



Boston City Council

LIZ BREADON

Councilor – District 9

May 12, 2023

The Honorable Alex Geourtas
Office of the City Clerk
One City Hall Square, Room 601
Boston, MA 02201

Re: Redistricting litigation

Dear Clerk Geourtas:

As the Boston City Council is party to redistricting litigation, *Walters, et al. v. Boston City Council, et al.* (Case No. 1:22-cv-12048-PBS), I believe it is in the best interest of the Council and the public that the following items be entered into the record as the body continues its legislative duty to redraw electoral district boundaries under the authority of chapter 605 of the Acts of 1982. I will request that this communication be referred to the appropriate committee.

- Exhibit A.** Docket Report for Case no. 1:22-cv-12048-PBS, as of May 8, 2023 (pg. 2 of this communication; 17 pgs.);
- Exhibit B.** Doc. 21, filed Jan. 12, 2023: Plaintiffs' Motion for Preliminary Injunction (pg. 19 of this communication; 9 pgs.);
- Exhibit C.** Doc. 22, filed Jan. 13, 2023: Joint Motion to Establish Briefing Schedule and Expand Page Limit for Opposition to Preliminary Injunction (pg. 29 of this communication; 2 pgs.);
- Exhibit D.** Doc. 25, filed Jan. 17, 2023: Defendant Boston City Council's Opposition to Plaintiff's Motion for a Preliminary Injunction (pg. 32 of this communication; 26 pgs.);
- Exhibit E.** Exhibit D of Attachment 1 to Doc. 25, filed Jan. 17, 2023: "An Analysis of Voting Patterns by Race and an Assessment of Minority Voters' Opportunities to Elect Candidates in Recent Boston Municipal Elections" by Dr. Lisa Handley (pg. 59 of this communication; 19 pgs.);
- Exhibit F.** Doc. 30, filed Jan. 20, 2023: Rule 16 Joint Statement (pg. 79 of this communication; 4 pgs.);
- Exhibit G.** Doc. 48, filed Feb. 23, 2023: Defendant Boston City Council's Sur-Reply in Opposition to Plaintiff's Motion for a Preliminary Injunction (pg. 84 of this communication; 9 pgs.);
- Exhibit H.** Doc. 62, filed Mar. 27, 2023: City Defendant's Supplemental Opposition to Plaintiff's Motion for a Preliminary Injunction Following Plaintiff's Second Amended Complaint (pg. 104 of this communication; 7 pgs.);
- Exhibit I.** Doc. 70, filed Apr. 21, 2023: Amended Joint Exhibit List (pg. 112 of this communication; 3 pgs.).

Respectfully submitted,

Liz Breadon

Chair, Committee on Redistricting
Boston City Councilor, District 9

EXHIBIT A

**United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:22-cv-12048-PBS**

Walters et al v. Boston City Council et al
Assigned to: Judge Patti B. Saris
Case in other court: Suffolk Superior Court, 2284cv02490
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 12/02/2022
Jury Demand: None
Nature of Suit: 441 Civil Rights: Voting
Jurisdiction: Federal Question

Plaintiff

Robert O'Shea
*Individually and as Chairman of the
Ward 6 Democratic Committee*
TERMINATED: 03/01/2023

represented by **Paul J. Gannon**
Gannon & Hurley, P.C.
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Plaintiff

Rita Dixon

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Plaintiff

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Plaintiff

Maureen Feeney

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Plaintiff

Phyllis Corbitt

*Individually and as President of the
Massachusetts Union of Public Housing
Tenants*

represented by **Paul J. Gannon**
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Plaintiff

The South Boston Citizens Association

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Plaintiff

Martin F. McDonough

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Plaintiff

St. Vincent's Lower End Neighborhood Association

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Plaintiff

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Plaintiff

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Plaintiff

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Plaintiff

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Plaintiff

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Plaintiff

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V.

Defendant

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TERMINATED: 01/10/2023
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Defendant

Michelle Wu
*In her Official Capacity as Mayor of the
City of Boston*

Defendant

The City of Boston

Defendant

Eneida Tavares
*In her Official Capacity as Commissioner
of the Boston Election Commission*

Amicus

NAACP Boston Branch

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MassVote

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Email All Attorneys

Email All Attorneys and Additional Recipients

Date Filed	#	Docket Text
05/08/2023	<u>78</u>	Judge Patti B. Saris: MEMORANDUM AND ORDER entered. Plaintiffs' Motion for Preliminary Injunction (Dkt. <u>21</u>) is ALLOWED with respect to Count III (violation of the Fourteenth Amendment). The Court does not find a likelihood of success on the remaining counts. Defendants are enjoined from using the enacted map in municipal elections. (Geraldino–Karasek, Clarilde) (Main Document 78 replaced on 5/8/2023 to correct docket entry) (Geraldino–Karasek, Clarilde). (Entered: 05/08/2023)
04/26/2023	77	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above–captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, available on the court website at https://www.mad.uscourts.gov/caseinfo/transcripts.htm (McDonagh, Christina) (Entered: 04/26/2023)
04/26/2023	<u>76</u>	Transcript of Evidentiary Hearing – Day Six held on April 5, 2023, before Judge Patti B. Saris. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Court Reporter Name and Contact Information: Lee Marzilli at leemarz@aol.com. Redaction Request due 5/17/2023. Redacted Transcript Deadline set for 5/30/2023. Release of Transcript Restriction set for 7/25/2023. (McDonagh, Christina) (Entered: 04/26/2023)
04/26/2023	<u>75</u>	Transcript of Evidentiary Hearing – Day Five held on April 4, 2023, before Judge Patti B. Saris. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Court Reporter Name and Contact Information: Lee Marzilli at leemarz@aol.com. Redaction Request due 5/17/2023. Redacted Transcript Deadline set for 5/30/2023. Release of Transcript Restriction set for 7/25/2023. (McDonagh, Christina) (Entered: 04/26/2023)

04/26/2023	<u>74</u>	Transcript of Evidentiary Hearing – Day Four held on April 3, 2023, before Judge Patti B. Saris. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Court Reporter Name and Contact Information: Lee Marzilli at leemarz@aol.com. Redaction Request due 5/17/2023. Redacted Transcript Deadline set for 5/30/2023. Release of Transcript Restriction set for 7/25/2023. (McDonagh, Christina) (Entered: 04/26/2023)
04/26/2023	<u>73</u>	Transcript of Evidentiary Hearing – Day Three held on March 30, 2023, before Judge Patti B. Saris. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Court Reporter Name and Contact Information: Lee Marzilli at leemarz@aol.com. Redaction Request due 5/17/2023. Redacted Transcript Deadline set for 5/30/2023. Release of Transcript Restriction set for 7/25/2023. (McDonagh, Christina) (Entered: 04/26/2023)
04/26/2023	<u>72</u>	Transcript of Evidentiary Hearing – Day Two held on March 29, 2023, before Judge Patti B. Saris. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Court Reporter Name and Contact Information: Lee Marzilli at leemarz@aol.com. Redaction Request due 5/17/2023. Redacted Transcript Deadline set for 5/30/2023. Release of Transcript Restriction set for 7/25/2023. (McDonagh, Christina) (Entered: 04/26/2023)
04/26/2023	<u>71</u>	Transcript of Evidentiary Hearing – Day One held on March 28, 2023, before Judge Patti B. Saris. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Court Reporter Name and Contact Information: Lee Marzilli at leemarz@aol.com. Redaction Request due 5/17/2023. Redacted Transcript Deadline set for 5/30/2023. Release of Transcript Restriction set for 7/25/2023. (McDonagh, Christina) (Entered: 04/26/2023)
04/21/2023	<u>70</u>	<i>Amended Joint</i> Witness List by Boston City Council, Eneida Tavares, The City of Boston, Michelle Wu. (Marshall, Christina) (Entered: 04/21/2023)
04/06/2023	<u>68</u>	<i>Joint Exhibit List</i> by Boston City Council, Eneida Tavares, The City of Boston, Michelle Wu.. (Marshall, Christina) (Entered: 04/06/2023)
04/05/2023	79	Electronic Clerk's Notes for proceedings held before Judge Patti B. Saris:Closing arguments held.(Court Reporter: Lee Marzilli at leemarz@aol.com.) (Entered: 05/10/2023)
04/04/2023	67	Electronic Clerk's Notes for proceedings held before Judge Patti B. Saris: Evidentiary Hearing held on 4/4/2023 (Tues) Day 6 Dr. Moon Duchin testimony resumes. Defense Rests. Closings to begin on Wed 4/5/2023 at 9:30 am – court adjourned (Court Reporter: Lee Marzilli at leemarz@aol.com.) (Entered: 04/04/2023)
04/03/2023	66	Electronic Clerk's Notes for proceedings held before Judge Patti B. Saris: Evidentiary Hearing held on 4/3/2023 MONDAY DAY 5 Plaintiff calls Congressman Stephen Lynch – sworn Plaintiffs RESTS DEFENSE CASE BEGINS Defense calls Dr. Moon Duchin–sworn, court adjourned until Tuesday 4/4/2023 at 9:00 am (Court Reporter: Lee Marzilli at leemarz@aol.com.) (Entered: 04/04/2023)
03/30/2023	65	Electronic Clerk's Notes for proceedings held before Judge Patti B. Saris: Evidentiary Hearing held on 3/30/2023 Day 3

		Plaintiff calls Eleanor Kasper – sworn; Erin Murphy– Boston City Councilor, court adjourned until Monday 4/3/2023 at 9:00 am (Court Reporter: Lee Marzilli at leemarz@aol.com.) (Molloy, Maryellen) (Entered: 03/30/2023)
03/29/2023	64	Electronic Clerk's Notes for proceedings held before Judge Patti B. Saris: Evidentiary Hearing – Day 2 held on 3/29/2023 in person Plaintiff calls witness #2 Rasheem Walters – sworn; #3 Maureen Feeney– sworn, court adjourned until Thursday 3/30/2023 at 9:30 am (Court Reporter: Lee Marzilli at leemarz@aol.com.) (Molloy, Maryellen) (Entered: 03/29/2023)
03/28/2023	69	NOTICE OF MANUAL FILING : Exhibits 16 and 26 – Videos re Hearings and Expert Witness Testimony Prof. Moon Duchin (4/3/2023). (Geraldino–Karasek, Clarilde) (Entered: 04/14/2023)
03/28/2023	63	Electronic Clerk's Notes for proceedings held before Judge Patti B. Saris: Evidentiary Hearing held on 3/28/2023 Openings and evidence begins 1st witness – Boston City Councilor Michael Flaherty – sworn Evidentiary hearing continued until 3/29/2023 at 9:30 AM (Atty Gannon, Hannington, Dashiell, Marshall, Miller, Povich) (Court Reporter: Lee Marzilli at leemarz@aol.com.) (Molloy, Maryellen) (Entered: 03/28/2023)
03/27/2023	<u>62</u>	Supplemental RESPONSE to Motion re <u>21</u> First MOTION for Preliminary Injunction following <i>Second Amended Complaint</i> filed by Boston City Council, Eneida Tavares, The City of Boston, Michelle Wu. (Attachments: # <u>1</u> Affidavit of Sabino Piemonte (Second), # <u>2</u> Affidavit of Michelle Goldberg (Second))(Marshall, Christina) (Entered: 03/27/2023)
03/14/2023	61	Judge Patti B. Saris: ELECTRONIC ORDER entered finding as moot <u>44</u> Motion for Clarification of Scheduling Conference filed by Boston City Council. (Geraldino–Karasek, Clarilde) (Entered: 03/14/2023)
03/14/2023	<u>60</u>	Judge Patti B. Saris: ENDORSED ORDER entered ALLOWED re <u>56</u> First Motion for Leave to File First Amended Complaint. (Geraldino–Karasek, Clarilde) (Entered: 03/14/2023)
03/13/2023	59	ELECTRONIC NOTICE Setting Hearing Motion <u>21</u> for Preliminary Injunction : Motion Hearing RESET FROM 3/14/23 TO 3/28/2023 09:30 AM in Courtroom 19 (In person only) before Judge Patti B. Saris. (Molloy, Maryellen) (Entered: 03/13/2023)
03/13/2023	58	ELECTRONIC NOTICE Canceling In Person hearing scheduled for Tuesday March 14, 2023 at 2:30 pm before Judge Saris Notice of Rescheduling to follow (Molloy, Maryellen) (Entered: 03/13/2023)
03/10/2023	<u>57</u>	JOINT LIST OF WITNESSES of counsel . (Hannington, Glen) Modified docket text on 3/13/2023 (Geraldino–Karasek, Clarilde). (Entered: 03/10/2023)
03/10/2023	<u>56</u>	First MOTION for Leave to File <i>First Amended Complaint</i> by Gladys Bruno, Phyllis Corbitt, Rita Dixon, Kasper Eleanor, Maureen Feeney, Carmen Luisa Garcia Terrero, Carmen Garcia–Rosario, Zheng Huanhua, Martin F. McDonough, Shirley

		Shillingford, St. Vincent's Lower End Neighborhood Association, The South Boston Citizens Association, Rasheed Walters.(Hannington, Glen) (Entered: 03/10/2023)
03/08/2023	55	<p>Electronic Clerk's Notes for proceedings held before Judge Patti B. Saris: Status Conference held on 3/8/2023 by Video</p> <p>Ordered:</p> <p>Motion hearing (in person) will go forward on Tues March 14, 2023 at 2:30 pm in Courtroom #19 – 7th Floor</p> <p>2nd hearing (in person) is scheduled for Monday March 27, 2023 at 10:00 am in Courtroom #19 – 7th Floor</p> <p>Plaintiff shall file a Motion for Leave to Amend the Complaint by 3/10/2023</p> <p>Parties shall confer and file an Amended Witness List which states the estimated amount of time for each witness. Witness list shall be filed by 3/10/2023</p> <p>(Atty present: Atty Gannon, Dashiell, Hannington, Miller, Povich, Love)</p> <p>(Court Reporter: Lee Marzilli at leemarz@aol.com.) (Molloy, Maryellen) (Entered: 03/08/2023)</p>
03/07/2023	54	<p>ELECTRONIC NOTICE of STATUS CONFERENCE.</p> <p>This hearing will be conducted by video conference. Counsel of record will receive a video conference invite at the email registered in CM/ECF. If you have technical or compatibility issues with the technology, please notify the courtroom deputy of the session as soon as possible.</p> <p>Access to the hearing will be made available to the media and public. In order to gain access to the hearing, you must sign up at the following address: https://forms.mad.uscourts.gov/courtlist.html.</p> <p>For questions regarding access to hearings, you may refer to the general orders and public notices of the Court available on www.mad.uscourts.gov or contact media@mad.uscourts.gov.</p> <p>Status Conference set for 3/8/2023 11:00 AM BY VIDEO before Judge Patti B. Saris. (Entered: 03/07/2023)</p>
03/07/2023	<u>53</u>	<p><i>Plaintiffs'</i> Witness List by Gladys Bruno, Phyllis Corbitt, Rita Dixon, Kasper Eleanor, Maureen Feeney, Carmen Luisa Garcia Terrero, Carmen Garcia–Rosario, Zheng Huanhua, Martin F. McDonough, Old Colony Tenant Association, Shirley Shillingford, St. Vincent's Lower End Neighborhood Association, The South Boston Citizens Association, Rasheed Walters. (Hannington, Glen) (Entered: 03/07/2023)</p>
02/28/2023	52	<p>ELECTRONIC NOTICE AS TO HEARING ON <u>21</u> First MOTION for Preliminary Injunction :</p> <p>MOTION HEARING GOING FORWARD ON 3/14/2023 02:30 PM in Courtroom 19 (IN PERSON ONLY) before Judge Patti B. Saris.</p> <p>(Geraldino–Karasek, Clarilde) (Entered: 02/28/2023)</p>
02/28/2023	<u>51</u>	<p>Summons Issued as to Eneida Tavares, The City of Boston, Michelle Wu. Counsel receiving this notice electronically should download this summons, complete one for each defendant and serve it in accordance with Fed.R.Civ.P. 4 and LR 4.1. Summons will be mailed to plaintiff(s) not receiving notice electronically for completion of service. (Geraldino–Karasek, Clarilde) (Entered: 02/28/2023)</p>
02/27/2023	<u>50</u>	<p>AMENDED COMPLAINT against The Boston City Counsel, Michelle Wu , The City of Boston and Eneida Tavares s filed by Kasper Eleanor, The South Boston Citizens Association, Robert O'Shea, Carmen Garcia–Rosario, Phyllis Corbitt, Rasheed Walters, Carmen Luisa Garcia Terrero, Rita Dixon, Gladys Bruno, St. Vincent's Lower</p>

		<p>End Neighborhood Association, Martin F. McDonough, Shirley Shillingford, Zheng Huanhua, Old Colony Tenant Association, Maureen Feeney.(Hannington, Glen)</p> <p>(Main Document 50 replaced to disclose and attached exhibits on 2/27/2023: # <u>1</u> Exhibit A–S) (Geraldino–Karasek, Clarilde).</p> <p>(Entered: 02/27/2023)</p>
02/27/2023	<u>49</u>	<p>DOCKET ENTRY 49 CORRECTED BECAUSE INCORRECT PDF ATTACHED. PLEASE SEE DOCKET NO. <u>50</u> .</p> <p>AMENDED COMPLAINT FILED . .(Hannington, Glen) Modified docket text on 2/27/2023 (Geraldino–Karasek, Clarilde). (Entered: 02/27/2023)</p>
02/23/2023	<u>48</u>	<p>SUR–REPLY to Motion re <u>21</u> First MOTION for Preliminary Injunction filed by Boston City Council. (Attachments: # <u>1</u> Exhibit Affidavit of Moon Duchin)(Marshall, Christina) (Entered: 02/23/2023)</p>
02/23/2023	47	<p>Judge Patti B. Saris: ELECTRONIC ORDER entered ALLOWED re <u>46</u> Motion for Leave a Sur–Reply.</p> <p>Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. (Geraldino–Karasek, Clarilde) (Entered: 02/23/2023)</p>
02/21/2023	<u>46</u>	<p>Assented to MOTION for Leave to File <i>Sur–Reply</i> by Boston City Council. (Attachments: # <u>1</u> Proposed Sur–Reply and Affidavit)(Marshall, Christina) (Entered: 02/21/2023)</p>
02/21/2023	<u>45</u>	<p>First Opposition re <u>44</u> MOTION for Clarification re 37 Scheduling Conference, filed by Phyllis Corbitt, Rita Dixon, Maureen Feeney, Martin F. McDonough, Robert O'Shea, Old Colony Tenant Association, Shirley Shillingford, St. Vincent's Lower End Neighborhood Association, The South Boston Citizens Association. (Hannington, Glen) (Entered: 02/21/2023)</p>
02/17/2023	<u>44</u>	<p>MOTION for Clarification re 37 Scheduling Conference, by Boston City Council. (Attachments: # <u>1</u> Affidavit of Christina Marshall)(Marshall, Christina) (Entered: 02/17/2023)</p>
02/16/2023	<u>43</u>	<p>AMICUS BRIEF filed by Chinese Progressive Association, La Colaborativa, MassVote, Massachusetts Immigrant & Refugee Advocacy Coalition, Massachusetts Voter Table, NAACP Boston Branch, New England United for Justice . (Glass, Andrew) (Entered: 02/16/2023)</p>
02/16/2023	<u>42</u>	<p>Judge Patti B. Saris: ENDORSED ORDER entered ALLOWED re <u>31</u> Motion for Leave to File Amicus Brief.</p> <p>Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include – Leave to file granted on (date of order)– in the caption of the document. (Geraldino–Karasek, Clarilde) (Entered: 02/16/2023)</p>
01/27/2023	<u>41</u>	<p>First REPLY to Response to <u>21</u> First MOTION for Preliminary Injunction filed by Phyllis Corbitt, Rita Dixon, Maureen Feeney, Martin F. McDonough, Robert O'Shea, Old Colony Tenant Association, Shirley Shillingford, St. Vincent's Lower End Neighborhood Association, The South Boston Citizens Association. (Hannington, Glen) (Entered: 01/27/2023)</p>
01/25/2023	<u>40</u>	<p>NOTICE of Appearance by Oren M. Sellstrom on behalf of Chinese Progressive Association, La Colaborativa, MassVote, Massachusetts Immigrant & Refugee Advocacy Coalition, Massachusetts Voter Table, NAACP Boston Branch, New England United for Justice (Sellstrom, Oren) (Entered: 01/25/2023)</p>
01/25/2023	39	<p>SET SCHEDULING ORDER DEADLINES AS TO <u>30</u> JOINT STATEMENT re scheduling conference – ADOPTED:</p>

		Fact Discovery to be completed by 9/8/2023; Dispositive Motions due by 12/8/2023; Opposition due by 1/5/2024; Reply due by 1/19/2024. (Geraldino–Karasek, Clarilde) (Entered: 01/25/2023)
01/25/2023	38	Judge Patti B. Saris: ELECTRONIC ORDER entered granting <u>34</u> Motion for Leave to Appear Pro Hac Vice Added Rasheem Johnson. Attorneys admitted Pro Hac Vice must have an individual PACER account, not a shared firm account, to electronically file in the District of Massachusetts. To register for a PACER account, go the Pacer website at https://pacer.uscourts.gov/register-account. You must put the docket number on your form when registering or it will be rejected. Pro Hac Vice Admission Request Instructions https://www.mad.uscourts.gov/caseinfo/nextgen-pro-hac-vice.htm . A Notice of Appearance must be entered on the docket by the newly admitted attorney. (Geraldino–Karasek, Clarilde) (Entered: 01/25/2023)
01/25/2023	<u>36</u>	NOTICE of Appearance by Gregory N. Blase on behalf of Chinese Progressive Association, La Colaborativa, MassVote, Massachusetts Immigrant & Refugee Advocacy Coalition, Massachusetts Voter Table, NAACP Boston Branch, New England United for Justice (Blase, Gregory) (Entered: 01/25/2023)
01/25/2023	<u>35</u>	NOTICE of Appearance by Jacob M. Love on behalf of Chinese Progressive Association, La Colaborativa, MassVote, Massachusetts Immigrant & Refugee Advocacy Coalition, Massachusetts Voter Table, NAACP Boston Branch, New England United for Justice (Love, Jacob) (Entered: 01/25/2023)
01/24/2023	<u>34</u>	MOTION for Leave to Appear Pro Hac Vice for admission of Rasheem Johnson Filing fee: \$ 125, receipt number AMADC–9684254 by Chinese Progressive Association, La Colaborativa, MassVote, Massachusetts Immigrant & Refugee Advocacy Coalition, Massachusetts Voter Table, NAACP Boston Branch, New England United for Justice. (Attachments: # <u>1</u> Exhibit A — Certification of Rasheem Johnson ISO Mot. for Admission Pro Hac Vice)(Glass, Andrew) (Entered: 01/24/2023)
01/24/2023	<u>33</u>	CORPORATE DISCLOSURE STATEMENT by Chinese Progressive Association, La Colaborativa, MassVote, Massachusetts Immigrant & Refugee Advocacy Coalition, Massachusetts Voter Table, NAACP Boston Branch, New England United for Justice identifying Other Affiliate Community Labor United for New England United for Justice; Corporate Parent National Association for the Advancement of Colored People for NAACP Boston Branch.. (Glass, Andrew) (Entered: 01/24/2023)
01/24/2023	<u>32</u>	MEMORANDUM in Support re <u>31</u> MOTION for Leave to File <i>Amicus Brief</i> filed by Chinese Progressive Association, La Colaborativa, MassVote, Massachusetts Immigrant & Refugee Advocacy Coalition, Massachusetts Voter Table, NAACP Boston Branch, New England United for Justice. (Glass, Andrew) (Entered: 01/24/2023)
01/24/2023	<u>31</u>	MOTION for Leave to File <i>Amicus Brief</i> by NAACP Boston Branch, MassVote, Massachusetts Voter Table, La Colaborativa, Massachusetts Immigrant & Refugee Advocacy Coalition, Chinese Progressive Association, New England United for Justice. (Attachments: # <u>1</u> Exhibit A — proposed amicus brief)(Glass, Andrew) (Entered: 01/24/2023)
01/23/2023	37	Electronic Clerk's Notes for proceedings held before Judge Patti B. Saris: Scheduling Conference held on 1/23/2023 BY VIDEO ORDERED: Joint Statement – Adopted, one added modification as follows: 1) Any Amendments must be filed by 2/27/2023 Preliminary Injunction hearing will go forward as scheduled on 3/14/2023 at 2:30 PM as IN PERSON HEARING

