IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

JACKSONVILLE BRANCH
OF THE NAACP, ,

,

Case No. 3:22-cv-493-MMH-LLL

v.

CITY OF JACKSONVILLE, ,

.

_____/

PLAINTIFFS' SECOND UNOPPOSED MOTION TO SUPPLEMENT THE RECORD

Plaintiffs respectfully move to supplement the record attached to their Objections to the City's Proposed Remedial Plan and Submission of Alternative Plans ("Remedial Brief") with the news article and column attached hereto:

ECF No.	Description	Pages
98-1	Fourth Declaration of Nicholas Warren	2
98-2	Ex. A – Andrew Pantazi, , TRIBUTARY (Dec. 9, 2022), https://jaxtrib.org/?p=3637 [https://perma.cc/ZY6V-SY4E]	10
98-3	Ex. B – Nate Monroe, , FLA. TIMES-UNION (Nov. 18, 2022), https://www.jacksonville.com/story/news/columns/nate-monroe/2022/11/30/10796331002/ [https://perma.cc/U6X9-BL6E]	7

These articles were published recently and contain information regarding the interim remedial process the Court may find relevant. Councilmember statements and

According to the version of events that Jacksonville's city lawyers told a federal court, the City Council passed a redistricting map last month that carefully considered many factors.

The council wanted a map that was "as logical and compact a geographical pattern as possible", one that honored planning district boundaries, major roads and waterways, one that considered socioeconomic demographics and one that maintained Republicans' advantage.

But there's a problem with the city's court filing: It's not true.

Or at least, if council members agreed to those criteria, they didn't do so in public.

The council never claimed to prioritize compactness. In fact, the council passed a map that both the city's top lawyer and its consultant described as "oddly shaped".

City Council members never said they wanted to follow planning district boundaries or major roadways. The council explicitly asked for at least one district that crossed a major waterway.

One council member did ask for socioeconomic demographics, but the city's experts said it would be impossible to consider those.

Another council member said he wanted a "nonpartisan" approach to drawing the maps. Another said he rejected "naked partisanship." No one publicly asked for a partisan gerrymander.

In fact, the City Council's special redistricting committee never publicly adopted any redistricting criteria.

“It might not be a perfect map in terms of good governance,” the city’s general counsel, Jason Teal, said the day the council approved the new maps. “It might not have been as deliberative as you wanted it to be.”

Yet the city claims the council approved seven principles that drove mapmaking, but that claim just raises questions about whether council members made redistricting decisions in private meetings with city staff.

City staff held a flurry of back-to-back meetings just a few days before the maps ever came to light. Courts have viewed repeated private meetings ahead of a big decision suspiciously in light of the state’s Government-in-the-Sunshine law.

Supposed redistricting criteria (p. 9)

In crafting the IRP, the Council, with the assistance of Dr. Doug Johnson, worked under the following principles:

> (1) Creating districts that are nearly equal in population as possible in order to satisfy the "one person/one vote" requirement; (2) arranging all districts in as logical and compact a geographical pattern as possible; (3) creating compact and contiguous districts so that the people of the City, and their varied economic, social and ethnic interests and objectives, are adequately represented in the Council; (4) creating district boundaries along Citizen Planning Advisory Commission Committee (CPAC) region boundaries,[2] freeways, waterways and major roads; (5) accounting for the residence of City Council and School Board incumbents who can run for re-election and not pairing these incumbents against each other; (6) considering the political and socio-economic demographics of the districts; and (7) attempting to avoid changes to the boundaries of the unchallenged districts.

Doc. 67-1 at 17-18. Most importantly, "the race of the potential district constituents was not considered when creating the interim remedial district boundaries, nor were the 2011 district lines preserved." *Id.* at 18. *See also* Doc. 96-2 at ¶¶ 9-17 (describing Dr. Johnson's initial process).

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U.S. District Judge Marcia Morales Howard, who struck down the city's earlier maps as racial gerrymanders, has said she would order new maps based on filings from the city and the plaintiffs, which include the Jacksonville Branch of the NAACP. The Duval Supervisor of Elections Office has said it needs those maps in place by Dec. 16 in order to use them in the coming March municipal elections.

After Howard ordered the city to redraw its district maps, City Council President Terrance Freeman formed a special redistricting committee with a charge to "obtain legally permissible considerations for redistricting in accordance with state, federal and case law." Yet the committee never actually voted on any considerations before the maps were drawn.

The mapping consultant and city staff said the mapmaking criteria they used came from private meetings with council members.

