VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

LINWOOD BRANCH, et al.

v. **CL24-322**

CITY OF VIRGINIA BEACH, et al.

Memorandum Order

This action is before the Court upon the Defendants' demurrers and special pleas in bar, which are fairly duplicative of each other. After consideration of the briefs filed by the parties and the argument and evidence presented at the hearing on these motions, as discussed below, the Court denies all special pleas in bar except one, and overrules all demurrers except one.

The plaintiffs filed their complaint on January 24, 2024, and the defendants responded by filing demurrers and special pleas in bar on February 1, 2024. The Court granted Georgia Allen leave to file an *amicus curiae* brief on May 20, 2024.[1]

Each of the plaintiffs is registered to vote in the City of Virginia Beach, Virginia. Their complaint alleges that the city is obligated under the provisions of the city charter to conduct elections to the city council using a scheme of seven single-member districts, three at-large districts, and an at-large mayor. This system has been described as a "7-3-1 system." Further, the complaint urges that this provision of the city charter is supported by House Bill 2198 ["HB 2198"], since that bill adds the requirement that any candidate subject to a district-based residency requirement could not be elected at-large, but must be elected by members of that district. *See* 2021 Acts ch. 225 (Spec. Sess. I). Thus, per the plaintiffs, candidates in any one of the seven single-member districts must reside in that district, and only fellow district residents can vote for them.

[1] The Attorney General submitted an *amicus curiae* brief but never sought leave of court to file it.

Plaintiffs conclude that only three council seats and the mayor remain subject to at-large elections.

The notion of requiring council members to be elected by the voters of the districts from which they are elected is relatively new with regard to the Virginia Beach City Council. Until 2021 the council members from the seven single-member districts contemplated by the city charter were required to reside in their respective districts but were elected by the entire population of voters in the city. This system was challenged as violating the federal Voting Rights Act in *Holloway v. City of Va. Beach*, 531 F. Supp. 3d 1015 (E.D. Va. 2021). After the trial in *Holloway* was complete, but before the federal district court had ruled, the General Assembly passed HB 2198. That bill changed the at-large system of elections to true single member districts, each of which elected its own council member without the participation of the rest of the Virginia Beach electorate. The City argued HB 2198 mooted the plaintiffs' claims, but on March 31, 2021, the federal district court rejected that argument and proceeded to rule that the City system violated the federal Voting Rights Act. *Holloway*, 531 F. Supp. 3d at 1027 n.1, 1102. In December of 2021, in the remedy phase, the court adopted a report prepared by a special master and imposed a "10-1 system" on the City. *See Holloway v. City of Va. Beach*, No. 2:18-cv-69, 2021 U.S. Dist. LEXIS 249462 (E.D. Va. Dec. 22, 2021). The 10-1 system required all council members to reside in their districts and to be elected by the voters of their respective districts, with only the mayor being elected by the city's voters at large. That court further ordered the next election to be conducted using this system. *Id.* at *6-7.

The City and all other defendants appealed this decision. On July 27, 2022, the United States Circuit Court for the 4th Circuit held that the *Holloway* case was moot by virtue of the General Assembly's adoption of HB 2198. *Holloway v. City of Va. Beach*, 42 F.4th 266 (4th Cir. 2022). The federal district court judgment was vacated, and the matter was remanded without instructions to dismiss, but instead with leave for the plaintiffs to raise any claims they might have against the post-HB 2198 system. *Id.* at 277-78. Due to the timing of this decision, the 2022 city council elections were

conducted under the 10-1 system ordered by the federal district court. As established by testimony at the hearing of this matter by Christine Lewis, the City Director of Elections, the deadline that year for candidates for city council to file required candidacy documents was June 21, 2022. Tr. 5/20/2024 Hr'g at 13. By the time of the issuance of the Fourth Circuit decision over a month later, there was no "ability to change the system" for voting in that fall's elections. *Id.* at 22. *Holloway* has since been dismissed by an agreed Stipulation of Dismissal filed in the federal district court on November 27, 2023. *Holloway v. City of Va. Beach*, No. 2:18-cv-0069, Stip. of Dism. ECF No. 318 (Nov. 27, 2023).

On August 13, 2023, city council adopted its 2023 Redistricting Ordinance that, according to the city, "permanently moots the *Holloway* case and clearly satisfies the VAVRA[2]." City Dems. and Special Pleas in Bar at ¶ 14. In this ordinance, the city council adopted a system requiring election of city council members from ten single-member districts and a mayor elected at large (the "10-1 system"), as originally ordered by the federal district court in *Holloway*. Each council member is required to reside in the district from which the member was elected.

