JACKSONVILLE BRANCH
OF THE NAACP, et al,

Plaintiffs

v.

CITY OF JACKSONVILLE, et al,

Defendants
_____/

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

In accordance with this Court's Order, ECF 53 ("Order"), Plaintiffs submit their objections to the City's proposed interim remedial plan, ECF 81 ("Ordinance 2022-800"). That plan does not cure the substantially likely constitutional violations the Court identified. Plaintiffs also offer and describe three alternative remedial plans; two fully cure the violations while one is based on Ordinance 2022-800 and corrects its most egregious errors. A proposed order is attached. Plaintiffs do not request an oral argument or evidentiary hearing, but are prepared for either at the Court's convenience.

Last month, this Court found that Ordinance 2022-001 ("Enjoined Plan") "pack[ed] artificially large numbers of Black voters into Districts 7, 8, 9, and 10" ("Packed Districts"). Order at 120. Under Ordinance 2022-800, 89% of those four districts' residents remain there. ECF 89-1 (Fairfax Rep.) at 114. The 11% that were

Johnson may have smoothed out some of D9's roughest edges, but the district retains its snaking shape and neck because race predominated in the choice of areas to include within it. Like its predecessor, it includes a precinct-wide "land bridge" connecting pockets of Black voters. Johnson explained that he kept Woodstock (where Clark-Murray lives) together with communities immediately adjacent to I-295 running south because they are "similar in many ways." 11/1 Tr. 22:5–11. Other than their proximity to either side of the Beltway, however, Johnson did not specify how these communities are related to the Woodstock neck. Indeed, the similarity is nothing more than race. Jacksonville Heights, McGirt's Creek, and Duclay have more in common, as neighborhoods, with Argyle Forest and Chimney Lakes. See, e.g. id. 67:19–68:9;* 11/3 Tr. 93:5–9, 93:15–16. The only thing they have in common with Woodstock—the home of incumbent Clark-Murray and the northernmost part of the district—is that they are predominantly Black areas. Fairfax Rep. 91–94.

E. District 10

D10 is an afterthought—curling around the top of D9 so Clark-Murray can remain alone in D9, squished below D8 so Pittman's district can flow northward as it did in the Enjoined Plan. It only stretches slightly further south than the Enjoined Plan's D10 boundary, such that it includes predominantly white Riverside and Avondale, but not Lakeshore, Fairfax, or Ortega. Id. at 91–94 By barely changing the D10/14 boundary, Ordinance 2022-800 does not cure the racial gerrymandering of the Enjoined Plan.

F. District 12

D12 has a very high core-retention rate of 81.1%. Id. at 113. Race explains which areas were moved into and out of D12. The district's northern border was moved further north by pulling white neighborhoods out of the enjoined D8: Cisco Gardens (84.7% WVAP), Otis (76.2% WVAP), Bulls Bay (80.3% WVAP), and Marietta (78.5% WVAP). Id. at 91-94. At D12's southern end, more mixed Chimney Lakes (46.5% WVAP, 31.0% BVAP) was removed. Fairfax Rep. 91-94; see supra p. 22, 25–27.

G. District 14

Fairfax Rep. 69, 74.

Race continued to predominate in the choice of borders for D14 in Ordinance 2022-800. Indeed, D14's general shape is maintained from the Enjoined Plan. Johnson explained that he made D14 "the riverfront seat," but also decided to keep Argyle Forest and add Chimney Lakes, to connect areas on either side of the D9 "corridor." 11/1 Tr. 22:12–24.* The resulting D14 continues to be V-shaped, retaining its "land bridge" to wrap around D9's southern end and connect white voters on either side.