The Florida Government in the Sunshine Law requires City Council meetings to be public. While individual council members may meet individually with city staff, courts have said elected officials can't use those meetings to evade public scrutiny. For example, city staff is not allowed to pass along information to council members that they heard in private meetings.

In one case, a court found that a series of meetings between School Board members and a superintendent held in "rapid-fire succession" violated the sunshine law, even though the superintendent was "adamant that he did not act as a go-between."

NO PUBLICLY DISCUSSED CRITERIA

The special redistricting committee hosted its first meeting on Oct. 20, where Freeman said he didn't want council members to discuss criteria until after a hired consultant drew maps.

"My goal is to try to not get ahead of the process with our map drawer first rendering it and us seeing what was produced and then us going from that point," Freeman said.

Freeman eventually allowed Councilman Matt Carlucci to speak since he would be absent the week the council would receive map proposals. He ended up being the only council member to speak at length about partisanship, criticizing the council's previous map and saying the council should prioritize a "nonpartisan" approach that "must reflect a better diversity of party, thus opening up more opportunities for people of all color."

Then, on Nov. 1, without any prior public discussion about criteria, a city consultant revealed three drafts of maps that he called Maroon, Orange and Lime, in addition to the plaintiff's so-called Unity Map proposal.

That consultant, Doug Johnson, said he drew the maps based on criteria he received from the city's planning director, Bill Killingsworth. Killingsworth said he determined the criteria from private meetings with council members.

(Freeman and Killingsworth did not return requests for comment.)

Criteria of Maroon map (p. 25)

82. With the exception of small areas used for population balancing, the Maroon map: (1) maintained the partisan makeup of Districts 12 and 14; (2) kept similar communities together (rural communities in District 12; communities along the Interstate 295 corridor in District 9; riverfront and newer developments in District 14, the urban core in District 8); (3) used

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Criteria of Maroon Map cont. (p. 26)

natural boundaries, including roadways (Interstate 295, Blanding Boulevard, Collins Road), CPAC boundaries (Urban Core and Northwest), and waterways (St. Johns River, Ortega River, Trout River); and (4) did not pair incumbents.

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At 9 a.m. on Oct. 28, Killingsworth met with Councilman Kevin Carrico. At 10 a.m., he met with Councilman Reggie Gaffney. At 1 p.m., he met with Councilman Randy White. At 1:30 p.m. and again at 2:30 p.m., he met with Councilman Rory Diamond. At 3 p.m., he met with Councilwoman Ju'Coby Pittman. At 4 p.m., he met with Councilman Al Ferraro.

He also met with Council President Terrance Freeman at least twice, and he held separate later meetings with Councilwoman Tyrona Clark-Murray, Councilwoman Randy DeFoor and Councilman Nick Howland.

Those one-on-one meetings, Freeman said at the Nov. 1 meeting, led to the maps before them. “I’m hearing from some of my colleagues that it sort of sounds as if you may have collaborated with, you know, others, and potentially some of us before today, to come to this conclusion of four.”

“The only three pieces of information we got out of all of the meetings,” Killingsworth said, “was: to the extent possible, keep 12 R; try to separate the rural from the urban areas if we can; and Ms. Pittman asked if she could, to the extent possible, go north rather than going south.”

The new maps prioritized keeping District 12 Republican due to something said in **Killingsworth’s private conversations** with council members, even though the only publicly discussed criteria at that point was a suggestion to make the map more politically diverse.

Holding private meetings about redistricting with city staff, which led to the redistricting maps that were eventually agreed on, raises concerns the city may have violated the Sunshine Law, said Barbara Petersen, executive director of the **Florida Center for Government Accountability**.

“How many times do they have to be told?” she said of Jacksonville elected officials, referring to past Sunshine lawsuits the city has lost. “How many times do they have to be sued?”

City staff, she said, are “answering all the questions the council members would’ve had and when they come to the public meeting, there’s just a vote. The public doesn’t have the opportunity to 1) understand why they came to that decision or 2) to question them.”

"In the sunshine law, there's a provision that everyone has the right to speak," she continued. "If we don't know why they made a decision or what their rationale is, how can we ask questions? We don't know why they're doing what they're doing. I would argue those one-on-one meetings are a violation of law. At the very least, they're a violation of the spirit and intent of the law."

Diamond said his meeting with Killingsworth "was very much one-way," with Diamond telling Killingsworth what he wanted to see in the maps: neighborhoods kept together and Republican power solidified. He said he didn't see any map drafts until 15 minutes before the first committee meeting on Nov. 1.