The Demurrers

The defendants assert the following grounds for their demurrer, which the court addresses in the paragraphs immediately thereafter:

1. Plaintiffs lack an implied or private statutory cause of action to bring declaratory judgment and injunction claims.[3] City Dems. and Special Pleas in Bar at ¶ 20.

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[2] Virginia Voting Rights Act

[3] The defendants also raise this issue for Count III (compel redistricting/mandamus), which the court addresses elsewhere herein.

In these counts the plaintiffs seek a declaration that the acts of the City in adopting the 10-1 system are void and *ultra vires* under the Dillon Rule, and an injunction against conducting elections using that system and/or eliminating the three at-large seats, *i.e.*, essentially enforcing the declaratory judgment. The declaratory judgment count asserts the City is neither expressly nor impliedly authorized by the charter, statutes, or the Virginia Constitution to adopt the 10-1 system as was done in the 2023 Redistricting Ordinance.

The text of the statute that grants courts the power to issue declaratory judgments, § 8.01-184, specifically provides for use of that action for "the interpretation of . . . statutes, municipal ordinances, and other government regulations." There are a number of Virginia Supreme Court cases addressing declaratory judgment actions involving issues similar to those herein, including cases cited by plaintiffs. As well, one treatise includes in a list of examples where declaratory judgment has been found appropriate the following: "Establishing the legality or enforceability of a local ordinance." *See* Kent Sinclair, Sinclair on Virginia Remedies § 4-9 (5th ed. LexisNexis Matthew Bender); *see also Sinclair v. New Cingular Wireless PCS, LLC*, 283 Va. 567 (2012) (obtaining declaratory judgment that provisions for waiving zoning regulations violated the Dillon Rule because those provisions were not authorized by state law).

The declaratory judgment count is not seeking to enforce the charter and statutes. Rather, it is seeking a declaration that the City was not authorized to enact the 2023 Redistricting Ordinance, rendering it invalid, on both statutory and constitutional bases. There is a difference between a declaratory judgment action that seeks to enforce a statute or ordinance, and one that seeks a declaration that the legislative body did not have the power to enact the law at issue. Likewise, the fact that as a consequence of such a declaration the 7-3-1 system would be in place is not the same as seeking to enforce laws that produce that result. Further, the cases relied upon by the defendants are distinguishable because other remedies were available to provide the relief sought, so that no "private right of action" would be implied. *See Cherrie v. Va. Health Servs.*, 292 Va. 309 (2016) (declining to imply a private right of action where

there were various statutory methods available to enforce the rights asserted by plaintiffs); *Michael Fernandez, D.D.S., Ltd. v. Comm'r of Highways*, 298 Va. 616 (2020) (administrative process was available to address plaintiff's rights so no private right of action implied); *Lafferty v. Sch. Bd. of Fairfax Cty.*, 293 Va. 354 (2017) (code provided a judicial remedy to challenge school board actions as opposed to use of a declaratory judgment); *Stoney v. Anonymous*, No. 200901, 2020 Va. Unpub. LEXIS 19 (August 26, 2020) (related statute created a right and provided a remedy for the subject of the declaratory judgment action).

Accordingly, the court finds that plaintiffs are entitled to bring their declaratory judgment action, and related injunction, to pursue their claim that changes in districts were not done "in a manner provided by law," and thus essentially not done at all. *See, e.g., Rebh v. Cty. Bd. of Arlington Cty.*, 80 Va. App. 754, 770 (2024) (acts by localities outside their authority and in violation of the Dillon Rule are *void ab initio*); *Kelley v. Stamos*, 285 Va. 68, 75 (2013) ("'void ab initio' . . . mean[s] without effect from the moment it came into existence . . . a nullity without force or effect"); "Void," Black's Law Dictionary (11th ed. 2019) ("having no legal force or binding effect").

The demurrer as to this ground is overruled.

2. To the extent that the complaint challenges the 2022 local elections, federal law required the city and the state to conduct those elections under the 10-1 system ordered by the United States District Court. City Dems. and Special Pleas in Bar at ¶ 21.