Johnson admitted that D14 "obviously is an odd-looking district." Id. 22:1–2. Yet the Council chose to maintain that strange shape;

Attempts to remove the V-shape and unite communities were ignored because of race. Public commenters explained that all of Argyle[12] should be united in D14. Id. 63:16–64:2,* 64:15–17, 67:19–68:9,* 76:16–23. Even DeFoor noted a "little dip in Argyle that didn't really make sense." 11/3 Tr. 92:21–93:7, 93:15–16. Adding Argyle to Maroon's D14 would have created a highly compact district without dividing riverfront neighborhoods like Riverside/Avondale. Indeed, when the Committee voted to move heavily white Riverside/Avondale out of D14 and into D10, DeFoor suggested making up the population in Argyle—areas Johnson had put into D9's "dip" like Duclay (33.8% WVAP) and McGirt's Creek (38.7% WVAP). 11/3 Tr. 92:21–93:7, 93:15–16, Fairfax Rep. 91-94. Johnson said he would start with Argyle, 11/3 Tr. 93:21–22, but in fact, he hardly touched that area, choosing instead to move a 30.4% Black part of Cedar Hills into D14. ECF 67-1 at 34, Fairfax Rep. 140. There was no explanation for why the Maroon III series moved a heavily white neighborhood nobody had ever mentioned, deviating from Blanding Boulevard which otherwise made up the D9/14 border, instead of the more racially mixed areas DeFoor had specifically asked for. The remainder of Argyle (31.1% White) remained in D9 as well. Id.

[12] Defined by the Argyle Area Civil Council as extending from I-295 to Chimney Lakes, south of 103rd Street. 11/1 Tr. 67:25–68:5; see also http://www.neighborhoodlink.com/Argyle_Area/map [https://perma.cc/2X9N-BUBZ].

The portion of Cedar Hills moved into D14 to make up for the lost Riverside/Avondale population was noticeably more white (51.6% White) than either of the areas of Argyle DeFoor proposed to move (29.4% and 37.3% White). Id.

Plaintiffs present several plans that fully remedy the City's constitutional violations while comporting with local, state, and federal law and respecting the Council's legitimate policy choices.[13] They stand in stark contrast to Ordinance 2022-800's failure to cure the substantially likely constitutional violations the Court identified in its Order.

Plaintiffs' maps P1 and P2 were drawn with communities in mind. They group together communities that had expressed a desire to be paired during the original redistricting process; they also pair communities identified in the Council's remedial process (by councilmembers or the public) as closely united. In so doing, they feature compact districts with smooth edges that are otherwise logical and respect the Council's legitimate criteria. P1 differs from Ordinance 2022-800 only in D2, 7–10, 12, and 14. P2 differs only in D7–10, 12, and 14. P2 does not address the continued stripping of D2, while P1 does.

Plaintiffs' map P3 starts with Ordinance 2022-800 and adjusts D7–10 and 14 to try to rectify the Council's most problematic decisions. P3 cannot fully undo all the

[13] Besides the images herein, PlaintiffsÕ plans can be viewed on Google Maps, here: https://bit.ly/3Guydnr (P1); https://bit.ly/3XcdMBh (P2); https://bit.ly/3V161Nr (P3).

impermissible choices the Council made, but to the extent the Court does not agree with all of Plaintiffs' arguments regarding Ordinance 2022-800's failures to cure the Enjoined Plan's constitutional infirmities, P3 at least remedies the more glaring violations. P3 remedies the stripping of D14, packing of D9, and D7/8's adherence to their unconstitutional cores. It does not address the continued stripping of D12 or D2.

All three of Plaintiffs' maps comply with Section 2 of the VRA, as federal law requires. See infra pp. 42–44.

Fairfax Rep. 48.

Id. at 49.

Ordinance 2022-800 lists seven relevant criteria purportedly used to create the interim remedial plan:

(1) creating nearly equally-populated districts;

(2) arranging districts in as logical and compact a geographic 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;

(4) following Citizens Planning Advisory Committee (CPAC) region boundaries, freeways, waterways, and major roads;

(5) accounting for residences of incumbents who can run for reelection;

(6) considering the political and socio-economic demographics of the districts;

(7) avoiding changes to unchallenged districts.

ECF 67-1 at 17–18.

Plaintiffs explain above why criteria 5 and 6 are improper starting points, see supra pp. 10–23, but confirm that P1 and P2 respect the other five criteria, as set out below.