		(Court Reporter: Lee Marzilli at leemarz@aol.com.) (Entered: 01/25/2023)
01/20/2023	<u>30</u>	JOINT STATEMENT re scheduling conference filed by Boston City Council . (Marshall, Christina) Modified on 1/20/2023 to include filing party . (Geraldino-Karasek, Clarilde). (Entered: 01/20/2023)
01/20/2023	<u>29</u>	First CERTIFICATION pursuant to Local Rule 16.1 filed by Robert O'Shea . (Hannington, Glen) Modified on 1/20/2023 to include filing party . (Geraldino-Karasek, Clarilde). (Entered: 01/20/2023)
01/19/2023	28	Judge Patti B. Saris: ELECTRONIC ORDER entered ALLOWED re <u>22</u> Joint Motion to Establish Briefing Schedule and for Leave to File Excess Pages in Opposition to <u>21</u> Plaintiffs' Motion for Preliminary Injunction. SET DEADLINES AS TO: Reply due by 1/27/2023. (Geraldino-Karasek, Clarilde) (Entered: 01/19/2023)
01/19/2023	27	NOTICE re <u>10</u> SCHEDULING CONFERENCE SET FOR 1/23/2023 02:00 PM BY VIDEO before Judge Patti B. Saris. The parties shall file a JOINT STATEMENT pursuant to Fed.R.Civ.P. 16(b) and 26(f) by 5:00PM today, January 19, 2023. (Geraldino-Karasek, Clarilde) (Entered: 01/19/2023)
01/18/2023	26	ELECTRONIC NOTICE issued requesting courtesy copy for <u>25</u> Opposition to Motion. Counsel who filed this document are requested to submit a courtesy copy of this document to the Clerk's Office by 1/25/2023. These documents must be bounded clearly marked as a Courtesy Copy and reflect the document number assigned by CM/ECF and Exhibits must be tabbed. (Geraldino-Karasek, Clarilde) (Entered: 01/18/2023)
01/17/2023	<u>25</u>	Opposition re <u>21</u> First MOTION for Preliminary Injunction filed by Boston City Council. (Attachments: # <u>1</u> Affidavit of Michelle Goldberg, # <u>2</u> Affidavit of Sabino Piemonte)(Marshall, Christina) (Entered: 01/17/2023)
01/17/2023	24	ELECTRONIC NOTICE SETTING HEARING ON <u>21</u> First MOTION for Preliminary Injunction : MOTION HEARING SET FOR 3/14/2023 02:30 PM BY VIDEO before Judge Patti B. Saris. This hearing will be conducted by video conference. Counsel of record will receive a video conference invite at the email registered in CM/ECF. If you have technical or compatibility issues with the technology, please notify the session's courtroom deputy as soon as possible. Access to the hearing will be made available to the media and public. In order to gain access to the hearing, you must sign up at the following address: https://forms.mad.uscourts.gov/courtlist.html . For questions regarding access to hearings, you may refer to the Court's general orders and public notices available on www.mad.uscourts.gov or contact media@mad.uscourts.gov . (Geraldino-Karasek, Clarilde) (Entered: 01/17/2023)
01/13/2023	23	Judge Patti B. Saris: ELECTRONIC ORDER entered Allowed <u>19</u> Joint Motion for Extension of Time to January 13, 2023 to File Opposition to Preliminary Injunction Motion and Expand Page Limit (Geraldino-Karasek, Clarilde) (Entered: 01/13/2023)
01/13/2023	<u>22</u>	JOINT MOTION to Establish Briefing Schedule and for Leave to File Excess Pages in Opposition to <u>21</u> Plaintiffs' Motion for Preliminary Injunction< by Boston City Council.(Marshall, Christina) (Entered: 01/13/2023)

01/12/2023	<u>21</u>	First MOTION for Preliminary Injunction by Phyllis Corbitt, Rita Dixon, Maureen Feeney, Martin F. McDonough, Robert O'Shea, Old Colony Tenant Association, Shirley Shillingford, St. Vincent's Lower End Neighborhood Association, The South Boston Citizens Association.(Hannington, Glen) (Entered: 01/12/2023)
01/11/2023	<u>20</u>	NOTICE of Appearance by Frederick E. Dashiell on behalf of Robert O'Shea (Dashiell, Frederick) (Entered: 01/11/2023)
01/11/2023	<u>19</u>	Joint MOTION for Extension of Time to January 13, 2023 to File <i>Opposition to Preliminary Injunction Motion and Expand Page Limit</i> by Boston City Council.(Povich, Lon) (Entered: 01/11/2023)
01/09/2023	<u>18</u>	NOTICE of Withdrawal of Appearance by Michael P. Moore, Jr (Moore, Michael) (Entered: 01/09/2023)
12/29/2022	17	<u>ELECTRONIC NOTICE TO COUNSEL:</u> re <u>16</u> NOTICE of Appearance filed by Glen Hannington. Counsel filed a notice of appearance on behalf of Frederick E. Dashiell in violation of Court Rules and CM/ECF Administrative Procedures. Frederick E. Dashiell is required to file his/her own appearance under his/her own CM/ECF NextGen account otherwise counsel will not appear on the case as counsel of record. (Geraldino-Karasek, Clarilde) (Entered: 12/29/2022)
12/21/2022	<u>16</u>	NOTICE of Appearance by Glen Hannington on behalf of Phyllis Corbitt, Rita Dixon, Maureen Feeney, Martin F. McDonough, Robert O'Shea, Old Colony Tenant Association, Shirley Shillingford, St. Vincent's Lower End Neighborhood Association, The South Boston Citizens Association (Hannington, Glen) (Entered: 12/21/2022)
12/20/2022	<u>15</u>	STATE COURT Record. (Marshall, Christina) (Entered: 12/20/2022)
12/13/2022	<u>14</u>	NOTICE OF MOTIONS PENDING IN STATE COURT by Boston City Council (Fuchs, Samantha) Modified docket text on 12/14/2022 (Geraldino-Karasek, Clarilde). (Entered: 12/13/2022)
12/09/2022	13	Judge Patti B. Saris: ELECTRONIC ORDER entered ALLOWED re <u>12</u> Assented to Motion for Extension of Time to Respond to Complaint. Boston City Council answer due by January 16, 2023. (Geraldino-Karasek, Clarilde) (Entered: 12/09/2022)
12/08/2022	<u>12</u>	Assented to MOTION for Extension of Time to January 16, 2023 to Respond to Complaint by Boston City Council.(Povich, Lon) (Entered: 12/08/2022)
12/07/2022	<u>11</u>	NOTICE of Appearance by Glen Hannington on behalf of Phyllis Corbitt, Rita Dixon, Maureen Feeney, Martin F. McDonough, Robert O'Shea, Old Colony Tenant Association, Shirley Shillingford, St. Vincent's Lower End Neighborhood Association, The South Boston Citizens Association (Hannington, Glen) (Entered: 12/07/2022)
12/07/2022	<u>10</u>	NOTICE OF SCHEDULING CONFERENCE BY VIDEO: SCHEDULING CONFERENCE SET FOR 1/23/2023 02:00 PM BY VIDEO before Judge Patti B. Saris. This hearing will be conducted by video conference. Counsel of record will receive a video conference invite at the email registered in CM/ECF. If you have technical or compatibility issues with the technology, please notify the session's courtroom deputy as soon as possible. Access to the hearing will be made available to the media and public. In order to gain access to the hearing, you must sign up at the following address: https://forms.mad.uscourts.gov/courtlist.html . For questions regarding access to hearings, you may refer to the Court's general orders and public notices available on www.mad.uscourts.gov or contact media@mad.uscourts.gov .

		(Geraldino–Karasek, Clarilde) (Entered: 12/07/2022)
12/07/2022	<u>9</u>	NOTICE of Appearance by Jennifer G. Miller on behalf of Boston City Council (Miller, Jennifer) (Entered: 12/07/2022)
12/07/2022	8	Filing fee/payment: \$ 402.00, receipt number 100001325 for <u>1</u> Notice of Removal (Barbosa, Nilsa) (Entered: 12/07/2022)
12/07/2022	<u>7</u>	NOTICE of Appearance by Michael P. Moore, Jr on behalf of Boston City Council (Moore, Michael) (Entered: 12/07/2022)
12/06/2022	<u>6</u>	NOTICE of Appearance by Lon F. Povich on behalf of Boston City Council (Povich, Lon) (Entered: 12/06/2022)
12/06/2022	<u>5</u>	NOTICE of Appearance by Christina S. Marshall on behalf of Boston City Council (Marshall, Christina) (Entered: 12/06/2022)
12/05/2022	4	Certified Copy of Notice of Removal Provided to Defense Counsel by Email (Currie, Haley) (Entered: 12/05/2022)
12/05/2022	3	ELECTRONIC NOTICE of Case Assignment. Judge Patti B. Saris assigned to case. If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Donald L. Cabell. (Finn, Mary) (Entered: 12/05/2022)
12/05/2022	2	<u>ELECTRONIC NOTICE TO COUNSEL:</u> The Category form filed with the Notice of Removal indicates there are pending motions that need this court's attention. Please re–file any pending motions from State Court into this District Court Record. (Currie, Haley) (Entered: 12/05/2022)
12/02/2022	<u>1</u>	NOTICE OF REMOVAL by Boston City Council (Fee Status: Local Government) (Attachments: # <u>1</u> Exhibit Exhibit A, # <u>2</u> Exhibit Exhibit B, # <u>3</u> Civil Cover Sheet Civil Cover Sheet, # <u>4</u> Category Form Category Form)(Fuchs, Samantha) (Entered: 12/02/2022)

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT O'SHEA, CHAIRMAN OF THE WARD
6 DEMOCRATIC COMMITTEE, ET AL.,

Plaintiffs,

v.

BOSTON CITY COUNCIL,

Defendant.

Civil Action No. 1:220cv012048-PBS

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Now Come the Plaintiffs and respectfully submit this memorandum of law in support of Plaintiffs' Application for Preliminary Injunction against the Defendant Boston City Council pursuant to Fed. R. Civ. P. 65(b).

I. Facts

This action relates to the Redistricting Plan (Docket #1275) that was approved by the Boston City Council on November 2, 2022. This Redistricting Plan was motivated by a desire to achieve "racial balancing" between various Districts in the City of Boston. Primarily, the goal was to make white-majority districts less white, and African-American majority districts less black.

In order to achieve the desired results, the City Council engaged in secretive and inaccessible meetings at which the citizens of the effected districts did not have sufficient access under the Open Meeting Law. Specifically, language access was not provided to many language minority residents. Also, the final Redistricting Plan was not provided to Councilors and the general public until less than 48 hours before the scheduled vote.

On November 2, 2022, the City Council voted 9-4 to approve the Redistricting Plan. A full recitation of the applicable facts is included in Plaintiffs' First Amended Complaint, filed herewith. Councilor Liz Breadon became the Chair of Redistricting on August, 29, 2022.

II. Argument

To determine whether a preliminary injunction should issue, the Court is to follow the three-step analysis laid out by the Supreme Judicial Court in Packaging Industries Group v. Cheney, 380 Mass. 609 (1980). First, the Court "evaluates in combination the moving party's claim of injury and chance of success on the merits." Id. at 617. Next, if the Court finds that failure to issue the order would subject the movant to "a substantial risk of irreparable harm," then the Court must then balance such harm against the injury to the nonmovant if the order is granted together with the nonmovant's chance of succeeding on the merits. Id. Lastly, the Court must balance the risk of irreparable harm to the movant against the injury to the nonmovant if the injunction is granted or denied with their respective chances of succeeding on the merits. Id. When the balance between these risks, together with their respective chances of success on the merits, "cuts in favor of the moving party" then a preliminary injunction should issue. Id.

A. Likelihood of Success on the Merits

1. The Open Meeting Law

The Open Meeting Law, G. L. c. 39, §§ 23A-23C, was enacted by the Legislature because "It is essential to a democratic form of government that the public have broad access to the decisions made by its elected officials and to the way in which the decisions are reached." Foudy v. Amherst-Pelham Regional Sch. Comm., 402 Mass. 179, 184 (1988). The Supreme Judicial Court held that "'the general provision[s] of ... the Open Meetings Law are to be broadly and liberally construed in order to effectuate the legislative purpose of openness.'" General Elec. Co. v. Department of Env'tl. Protection, 429 Mass. at 806 n.9, *quoting from* Cella, *Administrative Law and Practice* § 1186, at 592 n.16 (1986).

As described in the First Amended Complaint, and in Exhibit J thereto, the Boston City Council repeatedly violated the Open Meeting Law. Specifically, meetings on October 10, 2022, October 18, 2022, and October 19, 2022 were not properly noticed. "All meetings of a governmental body shall be open to the public." G. L. c. 39, § 23B, first par., as appearing in St. 1976, c. 397, § 6. "[N]otice of every meeting of any governmental body shall be filed with the clerk of the city ... in which the body acts, and the notice or a copy thereof shall, at least forty-eight hours ... prior to such meeting, be publicly posted in the office of such clerk or on the principal official bulletin board of such city." G. L. c. 39, § 23B, sixth par.

These meetings (and presumably other secret meetings) were not properly noticed and did not give the public an opportunity to engage in the deliberative and legislative process. Moreover, the City Council's failure to provide access to language minority residents (see Exhibits F through I attached to the First Amended Complaint) further limited public access to these governmental proceedings.

At least two Open Meeting Law complaints have been filed against the City Council in relation to these meetings (Exhibits J and K). Despite these complaints, the City Council proceeded to a vote on the Redistricting Plan on November 2, 2022. Alarming, the final proposed map (Docket #1275) was not provided to the other Councilors or to the public until less than 48 hours before the scheduled vote.

Throughout the process, the City Council has pushed to pass this unconstitutional and illegal Redistricting Plan without giving adequate notice of meetings, without providing meaningful access to language minority residents, and with secretive plans not revealed until the eleventh hour before the eventual vote.

For these reasons, the Plaintiffs respectfully request that this Honorable Court find that the City Council violated the Open Meeting Law.

2. The Voting Rights Act

Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301, prohibits voting practices or procedures that discriminate on the basis of race, color, or membership in a language minority group. This prohibition applies nationwide to any voting qualification or prerequisite to voting or standard, practice, or procedure, including districting plans and methods of election for governmental bodies. Grove v. Emison, 507 U.S. 25, 39-40 (1993). Section 2 also prohibits adopting or maintaining voting practices for the purpose of disadvantaging citizens on account of race, color, or membership in a language minority group. Chisom v. Roemer, 501 U.S. 380, 394 n.21 (1991). “To prevail on a s. 2 claim, plaintiffs need not show discriminatory purpose; rather, they must first meet the three threshold Gingles conditions: (1) that they are a part of a minority group that is "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) that the plaintiff minority group is "politically cohesive"; and (3) that "the white majority votes sufficiently as a bloc to enable it - in the absence of special circumstances, such as the minority candidate running unopposed - usually to defeat the minority's preferred candidate." Meza v. Galvin, 332 F. Supp. 2d 52 (D. Mass. 2004), *quoting* Thorburg v. Gingles, 478 U.S. 30, 50-51 (1986).

There can be no doubt that District Four contains a minority group (African-Americans) that is sufficiently large and compact to constitute a majority in the District. The Redistricting Plan approved by the City Council effectively splits District Four, transferring African-American votes out of the district and receiving primarily white votes in return. This “cracking” of a historically African-American district will result in the dilution of the African-American vote in that District and critically endanger the opportunity to elect the minority’s preferred representative.

As described more fully in the First Amended Complaint, the stated goal of the City Council was “racial balancing” of districts. In attempting to racially balance Districts 2, 3, and 4, the City Council has diluted the power of the African-American vote in what is currently District 4. As stated

above, Plaintiffs need not show that the City Council intended to discriminate against African-American voters, only that a dilution of the minority majority vote will occur as result of the redistricting.

For these reasons, Plaintiffs respectfully request that this Honorable Court enter an order finding that the Redistricting Plan approved by the City Council violates Section 2 of the Voting Rights Act.

3.The Fourteenth Amendment

The Fourteenth Amendment to the United States Constitution provides, in pertinent part that “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

The Equal Protection Clause prohibits a state, “without sufficient justification, from ‘separat[ing] its citizens into different voting districts on the basis of race.’” Bethune-Hill v. Va. State Bd. of Elections, 137 S. Ct. 788, 797 (2017) Race-based lines, therefore, are unconstitutional where (1) “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district,” and (2) the district’s design cannot withstand strict scrutiny. Miller v. Johnson, 515 U.S. 900, 916 (1995). To pass strict scrutiny, the state must prove that its race-based redistricting scheme is “narrowly tailored” to meet a “compelling interest.” Bethune-Hill, 137 S. Ct. at 801. As discussed hereinabove, the primary (if not the only) goal of the City Council was to engage in “racial balancing” of various districts.

In order to show a violation of the Equal Protection Clause , Plaintiffs must show “either through circumstantial evidence of a district's shape and demographics or more direct evidence going to legislative purpose, that race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district.” Miller, 515 U.S. at 916.

“To make this showing, a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations.” Id.

The City Council throughout the redistricting process has repeatedly claimed that the motivation for the Redistricting Map was “racial balancing”. The express intent of the City Council should be determinative of the fact that the Redistricting Map was based primarily (if not solely) on racial considerations. Other evidence supports this outcome as well. The Boston City Charter provides that during redistricting “Each such district shall be compact and shall contain, as nearly as may be, an equal number of inhabitants as determined by the most recent state decennial census, shall be composed of contiguous existing precincts, and shall be **drawn with a view toward preserving the integrity of existing neighborhoods.**” Boston City Charter § 18 (emphasis added). G.L. c. 43 § 131 contains identical language. Similarly, the memorandum provided to the City Council by Professor Wice at their request states that such preservation of neighborhoods is a required criteria of redistricting. Exhibit O to Amended Complaint. Specifically, Prof. Wice states that “Consideration must be given to drawing districts that respect the boundaries of Boston’s recognized neighborhoods.” Id.

As discussed hereinabove and more fully in the Amended Complaint, the Redistricting Plan eviscerates the neighborhoods in Districts 2, 3, and 4. Mattapan and Dorchester are each effectively split in two, and South Boston loses neighborhoods that have been historically connected to District 2 for many years. The failure of the City Council to protect any of these neighborhoods belies their intent to redistrict solely based on race, and to ignore any other criteria.

Also, as described eloquently in Congressman Lynch’s letter to the Court (Exhibit S to the Amended Complaint), the Redistricting Plan divides public housing developments, diluting the power

of public housing residents who share many things in common from pooling their power to elect their chosen representatives and to effect significant change.

Lastly, the City Council's reckless push for "racial balance" does not even achieve the goal it seeks. Boston is a very diverse city, with many Hispanics, Vietnamese, Haitians, Cape Verdeans, Chinese, and various other significant minority groups. However, the City Council's Redistricting Plan ignores the various minority groups, and instead focuses solely on a matter of white vs. non-white. In doing so, the City Council has also uprooted and divided neighborhood of minority residents who collectively will suffer a diminution of their collective voting power if spread across multiple districts.

It is easy to see why the Fourteenth Amendment prohibits redistricting based on race except in the most extreme circumstances. Although the City Council did need to shift some precincts to other districts in order to meet the population requirements of the City Charter, the proposed maps from Councilors Murphy, Flynn, Baker, and Flaherty all address the population shift without causing unnecessary damage to existing neighborhoods.

Because the City Council's Redistricting Plan is based primarily on race, the Plaintiffs respectfully request that this Honorable Court enter an order finding that the Redistricting Plan violates the Fourteenth Amendment.

B. Irreparable Harm

Plaintiffs face imminent and irreparable harm if the preliminary injunction is not granted. As residents of the effected districts, the Plaintiffs are rightfully concerned about the Redistricting Plan and its effect on the integrity of existing communities, as well as the negative effect it will have on the political power and cohesiveness of its most vulnerable residents. The deprivation of Plaintiffs' constitutional rights constitutes irreparable harm. T & D Video, Inc. v. City of Revere, 423 Mass. 577, 582 (1996). Because Plaintiffs raise a substantial constitutional claim, no further showing of

irreparable harm is necessary. *Id.*; *see also, e.g., Coleman v. Bd. of Ed. of the City of Mt. Vernon*, 990 F. Supp. 221, 226 (S.D.N.Y. 1997) ("the deprivation or dilution of voting rights constitutes irreparable harm.").

C. Balance of Harms

There is no harm to the City Council that could result from the issuance of a preliminary injunction at this time. According to the City of Boston Corporation Counsel, the only explicit statutory deadline set forth in the Boston City Charter is that City Council districts be redrawn by August 1, 2026. The City Council has plenty of time to get this right.

On the other hand, the harms to the voters of the effected districts are severe. And constitutional deprivation is severe, but the damage done to the right to vote, a core right of American citizens, is as significant a harm as one can endure. Plaintiffs ask only that the City Council engage the community in the Redistricting Process and follow the Required Criteria in the City Charter to preserve the integrity of neighborhoods. Plaintiffs also ask that the City Council pursue redistricting in a race-neutral manner, with careful thought given to the various communities affected by the redistricting process.

III. Conclusion

For the foregoing reasons, Plaintiff respectfully requests this Court issue a preliminary injunction enjoining the Defendant Boston City Council from enacting the Redistricting Plan (Docket #1275) approved by the Boston City Council on November 2, 2022.

Respectfully submitted,
The Plaintiffs,
By their Attorneys,

/s/ Paul Gannon, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document was filed through the ECF System and will be served upon the attorney of record for each party registered to receive electronic service on this the 12th day of January 2023.

/s/ Glen Hannington
Glen Hannington, Esquire

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

)	
ROBERT O’SHEA, CHAIRMAN OF THE)	
WARD 6 DEMOCRATIC COMMITTEE, ET)	
AL.,)	
Plaintiffs,)	
v.)	Civil Action No. 1:22-cv-12048-PBS
BOSTON CITY COUNCIL,)	
Defendant.)	
)	

**JOINT MOTION TO ESTABLISH BRIEFING SCHEDULE AND EXPAND PAGE
LIMIT FOR OPPOSITION TO PRELIMINARY INJUNCTION**

This matter was removed from Suffolk Superior Court to this Court on December 2, 2022. At that time, a motion for preliminary injunction filed by the plaintiffs was pending, with a hearing tentatively scheduled for December 7, 2022 and no opposition yet filed by the defendant. The motion for preliminary injunction was re-filed in this Court on January 12, 2023 (ECF 21).