The 2022 elections were conducted in accordance with an order of the United States District Court. Although that order had been vacated prior to the November 2022 election, the vacatur occurred after the deadline for candidates to file to run for a city council seat. This deadline is mandated by statute. *See* § 24.2-503. Therefore, the City did not have the power to change the deadline to accommodate new districts, so there was no choice but to move forward with the November 2022 city council elections

using a 10-1 system. *See also Upham v. Seamon*, 456 U.S. 37, 44, 102 S. Ct. 1518, 1522 (1982); *Purcell v. Gonzalez*, 549 U.S. 1, 5-6, 127 S. Ct. 5, 8 (2006) (courts should not change the rules governing elections too close in time to election day, to avoid confusion and administrative problems). The Demurrer is sustained with respect to challenges to the 2022 elections and that part of the complaint seeking relief with respect to those elections is dismissed.[4]

3. Virginia Code § 24.2-304.4 limits judicial review of the Redistricting Ordinance to "whether the redistricted representation is proportional to the population of one or more of the districts." City Dems. and Special Pleas in Bar at ¶ 22.

The action at bar is an action for a declaratory judgment that the 10-1 system in 2022 and under the 2023 Redistricting Ordinance are void as violative of the Dillon Rule, for an injunction barring the city from conducting the 2024 election under the 2023 Redistricting Ordinance, and for the Court to issue a writ of mandamus requiring the city to redistrict "in a manner that does not infringe on the Plaintiffs' constitutional rights and is consistent with state law." The complaint does not rely on the Virginia Voting Rights Act. It relies upon the Virginia Constitution and the city charter. Indeed, the prayer for a writ of mandamus is incident to the prayer for declaratory judgment, as both are premised upon the use of the 10-1 system as being *ultra vires* and void.

Article VII, Section 5 of the Virginia Constitution provides that "if members are elected by district," the locality may "increase or diminish the number, and change the boundaries, of districts . . . reapportion the representation in the governing body among the districts in a manner provided by law." The Charter for the City follows this language by setting forth the "manner provided by law," namely that for council districts "the boundaries shall be adjusted periodically as may be necessary to ensure that the populations of the districts remain approximately equal." Virginia Beach City Charter

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[4] At the hearing, plaintiffs' counsel disclaimed any intent to attempt to undo the 2022 city council election. Tr. 5/20/2024 Hr'g at 159.

§ 3.01(B), 1995 Acts ch. 697. Plaintiffs allege that this "approximately equal" standard has not been satisfied.

The Court is of the opinion that Virginia Code § 24.2-304.4 is not a universal limitation on writs of mandamus grounded on other bases such as the Virginia Constitution or the common law. *See Town of Whitestone v. Cty. of Lancaster*, 97 Va. Cir. 309, 313 (Lancaster 2002); Pl.'s Br. In Opp'n to Defs.' Dem. and Special Plea at 10. There is no limitation on what type of suit can be brought under the constitutional provision. Thus, the demurrer on this ground is overruled.

4. Plaintiffs' challenge to the 2023 Redistricting Ordinance is not ripe because the General Assembly is considering legislation related to adopting the 10-1 system. City Dems. and Special Pleas in Bar at ¶ 23.

The demurrer is overruled. The General Assembly adjourned without enacting legislation affecting the action at bar. The demurrer on this ground, then, is moot.

5. Defendants assert that the 2023 Redistricting Ordinance, which removed the three at-large districts, is valid because Virginia Constitution and statutory provisions provide that the city may "increase and decrease districts during a decennial redistricting, which accordingly grants the City the power to increase single-member districts and decrease at-large districts during such process." City Dems. and Special Pleas in Bar at ¶ 24. The defendants further allege that the decennial redistricting measure takes precedence over its charter provisions.

The city charter provides for an 11-member city council consisting of a mayor and three members elected by the voters of the city at large. Seven other members are elected at large but must reside in districts defined by ordinance. Virginia Beach City Charter § 3.01. Significantly, the City Charter does <u>not</u> provide for increasing or diminishing the number of districts, but only for reapportionment by changing boundaries.

The defendants argue that the decennial redistricting measure overrides the city charter. They base that argument on Article VII, Section 5 of the Virginia Constitution, which reads in pertinent part:

> The governing body of each county, city, or town shall be elected by the qualified voters of such county, city, or town *in the manner provided by law*.
>
> If the members are elected by district, the district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. When members are so elected by district, the governing body of any county, city, or town may, *in a manner provided by law*, increase or diminish the number, and change the boundaries, of districts, and shall in 1971 and every ten years thereafter, and also whenever the boundaries of such districts are changed, reapportion the representation in the governing body among the districts *in a manner provided by law.* Whenever the governing body of any such unit shall fail to perform the duties so prescribed in the manner herein directed, a suit shall lie on behalf of any citizen thereof to compel performance by the governing body.