Gaffney said his conversation didn't last long, and "I got no information out of him [Killingsworth] at all."

Councilman Howland, who met separately with Killingsworth on Nov. 3, said by that point, the committee had already settled on a map, so "it was a short meeting, and we didn't have anything to discuss."

Councilwoman Clark-Murray said she expressed a desire to return District 9 to its old configuration. "I'd like it to remain what it is now," she told the Tributary. She eventually voted for a map that incorporated some of her proposed changes even though she said she still dislikes the new map.

Councilwoman DeFoor met with Killingsworth twice after the initial maps came out to advocate for uniting Riverside, Avondale and Ortega. She said that by the time they met "it was a done deal. By the time I was able to get any type of review and response at all, everything had consequences, so if you put back Riverside it impacted all these other areas."

Council members Carrico, White, Ferraro and Pittman did not answer questions about their private meetings.

Back-to-back recesses

Even after Johnson presented the maps, council members continued holding private meetings with him and Killingsworth, including during recesses ahead of the council's final vote on Nov. 4.

During the final meeting on Nov. 4, the council took four back-to-back recesses in a one-hour period. During those recesses, White and DeFoor each said they wanted to look at proposals with Johnson to see if they could reach an agreement.

After the second recess, DeFoor said the attempted changes wouldn't work, and the council took a vote on the overall map that initially failed.

Councilman White then asked for another recess so he could reconsider. When the council's public meeting restarted, DeFoor said she couldn't make the map work so she filed a motion to reconsider the litigation and changed her vote.

No one said if Johnson or other city staff had passed comments back and forth between the council members, which would likely be a violation of the state's Government in the Sunshine Law.

Shielding records and conversations

The city also tried to shield demographic data from **a public records request by The Florida Times-Union**, claiming it was legally privileged, even though the law only allows the city to shield "legal theories" not factual data. The city has also said delays in releasing council members' text messages and emails to The Tributary were "due to pending litigation."

The city also can't use its shade meetings — private meetings with lawyers to discuss potential settlements or strategies related to litigation expenses — to

talk about legislation. Yet it appears the council did discuss topics that later came up during council meetings.

At one point, Councilman Ron Salem began saying, “as you all know, I brought up in our shade meeting —”, when he was interrupted. Council President Terrance Freeman, without hearing Salem’s question, apparently knew what Salem was going to ask.

Would the new maps affect candidates on the ballot for a special election?

If City Council members discussed that question in private at the shade meeting, they may have violated state law, Petersen said.

The state’s sunshine law also requires that the city first provide a meeting notice that says they are having a “shade” meeting and lists the names of those who will attend the meeting. But before the first shade meeting, the meeting notice only described it as a “Special Council Meeting re Redistricting Federal Court Order.” It never said it would be a shade meeting or who would attend.

Salem told The Tributary he wouldn’t comment on the shade meeting and he regretted bringing it up earlier

The federal court is expected to choose new City Council maps any day now. Those maps will go into effect for the March and May 2023 municipal elections.

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NATE MONROE

Nate Monroe: Private meetings were critical in producing Jacksonville's gerrymandered council map

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Florida Times-Union

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COMMENTARY | Ahead of a court-ordered effort last month to create a new City Council map, Jacksonville council members shared their policy priorities and preferences with the city's planning chief in one-on-one meetings rather than in the public meetings where those decisions were supposed to be debated, an examination of hundreds of pages of court filings and meeting transcripts shows.

Those closed-door conversations were a key factor that guided a city expert who was hired to draw the new maps, even as council members themselves often said little in public meetings to explain why they supported some versions of the council maps over others. That silence created huge gaps in the public record that make it difficult for voters to understand the process that led to the city's new council map, and it could imperil the city's goal of convincing a federal judge to green-light the new districts ahead of next year's spring elections.

More: Eyes turn to federal judge as she decides on accepting Jacksonville's redistricting map

Those private talks became a flashpoint during one of the council's public committee meetings last month, when some members realized they, for unclear reasons, had not been extended the privilege of meeting with staff ahead of time.

"I know I didn't have input on this map," said Council member Al Ferraro during the redistricting committee's Nov. 1 meeting. "I don't know who else did."

The link between the motivations of council members and the provenance of the new council map is a key question in a federal court case, in which a coalition of plaintiffs have alleged the council illegally segregated voters by race earlier this year when drawing a prior council map, which had the effect of diluting Black voting power. That argument persuaded U.S. District Judge Marcia Morales Howard, who ruled in October that initial map likely violated the 14th amendment.