The parties have conferred and agree to the following briefing schedule for the preliminary injunction motion and the Defendants’ responsive pleading to Plaintiffs’ First Amended Complaint, and respectfully request that the Court grant their motion to establish this schedule:

- Defendant’s Opposition to Preliminary Injunction Motion: January 17, 2023
- Plaintiffs’ Reply: January 27, 2023
- Hearing on Preliminary Injunction Motion: As soon after January 27, 2023 as this Court’s schedule will allow
- Defendants’ Responsive Pleading to First Amended Complaint: Seven days after the Court rules on the preliminary injunction motion.

The Defendant Boston City Council further requests leave to file a 25-page opposition to the preliminary injunction motion. The plaintiffs have assented to this request.

Respectfully submitted,

PLAINTIFFS,

BOSTON CITY COUNCIL

By their attorneys,

By their attorneys,

/s/ Paul Gannon

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Dated: January 13, 2023

Certificate of Service

I hereby certify that a true and accurate copy of this document was filed through the Electronic Case Filing system, and will be served upon the attorney of record for each party registered to receive electronic service on this 13th day of January 2023.

/s/ Christina S. Marshall

Christina S. Marshall

EXHIBIT D

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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ROBERT O'SHEA, CHAIRMAN OF THE)	
WARD 6 DEMOCRATIC COMMITTEE, et)	
al.,)	
)	
	Plaintiffs,)	
v.)	Civil Action No. 1:22-cv-12048-PBS
)	
BOSTON CITY COUNCIL,)	
)	
	Defendants.)	
<hr/>)	

**DEFENDANT BOSTON CITY COUNCIL'S OPPOSITION TO
PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION**

Pursuant to Fed. R. Civ. P. 65(a), the Defendant, the Boston City Council (the "Council"), submits this opposition to the application for preliminary injunction filed by the Plaintiffs, Robert O'Shea, Rita Dixon, Shirley Shillingford, Maureen Feeney, Phyllis Corbitt, the South Boston Citizens Association, Martin F. McDonough American Legion Post, St. Vincent's Lower End Neighborhood Association, and Old Colony Tenant Association ("Plaintiffs"). Plaintiffs' challenge to Boston's recent redistricting process is little more than a proxy for Plaintiffs' dissatisfaction with a set of relatively limited changes to Boston's City Council districts.

Plaintiffs' application suffers from a host of fundamental defects. To begin with, Plaintiffs seek relief that would be impossible for this Court to grant: the Council is not a proper party here, where the challenge is to a duly enacted ordinance. Plaintiffs' injunction request is therefore moot. As acknowledged in Plaintiffs' pleadings, the Council voted on November 2, 2022 to approve the current redistricting plan (the "2022 Plan"). In addition, none of the

Plaintiffs have established standing or irreparable harm; indeed, a number of them do not live in the districts they are challenging.

But even on the merits, Plaintiffs have not established any likelihood of success. They have asserted claims under section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301 (“VRA”), the federal Equal Protection Clause, U.S. Const., amend. 14 (“Equal Protection”), and the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25 (“OML”). All are flawed. Judicial review of districting legislation “represents a serious intrusion on the most vital of local functions.” *Miller v. Johnson*, 515 U.S. 900, 915 (1995). In assessing the sufficiency of a challenge to a districting plan, courts “must be sensitive to the complex interplay of forces that enter a legislature’s redistricting calculus.” *Id.* at 915-16. And the good faith of the redistricting body—here, the Council—“must be presumed.” *Id.* at 915. In other words, the burden for plaintiffs challenging districting plans is high. The Plaintiffs in this case have not come close to meeting that burden. They fail even to allege the most basic elements of their claims, and certainly do not provide the Court with the record or statistical evidence necessary to support them.

Finally, Plaintiffs’ requested order here would harm, not promote, the public interest. An injunction based on a virtually nonexistent evidentiary showing would only lead to voter frustration and confusion, and would unnecessarily undermine the public’s trust and understanding of the redistricting process. Therefore, Plaintiffs’ request for preliminary relief should be denied.

FACTS

This case concerns Boston’s 2022 Plan, a redistricting plan enacted in November 2022 following an informed and carefully prescribed legal process codified in the Boston City Charter

(“Charter”). St. 1982, c. 605, § 3, as amended by St. 1986, c. 343, § 1 (Charter § 18). When Boston’s 2020 Census revealed that Boston’s population had increased by 9.4% since the 2010 Census, the City Council commenced a redistricting process designed to be complete at least one year before the next municipal election in the City. Bos. City Council Meeting Minutes, Aug. 4, 2022; Report of Committee on Redistricting Chair Liz Breadon (“Breadon Report”) at 3, 8 (Nov. 2, 2022) (copies of which are attached as Ex. A and C to the Affidavit of Michelle Goldberg (“Goldberg Aff.")). Because growth did not occur evenly across Boston—for example, population increases in South Boston reflected 10.6% of total growth while the growth in Longwood reflected 0.9% of total growth—Council Districts had to change. Breadon Report at 3. The Council began the process of developing new district maps in 2021, and in short order, dozens of maps were submitted for consideration. *Id.* at 20. All 270 precincts in Boston had to be distributed between its 9 voting districts, each of which were required to be within 5% of 75,072 voters. *Id.* at 14.

Throughout 2022, the Council and its Committee on Redistricting held no fewer than nineteen public meetings and hearings, heard and recorded hours of testimony from both experts and residents, met with advocacy groups, and formally considered five finalist redistricting plans, including the 2022 Plan, Docket #1275. Bos. City Council Meeting Minutes, Oct. 21, 2022 (Goldberg Aff., Ex. B); Breadon Report at 19-22. The Council received and considered input from legal and statistical experts analyzing the impact of the proposed plans. Breadon Report at 12-17. The Committee on Redistricting ultimately recommended approval of Docket #1275, a plan sponsored by Councilors Breadon and Ricardo Arroyo and referred to the Committee on October 19, 2022. *Id.* at 22. In its recommendation to the full Council, the Committee made five changes to Docket #1275 reflecting public feedback. *Id.* at 26.

The 2022 Plan resulted in a maximum deviation of 3.9% among precincts, reflects contiguous and compact districts and precincts, and in total “meets population requirements and measures the opportunity for voters to elect their candidates of choice, while balancing priorities to maintain the integrity of existing neighborhoods and communities of interest where possible.” Breadon Report at 1. The 2022 Plan paid particular and careful attention to the allocation of precincts between Districts 3 and 4, while addressing the significant population growth in District 2. *Id.* at 27.¹

The Council approved the 2022 Plan, Docket #1275, on November 2, 2022. On November 7, 2022, Mayor Wu signed the 2022 Plan into law. Goldberg Aff., ¶ 5.

PROCEDURAL HISTORY

On October 25, 2022, counsel for Plaintiffs filed an OML complaint with the Attorney General asserting that three meetings concerning the redistricting process were allegedly conducted illegally without notice. First Amended Complaint (“FAC”), Ex. J. One week later, on November 2, Plaintiff Robert O’Shea,² along with organizational Plaintiffs South Boston Citizens Association, Martin F. McDonough American Legion Post, St. Vincent’s Lower End Neighborhood Association, and Old Colony Tenant Association, filed a lawsuit in Suffolk Superior Court seeking an *ex parte* temporary restraining order or a preliminary injunction preventing the Council from voting on the 2022 Plan until after the Attorney General responded to the pending OML complaint. ECF 14 at 3-4. The Superior Court (Campo, J.) promptly denied the request for a temporary restraining order because Plaintiffs had “not demonstrated an

¹ An interactive map of the current districts, with 2020 Census data, is available at <https://districtr.org/plan/146943>.

² Plaintiff O’Shea is registered to vote in District 3 under the 2022 Plan. Affidavit of Sabino Piemonte (“Piemonte Aff.”), ¶ 3.

irreparable risk of harm warranting” such relief. *Id.* at 19. The Court issued a short order of notice for a hearing on a preliminary injunction to take place on November 9, 2022. *Id.*

On November 7, Plaintiffs filed a motion to continue the preliminary injunction hearing to November 30, and to file an amended complaint. ECF 14 at 20-21. The Superior Court granted the motion. *Id.* at 22. On November 21, 2022, Plaintiffs filed their First Amended Complaint. ECF 1, Ex. 1. The FAC expanded the list of Plaintiffs to include four additional individuals: Rita Dixon, Shirley Shillingford, Maureen Feeney, and Phyllis Corbitt,³ and expanded Plaintiffs’ claims to include alleged violations of the VRA and the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, and sought an order from the Superior Court (1) enjoining the Council from enacting the 2022 Plan; (2) finding that the 2022 Plan violates the VRA; and (3) finding that the 2022 Plan violates the Fourteenth Amendment. *See generally, id.* Plaintiffs did not add any defendants to their case, and to date have sought no relief against anyone but the Council. *See id.* Also on November 21, Plaintiffs filed their Supplemental Memorandum in support of their preliminary injunction request, seeking to enjoin the Council from enacting the 2022 Plan “approved by the Boston City Council on November 2, 2022.” ECF 14 at 117-125, Plaintiffs’ Supplemental Memorandum in Support of Application for Preliminary Injunction Pursuant to Mass. R. Civ. P. 65(b) (“Supp. Memo.”) at 9. On December 2, 2022, the Council removed the case to Federal court on the basis of federal question subject matter jurisdiction. ECF 1 (citing 28 U.S.C. § 1441(a)).

³ Under the 2022 Plan, Plaintiff Dixon is registered to vote in District 5; Plaintiff Shillingford is registered to vote in District 8; Plaintiff Feeney is registered to vote in District 4; and Plaintiff Corbitt is registered to vote in District 3. Piemonte Aff., ¶ 3.

ARGUMENT

Preliminary injunctive relief is “an extraordinary remedy never awarded as of right,” *Wash. Tr. Advisors, Inc. v. Arnold*, -- F. Supp. 3d --, 2022 WL 17630520, at *4 (D. Mass. Dec. 13, 2022) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008)). A preliminary injunction may only issue if the plaintiff establishes “(1) a substantial likelihood of success on the merits, (2) a significant risk of irreparable harm if the injunction is withheld, (3) a favorable balance of hardships, and (4) a fit (or lack of friction) between the injunction and the public interest.” *NuVasive, Inc. v. Day*, 954 F.3d 439, 443 (1st Cir. 2020) (quotation omitted). The last two “factors ‘merge when the Government is the opposing party.’” *Mass. Fair Hous. Ctr. v. U.S. Dept. of Hous. & Urban Dev.*, 496 F. Supp. 3d 600, 611 (D. Mass. 2020) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

A. This Court Cannot Grant Plaintiffs the Relief they Request.

Before even considering the standard components of a preliminary injunction motion, there is a more fundamental bar to the relief Plaintiffs seek: they chose the wrong defendant.

Plaintiffs ask the Court to “[i]ssue a preliminary injunction preventing the Defendant, the Boston City Council, from enacting the Redistricting Plan (Docket #1275) approved by the Boston City Council on November 2, 2022.” FAC ¶ 154; Supp. Mem. at 9. There are at least four insurmountable procedural and jurisdictional defects with this request.

First, the Council is not a municipal corporation with the power to sue and be sued: it “is not a legal entity subject to suit.” *Latino Political Action Comm., Inc. v. City of Bos.*, 581 F. Supp. 478, 484 (D. Mass. 1984) (citing *Zegouros v. City Council of Springfield*, 381 Mass. 424 (1980)). Nor is suing the Council the same as suing the City of Boston. *Id.*

Second, the Council and its members enjoy absolute immunity from suit for its legislative acts, including the passage of districting legislation. *Id.* at 481-84 (“[I]n adopting an ordinance implementing the allegedly unlawful revised district plan, the City Council members acted solely within the sphere of legitimate legislative activity,” and therefore were entitled to absolute legislative immunity from VRA and equal protection claims.); *Cushing v. Packard*, 30 F.4th 27, 42 (1st Cir. 2022) (“[A] legislative body may itself assert legislative immunity.”).

Third, the case is moot. There is no Council action to enjoin. A “case is moot if the requested relief would be . . . impracticable in light of the change in circumstances.” *In re Pub. Serv. Co. of N.H.*, 963 F.2d 469, 473 (1992). As Plaintiffs acknowledge, the Council approved the 2022 Plan months ago. FAC ¶ 154. Five days after the Council approved the 2022 Plan, Mayor Wu signed it into law, at which time the plan was “in force.” St. 1951, c. 376, § 1.17D (Charter § 17D). It is now an ordinance of the City of Boston. No further action by the Council will—or could—“enact” the 2022 Plan.

Fourth and finally, even if there were some ongoing legislative process, courts are loath to interfere with that process. *Assoc’d Gen. Contractors of Am. v. City of Columbus*, 172 F.3d 411, 415-16 (6th Cir. 1999) (collecting cases) (courts should not interfere with the legislative discretion of a municipal body).

B. Plaintiffs Have No Likelihood of Success on the Merits of Any of Their Claims.

Even if Plaintiffs could overcome these fundamental pleading errors, they would not be entitled to injunctive relief because they have failed to establish a likelihood of success on any of their various claims. Likelihood of success is “the ‘main bearing wall’ of the preliminary injunction framework.” *Wash. Tr. Advisors, Inc.*, 2022 WL 17630520, at *4 (quoting *Corp.*

Techs., Inc. v. Harnett, 731 F.3d 6, 10 (1st Cir. 2013)). Without its support, Plaintiffs' VRA, Equal Protection, and OML claims must all fall.

1. Plaintiffs Have Failed to Establish a Vote Dilution Claim.

Plaintiffs have not established a VRA claim, which they have apparently premised on alleged voter dilution in District 4. *See* Supp. Memo. at 4-5. To begin with, the only named plaintiff who currently resides and votes in District 4 is Maureen Feeney, Piemonte Aff., ¶ 3, who is not alleged to be a member of any group whose votes are purportedly being diluted in District 4. Plaintiffs have not established that any of the associational plaintiffs have members who reside and vote in District 4. They certainly have not established the race or ethnicity of any of the associations' members. The complaint states only that their members include "residents and registered voters of the City of Boston's South Boston section." FAC ¶ 6. South Boston is contained within Districts 2 and 3 under the 2022 Plan. *Supra* n.1. This is insufficient to establish standing on Plaintiffs' VRA claim. *U.S. v. Hays*, 515 U.S. 737, 744-45 (1995).

Moreover, while plaintiffs correctly and appropriately recite the three threshold conditions for a VRA claim, established in *Thornburg v. Gingles*, 478 U.S. 30 (1986), they do nothing to satisfy them. Under *Gingles*, Plaintiffs must establish: (1) that they are part of a minority group that is "sufficiently large and geographically compact to constitute a majority" in some reasonably configured legislative district; (2) that the plaintiff minority group is "politically cohesive"; and (3) "that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Gingles*, 478 U.S. at 50-51. Failure to satisfy any one of these conditions is fatal to a VRA claim. *Cooper v. Harris*, 581 U.S. 285, 306 (2017) ("unless *each* of the three *Gingles* prerequisites is established, 'there neither has been a wrong nor can be a remedy'" (emphasis in original, quoting *Grove v. Emison*, 507 U.S. 25, 41 (1993))).

Plaintiffs begin to address only the first condition, that Black voters make up a sufficiently large and compact group to establish a majority in District 4.⁴ Supp. Mem. at 4. This is incontrovertible: Black voters have consistently made up a majority in District 4. See Dr. L. Handley, An Analysis of Voting Patterns by Race and an Assessment of Minority Voters’ Opportunities to Elect Candidates in Recent Boston Municipal Elections (Draft 2.0) at 18, Table 5 (“Handley Report”) (Goldberg Aff., Ex. D)⁵. Under the 2022 Plan, Black voters in District 4 make up 52.1% of the district’s voting age population, compared to a virtually identical 52.6% under the 2012 plan.⁶ *Id.*

This established Black majority in District 4 is fatal to plaintiffs’ VRA claim. Assuming Black voters are cohesive—the second *Gingles* condition, which plaintiffs have also failed to establish, FAC ¶ 162—their candidate of choice to represent the district will almost assuredly win. That is borne out by the analysis of Dr. Handley. Handley Report at 9. In all the Council elections she reviewed in District 4, the candidate of choice for Black voters won. *Id.* The recompiled bellwether election results she analyzed for the proposed 2022 Plan indicated that the proposed District 4 would continue to provide Black voters with the opportunity to elect the candidate of their choice. *Id.* at 18. Plaintiffs have done nothing to demonstrate that this analysis was wrong.

For the same reason, plaintiffs cannot establish the third *Gingles* condition: that a white “majority” votes to defeat the Black voters’ candidate of choice. Under the 2022 Plan, white

⁴ Plaintiffs do not, however, establish that they are “part of” that group in District 4, as required by *Gingles*.

⁵ Although a draft, this is the report that was available to Boston Mayor Michelle Wu, before she signed the ordinance establishing the 2022 Plan. Goldberg Aff., ¶ 6. Moreover, Dr. Handley provided similar testimony to the Council at a meeting on October 25, 2022. *Id.*, ¶ 6 & Ex. E.

⁶ This modest decrease in Black voter population in District 4 is less sharp than the decrease in the Black population in Boston as a whole, which the 2020 Census estimated declined by 6.4%. Breadon Report at 4.

voters make up only 14.5% of District 4. They could not block a cohesive Black majority's candidate of choice even if they wanted to do so. They do not. The City's analyst found that white and Hispanic voters in District 4 often voted cohesively with the Black majority, Handley Report at 9, 12-13, and plaintiffs themselves plead that there is "no racial polarization of voting blocs" in District 4, FAC ¶ 162. Without racially polarized voting, there is no voter dilution claim. *Cooper*, 581 U.S. at 306; *Voinovich v. Quilter*, 507 U.S. 146, 158 (1993) (without "significant white bloc voting it cannot be said that the ability of minority voters to elect their chosen representatives is inferior to that of white voters" (quoting *Gingles*, 478 U.S. at 49 n.15)).

Plaintiffs' VRA claim appears to rely exclusively on the very slight dip in the Black voter population in District 4, and the very slight bump in white voter population. Supp. Mem. at 4-5. They proceed by assumption: any decrease in District 4's Black population will necessarily dilute the Black vote. But section 2 requires more than that. *Johnson v. DeGrandy*, 512 U.S. 997, 1017 (1994) ("Failure to maximize cannot be the measure of [Section 2]."). Plaintiffs have not demonstrated that this very minor demographic shift would make any difference in the Black majority's ability to elect the candidate of its choice in District 4, and their bare assumption otherwise flies in the face of Dr. Handley's finding that the slight demographic shift will make no electoral difference at all. Handley Report at 17. Accordingly, their VRA claim fails. See, e.g., *Cooper*, 581 U.S. at 305-06 (existence of effective crossover voting negated Section 2 liability); *Johnson*, 512 U.S. at 1017; *Latino Political Action Comm., Inc. v. City of Bos.*, 784 F.2d 409, 412 (1st Cir. 1986) (Breyer, J.) (rejecting claim that voter dilution is "minimization, cancellation or submergence of minority voting strength *below what might otherwise have been*") (emphasis in original); *Meza v. Galvin*, 322 F. Supp. 2d 52, 69 (D. Mass. 2004) (plaintiffs

failed to “demonstrate the level of ethnically-polarized . . . voting preferences needed for plaintiffs to satisfy the third *Gingles* precondition”).

2. Plaintiffs Have Failed to Establish an Equal Protection Claim.

Plaintiffs’ Equal Protection claim is similarly flawed. Once again, they fail to satisfy even basic, threshold requirements for the claim, including standing. Perhaps more critically, they also provide no record or statistical evidence to support their stark allegation that the Council’s primary goal in enacting the 2022 Plan was “to engage in ‘racial balancing’ of various districts.” Supp. Mem. at 6 (providing no attribution for this quote). Again, without evidence to support this remarkable claim—combined with their other, fundamental errors—Plaintiffs are not entitled to preliminary relief.

i. Plaintiffs Lack Standing to Assert An Equal Protection Claim.

As a preliminary matter, a racial gerrymandering claim under the Equal Protection Clause “applies to the boundaries of individual districts.” *Ala. Legislative Black Caucus v. Ala.*, 575 U.S. 254, 262 (2015) (citations omitted). It does not apply to an entire redistricting plan “as an undifferentiated ‘whole.’” *Id.* Instead, it is district-specific, because the harms underlying a racial gerrymandering claim are “personal.” *Id.* at 263. “They include being ‘personally . . . subjected to [a] racial classification.’” *Id.* (alteration in original) (quoting *Bush v. Vera*, 517 U.S. 952, 957 (1996)). Such personal harms “directly threaten a voter who lives in the *district* attacked. But they do not so keenly threaten a voter who lives elsewhere in the [city].” *Id.* (emphasis in original). Indeed, “the latter voter normally lacks standing to pursue a racial gerrymandering claim.” *Id.* (citing *U.S. v. Hays*, 515 U.S. 737, 744-45 (1995)); *see also Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018) (quoting *Hays*, 515 U.S. at 745) (“A plaintiff who complains of gerrymandering, but who does not live in a gerrymandered district ‘assert[s] only a generalized grievance against governmental conduct of which he or she does not approve.’”).

Here, Plaintiffs seem to be attacking the 2022 Plan as a whole. *See, e.g.*, FAC ¶ 171 (referring to alleged “racial balancing” across “various districts”). This is impermissible. *Ala. Legislative Black Caucus*, 575 U.S. at 262; *Hays*, 515 U.S. at 745. Moreover, at least two named Plaintiffs live in districts—Districts 5 and 8—that are not the focus of the Plaintiffs’ concerns. *See* Supp. Mem. at 6 (claiming that the 2022 Plan “eviscerates the neighborhoods in Districts 2, 3 and 4”); *Piemonte Aff.*, ¶ 3. Thus, they plainly lack standing. Plaintiffs, of course, have the burden to establish standing. *See, e.g., Gill*, 138 S. Ct. at 1929. But their undifferentiated claims fall significantly short of that burden.

ii. Plaintiffs’ Equal Protection Claim Lacks Evidentiary Support.

If Plaintiffs have failed to establish even their standing to bring an equal protection claim, they certainly have not established the merits. Equal protection plaintiffs must prove “that race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *See Miller*, 515 U.S. at 916. The Council’s decisions were driven by the requirements of federal law, including one person, one vote guarantees and the VRA, and the traditional, race-neutral considerations that typically inform the redistricting process. To argue otherwise, Plaintiffs string together a series of unsupported allegations concerning certain Councilors’ alleged statements of discriminatory intent, and a handful of precinct-level districting decisions Plaintiffs claim were improper and not the result of the usual push and pull of the districting process. Supp. Memo. at 4-7. This evidence does not demonstrate that the Council’s decision-making was predominately motivated by race.

iii. Courts Approach Equal Protection Claims With “Extraordinary Caution.”