(emphasis added). As well, the City relies upon § 24.2-311(E), which provides that if a redistricting ordinance and charter conflict, the redistricting ordinance overrides the charter. Specifically, that section states:

> In the event of a conflict between the provisions of a decennial redistricting measure and the provisions of the charter of any locality, the provisions of the redistricting measure shall be deemed to override the charter provisions to the extent required to give effect to the redistricting plan.

VA. CODE § 24.2-311(E). The decennial redistricting measure adopting the 10-1 system was adopted in part pursuant to Virginia Code § 24.2-304.1 which speaks to at-large and district elections. Section 24.2-304.1(B) gives the power to increase or decrease the number of districts as part of redistricting, if council members are "elected *from* districts or wards and *other than entirely at large* from the locality" (emphasis added).

Under HB 2198, for the seven residency districts, council members are now elected by and "from" that district, and not entirely at large. *See, e.g.,* § 24.2-222(A) (codifying HB 2198 in part). Since HB 2198 states it applies "notwithstanding any other provision of law, general or special," it overrides the Virginia Beach City Charter provisions as they constitute "special" acts of the General Assembly. *See* VA. CONST. art. VII, §§ 1, 2 (empowering the General Assembly to provide for the "organization, government, and powers" of any locality by "special act"). However, § 24.2-304.1(B) by its terms applies only to the seven districts that are no longer at large.

The powers of a city council in Virginia must be expressly granted by the legislature or must be clearly implied from expressly granted powers. This, in essence, is the "Dillon Rule" which has been adopted in Virginia.

> In applying the Dillon Rule, the Supreme Court of Virginia first examines the plain terms of the legislative enactment to determine whether the Virginia General Assembly expressly granted a particular power to the municipal corporation. If the power is not expressly granted, the court then determines whether the power is necessarily or fairly implied from the powers expressly granted by the statute. To imply a particular power from a power expressly granted, it must be found that the legislature intended that the grant of the express also would confer the implied. Questions concerning implied legislative authority of a local governing body are resolved by analyzing the legislative intent of the Virginia General Assembly. Legislative intent is determined from the plain meaning of the words used. Thus, the central focus of the analysis in applying the Dillon Rule is to ascertain and give effect to the Virginia General Assembly's intent in enacting the provisions.

13B M.J., *Municipal Corporations* § 26. It logically follows that the city council has no authority that is not authorized by its charter or specifically authorized or necessarily implied by statute. *Id.* at § 7; *see also Arlington County v. White*, 259 Va. 708, 712 (2000). The key to application of the Dillon Rule is determining and effectuating the intent of the General Assembly, which is derived "'from the plain meaning of the words used.'" *Marble Techs., Inc. v. City of Hampton*, 279 Va. 409, 418 (2010) (citations

omitted). Further, "[i]f there is a reasonable doubt whether legislative power exists, the doubt must be resolved against the local governing body." *Board of Supervisors v. Reed's Landing Corp.*, 250 Va. 397, 400 (1995).

The question presented, then, is whether the redistricting ordinance adopting a 10-1 city council organization fails because it conflicts with the city charter by abolishing the at-large seats on city council. Unquestionably, the city council may adjust the boundaries of the single member districts. In *Fonticello Mineral Springs Co. v. City of Richmond*, 147 Va. 355, 360 (1927), the city exercised its power of eminent domain consistent with the provisions of its charter. The charter's eminent domain provisions were slightly in conflict with the state code. The court held that Richmond's charter "to the extent of such conflict supersedes the provisions of the general statute as to the city of Richmond." *Id.* In a later case considering the relationship between a city charter and a statute of general application, the Supreme Court of Virginia opined:

> The Dillon Rule of strict construction controls our determination of the powers of local governing bodies. This rule provides that municipal corporations have only those powers that are expressly granted, those necessarily or fairly implied from the expressly granted powers, and those that are essential and indispensable . . . When a local ordinance exceeds the scope of this authority, the ordinance is invalid.

City Council of Alexandria v. Lindsey Trusts, 258 Va. 424, 427 (1999).