A. Equal Population

All Plaintiffs' maps are within the population equality limits set by the Council in Ordinance 2022-800. P1 and P2 have total population deviations of 9.59% and 9.25% respectively. Fairfax Rep. 55–56. These are lower than the total deviation of Ordinance 2022-800, at 9.95%. Id. at 54.

B. Redrawn Districts in P1 and P2 are Logical and Compact

The Redrawn Districts in P1 and P2 are logical because they adhere to traditional communities of interest, as outlined in the next section.

The Redrawn Districts in P1 and P2 are compact, with average Polsby-Popper scores of .46–.44; Convex Hull of .80. or .79; and Reock of .46 or .44. Id. at 61–62. In contrast, Ordinance 2022-800's Challenged Districts have lower average compactness scores across all three metrics, at .42, .78, and .42. Id. at 60. The least-compact of the Redrawn Districts in P1 and P2 have Reock scores of .30 and .36, compared to Ordinance's 2022-800's .27. Id. at 60–62.

C. Redrawn Districts in P1 and P2 Are Compact and Contiguous so that the People of the City Are Adequately Represented

Respecting neighborhood boundaries ensures residents are represented according to their varied economic, social, and ethnic interests and objectives. Ord. Code § 18.101(c). The City defines Municipal Code Compliance (MCC) Zones, which track most commonly understood neighborhoods,[14] including all the neighborhoods mentioned by councilmembers and the public in both the original and remedial redistricting processes.[15] Mr. Fairfax reports on the number of split neighborhoods using this definition of neighborhoods. Id. at 95.

P1 and P2 outperform the Enjoined Plan and Ordinance 2022-800 when it comes to neighborhood splits. P1 splits 30 neighborhoods, while P2 splits 28. Id. Ordinance 2022-800 and the Enjoined Plan split 39 and 47 neighborhoods, respectively. Id.

Importantly, the Plaintiffs' maps seek to make whole or unite neighborhoods that the Council desired to keep together, like Riverside/Avondale and Murray Hill (plus, in P2, Ortega); Robinson's Addition and Woodstock; Springfield, Downtown, and the Eastside; and Argyle.

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[14] The CityÕs MCC Zones are identical to the neighborhoods map Plaintiffs submitted earlier in this case. The MCC Zone map is available on the CityÕs Civil Planning GIS portal: https://maps.coj.net/DuvalCivilPlanning / [https://perma.cc/T4AK-V393].

[15] One exception is Argyle, see supra n.12.

D. P1 and P2 Follow CPAC and Major Geographic Boundaries

Id. at 99–100.

Just one of the seven redrawn districts (D14) in Ordinance 2022-800 is contained entirely within one CPAC; three districts (2, 8, 9) overlap with two CPACs, and three districts (7, 10, 12) overlap with three CPACs. Id. at 97-100.

In P1, two districts (12, 14) are within a single CPAC; one district (2) overlaps with two CPACs; and four districts (7, 8, 9, 10) overlap with three CPACs. Id.

In P2, one district (14) is inside a single CPAC; five districts (2, 8, 9, 10, 12) overlap with two CPACs; and one district (7) overlaps with three CPACs. Id.

Additionally, significant portions of district borders in P1 and P2 align with CPAC boundaries, even if districts themselves cross them in other places. Id.

P1 and P2 adhere to major geographic boundaries like waterways, highways, and railroads. For example, D8 in both maps is bounded on the west by the railroad and on the south by the Trout River or CPAC lines, except where needed to achieve

equal population (picking up portions of Riverview, as Ordinance 2022-800 does).[16] Other major boundaries followed include interstates and expressways; other railroads; arterial roads like 103rd Street, Cassat Avenue, Herlong Road, Hammond Boulevard, San Juan Avenue, Beaver Street, King Street, and Edgewood Avenue; major tributaries like the Ortega River, Cedar River, Fishing Creek, and Dunn Creek; and the Naval Air Station boundary.