In the complex decision-making required by redistricting—particularly given VRA demands—local legislatures will “almost always be aware of racial demographics.” *Miller*, 515

U.S. at 916. But from that awareness, “it does not follow that race predominates in the redistricting process.” *Id.* (citing *Shaw v. Reno*, 509 U.S. 630, 646 (1993)); see *Personnel Admin. of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (discriminatory purpose “implies more than intent as volition or intent as awareness of consequences,” it implies that the decision-maker “selected or reaffirmed a particular course of action at least in part ‘because of,’ not merely ‘in spite of’ its adverse effects”). Indeed, the “distinction between being aware of racial considerations and being motivated by them may be difficult to make.” *Miller*, 515 U.S. at 916. “This evidentiary difficulty, together with the sensitive nature of redistricting and the presumption of good faith that must be accorded legislative enactments, requires courts to exercise extraordinary caution in adjudicating claims that a [city] has drawn district lines on the basis of race.” *Id.*

This “extraordinary caution” results in a high burden for plaintiffs seeking to make a racial gerrymandering claim. Plaintiffs must show “either through circumstantial evidence of a district’s shape and demographics or more direct evidence going to legislative purpose, that race was the *predominant factor* motivating the legislature’s decision to place a *significant number* of voters within or without a *particular district*.” *Id.* (emphasis added). To make this showing, Plaintiffs must prove that the Council “subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations.” *Id.*

Here, Plaintiffs have attempted to follow both paths in support of their Equal Protection claim. That is, they have argued both that the Council’s stated purpose in adopting the 2022 Plan was discriminatory and that the contours of the 2022 Plan provide circumstantial evidence of discriminatory intent. Supp. Mem. at 6-7. But Plaintiffs have not provided adequate proof to

show a likelihood of success on the merits. Instead, the facts—even at this preliminary stage—demonstrate that the Council appropriately considered race in District 4 and elsewhere to ensure VRA compliance, and that other, racially neutral and competing considerations were the Council’s primary motivators. Therefore, the Council’s decision-making was proper.

iv. Plaintiffs Have No Direct Evidence of Discriminatory Intent.

Throughout their papers, Plaintiffs repeatedly assert that the Council attempted to achieve “racial balancing” in the 2022 Plan. *See* FAC ¶¶ 164, 171; Supp. Mem. at 1, 6, 7. But they do not explain the basis for this statement. The closest they come is in the affidavit of Councilor Erin Murphy. *See* FAC, Ex. R. Councilor Murphy’s affidavit does not use the “racial balancing” language, but does assert that “the stated goal of the approved map is to make District 4 less black and District 3 less white.” *Id.* at ¶ 11. Councilor Murphy attributes this “goal” to Councilor Breadon’s “expressed fear that the majority black population of District 4 could invite accusations of ‘packing’ which is the term used to describe the practice of drawing district lines so that minority voters are compressed into a small number of districts when the could effectively control more.” *Id.* at ¶ 12; *see also id.* at ¶ 21 (asserting without elaboration that Councilor Arroyo “was quoted as saying that District 3 was ‘too white’”). Thus, according to Councilor Murphy, the 2022 Plan swapped “majority [B]lack districts in District 3 in order to make District 4 less black and District 3 less white.” *Id.* at ¶ 13.

But Councilor Murphy does not describe anything nefarious. Of course, the Council was concerned about race in District 4: it was an established and effective majority Black opportunity district. Therefore, the Council had to ensure that the new district lines avoided any claim of diluting the Black vote or otherwise violating the VRA. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 425 (2006) (districting body violates Section 2 if its districting plan provides “less opportunity” for racial minorities “to elect representatives of their choice”). Race

was a necessary part of the Council’s discussion. *See, e.g., Cooper*, 137 S. Ct. at 1464 (redistricting bodies have “breathing room” to adopt reasonable VRA compliance measures even if they may prove “in perfect hindsight, not to be necessary”) (citing *Bethune-Hill*, 137 S. Ct. at 802). Moreover, Councilors had to be free to voice their VRA-related concerns with their fellow Councilors, their experts, and the public. Otherwise, they would not have been effectively representing their constituents, nor would they have been afforded an opportunity to better understand the complicated legal and statistical underpinnings of redistricting. *See, e.g.,* Breadon Report at 25-26 (noting Council’s discussions with legal and statistical experts). Indeed, perhaps the best evidence that race was a necessary consideration in the Council’s redistricting debate is Plaintiffs’ own VRA claim. Given the demographics of District 4 and its history as an effective, majority Black opportunity district, a thorough understanding of any VRA-related impact of redistricting changes was necessary and prudent to forestall claims just like the one asserted by Plaintiffs. *See, e.g., Cooper*, 137 S. Ct. at 1464.⁷

v. *Plaintiffs Have No Circumstantial Evidence of Discriminatory Intent.*

Lacking direct evidence of discriminatory intent, Plaintiffs must provide the Court with circumstantial evidence that race was the Council’s predominant motivation in drawing specific districts in the 2022 Plan. *Miller*, 515 U.S. at 916. They have not.

Generally, an equal protection claim would include evidence of a district so odd-looking that race can be the only explanation for its contours. *See, e.g., Bethune-Hill*, 580 U.S. at 188 (district shape “may be persuasive circumstantial evidence that race for its own sake, and not

⁷ Even if Councilor Breadon’s concern about potential “packing” in District 4 was somehow inappropriate—which it assuredly was not in the context of the Council’s larger VRA discussion—comments by individual legislators do not infect the entire body. *See, e.g., U.S. v. O’Brien*, 391 U.S. 367, 384 (1968) (“[w]hat motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it”); *cf. Brnovich v. Democratic Nat’l Comm.*, -- U.S. --, 141 S. Ct. 221 (2021) (rejecting “cat’s paw” theory of attributing racial animus of one legislator to entire legislative body). The same is true for Councilor Arroyo’s alleged comments.

other districting principles, was the legislature’s dominant and controlling rationale”). Not so here. The districts in the 2022 Plan are contiguous and compact, just as they should be when a local legislature follows traditional districting principles. *See, e.g.*, Breadon Report at 21, 25-26 (noting that all submitted plans were contiguous and compact). Plaintiffs do not claim otherwise, nor can they. The district boundaries in *all* the proposed plans—including those submitted by Councilors Murphy, Flynn, Baker, and Flaherty, which Plaintiffs apparently support—“are more alike than they are different.” Breadon Report at 25; Supp. Mem. at 7.

Instead, Plaintiffs point to a handful of precinct swaps in Districts 2, 3 and 4, claiming that those districting decisions “destroy” certain neighborhoods or communities of interest. Supp. Mem. at 6-7. However, the swapping of these precincts in the 2022 Plan did not significantly change the districts’ demographics. *See Bethune-Hill*, 580 U.S. at 192 (equal protection claim judged on “design of the district as a whole”); Handley Report at 17, 18, Table 5 (“[t]here is very little difference in the demographic composition of the districts”). The swaps resulted from the “complex interplay” of competing, neutral principles that districting bodies must weigh, and which courts are loath to disturb.⁸ *Miller*, 515 U.S. at 916.

As in every redistricting exercise, the Council had to meet the federal requirement of one person, one vote. *See* FAC, Ex. O at 1 (listing population equality first among “required”

⁸ Plaintiffs also assert that certain alleged procedural shortcomings marred the redistricting process. Supp. Mem. at 3-4. But courts have been reluctant to ascribe a discriminatory purpose based only on alleged procedural irregularities, especially if those alleged irregularities appear to have affected all constituents, regardless of race. *See, e.g., Abbott*, 138 S. Ct. at 2328-29 (“brevity of the legislative process” does not “give rise to an inference of bad faith—and certainly not an inference that is strong enough to overcome the presumption of legislative good faith”); *Martinez v. Bush*, 234 F. Supp. 2d 1275, 1279 (S.D. Fla. 2002) (per curiam) (3-judge panel) (concluding that plaintiffs failed to “present sufficient evidence to show that defendants were motivated by discrimination against blacks or Hispanics in deciding what redistricting software or allocation method to use, where to hold public hearings, when to hold public hearings, what type of notice to provide, or whether to consider input from Florida citizens and Democratic legislators in drawing the redistricting plans”); *Black Political Task Force v. Galvin*, 300 F. Supp. 2d 291, 313 (2004) (“policy of not listening to community representatives in private, focused meetings appears to have been applied without regard to race”).

redistricting criteria); *Reynolds v. Sims*, 377 U.S. 533, 579 (1964) (requiring “substantial equality of population” among local districts). After the 2020 Census, the ideal population for each district was 75,071. FAC, Ex. O at 1. By that measure, District 2 was overpopulated by 13,482 residents (18% variance), while Districts 3 and 4 were underpopulated, by 6,510 residents (8.6%), and 3,260 residents (4.3%), respectively. Breadon Report at 8. Because the Council was constitutionally obligated to achieve equal populations within these three districts, some change from the status quo was inevitable.

And given that change was inevitable, it was the Council’s job to weigh the “complex interplay” of competing districting, political and other factors; something courts have not disturbed lightly. *Miller*, 515 U.S. at 916; *see* Breadon Report at 23-25 (noting various precinct shifts suggested by different Councilors). Plaintiffs claim that changes the Council settled on could only have been motivated by race. But that does not square with the existing evidence.

Plaintiffs first assert that race-based decision-making can be inferred from district changes to certain neighborhoods. They claim the 2022 Plan violates the Charter’s instruction that districts be “drawn with a view toward preserving the integrity of existing neighborhoods.” *See* Bos. Charter § 18; Supp. Mem. at 6-7. But the Council did consider neighborhoods as it drew the 2022 Plan, *see, e.g.*, Breadon Report at 24, and the Charter does not define “existing neighborhoods” or provide criteria for when a plan is “drawn with a view” to preserving them. Moreover, perfectly preserving traditional neighborhood boundary lines is *impossible*, given federal equal population requirements. *See, e.g.*, U.S. Const., art. VI, clause 2 (Supremacy Clause). Thus, some change to how precincts in South Boston, Dorchester and Mattapan are allocated among Districts 2, 3, and 4 is not evidence of race-based decision-making.

Plaintiffs’ next line of attack is based on alleged harm to communities of interest in Districts 2, 3 and 4. Supp. Mem. at 6-7. However, there is no federal, state or local requirement to preserve communities of interest, *id.*, or any clear way to even define one. Plaintiffs’ post-hoc “recitations” of such purported communities will not suffice. *Miller*, 515 U.S. 919. What is certain is that the Council’s weighing of various competing factors was always going to disappoint some neighborhoods and communities. For every self-identified community that successfully advocated for certain district boundaries in the 2020 Plan, another would inevitably fail to achieve their preference. Far from being evidence of racially motivated map drawing, the precinct-swapping cited by Plaintiffs simply exemplifies the kind of political push and pull so common in redistricting. See FAC ¶ 118 (asserting that 2022 Plan “dilutes a moderate vote”).

Factually, Plaintiffs focus their equal protection claim on two changes at the margins of District 3’s borders. First, they complain about the Council’s choice to move a public housing development, the Anne Lynch Homes at Old Colony, from District 2 to the edge of District 3. FAC, Ex. P ¶¶ 5-22. Specifically, Plaintiffs assert that moving the Anne Lynch Homes while leaving nearby public housing, the West Broadway Development, in District 2 dilutes residents’ political power. *Id.* Plaintiffs, however, do not explain how moving one housing development from the overpopulated District 2 to the adjoining, underpopulated District 3 evidences race-based redistricting; how this choice affects District 3 as a whole, as opposed to the few blocks containing the housing development, see *Bethune-Hill*, 580 U.S. at 191; or why, legally, the preferences of those few blocks should prevail over all other considerations. Indeed, Plaintiffs do not cite a single case with a similar legal premise. Supp. Mem. at 6-7.⁹

⁹ For example, Councilor Murphy submitted a proposed map (Docket #1215)—supported by Councilors Flynn and Baker—which removed precincts 7-5 and 7-6 from District 2 and placed them in District 3. FAC, Ex. D. Plaintiffs, supported by the affidavits of those three Councilors, now contend that this precinct move evidences the Council’s discriminatory intent. FAC, Ex. P at ¶¶ 7-26.

Plaintiffs' second area of focus is the border between Districts 3 and 4. FAC, Ex. Q ¶¶ 5-18. Specifically, Plaintiffs complain about the move of three precincts from District 3 to District 4. *Id.* These precincts make up what are colloquially known as the Cedar Grove and Neponset neighborhoods. *Id.* Plaintiffs, of course, made these same precincts the subject of their VRA claim, contending that movement of the majority white precincts at the southern edge of District 3 somehow diluted the vote of the majority Black population in District 4. Supp. Memo. at 4-5. Plaintiffs' VRA claim undermines their Equal Protection argument. Because the Equal Protection Clause "restricts consideration of race and the VRA demands consideration of race," courts have long assumed that "compliance with the VRA may justify the consideration of race in a way that would not otherwise be allowed." *Abbott*, 138 S. Ct. at 2315. Thus, the Council had to analyze the effect these three precincts would have on the established, effective majority Black voting population in District 4. The Council did that analysis and determined that the move made no difference whatsoever to the effectiveness of the District 4 opportunity district. Breadon Report at 17; Handley Report at 17. Plaintiffs cannot demand a race-based analysis of the precinct-swapping in Districts 3 and 4 in one section of their complaint, and condemn it in another. *See, e.g., Abbott*, 138 S. Ct. at 2315 ("At the same time that the Equal Protection Clause restricts the consideration of race in the districting process, compliance with the [VRA] pulls in the opposite direction: It often insists that districts be created precisely because of race."); *Ala. Legislative Black Caucus*, 575 U.S. at 278 ("The law cannot lay a trap for an unwary legislature, condemning its redistricting plan as either (1) unconstitutional racial gerrymandering should the legislature place a few too many minority voters in a district or (2) retrogressive . . . should the legislature place a few too few.").

Moreover, as stated above, the slight change in District 4’s demographics as a result of the precinct swap makes *no difference* in its electoral effectiveness. *Supra* at 10-11; Handley Report at 17. The same is true in District 3. *See* Handley Report at 18, Table 5. Under the 2012 Plan, District 3 was 41.5% white, 18.2% Black, 14.1% Hispanic and 16.9% Asian. *Id.* Under the 2022 Plan, District 3 became 41.9% white, 17.4% Black, 14.4% Hispanic and 17.2% Asian. There is no significant difference between those numbers, *see* Handley Report at 17, and Plaintiffs have produced no evidence (nor could they) that they will make any electoral difference whatsoever. *See also Bethune-Hill*, 580 U.S. at 187 (equal protection plaintiff must show legislature “place[d] a *significant number* of voters within or without a particular district”) (emphasis added) (quoting *Miller*, 515 U.S. at 916). If the changes were marginal in both districts and make no difference in how the districts will vote, it is quite a leap to infer that racial considerations were the primary motivation behind these moderate changes—a leap too far to overturn the presumption of good faith accorded to districting bodies like the Council. *See Abbott*, 138 S. Ct. at 2324 (districting body’s good faith “must be presumed”); *Miller*, 515 U.S. at 916 (same).

3. The Alleged OML Violations, Even if True, Would Not Support an Injunction.

In their most far-flung and indirect effort to set aside the duly approved redistricting ordinance, the Plaintiffs seek to leverage weak claims under the Massachusetts OML to support their request for a preliminary injunction. This is supported by neither the facts nor the law.

The OML requires that all deliberations among a quorum of members of a public body be held in public and that notice of such a meeting be posted at least 48 hours in advance. *See* G.L. c. 30A, §§ 18-25. A “deliberation” is “an oral or written communication,” and a quorum is a simply majority of the members of the public body. *Id.* at § 18. Here, the City Council is a 13-

member public body, FAC ¶ 7, and therefore meetings among at least 7 members at which deliberation occurs are subject to the OML.

Plaintiffs allege that meetings on October 10, 18, and 19, 2022 concerning the redistricting process were not properly noticed under the OML.¹⁰ FAC ¶ 38. These claims are unsubstantiated and insufficiently pled. Moreover, even assuming the Council improperly noticed or conducted one of these meetings, such violations do not merit the “extraordinary” grant of a preliminary injunction in this case. The challenged meetings are addressed in turn.

October 10, 2022: Plaintiffs allege that seven unidentified Council members “met at the Bruce C. Bolling Municipal Building to discuss the topic of Legislative Redistricting in the City of Boston without giving notice.” FAC ¶ 21.¹¹ The event was organized by community organizations, and the councilors in attendance did not speak at the event except to introduce themselves to the audience. Goldberg Aff., Ex. F. There was no “deliberation” because the councilors did not communicate; no “meeting” because there was no deliberation; no need to notice the gathering; and no OML violation. *See* G.L. c. 30A, §§ 18, 20(b).

October 18, 2022: Plaintiffs allege that five unidentified Council members “were present at City Hall Plaza to meet and discuss the topic of Legislative Redistricting in the City of Boston without giving notice.” FAC ¶ 23. On that date, a press conference was scheduled by parties

¹⁰ Plaintiffs’ Supplemental Memo also obliquely asserts OML violations arising out of the City Council’s alleged failures (1) to publicize a copy of the final proposed map until less than 48 hours before the City Council’s November 2, 2022 vote and (2) to provide “access to language minority residents.” Supp. Mem. at 3. As to the first: the Attorney General has repeatedly held that “[t]he Open Meeting Law does not require that a public body attach supporting documents to a meeting notice nor that it publicly post a ‘meeting packet’ that contains such documents.” *E.g., Nancy Glowa, Esq.*, Op. No. OML 2022-19, 2022 WL 432043, at *1 (Feb. 8, 2022). As to the second: providing interpretation services is a practice the Council seeks to deliver. Plaintiffs cite no authority making interpretation a requirement of the OML.

¹¹ Plaintiffs also allege that four unidentified members of the Boston City Council Redistricting Committee were present at this meeting. FAC ¶ 21. Aside from these alleged OML violations, Plaintiffs’ FAC contains no other allegations about the Redistricting Committee and seeks relief only against the Council as a whole. The Council’s arguments about the alleged OML violations are equally applicable to the Redistricting Committee, and thus this brief does not address the two groups of councilors separately.

other than the Council; at that press conference, four councilors participated in the presentation and two more were in attendance. Goldberg Aff., Ex. F. Even if the presentation could have arguably constituted a deliberation (a point on which Plaintiffs present no evidence), it would not have been a deliberation among a quorum of the Council. G.L. c. 30A, § 18.

October 19, 2022: Plaintiffs allege that seven unidentified Council members “met at the Condon School in South Boston, MA to discuss the topic of Legislative Redistricting in the City of Boston without giving notice.” FAC ¶ 24. The Council acknowledges that seven of its members attended a community event on that date, and discussed redistricting and some proposed maps filed with the Council. Goldberg Aff., Ex. F. The meeting was organized by Council President Edward Flynn and South Boston elected officials from other political bodies, *see* Goldberg Aff., ¶ 10 & Ex. L, and when organized, it was not expected that a quorum of Council members would attend. *Id.*, Ex. F. The lack of official notice for the meeting was inadvertent based on the expectation that a quorum would not be present, not intentional. Furthermore, the meeting was heavily advertised on social media by community organizations and residents. *Id.* Even if the discussion that took place on that date could be considered deliberation (which, again, is not proved by Plaintiffs’ pleadings), the violation must be viewed in the context of the Council’s adherence to and respect for the OML during the nearly eighteen months of deliberations over redistricting, including the multiple subsequent duly noticed meetings leading up to and including the final vote.

OML violations can be cured by “independent deliberative action” as a properly-noticed public meeting on the same subject matter. *Pearson v. Bd. of Selectmen of Longmeadow*, 49 Mass. App. Ct. 119, 125 (2000). Following the October 19 meeting, the Council held five publicly noticed meetings, hearings, and working sessions regarding legislative redistricting

before voting to adopt the 2022 Plan. Goldberg Aff., ¶¶ 8-9 & Exs. G-K. Meetings were held on October 20 (public testimony), October 21 (City Council Committee on Redistricting Working Session), October 24 (same), October 24 (City Council Committee on Redistricting Hearing), and October 25 (City Council Committee on Redistricting Working Session). *Id.* ¶ 8 & Exs. F, G-K. At each of these meetings, Council members discussed and debated legislative redistricting sufficient to constitute “independent deliberative action” on the subject matter that was challenged by Plaintiffs’ OML complaint. Finally, the Council as a whole deliberated and voted at duly noticed open meeting on November 2. *Id.*, ¶ 9. These six meetings cured any potential OML violation. *City of Revere v. Mass. Gaming Comm’n*, No. 14-CV-3253, 2019 WL 4017027 (Mass. Super. Ct. July 12, 2019) (any violations at certain meetings would have been cured where subsequent six-day-long public hearing explored every aspect of topics considered at contested meetings); *see also Benevolent & Protective Order of Elks, Lodge No. 65 v. City Council of Lawrence*, 403 Mass. 563, 566 (1988) (properly noticed public meetings “cured any violation which may have occurred when the president privately conversed about the project with other City Council members”); *Pearson*, 49 Mass. App. Ct. at 125 (violation cured by “independent deliberative action” taken at properly noticed public meeting).

Under these circumstances, Plaintiffs have not carried their burden of proving any OML violation, much less any that have not been substantially mitigated by “extensive public deliberation” before and after the alleged violation. *See City of Revere*, 2019 WL 4017027, at *2, 5 (where public body was in “broad compliance” with OML and made final decision by six-day public hearing, “handful” of potential violations over multiple years did not provide grounds to overturn decision). Even a documented OML violation would not support a decision on the merits imposing the extraordinary remedy sought here by the Plaintiffs. The statutory remedies

for an OML violation which has not been cured by subsequent public deliberation, set forth in G.L. c. 30A, §§ 23(c) and (f), range from an order directing future compliance, attendance at OML training, to invalidation of agency action. It is within the “sound judicial discretion” of the Court as to what remedy to impose for an uncured violation, *Bartell v. Wellesley Hous. Auth.*, 28 Mass. App. Ct. 306, 310 (1990), but to award the most extreme remedy here “would be an abuse of discretion,” *City of Revere*, 2019 WL 4017027, at *4. Plaintiffs will not succeed in showing that any meeting violated the OML, that any violation remained uncured, or that the remedy they seek is appropriate.

C. None of the Named Plaintiffs Will Be Harmed by the Current Redistricting Plan.

Plaintiffs’ “generalized grievances” are insufficient to establish irreparable harm.¹² *See Gill*, 138 S. Ct. at 1931 (no legal injury, and therefore no standing, for plaintiffs interested in “collective representation” and “overall composition and policymaking”). Plaintiffs claim that they will suffer irreparable harm absent a preliminary injunction because of their “concern[.]” about the 2022 Plan “and its effect on the integrity of existing communities, as well as the negative effect it will have on the political power and cohesiveness of its most vulnerable residents.” Supp. Mem. at 8. They then argue that a deprivation of their constitutional rights constitutes irreparable harm. But as established above, there is no constitutional violation in the 2022 Plan, much less any that is traceable to the Plaintiffs themselves. The Complaint does not allege that any individual (much less any Plaintiff, or any group of which a Plaintiff is a member) has suffered harm as a result of the 2022 Plan. *Gill*, 138 S. Ct. at 1931.

¹² Stated a different way, though “[a]n abridgement or dilution of the right to vote constitutes irreparable harm,” *Montano v. Suffolk Cty. Legislature*, 268 F. Supp. 2d 243, 260 (E.D.N.Y. 2003), Plaintiffs have neither alleged nor proved that they, or anybody else’s, right to vote has been abridged or diluted through the 2022 Plan.