At issue in this case is whether provisions on reapportioning or redistricting permit the removal and replacement of at-large districts with representative districts. Article VII, Section 5 of the Virginia Constitution provides that "if members are elected by district," the locality may "increase or diminish the number, and change the boundaries, of districts . . . reapportion the representation in the governing body among the districts *in a manner provided by law*" (emphasis added). The Virginia Beach City Charter sets forth the "manner provided by law" by stating that council members are to

be "elected by the city at large from the residents of each of the seven districts and three members and the mayor to be elected by and from the city at large," and then that for the districts "the boundaries shall be adjusted periodically as may be necessary to ensure that the populations of the districts remain approximately equal." § 3.01(A, B). There is no provision in the Charter for reapportionment by increasing or diminishing the number of districts.

The problem for the City in relying upon §§ 24.2-304.1(B) and 24.2-311(E) to allow it to increase the number of single member districts and decrease the number of at-large districts, despite the provisions of the Charter, is that § 24.2-304.1(B) was enacted in the same General Assembly session that amended Charter § 3.01 to refer to districts rather than boroughs. *See* 1995 Acts ch. 249 (codified in part as § 24.2-304.1); 1995 Acts ch. 697 (amending charter). In the charter amendment, the General Assembly specifically added § 3.01(B), providing that only boundaries could be changed to maintain roughly equal populations among districts and chose not to provide that the number of districts could be increased or decreased. Taken together, the reapportionment amendments to § 24.2-304.1 and the City Charter indicate that the General Assembly intended for valid reapportionment to occur only by changing district boundary lines.[5] Section 24.2-311(E) does not change this result, as it is premised upon the passage of a redistricting ordinance that council was given the power to enact. *See, e.g., Vinton v. Falcun Corp.,* 226 Va. 62, 67 (1983).

The Virginia Voting Rights Act does not expressly provide that it modifies city charters. Further, according to *Holloway v. City of Va. Beach*, 42 F.4th 266 (4th Cir. 2022), HB 2198 made moot the *Holloway* plaintiffs' Federal Voting Rights Act challenge. Both the Virginia Voting Rights Act and HB 2198 were passed in the 2021 Special

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[5] In addition, the amendment of Virginia Beach City Charter § 3.01(B) was signed into law on April 3, 1995, after the date that § 24.1-304.1 was enacted (signed into law March 21, 1995). Thus, although these changes occurred during the same session of the General Assembly, technically they can be considered subject to the rule that if a charter provision is passed after the enactment of a general statute, the charter can be considered as "'a qualified amendment of the general law, and controlling in the locality to which it applies.'" *City Council of Alexandria v. Lindsey Trusts*, 258 Va. 424, 428 (1999).

Session I of the General Assembly, yet neither provides for modification of city charter provisions regarding reapportionment. The court is unable to conclude that authority for the city council to abolish the three at-large city council seats is necessarily or fairly implied from the expressly granted powers. Further, the General Assembly has declined the opportunity to modify the city charter to provide that authority. Thus, the court concludes that there was no authority, except the now vacated Federal court order, for the city council to abolish the three at-large city council seats.

The demurrer as to this ground is overruled.

6. "[The] VAVRA both requires the City to utilize a 10-1 system with three minority opportunity districts and prohibits the City from adopting a decennial redistricting measure using the 7-3-1 charter system a Plaintiffs seek." City Dems. and Special Pleas in Bar at ¶ 25.

The discussion in paragraph numbered 4 above is applicable to this ground. If, perchance, the General Assembly intended to prohibit the use of the 7-3-1 charter system's at-large seats, it had ample opportunity to express that intention or to do something from which one could necessarily and fairly conclude that it had such intention. The General Assembly has not done so. Further, VAVRA does not *per se* bar at-large elections but requires proof of an adverse impact on a statutorily defined protected class before that type of election is prohibited.

The demurrer as to this ground is overruled.

The Pleas in Bar

The pleas in bar assert the following grounds:

1. The plaintiffs lack standing and a private right of action to bring the action at bar. Article VII, Section 5 of the Virginia Constitution addresses local elections:

> The governing body of each county, city, or town shall be elected by the qualified voters of such county, city, or town in the manner provided by law.
>
> If the members are elected by district, the district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. When members are so elected by district, the governing body of any county, city, or town may, in a manner provided by law, increase or diminish the number, and change the boundaries, of districts, and shall in 1971 and every ten years thereafter, and also whenever the boundaries of such districts are changed, reapportion the representation in the governing body among the districts in a manner provided by law. *Whenever the governing body of any such unit shall fail to perform the duties so prescribed in the manner herein directed, a suit shall lie on behalf of any citizen thereof to compel performance by the governing body.*

(emphasis added).