[17]

P3 takes Ordinance 2022-800 and adjusts D7–10 and 14 to partially remedy the continued constitutional violations present in that area of the map, by not stripping Black residents from D14, not packing them into the other districts, and not otherwise aligning these five districts to their unconstitutional cores.

P3 has a total population deviation of 9.95% and therefore complies with equal population requirements. Id. at 57. The compactness scores for P3's redrawn districts range from 0.36-0.55 (Reock), 0.27-0.69 (Polsby-Popper), and 0.67-0.97 (Convex-Hull), with averages of 0.44, 0.45, and 0.80, respectively, compared to averages of 0.42, 0.42, and 0.78 respectively for Map 2022-800. Id. at 60, 63. P3 splits only 30 neighborhoods. Id. at 95. In P3, one district (14) is inside a single CPAC, four districts (2, 8, 9, 12) overlap with two CPACs, and two districts (7, 10) overlap with three

[16] D8ÕsborderwithD2isadjustedandregularizedinP1soasnottoperpetuatetheracebasedstrippingofBlackvotersfromD2describedsupra p. 28. P2adoptsOrdinance2022-800ÕsborderforD2. EitherchoicecouldbeusedinP1orP2,dependingontheCourtÕsfindingsregardingtheCouncilÕsD2.

[17] To avoid doubt: Plaintiffs are not convinced that P3 will fully cure the constitutional violations, though it will come closer than Ordinance 2022-800. PlaintiffsÕ position is that, of the maps presented to the Court, only P1 and P2 are certainly curative of the underlying problem.

CPACs. Id. at 98. Additionally, significant portions of district borders in P3 align with CPAC boundaries, even if districts themselves cross them in other places. Id.

Id. at 50.

When Plaintiffs submitted P1's earlier iteration to the Council as the Unity Map, see ECF 67-1 at 3, it paired only two incumbents running for reelection: Pittman and White. A day later, Councilmember Priestly Jackson announced that she would also seek reelection, meaning P1 puts the three of them in one district. Pantazi, Plaintiffs Propose, supra n.2.

Similarly, P2 and P3 pair only Pittman and Priestly Jackson—who live two miles from each other, as discussed infra p. 15. Changes could be made to either P2 or

P3 to separate them—to the detriment of other criteria like compactness—if the Court desired to do so. None of Plaintiffs' maps pair any School Board members eligible for reelection in 2024.

The City admits (as it must) that Section 2 of the VRA applies to Jacksonville. *See* ECF 34-03 at 13, 76–77, 82 (OGC explaining Section 2 applies here); ECF 34-08 at 12–15 (OGC memo discussing Section 2). Yet the City declined to provide a VRA analysis during the remedial process. ECF 76-1 at 17. Plaintiffs therefore offer expert testimony from Mr. Fairfax and Drs. Imai and Austin to show that Section 2 requires four Black opportunity districts to be included in Jacksonville's fourteen-district Council map.

A. Application of Section 2 to Jacksonville

Section 2 applies to a jurisdiction if three preconditions are met: "(1) the racial group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) the racial group is politically cohesive; and (3) the majority votes sufficiently as a bloc to enable it … usually to defeat the minority's preferred candidate." *LULAC*, 548 U.S. at 425. If all three factors are established, "the statutory text directs us to consider the 'totality of circumstances' to determine whether members of a racial group have less opportunity than do other members of the electorate." *Id.* at 425–26. At this stage, "[a]nother relevant consideration is whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area." *Id.* at 426.

Plaintiffs' experts provide evidence as to each of these elements. First, Fairfax confirms that the "Demonstration Plan" includes four reasonably compact districts with BVAPs over 50%. Fairfax Rep. 111. Second, Imai confirms that elections in Jacksonville are highly racially polarized between white and Black voters. Imai Rep., ECF 89-2 4–5. Imai expands his initial analysis of 17 probative elections, examining all 31 elections since 2012 where at least one Democrat ran against at least one Republican, yielding a single winner.[18] Id.