She ordered the city to draw a remedial map to use for the spring city elections.

During the remedial process, city attorneys and the map drawing expert they hired strained to show in court filings that race was not a factor as council members divided up neighborhoods and redrew the districts.

But council members themselves were often circumspect in real time about why they supported some maps over others.

For instance, city attorneys told Howard the council's policy priorities for a new map included "maintaining the City Council’s political balance," a goal none of the 19 council members actually expressed in the public meetings that were supposed to be leading the map-drawing process. It can be legal for legislative bodies to consider politics when drawing districts — hence its appeal to a city council searching for a policy that will pass muster with a federal judge.

But neither the full council nor a special redistricting committee that initially vetted various maps ever debated or voted on an agreed list of policy priorities that would guide the map-drawing process. Instead, city attorneys later tried to clarify some of those otherwise absent political considerations in court filings to Howard.

Compounding the problem, the city has also shielded aspects of the redistricting process from public disclosure, including the transcript of a meeting during which city officials claim they only discussed litigation strategy. City lawyers refused to provide the Times-Union with the racial data it used when putting the maps together, claiming it was attorney-client privilege. Race unquestionably played a role in the map-making process — it was discussed repeatedly during the council's public meetings, and the city's expert acknowledged using racial data to tweak his maps — but it's impossible to know the degree to which it directly influenced the council lines.

Those remarkable omissions in the public record could lead Howard to conclude the council had other motivations in mind beyond those later articulated by city attorneys in court filings. Howard is set to decide any day whether the city's new map is an acceptable remedy to her order tossing out the previous district lines.

Council priorities were not just opaque — they were problematic

While the council never explained which policies it was using to guide its map-drawing, comments from council members during public meetings did make clear there were two goals that had an overwhelming influence on the process: protecting incumbents — that is, ensuring no sitting member would have to run against another for re-election — and maintaining as much of the core of the original districts as possible. Those two priorities, however, could prove problematic since they were goals that ensured the new map retained many elements of the old map Howard ruled was likely unconstitutional.

The city insists the new map represents a "wholesale" rewrite of the council districts, even as its own map-drawing expert said he worked to retain the "heart" of the old districts — which he testified was defined by the council members themselves.

"I moved this boundary north rather than west to reflect the Committee's request that the District 8 Councilmember (Ju'Coby Pittman) not be removed from the heart of the population she had represented for years," Johnson said in a sworn statement explaining his map-drawing process.

And among the few instances in which council members did discuss political party, the issue was tied to race — which could be problematic if Howard is persuaded partisanship was merely a pretext to divide voters based on the color of their skin.

To wit: In one exchange between City Council member Reggie Gaffney and a city attorney, Gaffney first asked whether the new potential maps maintained the four majority-Black districts that the prior map provided. Upon being informed the council was barred from "establish(ing) any district based on African American or any other demographic group or ethnic group," Gaffney rephrased the question to ask which districts a Democrat would be able to "maintain."

The coalition of plaintiffs, which includes the Jacksonville-branch NAACP and the Northside Coalition, told Howard that exchange was indicative of a problem that infected the entire remedial process: The council still used race to divide up voters and merely masked that effort behind other purported policy priorities.

"The result is a map that calcifies, rather than cures, the constitutional violations this Court identified," they told Howard. "The Council had the opportunity and obligation to do better."

The plaintiffs noted that new map still packs large populations of Black voters into four districts just as the old map did, claiming the new four districts retained 89 percent of the population from the old ones. In sum, they argue, the council merely shuffled Black voters among the same districts, some of which appear remarkably similar to the map Howard already found to be likely illegal.

Jacksonville council's poorly explained map

The lack of a clear list of policy priorities from the City Council led to sometimes-inexplicable developments.

During the redistricting committee's Nov. 1 meeting, for example, when members were purportedly seeing four potential maps from the city expert for the first time, Killingsworth told the group one of the instructions he received from the council during his one-on-one meetings was to "keep 12 R" — presumably meaning he was told to keep District 12, currently held by Republican Randy White, a GOP-performing district.

But no council member, including White, ever articulated that goal as a policy priority in public meetings, and it was never made clear who provided that instruction to Killingsworth. White largely sat mute throughout the entire map-drawing process, even though his seat was among the challenged districts at the heart of the federal court case.

The Nov. 1 meeting stands out as indicative of the sometimes opaque nature of the council's process. That day, several council members of both parties said they were unable to understand or merely read the four potential maps they were presented

with, yet the committee nonetheless made critical decisions that guided the rest of the map-drawing process.