D. An Injunction Will Significantly Harm the Public Interest.

The injunction Plaintiffs seek would not actually accomplish anything: the 2022 Plan has been signed into law. The more extreme remedy, an injunction invalidating the 2022 Plan, would harm the public. First, preserving the status quo means reinstating the 2012 maps, which are manifestly malapportioned—resulting in demonstrable, unconstitutional vote dilution. The 26.6% variance between Districts 2 and 3 exceeds even the 23.6% variance this court concluded in 1983 not only violated one-person, one-vote, but was “greater than any variance previously tolerated anywhere in the country by the Supreme Court of the United States.” *Latino Political Action Comm., Inc. v. City of Bos.*, 568 F. Supp. 1012, 1019 (D. Mass. 1983), *stay denied*, 716 F.2d 68 (1983). Second, it would frustrate the public’s understanding of and reliance on lawful Council actions, and could confuse the public as to the role of the Council and the status of the challenged districts. *League of United Latin Am. Citizens v. Abbott*, -- F. Supp. 3d --, 2022 WL 1410729, at *31 (W.D. Tex. May 4, 2022) (voting injunctions may cause “voter confusion and consequent incentive to remain away from the polls,” and “may unduly burden election officials, inflicting massive costs and risking mistakes or disenfranchisement”).

CONCLUSION

For the foregoing reasons, Plaintiffs’ motion for preliminary injunctive relief should be denied.

By its attorneys,

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Dated: January 17, 2023

Certificate of Service

I hereby certify that a true and accurate copy of this document was filed through the Electronic Case Filing system, and will be served upon the attorney of record for each party registered to receive electronic service on this 17th day of January 2023.

/s/ Christina S. Marshall

Christina S. Marshall

EXHIBIT E

**An Analysis of Voting Patterns by Race and an Assessment of Minority Voters'
Opportunities to Elect Candidates in Recent Boston Municipal Elections**

Dr. Lisa Handley

DRAFT 2.0

I. Scope of Project

I was retained by the City of Boston to conduct an analysis of voting patterns by race and Hispanic ethnicity. I was also asked to conduct a district-specific, functional analysis to determine which districts under the current city council plan (2012 City Council District Plan) provide minority voters with an opportunity to elect their candidates of choice to the Council.

II. Professional Experience

I have over thirty-five years of experience as a voting rights and redistricting expert. I have advised scores of jurisdictions and other clients on minority voting rights and redistricting related issues and have served as an expert in dozens of voting rights cases. My clients have included scores of state and local jurisdictions, independent redistricting commissions (Alaska, Arizona, Colorado, Michigan), the U.S. Department of Justice, national civil rights organizations (ACLU, Lawyers Committee for Civil Rights Under Law), and such international organizations as the United Nations.

I have been actively involved in researching, writing, and teaching on subjects relating to voting rights, including minority representation, electoral system design, and redistricting. I co-authored a book, *Minority Representation and the Quest for Voting Equality* (Cambridge University Press, 1992) and co-edited a volume, *Redistricting in Comparative Perspective* (Oxford University Press, 2008), on these subjects. In addition, my research on these topics has appeared in peer-reviewed journals such as *Journal of Politics*, *Legislative Studies Quarterly*, *American Politics Quarterly*, *Journal of Law and Politics*, and *Law and Policy*, as well as law reviews (e.g., *North Carolina Law Review*) and a number of edited books. I hold a Ph.D. in political science from The George Washington University.

I have been a principal of Frontier International Electoral Consulting since co-founding the company in 1998. Frontier IEC specializes in providing electoral assistance in transitional

democracies and post-conflict countries. In addition, I am a Visiting Research Academic at Oxford Brookes University in Oxford, United Kingdom.

III. Introduction: The Voting Rights Act and Racially Polarized Voting

The Voting Rights Act of 1965 prohibits any voting standard, practice, or procedure – including redistricting plans – that result in the denial or dilution of minority voting strength. Section 2 of the Voting Rights Act was amended in 1982 to establish that intentional discrimination need not be proven (as the Supreme Court determined was required under the 15th Amendment to the Constitution). The U.S. Supreme Court first interpreted the amended Act in *Thornburg v. Gingles*,¹ a challenge to the 1982 North Carolina state legislative plans. In this case the U.S. Supreme Court held that plaintiffs must satisfy three preconditions to qualify for relief:

- The minority group must be sufficiently large and geographically compact to form a majority in a single-member district
- The minority group must be politically cohesive
- Whites must vote as a bloc to usually defeat the minority-preferred candidates

What do we mean when we say minority voters must be politically cohesive? And how do we know if White voters usually vote as a bloc to defeat the candidates preferred by minority voters? According to the Court, racially polarized voting is the “evidentiary linchpin” of a vote dilution claim. Voting is racially polarized if minorities and Whites consistently vote for different candidates.² If minorities consistently support the same candidates, they are said to be politically cohesive. If Whites are consistently *not* supporting these candidates, they are said to be bloc voting against the minority-preferred candidates.

The Voting Rights Act requires a state or local jurisdiction to create districts that provide minority voters with an opportunity to elect their candidates of choice if voting is racially polarized and the candidates preferred by minority voters usually lose. If districts that provide

¹ 478 U.S. 30 (1986).

² More specifically, if minority voters and White voters considered separately would have elected different candidates in a given election contest, the contest is racially polarized. If this is the pattern across a number of election contests in the jurisdiction, then voting in the jurisdiction is racially polarized. If the candidates preferred by minority voters consistently lose, the polarization rises to the level of legally significant.

minority voters with the opportunity to elect their preferred candidates despite the presence of racially polarized voting already exist, these must be maintained as effective minority districts.

IV. Statistical Techniques for Analyzing Voting Patterns by Race

An analysis of voting patterns by race serves as the foundation of two of the three elements of the “results test” as outlined in *Gingles*: a racial bloc voting analysis is needed to determine whether the minority group is politically cohesive; and the analysis is required to determine if Whites are voting sufficiently as a bloc to usually defeat the candidates preferred by minority voters. The voting patterns of White and minority voters must be estimated using statistical techniques because direct information regarding the race of the voters is not, of course, available on the ballots cast.

To carry out an analysis of voting patterns by race, an aggregate level database must be constructed, usually employing election precincts as the units of observation. Information relating to the demographic composition and election results in these precincts is collected, merged and statistically analyzed to determine if there is a relationship between the racial composition of the precincts and support for specific candidates across the precincts.

Three standard statistical techniques have been developed over time to estimate vote choices by race: homogeneous precinct analysis, ecological regression, and ecological inference.³ Two of these analytic procedures – homogeneous precinct analysis and ecological regression – were employed by the plaintiffs’ expert in *Gingles*, have the benefit of the Supreme Court’s approval in that case, and have been used in most subsequent voting rights cases. The third technique, ecological inference, was developed after the *Gingles* decision and was designed, in part, to address some of the disadvantages associated with ecological regression analysis. Ecological inference analysis has been introduced and accepted in numerous court proceedings. It is generally accepted by experts in the field as the most accurate methodology for producing estimates of voting patterns by race.

³ For a detailed explanation of homogenous precinct analysis and ecological regression see Bernard Grofman, Lisa Handley and Richard Niemi, *Minority Representation and the Quest for Voting Equality* (Cambridge University Press, 1992). See Gary King, *A Solution to the Ecological Inference Problem* (Princeton University Press, 1997) for a more detailed explanation of ecological inference.

Homogeneous precinct (HP) analysis is the simplest technique. It involves comparing the percentage of votes received by each of the candidates in precincts that are racially or ethnically homogeneous. The general practice is to label a precinct as homogeneous if at least 90 percent of the voting age population is composed of a single race.⁴ In fact, the homogeneous results reported are not estimates – they are the actual precinct results. However, most voters do not reside in homogeneous precincts and voters who reside in homogeneous precincts may not be representative of voters who live in more racially diverse precincts. For these reasons, I refer to these calculations as estimates.

The second statistical technique employed, ecological regression (ER), uses information from all precincts, not simply the homogeneous ones, to derive estimates of the voting behavior of minorities and Whites. If there is a strong linear relationship across precincts between the percentage of minorities and the percentage of votes cast for a given candidate, this relationship can be used to estimate the percentage of minority (and White) voters supporting the candidate.

The third technique, ecological inference (EI), was developed by Professor Gary King. This approach also uses information from all precincts but, unlike ecological regression, it does not rely on an assumption of linearity. Instead, it incorporates maximum likelihood statistics to produce estimates of voting patterns by race. In addition, it utilizes the method of bounds, which uses more of the available information from the precinct returns as well as providing more information about the voting behavior being estimated.⁵ Unlike ecological regression, which can produce percentage estimates of less than 0 or more than 100 percent, ecological inference was designed to produce only estimates that fall within the possible limits.

EI as originally developed produced estimates in a situation with only two races or ethnic groups, for example, Black and White voters. When there are more than two groups of significant size, King's EI is run iteratively (that is, White versus non-White, Black versus non-Black, and Hispanic versus non-Hispanic). A more recently developed version of ecological inference, which

⁴ If turnout or registration by race is available, this is the information used to identify homogeneous precincts.

⁵ The following is an example of how the method of bounds works: if a given precinct has 100 voters, of whom 75 are Black and 25 are White, and the Black candidate received 80 votes, then at least 55 of the Black voters voted for the Black candidate and at most all 75 did. (The method of bounds is less useful for calculating estimates for White voters in this example as anywhere between none of the Whites and all of the Whites could have voted for the candidate.)

if often referred to as “EI RxC”, expands the analysis so that more than two racial/ethnic groups can be considered simultaneously.⁶

V. Conducting a Racial Bloc Voting Analysis in Boston

Protected Minority Groups Minority groups that the U.S. Department of Justice and courts have recognized as protected under the Voting Rights Act are Black, Hispanic, Asian, American Indian, and Alaska Native voters. Boston has Black, Hispanic, and Asian populations sizeable enough to produce estimates of voting patterns by race/ethnicity in a number of city council district elections (although not in all of the districts). Table 1, prepared by the Boston Planning & Development Agency,⁷ provides racial and Hispanic origin population for Boston according to the 2020 census, as well as the 2010 census.⁸

Table 1: Boston Population by Race and Hispanic Ethnicity, 2010 and 2020

	2010		2020		2010 to 2020 Change	
	Count	Share	Count	Share	Count	Percent
Total Population						
Massachusetts	6,547,629		7,029,917		482,288	7.4%
Boston	617,594	100.0%	675,647	100.0%	58,053	9.4%
White Alone	290,312	47.0%	301,464	44.6%	11,152	3.8%
Black or African American Alone	138,073	22.4%	129,264	19.1%	-8,809	-6.4%
Hispanic or Latino	107,917	17.5%	128,113	18.7%	20,196	18.9%
Asian Alone	54,846	8.9%	75,588	11.2%	20,742	37.8%
American Indian and Alaska Native Alone	1,227	0.2%	989	0.1%	-238	-19.4%
Native Hawaiian and Other Pacific Islander Alone	182	0.0%	261	0.0%	89	37.6%
Some Other Race Alone	10,078	1.6%	9,257	1.4%	-821	-8.1%
Two or More Races	14,859	2.4%	32,721	4.8%	17,762	118.7%
Adult Population (age 18 and older)						
Massachusetts	5,128,706		5,663,723		535,017	10.4%
Boston	513,884	100.0%	573,836	100.0%	59,952	11.7%
White Alone	266,389	51.8%	276,031	48.1%	9,642	3.6%
Black or African American Alone	103,642	20.2%	102,289	17.8%	-1,353	-1.3%
Hispanic or Latino	76,708	14.9%	94,207	16.4%	17,499	22.8%
Asian Alone	47,733	9.3%	66,334	11.6%	18,601	39.2%
American Indian and Alaska Native Alone	952	0.2%	794	0.1%	-158	-16.6%
Native Hawaiian and Other Pacific Islander Alone	157	0.0%	228	0.0%	89	43.9%
Some Other Race Alone	7,563	1.5%	7,258	1.3%	-305	-4.0%
Two or More Races	10,740	2.1%	24,697	4.3%	13,957	130.0%

⁶ The original form of EI was designed for 2x2 contingency tables (two racial groups, two candidates). EI RxC expands the analysis to a contingency table with an expanded number of rows (R) and columns (C).

⁷ This table was taken from a publication of the Boston Planning & Development Agency, Research Division, entitled “2020 U.S. Census: Redistricting Data Release, August 2021,” page 5.

⁸ The Black and Asian counts under-represent the actual number of Black and Asians in Boston because these counts do not include respondents who indicated they were Black or Asian and one or more other races.

The Asian population in Boston increased substantially (an increase of 37.8% since 2010) over the past decade and Asians now comprise 11.2% of the City's population. Hispanics are both the second fastest growing minority group (with a 16.9% increase since 2010) and the second largest minority group in size: Hispanics now comprise 18.7% of the population in Boston. The Black population, at 19.1% according to the 2020 census, is the largest minority group in the City.

Database To analyze voting patterns by race using aggregate level information, a database that combines election results with demographic information is required. In Boston, the smallest unit for which election results are reported is the election precinct. All preliminary and general election returns by precinct for recent municipal elections were obtained from the Boston Election Department. The demographic composition of these precincts, as derived from the 2020 PL94-171 census redistricting data, is reported by the Research Division of the Boston Planning & Development Agency, and can be found on their website.⁹ Merging the two datasets was straightforward: both databases identified each precinct by a ward and precinct number that matched across the two sets of data.

Elections Analyzed The courts have been clear that the most probative contests to consider when determining if voting is racially polarized are recent contests for the office at issue (in this case, nonpartisan municipal elections, especially for city council) that include minority candidates.¹⁰ I analyzed recent (2015 – 2021) Boston municipal preliminary and general election contests, most of which included minority candidates. The following is a list of the election contests examined:

Year	Office
2021	Mayoral preliminary election
	Mayoral general election
	City Council preliminary elections

⁹ <https://data.boston.gov/dataset/census-data-for-2022-redistricting/resource/c8a034f8-24f9-4067-b31c-7569b42039e8>

¹⁰ Courts consider election contests that include minority candidates more probative than contests that include only White candidates for determining if voting is racially polarized because it is not sufficient for minority voters to be able to elect their candidates of choice only if these candidates are White. On the other hand, it is important to recognize that not all minority candidates are the preferred candidates of minority voters.

Year	Office
2021	City Council general elections
2019	City Council preliminary elections City Council general elections
2017	Mayoral preliminary election Mayoral general election City Council preliminary elections City Council general elections
2015	City Council preliminary elections City Council general elections

The at-large city council elections have not been analyzed. Voters can cast up to four votes in these election contests (as there are four at-large seats to be filled), but they are not required to do so. In other words, voters can single shot vote if they feel very strongly about a specific candidate and do not want to risk spreading their votes across other, less attractive, candidates.¹¹ This presents complications for conducting a racial bloc voting analysis.

Statistical Analysis of Boston Municipal Elections My analysis did not produce homogenous precinct estimates because there are very few homogenous precincts in Boston, even if the definition is lowered from 90% single race or Hispanic ethnicity – the standard definition – to 85% single race or ethnicity.¹² The EI estimates reported are EI RxC estimates, which are derived via the most appropriate statistical approach given the presence of more than two sizeable racial/ethnic groups. Although I have reported ER estimates, they serve only as a check on the EI estimates (because the statistical methods employed to produce the estimates are considerably different). The EI estimates are more accurate, and I have relied on these if the EI and ER

¹¹ For example, in 2021 there were 144,380 ballots cast. The total votes cast for all of the mayoral candidates was 143,515 so 99% of those who came to the polls voted for this office. If voters cast all four of their allotted votes for the at-large seats in this same election, the total votes cast for all of the candidates would be about 577,520 (144,380 X 4) but only 359,294 votes were cast for this contest (62% of all possible votes). To conduct a statistical analysis, we would have to make the assumption that White, Black, Hispanic, and Asian voters all cast approximately the same number of votes (about 2.5 votes per voter).

¹² There are a handful of homogenous White precincts but no homogenous Black, Hispanic or Asian precincts in Boston.

estimates pointed to different candidates as the preferred candidates for a particular group of voters.

If a specific racial or ethnic group was not large enough in a given district to produce reliable estimates using a given statistical technique, the contest was marked with “INS” for an insufficient number of voters.

VI. Results of Racial Bloc Voting Analysis

The summary tables found in the *Appendices*, at the end of this report, provides the estimates of the percentage of White, Black, Hispanic and Asian voters who voted for each of the candidates in the municipal election contests analyzed. (*Appendix A* reports the estimates for 2021, *Appendix B* for 2019, *Appendix C* for 2017 and *Appendix D* for the 2015 elections.) A discussion of these results follows.

District 1: This district is currently represented by Gabriela Coletta., who was elected in a special election in 2022 to replace Lydia Edwards. The district is majority White in composition, but Hispanics make up close to 30% of the voting age population (VAP). **Prior to the 2022 special election, the only recently contested elections for this district were in 2017.** Three candidates competed in the 2017 preliminary election: Stephen Passacantilli (White), Lydia Edwards (Black) and Margaret Farmer (White). This contest was polarized, with a majority of White voters supporting Passacantilli and a majority of Hispanic voters supporting Lydia Edwards. A plurality of Asian voters supported Passacantilli. (There were an insufficient number of Black voters to produce estimates for this group.)

Passacantilli and Edwards proceeded to the general election, which was also polarized: a majority of White voters again supported Passacantilli, while a majority of Hispanic and Asian voters supported Edwards. Edwards won the election with 52.7% of the vote.

District 2: Edward Flynn currently represents this district and serves as the President of the City Council. The district is majority White in composition, with Asians making up the second largest group with 15.7% of the VAP. The only recently contested elections for this district were in 2017. The three candidates who competed in the preliminary election were Edward Flynn (White), Michael Kelley (White), and Corey Dinopoulos (White). This contest was polarized, with a majority of White voters supporting Flynn and Hispanic and Asian voters supporting Kelley. (There were an insufficient number of Black voters to produce estimates for this group.) The

Commented [LH1]: I should probably analyze this election. Are there any other special elections in the 2015 - 2021(2) time frame I should also analyze?

general election between Flynn and Kelley was not polarized: Hispanic and Asian voters, as well as White voters, supported Flynn, who won the election with 51.6% of the vote.

District 3: Frank Baker has represented this district since 2011. The district is majority minority in composition – with a Black VAP of 18.2%, a Hispanic VAP of 14.1%, and an Asian VAP of almost 17% (Whites comprise 41.5% of the VAP). Although there have been no recent preliminary elections, the general elections in 2021 and 2015 were contested. The 2021 general election was polarized: strong majorities of White and Asian voters supported Baker, as did a majority of Hispanic voters. A majority of Black voters, however, supported his challenger, Stephen McBride (White). Baker won with 62.9% of the vote.

The 2015 general election was not polarized: Baker was strongly supported by White, Black, Hispanic and Asian voters in his race against Donnie Palmer (Black). Baker won the election with slightly less than 85% of the vote.

District 4: This district is currently represented by Brian Worrell. The district is majority Black in composition (52.6% Black VAP), but Hispanics comprise slightly over 23% of the population. This seat was contested in 2021, 2019, and 2015. Nine candidates, all of whom were Black, competed in the preliminary election for this open seat in 2021. Worrell was the candidate of choice of a plurality of the Black voters. A plurality of Hispanic voters supported Evandro Carvalho; White voters supported Joel Richards and Carvalho. (There were an insufficient number of Asian voters to produce estimates for this group.) Worrell and Carvalho proceeded to the general election. The general election was not polarized: a majority of Black, White, and Hispanic voters supported Worrell, who won with 61.6% of the vote.

In 2019, the general election was contested, with incumbent Andrea Campbell (Black) facing a challenge from Jeff Durham (Black). This election was not polarized: Black, White and Hispanic voters all strongly supported Campbell, who won with 87.2% of the vote.

In 2015, incumbent Charles Yancey faced three challengers in the preliminary election: Andrea Campbell (Black), Terrance Williams (Black), and Jovan Lacet (Black). The contest was not polarized: a majority of Black, White and Hispanic voters all supported Campbell. Campbell and Yancey proceeded to the general election. This election was also not polarized, with all three groups supporting Campbell, who won with 61.3% of the vote.

District 5: Ricardo Arroyo currently represents this majority minority district. The district is 45.6% Black and 21.4% Hispanic in voting age population. This seat was contested in 2021,

2019, and 2015. In the 2021 general election, incumbent Arroyo (Hispanic) was challenged by John White (White). The contest was not polarized: Black, White and Hispanic voters all strongly supported Arroyo, who won with 75.7% of the vote.

Eight candidates competed in the 2019 preliminary election for this open seat. Voting was polarized: a plurality of Black voters supported Jean-Claude Sanon (Black), a plurality of Hispanic voters supported Arroyo, and a plurality of White voters supported Maria Esdale Farrell (White). Arroyo was the second choice of both Black and White voters. Arroyo and Farrell proceeded to the general election. The general election was not polarized: a clear majority of Black and Hispanic voters and a slight majority of White voters supported Arroyo, who won with 54.6% of the vote.

In 2015, incumbent Timothy McCarthy (White) faced a challenger in the general election: Jean-Claude Sanon (Black). White and Hispanic voters strongly supported McCarthy, but a majority of Black voters supported Sanon. McCarthy won with 64% of the vote.

District 6: Kendra Hicks Lara currently represents this district. The district is majority White in composition (62.8% White VAP), with a minority population that is 9.9% Black, 15.3% Hispanic, and 9.3% Asian in voting age population. There were no contested elections in 2015, 2017 or 2019 when the district was represented by Matt O'Malley (White). He declined to run again in 2021 and this open seat attracted three candidates in the preliminary election: Kendra Hicks (Afro Latina), Mary Tamer (White) and Winne Eke (Black). This contest was polarized: a majority of White voters supported Tamer; a majority of Black and Hispanic voters, and a plurality of Asian voters supported Hicks. Hicks and Tamer went on to face each other in the general election. This race was also polarized, with a majority of White voters supporting Tamer and a majority of Black, Hispanic and Asian voters supporting Hicks. Hicks won with 55.8% of the vote.

District 7: This district is currently represented by Tania Fernandes Anderson. The district is majority minority in composition – it is 33.7% Black, 22.6% Hispanic, and 10.8% Asian in voting age population (Whites comprise 27% of the voting age population). This was the only district seat contested in all four election years analyzed: 2021, 2019, 2017 and 2015. In the 2021 preliminary election, eight candidates competed in this polarized contest. Angelina Camacho (Black) was the candidate supported by a plurality of the White voters; a plurality of Black and Hispanic voters supported Tania Fernandes Anderson. But it was Anderson and Roy Owens Sr. (Black) who proceeded to the general election. The 2021 general election was not polarized: Black, White, Hispanic, and Asian voters all supported Anderson, who won with 73% of the vote.

The 2019 preliminary election included three candidates: incumbent Kim Janey (Black), Valerie Rust (Black), and Roy Owens Sr (Black). This contest was not polarized: a strong majority of White, Black, and Hispanic voters, and a plurality of Asian voters, supported Janey. Janey faced Owens in the general election in another contest that was not polarized: a strong majority of White, Black, Hispanic, and Asian voters supported Janey, who won with 74.5% of the vote.

District 7 was on an open seat in 2017 and the preliminary election drew 13 candidates. Despite the large number of candidates, the contest was not polarized: a plurality of White, Black, Hispanic, and Asian voters supported Kim Janey (Black), who proceeded to the general election with the second candidate of choice of Black voters, Rufus Faulk (Black). The 2017 general election was polarized, with White, Hispanic and Asian voters supporting Janey, but a slight majority of Black voters casting their votes for Faulk. Janey won with 55.5% of the vote.

In 2015, incumbent Tito Jackson (Black) faced six challengers in the preliminary election. This contest was not polarized: a strong majority of White, Black, and Hispanic voters and a plurality of Asian voters supported Jackson, who obtained 66.4% of the vote. The general election was polarized, with Jackson receiving a strong majority of the White, Black, and Asian vote, but his opponent Charles Clemons Jr. (Black) supported by a slight majority of Hispanic voters. Jackson won with 66.6% of the vote.