Third, Austin provides a report assessing the totality of the circumstances with respect to Jacksonville. Austin concludes that there is overwhelming evidence that Black voters in Jacksonville face historical and ongoing discrimination in voting and other areas like education, employment, and health. Austin Rep. at 2.

B. Performance Analysis of PlaintiffsÕ Maps

Experts commonly assess whether a district plan complies with the VRA by conducting a reconstituted election analysis. See, e.g., LULAC, 548 U.S. at 488 (Souter, J., concurring) (citing Bernard Grofman, Lisa Handley & David Lublin, Drawing Effective Minority Districts: A Conceptual Framework and Some Empirical Evidence, 79 N.C. L. REV. 1383 (2001). That involves re-aggregating historical election results in the newly drawn districts and counting how many votes would have been cast for the various candidates in the elections. If a district would usually elect the minority community's candidate of choice, then it is considered a minority opportunity (or

[18] Imai offers the results for all 31 elections to respond to DefendantsÕ critiques. ECF 41-2 at 22. The results are substantially the same, showing the soundness of ImaiÕs initial analysis.

performing) district. See, e.g., id. The Supreme Court has been careful to note that the VRA is not a guarantee of electoral success, meaning a district need not allow minority voters to elect their preferred candidates in every election. See LULAC, 548 U.S. at 428. But they should at least regularly be able to do so. See, e.g., Robinson v. Ardoin, No. 22-cv-211, 2022 WL 2012389, at *22 (M.D. La. June 6, 2022), cert. granted before judgment, 142 S.Ct. 2892 (2022) (districts allowing Black-preferred candidates to prevail in 17/18, 15/18, and 14/18 elections deemed performing districts).

Imai performed a reconstituted elections analysis for D7–10 in each of P1, P2, and P3. His results confirm that these districts would usually allow Black voters to elect their preferred candidates. Therefore, these plans each include four reasonably compact Black opportunity districts, ensuring VRA compliance.

For the foregoing reasons, the Court should reject Ordinance 2022-800 as an interim remedy and adopt one of Plaintiffs' alternative remedial plans until entry of final judgment in this case.

This memorandum contains 9,977 words, including titles, headings, footnotes, and quotations, but excluding case style and signature block.

Respectfully submitted this 18th day of November, 2022,

/s/ Nicholas Warren

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

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_____/

PROPOSED ORDER ESTABLISHING INTERIM REMEDIAL PLAN

Before the Court is Defendants' proposed interim remedial plan (Ordinance 2022-800) and Plaintiffs' objections thereto. Plaintiffs also have included three alternative proposed plans (P1, P2, and P3). After reviewing Ordinance 2022-800, the Parties' evidence, briefing, and oral arguments, and the applicable caselaw, as well as Plaintiffs' proposed interim remedial plans, it is hereby ORDERED:

1. Plaintiffs' objections to Defendants' proposed interim remedial plan are SUSTAINED.

2. Plaintiffs' plan **[P1] [P2] [P3]** is approved and ADOPTED as this Court's Interim Remedial Plan.

3. Defendants the City of Jacksonville; Mike Hogan, in his official capacity as Duval County Supervisor of Elections; and their officers, agents, employees, and attorneys who receive actual notice of this Order by personal service or otherwise, are DIRECTED to implement the Interim Remedial Plan in Jacksonville City Council and Duval County School Board elections, beginning with the regular 2023 Council and 2024 School Board elections and until entry of a final judgment in this case.

4. City Council districts are paired into School Board districts as follows:

School Board District	Council Districts
1	1 and 2
2	3 and 13
3	4 and 5
4	[P1: 8 and 7] [P2: 8 and 10] [P3: 8 and 10]
5	[P1: 9 and 10] [P2: 7 and 9] [P3: 7 and 9]
6	[P1: 12 and 14] [P2: 12 and 14] [P3: 12 and 14]
7	6 and 11

5. This Interim Remedial Plan shall remain in effect pending further Order of the Court.

DONE AND ORDERED in Jacksonville, Florida this ___ day of December, 2022.

MARCIA MORALES HOWARD
United States District Judge