
American Community Survey
data**

- Resolution: Plaintiffs agree to be bound to 7-3-1 system using final maps drawn using ACS 2015-19 data
- Solves appellate timeline problem by allowing parties to reach finality on system by July 15, 2021
- Plaintiffs assert that only technical population and precinct boundary tweaks will be needed after receipt of 2020 Census data; City expert agrees

Settlement Proposal re: Appeal

- Appeal stayed through July 15, 2021 as parties and court consider settlement. Stay is lifted if:
 - Council votes not to approve settlement on June 15, 2021
 - Parties cannot agree on joint proposed district maps for 7-3-1 plan
 - Court does not accept 7-3-1 plan/maps on or before July 15, 2021
- Plaintiffs agree to expedite City's appeal if court has not approved proposed consent decree and joint maps on or before July 15, 2021

Note: Any settlement must be reviewed and approved by the district court

Options

Reject Settlement/Appeal

If City prevails (and without further changes by General Assembly):

- 7 members
 - one residing in each of seven wards
 - elected only by registered voters residing in each ward
 - Residence districts no longer viable due to HB2198
- 4 members, including mayor
 - may reside anywhere in city
 - elected at large by all registered voters in city
 - Remaining at-large districts subject to possible future challenge under Virginia Voting Rights Act (HB1890/SB1395)

Reject Settlement/ No Appeal

Court likely to implement 10-1 ward system
Plaintiffs requested

- 10 representatives
- one residing in each of 10 wards
- elected only by the registered voters residing in each ward
 - Remedy would likely require at least 2 of 10 ward districts be minority opportunity districts
 - Mayor could still reside anywhere in the City and would be elected at-large

Note: District court likely to implement 10-1 ward system while appeal is on-going

Options

Reject Settlement & Appeal

■ Pros

- ~~Return to current system~~
- Defend principle that City's current election system does not violate VRA Section 2
- No ongoing federal court involvement in City's election system

■ Cons

- District court likely to implement 10-1 system during appeal (can seek stay of remedy)
- Costly/time consuming; Council elections in 2022
- Uncertain outcome
 - Best: 7 ward, 4 at-large system with potential for future litigation regarding at-large seats and subject to state AG preclearance
 - Worst: 10-1 system remains in place, significantly higher attorneys' fees and costs

Approve Settlement

■ Pros

- 7-3-1 system allows each citizen to vote for three council members
- Resolves Voting Right Act Section 2 concerns as well as state law issues
- Provides certainty by July 15, 2021
- Saves at least \$2.3 million, plus costs of appeal for (potentially) both parties

■ Cons

- No appellate court determination of whether district court was correct
- Ongoing federal court involvement in City's election system
- Still potentially subject to state AG preclearance

Impact on School Board Elections

- School Board is not a party in Holloway case
 - Ruling refers only to City Council elections
- By City Charter, School Board members are elected in same manner and according to same schedule as Council members
- HB2198 changes School Board's residence districts to wards
- Most likely result: System adopted by district court will apply to School Board
- Ambiguity as to 11th School Board member
 - School Board has 7 district and 4 at large members
 - School Board chair is selected by Board, not by the public
- Charter change likely required after new City Council system is determined

Public Information and Input

Council Goal: Use variety of City channels to disseminate information and provide residents with opportunities to provide feedback.

In Person

Public Briefings

- May 11 Council Chamber
- June 1 Council Chamber
- Other: Time and Place TBD

Council Townhalls/Community Meetings

- As determined or requested by Councilmembers

Public Hearings

- June 8
- June 15 (Council vote)

Digital/Media/Virtual

- Virtual Town Hall
- VBGov.com – headlines, update case page on site
- City Page
- City Manager Update
- Direct Mailing
- Media briefings/placements
- Social Media (Facebook, Twitter, NextDoor, YouTube, Instagram)
- VBTv



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