District 8: This district is currently represented by Kenzie Bok. The district is majority White, with an Asian VAP of 22.1%. The seat was not contested in 2021, or in 2015. In the 2019 preliminary election, five candidates competed for this open seat. The contest was not polarized between White voters and Asian voters; both groups supported Kenzie Bok. However, a plurality of Hispanic voters supported Helene Vincent (White). In the general election, Bok was supported by a strong majority of all three groups. (There is an insufficient number of Black voters in this district to produce estimates for this group.)

There was no preliminary election in 2017, but the general election was contested. It was not polarized: a majority of White, Hispanic, and Asian voters supported incumbent Josh Zakim (White). He won with 67.1% of the vote.

District 9: Liz Breadon currently represents this district. The district is majority White, with an Asian VAP of slightly less than 21%. The 2021 preliminary and general elections were not polarized: White, Hispanic, and Asian voters supported Breadon (White) in both the preliminary

election, in which she received 71.7% of the vote, and the general election, in which she garnered 71.4% of the vote.

This was an open seat in 2019. Seven candidates competed in the preliminary election. The first choice of White and Hispanic voters (by only a small percentage as support was spread out across many of the candidates) was Craig Cashman (White), with Liz Breadon the second choice of both groups. The first choice of Asian voters was Breadon, by a very slight percentage point. The 2019 general election was not polarized: a majority of White, Hispanic, and Asian voters supported Breadon.

The preliminary and general elections in 2017 were not polarized. White, Hispanic and Asian voters supported incumbent Mark Ciommo (White). He won the preliminary election with 58.6% of the vote and the general election with 61.3% of the vote.

2021 Mayoral Election: Eight candidates competed in the 2021 preliminary election for mayor, although only five candidates received more than 5% of the vote. The candidate of choice of a plurality of White, Hispanic, and Asian voters was Michelle Wu (Asian). A majority of Black voters supported Kim Janey (Black). Michelle Wu faced the second choice of White voters, Annissa Essaibi George, in the general election. The general election was not polarized: all four groups of voters supported Wu and she won with 64% of the vote.

2017 Mayoral Election: Four candidates competed in the 2017 mayoral preliminary election, although one of the candidates received less than 1% of the vote, and a second less than 7% of the vote. White voters strongly supported incumbent Martin Walsh (White), as did a majority of Hispanic and Asian voters. Black voters divided their support between Walsh and Tito Jackson (Black), giving Walsh a slight edge. In the general election between Jackson and Walsh, a slight majority of Black voters supported Jackson, while a majority of White, Hispanic, and Asian voters cast their votes for Walsh. Walsh won with 65.4% of the vote.

Overall Summary Many recent city council district elections were uncontested: of the 36 possible general elections (9 districts over 4 election years), incumbents faced challengers in only 20. In other words, 44.4% of all recent district generals were uncontested. Only 14 of the 20 district general elections were preceded by a preliminary election. As a consequence, I analyzed 34 city council district elections. A total of 14 of these contests (41.2%) were polarized, but the percentage of polarized contests varied substantially across the districts. Table 2 provides a summary of the

results, indicating for each district and each election cycle whether there was a contested election, and if there was a contested election, whether it was racially polarized.

Table 2: Summary of Racial Bloc Voting Results

District	2021		2019		2017		2015		percent (number) polarized
	primary	general	primary	general	primary	general	primary	general	
1	no contest	no contest	no contest	no contest	<i>polarized</i>	<i>polarized</i>	no contest	no contest	100% (2)
2	no contest	no contest	no contest	no contest	<i>polarized</i>	<i>not polarized</i>	no contest	no contest	50% (2)
3	no contest	<i>polarized</i>	no contest	no contest	no contest	no contest	no contest	<i>not polarized</i>	50% (2)
4	<i>polarized</i>	<i>not polarized</i>	no contest	<i>not polarized</i>	no contest	no contest	<i>not polarized</i>	<i>not polarized</i>	20% (5)
5	no contest	<i>not polarized</i>	<i>polarized</i>	<i>not polarized</i>	no contest	no contest	no contest	<i>polarized</i>	50% (4)
6	<i>polarized</i>	<i>polarized</i>	no contest	no contest	no contest	no contest	no contest	no contest	100% (2)
7	<i>polarized</i>	<i>not polarized</i>	<i>not polarized</i>	<i>not polarized</i>	<i>not polarized</i>	<i>polarized</i>	<i>not polarized</i>	<i>polarized</i>	37.5% (8)
8	no contest	no contest	<i>polarized</i>	<i>not polarized</i>	no contest	<i>not polarized</i>	no contest	no contest	33.3% (3)
9	<i>not polarized</i>	<i>not polarized</i>	<i>polarized</i>	<i>not polarized</i>	<i>not polarized</i>	<i>not polarized</i>	no contest	no contest	16.7% (6)
mayor	<i>polarized</i>	<i>not polarized</i>	no contest	no contest	<i>not polarized</i>	<i>polarized</i>	no contest	no contest	50% (4)

There were six general elections that were racially polarized. In four of these six contests, the candidate preferred by Black or Hispanic voters lost. Of course, there were 14 general elections that were not polarized and the minority-preferred candidates – who were also the candidate of choice of White voters – won these contests.

In the two citywide mayoral contests that were polarized, it was Black and White voters who supported different candidates – Hispanic and Asian voters supported the same candidates as White voters. In the city council district elections, the number of contests polarized between Black and White voters and between Hispanic and White voters was comparable; there was much less polarization between Asian and White voters in these elections.

Finally, when voting was polarized, Black, Hispanic, and Asian voters were not necessarily cohesive in support of the same candidates. This is especially true in preliminary elections. As a consequence, caution should be exercised when combining Black, Hispanic, and Asian voters to create a “coalition” district.

VII. Minority Opportunity Districts in the Current and Proposed Plans

In order to determine if a district provides minority voters with an opportunity to elect their candidates of choice, a district-specific, functional analysis is necessary. This assessment depends not only upon the demographic composition of the district but the voting patterns in the district and whether the candidates preferred by minority voters actually win in the district – this is what is meant by “functional.” When assessing a plan in which elections have already taken place, the results of previous elections can be examined to ascertain whether the candidates preferred by minority voters usually prevail. When proposed redistricting plans are being considered, and no elections have actually occurred within the boundaries of the proposed districts, an analysis of the likely electoral outcome based on previous elections that included minority-preferred candidates is necessary.

Current Plan Table 3 lists the demographic composition – as expressed as a percentage of the voting age population – of the current city council districts according to the 2020 census. **The White, Black, and Asian percentages are for non-Hispanic Whites, Blacks, and Asians to avoid double counting any segment of the population.**

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Table 3: Demographic Composition of the Current Boston City Council Districts

District	Percent White	Percent Black	Percent Hispanic	Percent Asian
1	57.3	3.7	29.5	6.5
2	69.8	4.8	7.7	15.7
3	41.5	18.2	14.1	16.9
4	10.6	52.6	23.1	5.7
5	26.7	45.6	21.4	2.5
6	62.8	9.9	15.3	9.3
7	27.0	33.7	22.6	10.8

District	Percent White	Percent Black	Percent Hispanic	Percent Asian
8	60.1	6.3	9.3	22.1
9	60.6	5.2	10.1	20.8

As indicated by Table 3, there are five districts that are majority White in voting age population: Districts 1, 2, 6, 8, and 9. District 4 is the only majority Black district, but Districts 5 and 7 have significant Black populations, as well as Hispanic populations greater than 20% in both instances.

As the analysis of particularly the preliminary elections demonstrates, Black, Hispanic, and Asian voters do not consistently agree on who the preferred candidate is in a given election. In the 2021 preliminary election in District 4, it was Black voters' support of Brian Worrell that propelled him into the general election; Hispanic voters supported other candidates. In the 2019 preliminary election in District 5, it was Hispanic support (and to a lesser degree, White support) that boosted Ricardo Arroyo into the general election – the plurality of Black voters supported another candidate.¹³ In District 7, Blacks, Hispanics and Asians have usually supported the same candidates in recent elections, but not always. As discussed below, in the 2021 preliminary election for mayor, a contest in which Black voters supported different candidates than Hispanic and Asian voters, it was the Black-preferred candidate that carried this district.

Recompiling Results in Bellwether Elections One approach to assessing the relative ability of districts to provide minority voters with the opportunity to elect their candidates of choice is to compare the district-level performance of minority-preferred candidates who have run jurisdiction-wide. This entails identifying bellwether elections – that is, elections in which minority voters and White voters support different candidates – and reconfiguring the results from these elections to ascertain how well the minority-preferred candidate did in each district. Reconfiguring bellwether election results in this manner is also a common, court-accepted

¹³ In the general elections, a majority of the White, Black, and Hispanic voters all supported Worrell in 2021 and Arroyo in 2019. There were not a sufficient number of Asian voters in either district to estimate which candidates they supported in these elections.

approach to assessing whether proposed districts are likely to provide minority voters with an opportunity to elect their candidates of choice to office.

Using reconfigured or recompiled election results to assess current and proposed districts entails (1) identifying jurisdiction-wide “bellwether” elections based on an analysis of voting patterns by race, (2) disaggregating the election results for each of the candidates in the bellwether elections down from the level of the precinct to the census blocks within each of the precincts,¹⁴ (3) designating which census blocks are assigned to each of the districts in the proposed plan, and (4) summing the disaggregated election results up to the level of the proposed districts to determine if the minority-preferred candidate would win. If the minority-preferred candidates consistently carry the district, this district provides or, in the case of a proposed district, is very likely to provide, minority voters with an opportunity to elect their candidates of choice.

A good bellwether election for the purposes of identifying districts that provide Black voters with an opportunity to elect their candidates of choice in recent Boston elections is the 2021 preliminary election for mayor. Black voters strongly supported Kim Janey, with Andrea Campbell their second choice. The candidate of choice of Hispanic and Asian voters was Michelle Wu. The first choice of White voters was also Wu, with Annissa Essaibi George the second choice of white voters. Election results for this contest have been disaggregated by Moon Duchin and MCCCCP and recompiled to reflect the current plan in Table 4.

Recompiled Bellwether Election Results for Current Plan As Table 4 indicates, the candidate preferred by Black voters (Janey) easily carries Districts 4 and 7. This provides additional evidence – beyond the results of recent city council district elections – that these two districts provide Black voters with an opportunity to elect their candidates of choice. In District 5, Wu receives slightly more votes than Janey, but Janey comes in a very close second. Moreover, Hispanic voters favored Wu over Janey. If Black and Hispanic voters are cohesive, the candidates supported by these voters will easily carry this district. If they are not, it is harder to predict whose preferred candidate will prevail: Hispanic-preferred candidate Arroyo was successful in the 2019 primary, but he had White as well as Hispanic support.

¹⁴ Although drawing in Boston is done at the precinct level rather than at the census block level as is the case in most jurisdictions, the precinct boundaries have changed since the 2015-2021 elections were conducted so this exercise in disaggregation and re-aggregation is still necessary.

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Table 4: Recompiled Bellwether Election Results for the Current District

Recompiled Election Results 2021 Mayoral Primary: Current Districts									
	Annissa Essabi George	John Barros	Andrea Campbell	Kim Janey	Michelle Wu	Robert Cappucci	Jon Santiago	Richard Spagnuolo	Total Votes Cast in District
D1	3,237 30.24%	246 2.30%	1,657 15.48%	1,143 10.68%	3,969 37.08%	293 2.74%	20 0.19%	139 1.30%	10,704
D2	3,963 32.06%	330 2.67%	2,126 17.20%	1,280 10.35%	4,418 35.74%	191 1.54%	39 0.32%	16 0.13%	12,363
D3	4,861 39.63%	733 5.98%	2,052 16.73%	1,678 13.68%	2,760 22.50%	109 0.89%	43 0.35%	30 0.24%	12,266
D4	899 8.74%	488 4.74%	3,104 30.17%	3,921 38.10%	1,810 17.59%	25 0.24%	31 0.30%	12 0.12%	10,290
D5	2,960 18.58%	271 1.70%	2,930 18.39%	4,767 29.92%	4,834 30.34%	110 0.69%	43 0.27%	18 0.11%	15,933
D6	5,312 25.91%	414 2.02%	4,181 20.40%	2,199 10.73%	8,094 39.49%	221 1.08%	54 0.26%	23 0.11%	20,498
D7	657 6.37%	574 5.56%	2,205 21.36%	4,013 38.88%	2,752 26.66%	31 0.30%	73 0.71%	16 0.16%	10,321
D8	1,081 15.27%	203 2.87%	1,601 22.62%	984 13.90%	3,095 43.73%	58 0.82%	43 0.61%	12 0.17%	7,077
D9	1,266 15.54%	173 2.12%	1,364 16.75%	958 11.76%	4,200 51.57%	144 1.77%	20 0.25%	20 0.25%	8,145

Proposed Plan (Docket 1275 as passed on November 2) There is very little change in the demographic composition of the districts in the Proposed Plan compared to the Current Plan. Table 5 provides the White, Black, Hispanic and Asian VAP percentages for each of the districts in the Current and Proposed Plans and, in the final four columns, indicates the difference between these percentages. Focusing on the districts with significant minority populations, the Black VAP percentage decreases slightly in District 4 from 52.6% to 52.1% and increases slightly in District 7 from 33.7% to 34.3%. In District 5, the Black VAP percentage decreases from 45.6% to 44.6% but the Hispanic VAP percentage increases from 21.4 % to 22.3%. The biggest change in district demographics across all of the districts is the increase in the White VAP in District 4 from 10.6% to 14.5%, and the decrease in Hispanic and Asian VAPs in this district from 23.1% to 21.1% HVAP and 5.7% to 4.3% AVAP. These changes made no difference to the ability of these districts to elect their candidates of choice, as demonstrated by Table 6.

Table 5: Comparison of Demographic Compositions of Districts in the Current and Proposed Plans

District	Current Plan				Proposed Plan (Docket 1275, Nov 2, 2022)				Difference			
	Percent White	Percent Black	Percent Hispanic	Percent Asian	Percent White	Percent Black	Percent Hispanic	Percent Asian	White	Black	Hispanic	Asian
1	57.3	3.7	29.5	6.5	58.1	3.7	28.5	6.7	0.8	0.0	-1.0	0.2
2	69.8	4.8	7.7	15.7	68.5	4.8	7.6	17.2	-1.3	0.0	-0.2	1.5
3	41.5	18.2	14.1	16.9	41.9	17.4	14.4	17.2	0.4	-0.8	0.2	0.3
4	10.6	52.6	23.1	5.7	14.5	52.1	21.2	4.3	3.9	-0.4	-1.9	-1.4
5	26.7	45.6	21.4	2.5	26.8	44.6	22.3	2.7	0.1	-1.0	0.8	0.1
6	62.8	9.9	15.3	9.3	63.1	9.8	15.3	9.2	0.2	-0.1	-0.1	-0.1
7	27.0	33.7	22.6	10.8	26.5	34.3	22.8	10.3	-0.6	0.5	0.2	-0.5
8	60.1	6.3	9.3	22.1	60.5	6.3	9.3	21.6	0.4	0.0	0.0	-0.5
9	60.6	5.2	10.1	20.8	60.6	5.2	10.1	20.8	0.0	0.0	0.0	0.0

Recompiled Bellwether Election Results for Proposed Plan An examination of Table 6 indicates that proposed Districts 4 and 7 will continue to provide Black voters with an opportunity to elect their candidate of choice. The percentage of votes garnered by Janey declines slightly in District 4 and increases more substantially in District 7 compared to the Current Plan, but Janey easily carries both districts. The result for District 5 in the Proposed Plan is comparable to the Current Plan: Wu receives slightly more votes than Janey. Overall, Black voters' candidate of choice, Janey, wins two districts and comes in a very close second place in a third district. This is precisely the same overall electoral outcome as under the Current Plan.

Table 6: Recompiled Bellwether Election Results for the Proposed Districts

Recompiled Election Results 2021 Mayoral Primary: Docket 1275 (Plan as Passed Nov 2, 2022)									
	Annissa Essabi George	John Barros	Andrea Campbell	Kim Janey	Michelle Wu	Robert Cappucci	Jon Santiago	Richard Spagnuolo	Total Votes Cast in District
D1	3,447 29.16%	280 2.37%	1,881 15.92%	1,262 10.68%	4,478 37.89%	301 2.55%	27 0.23%	143 1.21%	11,819
D2	3,860 31.05%	318 2.56%	2,069 16.64%	1,498 12.05%	4,138 33.29%	169 1.36%	56 0.45%	18 0.14%	12,126
D3	3,737 32.47%	821 7.13%	2,172 18.87%	1,794 15.59%	3,097 26.91%	124 1.08%	44 0.38%	25 0.22%	11,814
D4	2,061 17.76%	501 4.32%	3,083 26.56%	4,108 35.39%	1,780 15.34%	33 0.28%	26 0.22%	15 0.13%	11,607
D5	2,931 18.44%	267 1.68%	3,000 18.88%	4,648 29.25%	4,877 30.69%	104 0.65%	47 0.30%	19 0.12%	15,893
D6	5,483 25.33%	433 2.00%	4,475 20.67%	2,320 10.72%	8,630 39.86%	232 1.07%	54 0.25%	23 0.11%	21,650
D7	435 5.42%	445 5.55%	1,668 20.79%	3,513 43.79%	1,875 23.37%	21 0.26%	55 0.69%	11 0.14%	8,023
D8	1,016 15.58%	194 2.98%	1,508 23.13%	842 12.91%	2,857 43.82%	54 0.83%	37 0.57%	12 0.18%	6,520
D9	1,266 15.54%	173 2.12%	1,364 16.75%	958 11.76%	4,200 51.57%	144 1.77%	20 0.25%	20 0.25%	8,145

VIII. Conclusion

Voting is often racially polarized in Boston municipal elections, particularly in the preliminary elections. As a consequence, districts that provide minority voters with an opportunity to elect their candidates of choice should be maintained. However, because Black, Hispanic, and Asian voters do not necessarily support the same candidates, careful consideration should be given to redrawing these opportunity districts. In the current plan, Districts 4 and 7 provide Black voters with an opportunity to elect their preferred candidates. District 5 has been successful in electing a Hispanic-preferred candidate, albeit only because this candidate garnered some support from White voters and, to a lesser degree, Black voters. A district-specific, functional analysis of the Proposed Plan indicates that this plan will provide minority voters with the same opportunity to elect their preferred candidates to City Council as they currently have under the present plan.

EXHIBIT F

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
ROBERT O’SHEA, CHAIRMAN OF THE)	
WARD 6 DEMOCRATIC COMMITTEE, ET)	
AL.,)	
	Plaintiffs,)	
v.)	Civil Action No. 1:22-cv-12048-PBS
)	
BOSTON CITY COUNCIL,)	
)	
	Defendant.)	
_____)	

RULE 16 JOINT STATEMENT

Pursuant to Local Rule 16.1 and Federal Rules of Civil Procedure 16(b) and 26(f), undersigned counsel for Defendant the Boston City Council and Plaintiffs Robert O’Shea, Rita Dixon, Shirley Shillingford, Maureen Feeney, Phyllis Corbitt, the South Boston Citizens Association, Martin F. McDonough American Legion Post, St. Vincent’s Lower End Neighborhood Association, and Old Colony Tenant Association (collectively, the “Parties”), hereby submit this Joint Statement concerning case schedule and discovery. Prior to submitting this Statement, the Parties conducted a Rule 26(f) conference on January 20, 2023. Pursuant to the Court’s January 19, 2023 order, the Parties have agreed on the following proposed case scheduling and discovery plan:

1. **Hearing on Preliminary Injunction.** The parties request a hearing on the Plaintiffs’ Motion for Preliminary Injunction be held as scheduled on March 14, 2023.
2. **Initial Disclosures.** Initial disclosures required by Fed. R. Civ. P. 26(a)(1) must be completed by June 1, 2023.
3. **Discovery Schedule.** The Parties’ proposed schedule is as set forth:

a. **Fact Discovery.** All written discovery must be responded to, and all fact depositions completed by, September 8, 2023.

b. **Expert Discovery.**

i. Plaintiffs' experts must be designated, and the information contemplated by Fed. R. Civ. P. 26(a)(2), must be disclosed by September 22, 2023.

ii. Defendant's experts must be designated, and the information contemplated by Fed. R. Civ. P. 26(a)(2), must be disclosed by October 6, 2023.

iii. Plaintiffs' trial experts must be deposed by October 20, 2023.

iv. Defendant's trial experts must be deposed by November 10, 2023.

4. **Dispositive Motions.**

a. Dispositive motions, such as motions for summary judgment or partial summary judgment, and motions for judgment on the pleadings must be filed by December 8, 2023.

b. Oppositions must be filed by January 5, 2024.

c. Reply briefs shall be permitted and filed by January 19, 2024.

5. **Settlement Conference.** The Parties shall attend a settlement conference on a date set by the Court.

6. **Pretrial Conference.** The Parties shall attend a pretrial conference on a date to be set by the Court.

7. **Other Matters.**

- a. **Certification of Consultation.** The Parties shall individually file the certifications required by Local Rule 16.1(d)(3).
- b. **Alternative Dispute Resolution.** The Parties have considered the options for alternative dispute resolution programs set forth in Local Rule 16.4. Defendant does not have authority for alternative dispute resolution at this time, but will update the Court at the Pre-Trial hearing. The Plaintiffs believe that the alternative dispute resolution of a 30-day referral of the case to mediation to see if the parties could agree to change the Districting Plan to one of the other 6 choices, such as the Flaherty Map, could resolve the challenge to the current Redistricting Plan.

Respectfully submitted,

PLAINTIFFS,

BOSTON CITY COUNCIL

By their attorneys,

By its attorneys,

/s/ Paul Gannon

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January 20, 2023

Certificate of Service

I hereby certify that a true and accurate copy of this document was filed through the Electronic Case Filing system, and will be served upon the attorney of record for each party registered to receive electronic service on this 20th day of January 2023.

/s/ Christina S. Marshall
Christina S. Marshall

EXHIBIT G

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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ROBERT O’SHEA, CHAIRMAN OF THE)	
WARD 6 DEMOCRATIC COMMITTEE, et)	
al.,)	
)	
	Plaintiffs,)	
v.)	Civil Action No. 1:22-cv-12048-PBS
)	
BOSTON CITY COUNCIL,)	Leave to File Granted on
)	February 23, 2023
	Defendants.)	
<hr/>)	

**DEFENDANT BOSTON CITY COUNCIL’S SUR-REPLY IN OPPOSITION TO
PLAINTIFF’S MOTION FOR A PRELIMINARY INJUNCTION**

The Defendant, the Boston City Council (the “Council”) submits this sur-reply in opposition to Plaintiffs’ motion for preliminary injunction. Plaintiffs’ Reply to Defendant’s Opposition to Plaintiffs’ Motion for Preliminary Injunction (Dkt. No. 41) (“Reply”) presents new legal theories, cites new evidence, and requests a new form of relief. Accordingly, this Court should not consider the new arguments presented in the Reply. But even if it does, nothing in Plaintiffs’ Reply establishes any violation of section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301 (“VRA”), the federal Equal Protection Clause, U.S. Const., amend. 14 (“Equal Protection”) or the Massachusetts Open Meeting Law, G.L. c. 30A, §§ 18-25 (“OML”), much less any violations sufficient to overturn the Council’s careful redistricting process culminating in the 2022 Plan.