" ... it's very confusing up here for me," Council member Ju'Coby Pittman, the redistricting committee's lone Democrat, said just before the group announced it had eliminated two maps from consideration.

"I can't read these numbers. They are so small here. I can't read them," council member Ferraro, a Republican, said that day. "So it is hard to go along with something that I can't really read. We have four maps that we are supposed to move on today, and I am hearing other people can't read them as well."

Despite those struggles, a few committee members were able to quickly make sense out of maps they were purportedly seeing for the first time. They were apparently able to discern which maps provided electoral advantages to which party in which districts, even though the voter registration data provided on the maps didn't always make that clear.

Notably, the maps sometimes showed one district — District 14, which is held by a Republican — with a narrowly higher population of registered Democrats than Republicans, providing the appearance of a Democratic advantage even though later analysis by The Tributary, a local news nonprofit, showed it to be a Republican-friendly one in practice. That some council members, supposedly concerned with maintaining the current political balance, could apparently intuit that so early in the process, and with such confusing data, displayed an aptitude that bordered on prophecy.

And those discerning council members found themselves part of a remarkably spontaneous consensus that began to form almost immediately around which of the four potential maps to choose.

The committee quickly rejected a potential map offered by the plaintiffs, doing so with little substantive explanation. City attorneys told Howard one reason the council rejected the map because it "disrupted the Council’s current political balance," but only a single member, Rory Diamond, mentioned a concern that the map would "flip 12." And Diamond later supported maps that would bolster

Republican power on the council, thus disrupting the council's current political balance contrary to the goal city attorneys claim the council prioritized.

Terrance Freeman, the council president and chair of the redistricting committee, not only failed to mention the council's political balance as a priority his group had considered, he refused to discuss at all whether partisanship played any role in the process. Curiously, he told Andrew Pantazi with The Tributary that it was an issue only city attorneys could speak to.

Without taking a formal vote, Freeman, during the Nov. 1 meeting, simply announced the group had eliminated the plaintiff's proposed map as well as a similar one drawn by the city's expert from consideration. Instead, two others — called the "maroon" and "lime" maps — would be the only ones the committee would weigh.

And a revised version of the maroon map would ultimately prove to be the one the council adopted as its remedial plan.

Like the old map Howard tossed, it contains only four districts in which Black voters constitute a majority. One of those districts — District 9 — looks remarkably similar to its original form, having gone from a shape that merely resembled a T-rex to one that eerily mirrors the giant orange T-rex statue on Beach Boulevard (The ability to see reptilian figures within political boundaries was the basis for the word "gerrymander" in the first place — a portmanteau of "salamander" and Elbridge Gerry, a politician who pioneered the drawing of lines based on partisan interests).

The committee took steps to ensure that District 8, another of the packed districts, currently held by Pittman, more closely resembles the district she fought for in the original map Howard threw out. The group also forced a land swap that took a majority-white neighborhood out of a majority-Black district and put it back into a majority-white one in District 2, currently held by Ferraro — repeating a horse-trade made in the original map that Howard herself highlighted when she ruled that map likely unconstitutional.

The remedial map not only keeps District 12 a GOP-leaning one, it turns District 14 from the competitive, purplish district it is today into a more reliably Republican-

friendly district, shifting the balance of power further into the Republican Party's favor — contrary to the priority of maintaining political balance that city attorneys claim guided the council's process.

The map also rigorously protects the interests of council incumbents, a ploy the plaintiffs have alleged was "a fig leaf for minimizing changes" between the new map and prior one.

The city's own defense sums up the risks inherent in the approach the council decided to take: "incumbent protection is problematic," city lawyers wrote, "when accomplished through preserving unconstitutional district cores." The city's top lawyer, Jason Teal, conceded also that while he believed the map to be legally defensible, the process was perhaps lacking.

"It might not be a perfect map in terms of good governance," he told the council before it signed off on the remedial map Nov. 4.

Howard, a George W. Bush appointee with a reputation as a low-key and cautious judge, upended decades of status-quo power politics when she tossed the council map this fall, upsetting city officials who made little effort to mask their disgust with her ruling. She counseled both sides in a hearing last week to consider a settlement, warning that leaving her to rule will likely create "a clear loser and a clear winner."

"And I understand that it's complex when there's a government entity involved," Howard said, "but it does seem to me that the city would be well served, and the constituents, if an agreement could be reached rather than a court deciding the map."

Nate Monroe is a metro columnist whose work regularly appears every Thursday and Sunday. Follow him on Twitter @NateMonroeTU.