The Plaintiffs are undoubtedly citizens of the City of Virginia Beach and of the Commonwealth. They have alleged that the city council has not acted in the manner prescribed. This constitutional language is clear and unambiguous. It means what it says. The plaintiffs have standing to pursue this action. *See Howell v. McAuliffe*, 292 Va. 320 (2016); *Wilkins v. West*, 264 Va. 447 (2002). The portion of the plea in bar regarding a private right of action has been addressed in the Court's ruling on the demurrer.

The plea in bar on this ground is denied.

2. With respect to the November, 2022, elections, federal law authorized and required the city and state to conduct those elections under the 10-1 system ordered by the United States District Court.

This portion of the plea in bar has been addressed in the Court's ruling on the demurrer. The plea in bar as to this ground is granted.

3. With respect to the Plaintiffs' challenge to the 2023 Redistricting Ordinance, there is no authority for judicial review and the Court lacks subject matter jurisdiction.

This portion of the plea in bar has been addressed in the Court's ruling on the demurrer. The plea in bar as to this ground is denied.

4. The Plaintiffs' challenge to the 2023 Redistricting Ordinance is not ripe because the General Assembly is considering statutory provisions that may give express and clear authority to adopt a 10-1 plan.

Because the General Assembly adjourned without enacting legislation affecting this action, the plea in bar on this basis is denied.

5. The Plaintiffs' challenge to the November 2022 election is barred by the statute of limitations.

The defendants cite Virginia Code §§ 24.3-806 and 808 for the assertion that the cause of action is barred by the statute of limitations. The Plaintiffs have not pled a case under that statute but rather rely on the constitutional provisions that have been cited. Those provisions address contested elections, not a challenge to the redistricting decisions by the governing body. Furthermore, there appears to be no authority cited by either party that establishes a specific limitations period for constitutional challenges.

Finally, at the hearing plaintiffs' counsel disclaimed any attempt to undo the November 2022 city council election. Tr. 5/20/2024 Hr'g at 159.

The plea in bar on this ground is denied.

6. "Counts I, II, and II are barred by VAVRA, which both requires the City to utilize a 10-1 system with three minority opportunity districts and prohibits the City from adopting a decennial redistricting measure using the 7-3-1 charter system as Plaintiffs seek." *Id.* § 31.

This portion of the plea in bar has been addressed in the Court's ruling on the demurrer. While there is insufficient evidence to support the plea in bar, it is possible that at trial evidence will be presented that will provide a basis for the court to determine if the authority to abolish the at-large seat has been necessarily or fairly implied from those powers the General Assembly has expressly granted. The plea in bar on this basis is denied.

The Plaintiffs further ask the Court to grant a temporary injunction requiring the defendants to conduct the 2024 election under the districting provisions of the City Charter, i.e., under a 7-3-1 system. In an often-cited case, four considerations were prescribed for the court to consider in deciding whether to grant a temporary injunction:

> A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.

Winter v. NRDC, Inc., 555 U.S. 7, 20, 129 S. Ct. 365, 172 L. Ed. 2d 249 (2008).

Having considered the evidence presented and the argument of counsel, the Court cannot conclude that the Plaintiffs are likely to succeed on the merits or not

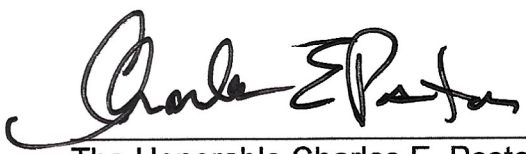
succeed on the merits, nor that they will suffer irreparable harm if the temporary injunction is not granted. Accordingly, the prayer for a temporary injunction is denied.

Counsel are requested to obtain a trial date and submit a scheduling order not later than September 1, 2024.

Endorsements are waived pursuant to Rule 1:13. The circuit court clerk shall mail a copy of this order to the parties. Counsel will have 21 days from the date of entry of this Order to file written objections.

IT IS SO ORDERED.

ENTER: August 19, 2024



The Honorable Charles E. Poston
Judge Designate