A. Plaintiffs Acknowledge They Lack Standing and Named the Wrong Defendant.

At the outset of the Reply, Plaintiffs acknowledge that they intend to remedy the standing and jurisdictional defects pointed out by the City Council with an amended pleading to be filed on

or before February 27, 2023.¹ These amendments are not, as Plaintiffs claim, “mere technicalities,” *see* Reply at 2, but in fact materially change the relief requested by the Plaintiffs. Regardless of the merits of Plaintiffs’ anticipated motion to amend their complaint or their allegations as amended a second time, the fact is that Plaintiffs’ pleadings remain substantively and procedurally insufficient at this stage in the case to merit the “extraordinary” relief of a preliminary injunction. *Wash. Tr. Advisors, Inc. v. Arnold*, -- F. Supp. 3d --, 2022 WL 17630520, at *4 (D. Mass. Dec. 13, 2022).

In their Reply, Plaintiffs also seek new and different relief: they now assert that they have always argued that “the November 2022 redistricting ordinance was unlawfully and unconstitutionally put into place by the duly authorized Legislative and Executive Branches of the City of Boston.” Reply at 1.² And building off of this new theory of the case, Plaintiffs seek new relief, asking this Court to enjoin the *implementation*, not just the *enactment*, of the 2022 Plan. *Id.* at 8. Again, having failed to name any defendant other than the Council, Plaintiffs seek relief that cannot be granted. But even if their complaint were amended to name the proper defendant(s), Plaintiffs supply no reasonable alternative to the 2022 Plan. At the parties’ Rule 16 conference, Plaintiffs suggest that the City revert to the districting plan that was in place prior to November 2022. However, Plaintiffs have failed to refute the Council’s argument that the earlier plan was rendered manifestly unconstitutional by the significant change in distribution of Boston’s population as revealed by the 2020 census. *See* Opposition at 3, 25. This alone is reason enough to deny the requested injunction. *See Capability Grp., Inc. v. Am. Exp. Travel Related Servs. Co.*,

¹ The City Council has addressed Plaintiffs’ incorrect belief that they may file this amendment as of right, despite having already amended their complaint once, in a separate filing. Motion for Clarification of Scheduling Order Deadlines (Dkt. No. 44). At the parties’ Rule 16 conference on January 16, 2023, the Court allowed Plaintiffs to file a motion to amend the complaint on February 27, not a second amended complaint.

² “[A] reply brief is not the proper place to raise new arguments” *Shea v. United States*, 976 F.3d 63, 80 n.12 (1st Cir. 2020) (quoting *United States v. Bradstreet*, 207 F.3d 76, 80 n.1 (1st Cir. 2000)).

706 F. Supp. 2d 146, 160 (D. Mass. 2010), *aff'd*, 658 F.3d 75 (1st Cir. 2011) (declining to issue requested preliminary injunction where plaintiff failed to “identify meaningful injunctive relief”).

B. Plaintiffs’ Vote Dilution Claim Under the VRA Remains Hopelessly Flawed.

Despite their efforts to save it, Plaintiffs’ VRA claim concerning alleged vote dilution in District 4 remains hopelessly flawed. In their Reply, they do not attempt to satisfy the requisite *Gingles* factors. Reply at 2-3. Most importantly, they do not attempt to claim that a white majority exists in District 4 and votes as a bloc in a manner that usually defeats a Black minority group’s preferred candidates. *Thornburg v. Gingles*, 478 U.S. 30 (1986). Of course, Plaintiffs cannot make that claim because Black voters continue to significantly outnumber white voters in District 4. See Dr. L. Handley, *An Analysis of Voting Patterns by Race and an Assessment of Minority Voters’ Opportunities to Elect Candidates in Recent Boston Municipal Elections* (Draft 2.0) (“Handley Report”) at 18, Table 5 (attached to the Affidavit of Michelle Goldberg at Exhibit D) (Under the City’s 2022 Plan, Black voters in District 4 make up 52.1% of the population, and white voters make up only 14.5%). Moreover, Black voters absolutely maintain their ability to elect the candidate of their choice under the 2022 Plan. Affidavit of Moon Duchin (“Duchin Aff.”) at ¶¶ 10-11, 15-17 (opining that minority group’s candidate of choice will continue to win “handily” in District 4).

Unable to make the traditional and requisite *Gingles* argument, Plaintiffs baldly state that “any reduction in the black vote in District 4 is catastrophic to the only black majority district in the City.” Reply at 2. But the Supreme Court roundly rejected that kind of argument in *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254 (2015), albeit in the context of a claim under section 5 of the VRA. Nonetheless, the Court was quite clear: the VRA does not require a jurisdiction to “maintain a particular numerical minority percentage.” *Id.* at 275. Rather, it

requires a jurisdiction “to maintain a minority’s ability to elect a preferred candidate of choice.” *Id.* Here, Plaintiffs have not demonstrated—and given the demographics, cannot demonstrate—that the Black voting population in District 4 has experienced any real change in its ability to elect the candidate of its choice. *Id.* at 276 (VRA prohibits only “those diminutions of a minority group’s proportionate strength that strip the group within a district of its existing ability to elect its candidates of choice”). Indeed, the available evidence establishes that Black voters in District 4 have experienced *no* electoral change as a result of the City’s adoption of the 2022 Plan. Duchin Aff. at ¶¶ 10-11, 15-17. Therefore, Plaintiffs’ VRA claim must fail.

Perhaps aware of the weakness of their claim, Plaintiffs offer an additional and novel argument, claiming that an alleged violation of the OML can be transformed into a violation of the VRA because it affects “Section 2 protected language minority groups who are residents and voters in Boston.” Reply at 2. There are multiple problems with this claim. The City will focus on only two. First, Plaintiffs apparently intend—assuming that they are successful in amending their complaint—to assert their section 2 claim on behalf of Black voters in District 4. Reply at 2. But they have not established that Black voters in District 4 are a protected language minority group as defined by the VRA. *See* 28 C.F.R. § 55.1 (defining language minority group as including those of “American Indian, Asian American, Alaskan Natives or of Spanish heritage”). Second, and perhaps more importantly, Plaintiffs have asserted no basis whatsoever to support their novel legal theory that a state OML claim can somehow be converted into a federal voter dilution claim, which has very specific—and here, unmet—evidentiary requirements. Plaintiffs cannot bootstrap one unproven state claim to prop up an unproven federal claim.

C. Plaintiffs’ New Litany of Quotations, Taken out of Context, Do Not Advance Their Equal Protection Claim Where the Challenged Districts Remain Largely Unchanged

At this late stage of the process, Plaintiffs cite a string of Councilor statements they claim demonstrates a discriminatory purpose underlying the 2022 Plan. Reply at 5-6. But these statements, taken out of context and prior to the Council being further educated on the topic of redistricting law, do little to advance plaintiffs’ Equal Protection claim. *See, e.g., Miller v. Johnson*, 515 U.S. 900, 916 (1995) (local legislatures will “almost always be aware of racial demographics” in redistricting); *cf. Brnovich v. Democratic Nat’l Comm.*, -- U.S. --, 141 S. Ct. 221 (2021) (rejecting “cat’s paw” theory of attributing alleged racial animus of one legislator to entire legislative body). The proof, as they say, is in the pudding. Here, the Council ultimately adopted districts that changed just enough to satisfy equal population requirements, swapping only a handful of precincts in Districts 2, 3 and 4 and leaving the borders and demographics of those challenged districts largely unchanged. *See Duchin Aff.* at Figures 1 and 2; *see also Handley Report* at 17, 18, Table 5 (“[t]here is very little difference in the demographic composition of the districts”). Without substantial change in the existing map, it is virtually impossible for plaintiffs to demonstrate that “race was the *predominant factor* motivating the legislature’s decision to place a *significant number of voters* within or without a particular district.”³ *Miller*, 515 U.S. at 916 (emphasis added).

In fact, the existing evidence is directly contrary. The City’s expert—Professor Moon Duchin of the Jonathan M. Tisch College of Civic Life at Tufts University—explains that the 2022 Plan demonstrated a “great degree of consideration” for traditional redistricting principles. Duchin

³ As just one example, plaintiffs cite a comment by Chair Braedon that Districts 3 was an “opportunity district” that should be “strengthened” by pushing the non-white population closer to 65% as a matter of “political aspiration.” Reply at 5. But that did not happen. The white population in District 3 barely budged, actually increasing slightly. It was 41.5% under the prior plan, and 41.9% under the 2022 Plan.

Aff. at ¶ 19. For example, the 2022 Plan reflected compactness (reasonable district shapes) and contiguity (connected district land area). *Id.* at ¶¶ 7, 19. But the overwhelming emphasis in the 2022 Plan was on core retention: that is, voters generally remained in the same districts under the new plan. *Id.* at ¶¶ 7, 19. As Professor Duchin points out, of 675,647 Boston residents, the vast majority—626,100 people—will have the same district assignment under the 2022 Plan. *Id.* at Figure 1. In District 3, for example—where several Plaintiffs reside and which is the focus of Plaintiffs’ claims—85.2% of the voting population will remain in the same district. *Id.* Indeed, Professor Duchin notes that the 2022 Plan reflects “a level of deference to prior district boundaries (i.e., extremely high core retention) that may be the highest I have seen in any redistricting plan in the country.” *Id.* at ¶ 19. Contrary to Plaintiffs’ claims that the 2022 Plan included “aggressive” and “catastrophic” changes that “destroyed” neighborhoods, therefore, the evidence is that the changes were minor and at the margins. That is insufficient to establish that race predominated the Council’s decision-making, particularly in light of “the sensitive nature of redistricting and the presumption of good faith that must be accorded legislative enactments.” *Miller*, 515 U.S. at 916.

Moreover, the Council was *required* under the VRA to consider race in drawing District 4 (as well as the necessary changes to neighboring Districts 3 and 5) because District 4 was already an effective district for Black voters. Thus, race was always going to be part of the Council’s redistricting conversation and the comments Plaintiffs cite simply reflect the Council’s good faith concerns about meeting their VRA obligations. For example, certain Councilors were concerned about improperly “packing” the Black voter population in District 4, in violation of the VRA. *See, e.g.*, Reply at 5 (Councilor Arroyo quoted as stating, “District 4, frankly, I think the Voting Rights Act is clear on this, cannot pack more people of color into it, it has to become a more white district”). Some Councilors also wondered if they could create additional “opportunity” districts,

in which cohesive minority groups could elect the candidates of their choice. *See, e.g.*, Reply at 5 (Chair Braedon quoted as stating, “we’re trying to strengthen the, actually, we’re trying to balance the racial minority, the total minority numbers between District 3 and District 4, to try to get a little more, increase the opportunity in District 3”). Because of VRA mandates, these conversations take place in every redistricting effort. *See, e.g., Abbott*, -- U.S. --, 138 S. Ct. at 2315 (“At the same time that the Equal Protection Clause restricts the consideration of race in the districting process, compliance with the [VRA] pulls in the opposite direction: It often insists that districts be created precisely because of race”). And Councilors must be free to voice their VRA-related concerns with their fellow Councilors, their experts, advocates and the general public. Moreover, as Professor Duchin points out, the comments Plaintiffs cite were made before she and the Council’s other experts had the opportunity to make presentations to the Council, explaining the requirements and limits of the VRA. Duchin Aff. at ¶¶ 21-22. In addition to being free to express their VRA concerns, local legislators must also be granted time and space to educate themselves on what can and cannot be done within the redistricting process.

Ultimately, the 2022 Plan speaks for itself. It made very few changes from the previous map. The district borders largely stayed the same. Duchin Aff. at Figures 1 and 2. The residents within those borders largely stayed the same. *Id.* at Figure 2. And the district demographics largely stayed the same. Handley Report at 18, Table 5. As a result, the electoral outcomes of the 2022 Plan are statistically likely to remain the same. Handley Report at 17, 18 and Tables 4 and 6. With so little change, it is hard to imagine that there would be opportunity for the kind of “aggressive” racial balancing plaintiffs have alleged, no matter what certain Councilors may have said during the districting process.

D. Plaintiffs Still Have Not Established any OML Violation Sufficient to Support the Extraordinary Relief Sought.

Next, Plaintiffs turn to their OML claims, again with two apparently new arguments. First, Plaintiffs pivot to focus on their allegation that the Council did not provide “language services to minority residents,” and thus it “effectively shut minority voters out of the process.” Reply at 3. But Plaintiffs have again failed to provide any authority for the claim that not providing interpretation services at Council meetings is a violation of the OML, even after this legal deficiency was noted in the Council’s Opposition. *See* Opposition at 21 n.10. That is because there is no legal authority for this claim: the OML does not require the provision of language services. *See generally* G.L. c. 30A, §§ 18-25.

Second, Plaintiffs appear to ask this Court to abstain from any determination under the OML, because that “issue . . . is best addressed by the State and local officials.” Reply at 4. Certainly, if the Plaintiffs would like to withdraw their OML claims in this case and proceed only on their VRA and Equal Protection claims, the City Council will not oppose that request. In any case, Plaintiffs have failed to establish any violation of the OML that was not cured, or any violation sufficient to support the extraordinary relief they request here, the nullification of the 2022 Plan. *City of Revere v. Mass. Gaming Comm’n*, No. 14-CV-3253, 2019 WL 4017027, at *2, 5 (Mass. Super. Ct. 2019) (would be an “abuse of discretion” to invalidate agency action on the basis of even a “handful” of potential OML violations).

E. Conclusion

For the reasons set forth above and in the Council's Opposition, the Council respectfully requests that this Court deny Plaintiffs' motion for a preliminary injunction.

By its attorneys,

/s/ Lon F. Povich

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Dated: February 23, 2023

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this document was filed through the Electronic Case Filing system, and will be served upon the attorney of record for each party registered to receive electronic service on this 23rd day of February 2023.

/s/ Christina S. Marshall
Christina S. Marshall

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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ROBERT O'SHEA, CHAIRMAN OF THE)	
WARD 6 DEMOCRATIC COMMITTEE, et))	
al.,)	
	Plaintiffs,)	
v.)	Civil Action No. 1:22-cv-12048-PBS
)	
BOSTON CITY COUNCIL,)	
)	
	Defendants.)	
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AFFIDAVIT OF MOON DUCHIN

I, Moon Duchin, on oath hereby do depose and say as follows:

1. I am a Professor of Mathematics, and a Senior Fellow in the Jonathan M. Tisch College of Civic Life, at Tufts University. At Tisch College, I am the director and principal investigator of an interdisciplinary research group called the MGGG Redistricting Lab. My areas of research and teaching include the structure of census data, computational redistricting, and the mathematical study of elections. In 2019, I was awarded a major grant from the National Science Foundation to study *Network Science of Census Data*.

2. I am compensated at \$400/hour for my work in this case. I have previously written reports and provided testimony by deposition, at hearings, and at trial in redistricting cases in North Carolina, Pennsylvania, Wisconsin, Alabama, South Carolina, Texas, and Georgia.¹ All work in this report was completed by me and by research assistants working under my direct supervision.

¹ *NC League of Conservation Voters, et al. v. Hall, et al.* No. 21-cvs-500085 (Wake Cty. Sup. Ct. 2021); *Carter v. Chapman*, No. 7 MM 2022, 2022 WL 702894 (Pa. Mar. 9, 2022); *Johnson v. Wis. Elections Comm'n*, No. 2021AP1450- OA, 2022 WL 621082 (Wis. Mar. 3, 2022); *Milligan, et al. v. Merrill, et al.*, Case No. 2:21-cv-01530-AMM and *Thomas, et al. v. Merrill, et al.*, Case No. 2:21-cv-01531-AMM (N.D. Ala. 2021); *S.C. NAACP et al. v. Alexander, et al.*, Case No. 3- 21-cv-03302-MBS-TJH-RMG (D.S.C. 2022) (three-judge ct.); *TX NAACP et al. v. Abbott*, Case No. 1:21-CV-00943-RP-JES-JVB.

3. I have been provided by counsel with the following documents and materials.

- **PI Memo** (Plaintiffs' Supplemental Memorandum in Support of Application for Preliminary Injunction), dated November 2, 2022
- **Amended Complaint**, dated November 21, 2022
- **Handley Report** (Lisa Handley Analysis, Exhibit D of City of Boston Goldberg Affidavit), dated January 13, 2023
- **City of Boston Opposition**, dated January 17, 2023
- **Plaintiffs' Reply** (Plaintiffs' Reply to the Defendant's Opposition to Plaintiffs' Motion for Preliminary Injunction), dated January 27, 2023
- Shapefiles showing the legally enacted districts from before and after the 2022 redistricting process (called the **Benchmark Plan** and the **2022 Enacted Plan**, or simply Enacted Plan, respectively)

4. I have also relied upon publicly available data from the U.S. Census Bureau, particularly the PL94-171 release known as the Redistricting Data, and referred to below as 2020 Census data.

Background Facts

5. According to the 2020 Census data, the population of the City of Boston is 675,647. The City Council has 13 members, of whom 9 are elected from geographical districts.

6. In Fall 2022, the Council undertook its decennial redistricting. Besides the usual challenge of balancing population in districts that had grown malapportioned over time, a second challenge faced the Council: the city had just conducted an adjustment of its precincts for the first time in over 100 years. Since the districts are made of whole precincts, this also prevented districts from staying exactly as before.

7. In addition to equalizing population and using whole-precinct building blocks, the Council had to balance a number of other traditional districting principles, or "TDPs," including contiguity (connected land area) and compactness (reasonable shapes). Many consider core retention (preserving the district assignment of most voters) and related incumbency considerations to also merit inclusion among TDPs. Rounding these out are two TDPs that are more complicated to quantify: respect for "communities of interest and the safeguarding of

electoral opportunity for members of minority groups, as articulated in the Voting Rights Act of 1965 and in racial gerrymandering jurisprudence drawn from the 14th Amendment.

8. The complaint in this case claims in part that race predominated over these traditional principles: “This Redistricting Plan was motivated by a desire to achieve ‘racial balancing’ between various Districts in the City of Boston. Primarily, the goal was to make white-majority districts less white, and African-American majority districts less black” (PI Memo, p. 1). The complaint alleges that the pursuit of these priorities led to “aggressive redistricting of boundaries along racial lines” (Amended Complaint, p. 20). In addition to the constitutional claim, Plaintiffs contend for VRA purposes that “any reduction in the black vote in District 4 is catastrophic to the only black-majority district in the City, especially when viewed in historical context” (Plaintiffs’ Reply, p. 2).

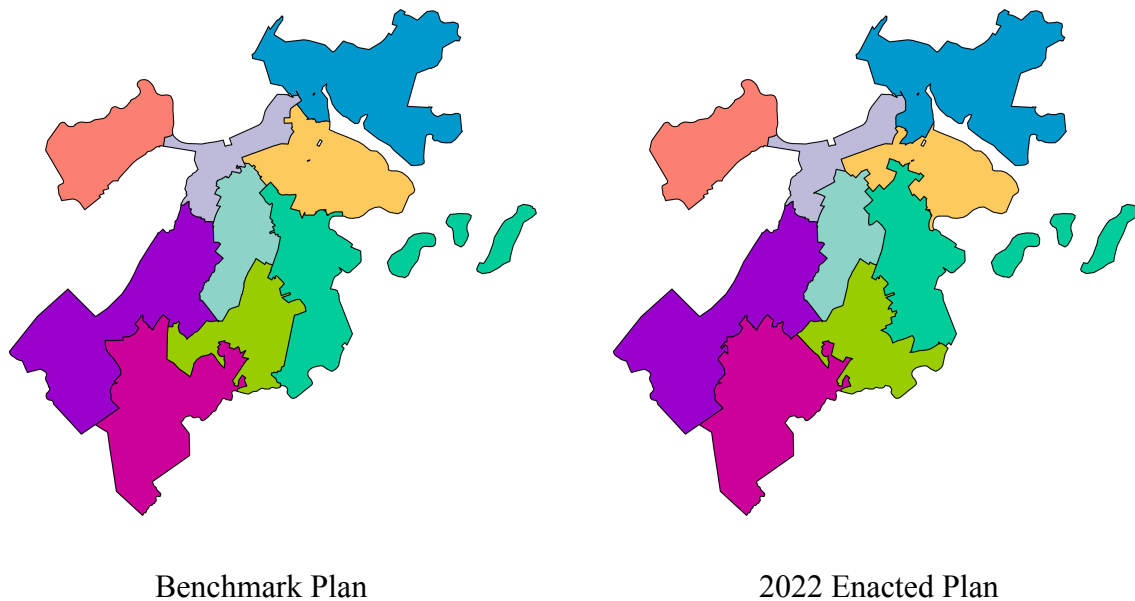


Figure 1: Of 675,647 Boston residents, the vast majority—626,100 people—will have the same geographical district assignment after redistricting that they did before. This is a remarkably high degree of *core retention*. In particular, 85.2% of the Bostonians who were assigned to District 3 before the redistricting are retained in the district.

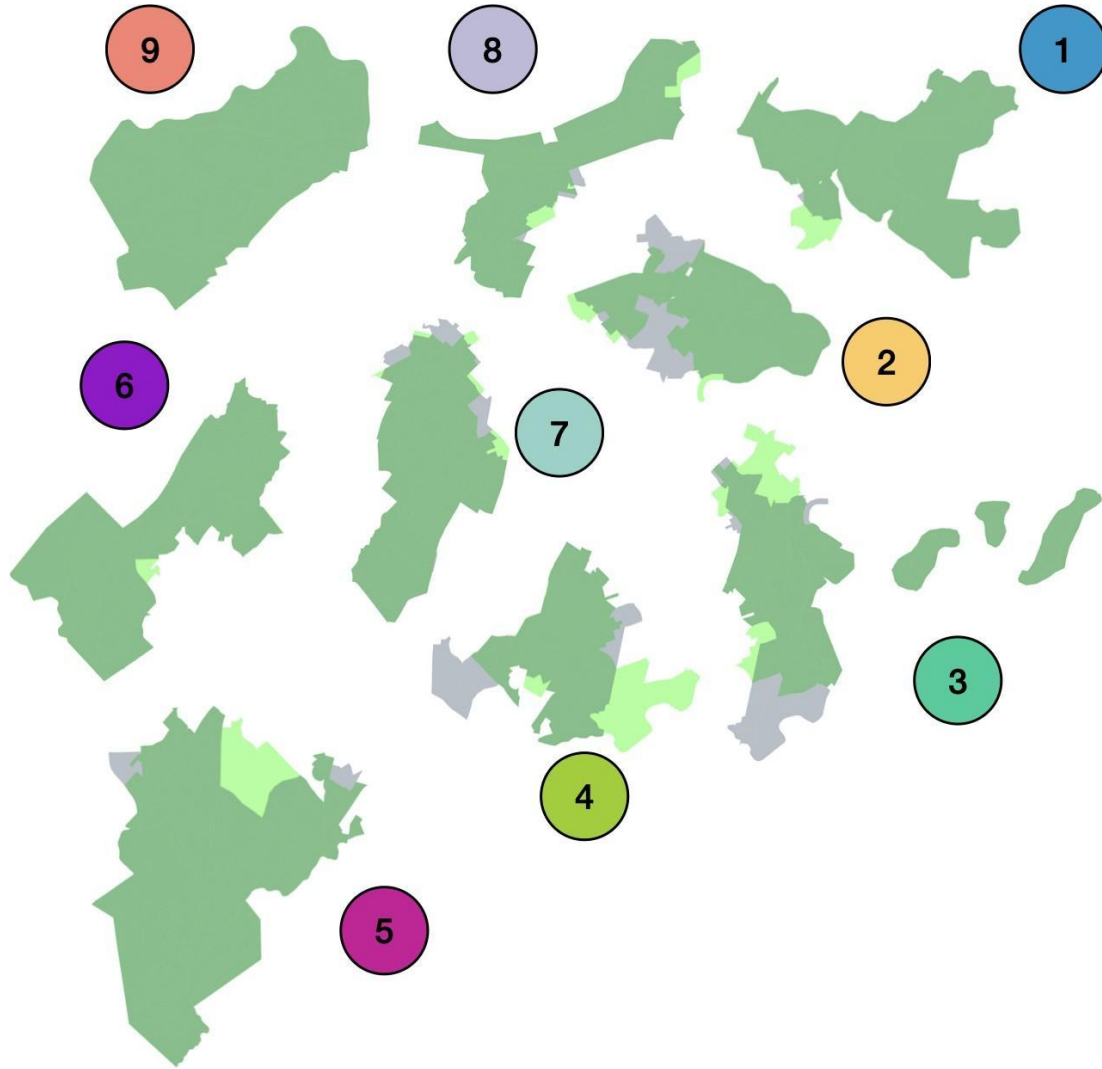


Figure 2: Before-and-after images are shown for each district. Pre-redistricting (“benchmark”) configurations are shown in gray and post-redistricting (“enacted”) configurations are shown in light green, so that the dark green regions represent the overlap. For instance, the figure suggests that District 2 had become overpopulated, and needed to shrink, while District 1 had become slightly underpopulated, and needed to grow. As this figure illustrates, the districts must fit together like a jigsaw puzzle, with changes to one district interacting with changes to neighboring districts.

Voting Rights Act Claim

9. The Voting Rights Act claim is put forward on behalf of Black voters in District 4:

There can be no doubt that District Four contains a minority group (African-Americans) that is sufficiently large and compact to constitute a majority in the District. The Redistricting Plan

approved by the City Council effective splits District Four, transferring African-American votes out of the district and receiving primarily white votes in return. This “cracking” of a historically African-American district will result in the dilution of the African-American vote in that District and critically endanger the opportunity to elect the minority’s preferred representative. (PI Memo, pp. 4-5)

10. The mention of Black population being "sufficiently large and compact" to be a majority is a reference to Gingles 1, the first of the three so-called “Gingles factors” that are preconditions for advancing VRA litigation. The other two required showings, known as Gingles 2 and 3, call for demonstrations of racially polarized voting. The minority group must be shown through statistical inference techniques to have a cohesive preference for particular candidates (Gingles 2), while the majority must be shown to vote as a bloc in a manner that usually defeats these preferred candidates (Gingles 3). But far from establishing these conditions, the Amended Complaint makes it clear that plaintiffs deny that evidence of racially polarized voting exists at all.

There has been no racial polarization regarding voting in the City, as was confirmed by Professor Wice, as can be seen from Councilor Baker’s re-election in his 63% non- white district, in the election of Secretary Galvin in the African-American majority of District 4, and in various other elections throughout the City. (Amended Complaint, ¶ 121)

Under the existing plan before redistricting, District 3 had a long history of electing African–American officials, and District 4 had a long history of electing white officials. There was no racial polarization of voting blocs in either district that would require redistricting based on race. (¶¶ 161-162)

There is no evidence in the record of racial polarization of votes in the City of Boston or in the affected districts. (¶ 173)

The Districts most affected by the redistricting legislation each have long histories of race-neutral elections, with white candidates winning elections in majority minority districts and minority candidates winning in majority white districts and precincts. (¶ 175)

11. Since the 1980s, these Gingles factors have been a fundamental precondition for advancing VRA claims, because they provide an indicator that the challenged configuration of districts creates a harm to minority voters that can be remedied with alternative district lines. Once the preconditions are met, liability is established by conducting a fuller *performance analysis* of districts, considering whether they provide effective opportunity for the minority group to elect candidates of choice.

12. The Council received information relevant to district performance from two different experts: myself and Dr. Lisa Handley. I was brought in to address the City Council Working Session on October 21, 2022 in my capacity as a local professor with domain expertise. Dr. Handley, as a consultant working for the City of Boston, addressed the City Council Working Session on October 25, 2022, and later provided a written report on her findings. Dr. Handley and I each independently concluded that the proposed District 4 map would not undermine the ability of Black voters in District 4 to elect candidates of their choice.

13. We each drew these conclusions from recent elections in which standard inference methods identify clear candidates of choice for Black voters. I offered the examples of Ayanna Pressley in the At-Large City Council elections of 2015 and 2017 as well as Kim Janey and Andrea Campbell in the Mayoral Primary of 2021. Handley also cited Janey and Campbell in the Mayoral Primary of 2021 as candidates of choice and described that election as “a good bellwether” (Handley Report, Goldberg p. 63).

14. Once contests have been identified that are probative of the preferences of the minority group, the test of effective opportunity is to see whether these candidates would have won their contest in the districts under consideration. This is sometimes called a “reconstituted” or “recompiled” election analysis.

15. To study this, I used standard techniques in spatial statistics to transfer election results from 2015-2021 onto the new districts.² I find that the candidate of choice wins handily in all three identified elections, as shown in Table 3.

	At-Large Council 2015	At-Large Council 2017	Mayoral Primary 2021
Benchmark 4	Pressley 5312	Pressley 7072	Janey 4073
	Wu 3272	Wu 4997	Campbell 3212
	Flaherty 3042	Flaherty 4046	Wu 1855
Enacted 4	Pressley 5417	Pressley 7544	Janey 4108
	Flaherty 3452	Wu 5452	Campbell 3083
	Wu 3319	Flaherty 5025	Essaibi George 2061

Table 3: The minor changes to District 4 in the 2022 redistricting process leave the performance analysis substantively unchanged—there are commanding showings by Black voters’ candidates of choice each time.

16. Dr. Handley agrees:

Recompiled Bellwether Election Results for Proposed Plan An examination of [a table of results] indicates that proposed Districts 4 and 7 will continue to provide Black voters with an opportunity to elect their candidate of choice. The percentage of votes garnered by Janey declines slightly in District 4 and increases more substantially in District 7 compared to the Current Plan, but Janey easily carries both districts. The result for District 5 in the Proposed Plan is comparable to the Current Plan: Wu receives slightly more votes than Janey. Overall, Black voters’ candidate of choice, Janey, wins two districts and comes in a very close second place in a third district. This is precisely the same overall electoral outcome as under the Current Plan.

17. In my view, this directly contradicts the plaintiffs’ claim that the new configuration of District 4 will “critically endanger the opportunity to elect the minority’s preferred representative.” (PI Memo, pp. 4-5)

18. In summary, as regards the Voting Rights Act challenge, the precondition showing

² In particular, I used the MAUP package developed in my Lab to disaggregate election results to 2020 census blocks proportional to voting age population in each block. See <http://github.com/mggg/maup>. Prorating from precincts to blocks can produce fractional vote totals, but I have reported the totals rounded to the nearest whole number.

racially polarized voting has not been met by plaintiffs (who in fact deny that polarization exists); and performance analysis independently offered by two experts shows that enacted District 4 is in any case highly effective at providing electoral opportunity for Black voters to elect candidates of choice.

Equal Protection Claim

19. In the PI Memo, plaintiffs cite *Miller v. Johnson* (1995) to explain what must be demonstrated in a racial gerrymandering claim:

To make this showing, a plaintiff must prove that the legislature subordinated traditional race-neutral districting principles, including but not limited to compactness, contiguity, and respect for political subdivisions or communities defined by actual shared interests, to racial considerations. (PI Memo, p. 6)

In this instance, such a demonstration would be extremely difficult given the plan's great degree of consideration for traditional principles: not only respect for compactness and contiguity, but also a level of deference to prior district boundaries (i.e., extremely high core retention) that may be the highest I have seen in any redistricting plan in the country.

20. The plaintiffs write that “the Redistricting Plan **eviscerates** the neighborhoods in Districts 2, 3, and 4” (PI Memo p. 6-7, *emph. added*) and that “There is a **complete disruption** of District 3, by **removing the core** of its district from its historical home” (Amended Complaint ¶110, *emph. added*). These claims are completely inconsistent with the plan's core retention levels of 80.5%, 85.2%, and 88.0% in Districts 2, 3, and 4, respectively. Indeed, the district that lost the highest number of prior residents, District 2, had no choice but to slim down as it had become severely overpopulated due to population shifts since the last Census.

21. Finally, I will briefly address the comments attributed to individual City Councilors in the Plaintiffs' Reply, which are presented as evidence of racial predominance in decision-making. Plaintiffs cite thirteen informal remarks made in Working Sessions dated

September 30 to October 20, 2022.

22. Most of the comments are fairly vague but indicate that the Councilors had the impression that VRA compliance might require tuning of racial demographics. For instance, the most explicitly race-oriented of the comments cited by Plaintiffs is this one:

Councilor Breadon stated: “Both District 5 and District 3 are opportunity districts, and we need to ensure that they continue to be opportunity districts and strengthen them.” Councilor Baker responded: “And so opportunity being 60% of non-white?” Councilor Breadon responded: “60% of non-white or ideally pushing it up higher than that up to 65.” Council Baker queried: “Ideally, as a political aspiration?” Councilor Breadon responded: “Yes.” (at 1:09:07) (October 17, 2022, cited in Plaintiffs’ Reply, p. 5)

That is, at the time of this comment, the speaker appears to have believed that racial demographics are directly germane to an opportunity analysis. However, this comment precedes the presentations to the Council by myself and Dr. Handley, which emphasized that electoral history, not racial percentages, is at the heart of a performance analysis: I made this point myself on October 21; and Dr. Handley made entirely consonant remarks on October 25. Thus, any mistaken impression would have been corrected before final decisions were made. As an indication of that, note that District 3 was enacted with a non-White voting age population share of 58.1%—actually *reduced* from the benchmark level of 58.5%—which makes it clear that a target of 60-65% discussed briefly at the October 17 meeting was not ultimately influential in the choice of district lines.

23. In summary, the changes made from the benchmark to the enacted plan are nearly mathematically minimal, and the plan reflects a strong deference to traditional districting principles. The cited discussion of racial demographics by individual Councilors does not seem to be reflected in the final design of the plan.

Signed under the pains and penalties of perjury this 21st day of February, 2023.

A handwritten signature in black ink, appearing to read "Moon Duchin", written in a cursive style.

Moon Duchin

EXHIBIT H

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
RASHEED WALTERS, et al.,)	
)	
Plaintiffs,)	
v.)	Civil Action No. 1:22-cv-12048-PBS
)	
THE CITY OF BOSTON, et al.,)	
)	
Defendants.)	
_____)	

**CITY DEFENDANTS’ SUPPLEMENTAL OPPOSITION
TO PLAINTIFFS’ MOTION FOR A PRELIMINARY INJUNCTION
FOLLOWING PLAINTIFFS’ SECOND AMENDED COMPLAINT**

As authorized by the Court at the March 8, 2023 status conference, the Defendants (“City”) submit this supplemental opposition to address Plaintiffs’ Second Amended Complaint.

I. Section 203 of the Voting Rights Act

Plaintiffs’ single new legal theory is that the City’s redistricting process violated Section 203 of the Voting Rights Act, 52 U.S.C. § 10503. Second Amended Complaint (“SAC”) ¶¶ 36, 180. However, the Second Amended Complaint contains minimal specific allegations as to how the City allegedly violated Section 203, misconstrues the applicability of Section 203 to non-voting materials, and incorrectly states the languages to which the City is required to translate such voting materials. There is no merit to Plaintiffs’ new allegation and it should be disregarded by the Court.

Section 203 aims to remediate “high illiteracy and low voting participation” among citizens of language minorities. 52 U.S.C. § 10503(a). To achieve this goal, it requires “covered” state and local governments to provide “voting materials” in languages accessible to language minority groups whose “limited-English-proficient” members make up an appreciable portion of the voting-age citizens in those jurisdictions. *Id.* § 10503(b)(3).

Plaintiffs only allege one specific incident constituted a Section 203 violation: an alleged failure to provide Vietnamese translation services at an October 20, 2022 community meeting. SAC ¶ 36. The complaint also alleges that the “Redistricting Committee ignored the requests from community groups to hold additional meetings in Cantonese, Spanish, Vietnamese, and Haitian Creole,” *id.* ¶ 99; *see also id.* ¶¶ 92-93, and that translation was disrupted at other community meetings, *id.* ¶ 43 & ex. I. For the purposes of this memorandum, the City will assume Plaintiffs mean for these allegations also to support their Section 203 claim.

Plaintiffs are not entitled to preliminary injunctive relief under Section 203. First, community meetings concerning redistricting are not “voting materials” subject to Section 203. Second, Boston is “covered” under Section 203 only with respect to Spanish speakers, so allegations about other language minority groups are irrelevant. Third, Plaintiffs’ allegations about Spanish-speaking Bostonians neither state a claim nor warrant the relief sought.

A. Community Meetings Are Not “Voting Materials”

Plaintiffs’ Section 203 claim is based on a misreading of the statute. Section 203 requires covered jurisdictions to offer “voting materials” in multiple languages. 52 U.S.C. § 10503(b)(1). “Voting materials” means “registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots.” *Id.* § 10503(b)(3)(A). It does not extend to community meetings on redistricting.

“Voting materials” must pertain to voter registration or the act of voting. *See Delgado v. Smith*, 861 F.2d 1489, 1493 (11th Cir. 1988); *Montero v. Mayer*, 861 F.2d 603, 609 (10th Cir. 1988) (quoting Implementation of the Provisions of the Voting Rights Act Regarding Language Minority Groups, 40 Fed. Reg. 46,080, 46080 (Oct. 1, 1975)) (noting Section 203 is designed “to make the total registration and voting process in the language of the applicable language minority group comparable to the registration and voting process in English”); 28 C.F.R. § 55.15.

Information on redistricting pertains to neither. The City has not been able to identify a case where a plaintiff argued otherwise, let alone a case in which districts were invalidated on the basis of a Section 203 violation. Even the Department of Justice's exhortation that Section 203's requirements "should be *broadly construed* to apply to *all stages* of the electoral process" refers only to "voter registration, the time, places and subject matters of elections, and the absentee voting process." 28 C.F.R. § 55.15 (emphasis added).

Section 203's protections simply do not extend to these community meetings; a conclusion which is fully consistent with Section 203's stated purpose of addressing "low voter participation" in language minority groups. 52 U.S.C. § 10503(a)(1); *see also Montero*, 861 F.2d at 609 (quoting 40 Fed. Reg. 46,080) (Section 203 designed to improve "registration and voting process in the [minority] language"). The Second Amended Complaint does not suggest, or even hint, that the alleged failures to provide additional meetings in four languages will depress voter turnout among minority language groups.

B. Section 203 Does Not Require Boston to Provide Voting Materials in Vietnamese, Cantonese, or Haitian Creole

Even assuming Section 203 applies to pre-redistricting meetings of the City Council, Plaintiffs have not alleged any actionable failure by the City to provide language translation services. Before Section 203 will require a given local government to provide voting materials in a given minority language, the language minority group must meet certain population thresholds within the jurisdiction. *Id.* § 10503(b), (c). The Census Bureau, exclusively, determines which language minority groups meet those thresholds in any particular jurisdiction. *Id.* § 10503(b)(4). Those determinations are "effective upon publication in the Federal Register and shall not be subject to review in any court." *Id.*

The Census Bureau published its latest determinations on December 8, 2021. Determinations Under Section 203, 60 Fed. Reg. 69,611, 69,611 (Dec. 8, 2021). Per those determinations, Boston is a covered political subdivision with respect to the Hispanic language minority group, and no others. *Id.* at 69,614. Thus, any allegations that the City violated Section 203 by failing to provide language access to other language minority groups—including speakers of Vietnamese, Cantonese, or Haitian Creole—fail as a matter of law.

C. Plaintiffs’ Spanish-Language Access Allegations Do Not Merit the Relief Sought

The City is obligated under Section 203 to provide voting materials in Spanish. Plaintiffs’ only allegations relating to Spanish language access do not allege the City failed to do so. They allege only that an organization named South Boston En Accion (“SBEA”) wrote to Councilor Breadon to express that “language access has not been a priority” at public meetings and that “[w]hen attempts were made to translate for residents, the interpretations were disrupted.” SAC ¶¶ 42-43 & Ex. I. As established above, public meetings about redistricting are not “voting materials.” Moreover, the letter does not complain that Spanish-speaking residents were deprived of an opportunity to weigh in on the redistricting process, let alone the opportunity to register or vote. *Id.* Ex. I. It only asks the City to ensure those residents have “the opportunity to learn about the impacts of redistricting.” *Id.* These allegations neither suggest any “denial of the right to vote” on the basis of membership in a minority language group, 52 U.S.C. § 10503(b), nor justify an injunction reinstating an indefensibly malapportioned map, *see* Opposition at 25.

II. Additional Materials

Defendants take this opportunity to submit four additional pieces of information to assist the Court in its consideration of Plaintiffs’ preliminary injunction motion in advance of the evidentiary hearing on this matter.

First, attached as Exhibit A to the Second Affidavit of Sabino Piemonte (“Second Piemonte Affidavit”) is the City’s 2023 Municipal Election Calendar. As shown on the calendar, the last hour and day for making application and distribution of nomination papers for the November 7, 2023 municipal election is 5:00 p.m. on May 16, 2023. To the extent that the Court orders any injunctive relief, the Defendants respectfully request that any such order provide them with time to create new voting districts sufficiently in advance of this deadline such that there is an opportunity for any interested party to file their application before this deadline.

Second, Paragraph 4 of the Second Piemonte Affidavit provides the address and voting district(s) for each new individual plaintiff named in the Second Amended Complaint, both before and after the 2022 redistricting process. The Second Amended Complaint adds a voter who resides in District 4, Rasheed Walters.¹ Mr. Walters alleges “that the redistricting map violates his voting rights and the City Charter by gerrymandering District 4 so it is no longer a majority black seat,” and “that this forced gentrification of District 4 may result in the black voters of District 4 never being represented by an African American again.” Second Amended Complaint, ¶¶ 132-133. These allegations appear to be based, as with Plaintiffs’ earlier allegations, on the slight dip in Black voter population in District 4. But the allegations are directly contrary to the evidence: as already established, under the 2022 Plan, Black voters will continue to vastly outnumber white voters in District 4, making up 52.1% of the voting population (slightly down from 52.6% under the preceding plan), compared to white voters at 14.5%. And Black voters maintain the ability to “handily” elect the candidate of their choice under the 2022 Plan.

¹ It also removes the Chairman of the Boston Ward 6 Democratic Committee in South Boston, Robert O’Shea, who resided in District 2 prior to the redistricting and in District 3 after the redistricting. Mr. O’Shea’s affidavit, on which the Plaintiffs’ Open Meeting Law claim is primarily based, remains as Exhibit J.

Third, attached as Exhibit A of the Second Affidavit of Michelle Laibson Goldberg (“Second Goldberg Affidavit”) is a chart of each of the City Council’s meetings on redistricting in 2021 and 2022, including the date of the meeting, the type of meeting, its subject, its location, and links to the public notice, minutes, video and transcripts, where available. This chart is intended to assist the Court in its review of Plaintiffs’ Open Meeting Law and Equal Protection claims. To the extent that the City relies on information contained within any individual link in its arguments to the Court or any additional briefing, it will submit full copies of such documents to the Court.

Fourth, attached as Exhibit B of the Second Goldberg Affidavit are the minutes of the meeting that occurred at the Condon School in South Boston on October 19, 2022. Plaintiffs’ Open Meeting Law claim is partially based on this meeting.

III. Conclusion

For the reasons set forth above and in the City’s Opposition and Sur-Reply, the City respectfully requests that this Court deny Plaintiffs’ motion for a preliminary injunction.

THE CITY OF BOSTON, et al.,
By their attorneys,

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Dated: March 27, 2023

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of this document was filed through the Electronic Case Filing system, and will be served upon the attorney of record for each party registered to receive electronic service on this 27th day of March 2023.

/s/ Christina S. Marshall
Christina S. Marshall

EXHIBIT I

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RASHEED WALTERS, et al.,)	
)	
Plaintiffs,)	
v.)	Civil Action No. 1:22-cv-12048-PBS
)	
THE CITY OF BOSTON, et al.,)	
)	
Defendants.)	
)	

AMENDED JOINT EXHIBIT LIST

	NAME	DATE ADMITTED
1	Second Amended Complaint, Tabs A-S	March 28, 2023
2	City Council Minutes on Redistricting from 9/28/2021 – 11/02/2022	March 28, 2023
3	City Council Order for the Adoption of City Council Redistricting Principles, September 28, 2022	March 28, 2023
4	October 19, 2022 Letter from City of Boston Law Department to the Committee on Redistricting	March 28, 2023
5	Boston City Council Districts Maps <ul style="list-style-type: none"> a. Boston City Council Districts Baseline with updated Precincts 2022, Docket #1089, September 20, 2022 and All Districts Summary Report b. City Council Redistricting – Docket #1275 Committee Report, November 2, 2022, and All Districts Summary Report c. City Council Redistricting – Docket #1351 Councilor Flaherty, November 2, 2022 d. Boston City Council Districts, 2016 Revised Plan 	March 28, 2023
6	City Council Committee on Redistricting, Report of Committee Chair, November 2, 2022	March 28, 2023

7	Quotes from Boston City Council Working Sessions on September 30 and October 7, 17, and 20, 2022 a. Video snippets of quotes, Tabs 1A-4B (contained in Flash drive in Exhibit 16)	March 28, 2023
8	Curriculum Vitae of Dr. Moon Duchin	March 28, 2023
9	Affidavit of Moon Duchin, February 21, 2023	March 28, 2023
10	An Analysis of Voting Patterns by Race and an Assessment of Minority Voters' Opportunities to Elect Candidates in Recent Boston Municipal Elections, by Dr. Lisa Handley	March 28, 2023
11	Affidavit of Sabino Piemonte (January 13, 2023)	March 28, 2023
12	Affidavit of Michelle Goldberg (January 13, 2023), Tabs A-L	March 28, 2023
13	Second Affidavit of Sabino Piemonte (March 27, 2023)	March 28, 2023
14	Second Affidavit of Michelle Goldberg (March 27, 2023)	March 28, 2023
15	Quotes from Boston City Council Working Session on October 25, 2022, Tabs A-G a. Video snippets of quotes (contained in Flash drive in Exhibit 16)	March 28, 2023
16	Flash drive: Videos of Boston City Council and Redistricting Committee Meetings on September 30 and October 7, 17, 20, 21, and 25, 2022, Tabs 1-7	March 28, 2023
17	Voter Turnout Percentage Chart	March 28, 2023
18	City Council Committee on Redistricting proposed plan submitted by Chair Councilor Breadon and Vice Chair Councilor Worrell (Docket #1216)	March 28, 2023
19	Ed Flynn Facebook Posts	March 28, 2023
20	Table: Population reassignment across districts (Dr. Moon Duchin)	March 28, 2023
21	Tables of City Councilors and Redistricting Committee	March 28, 2023
22	Dr. Moon Duchin submissions to Boston City Council	March 28, 2023

	<ul style="list-style-type: none"> a. Best Practices for Local Redistricting, Moon Duchin, Tufts University, October 20, 2022 b. Increasing electoral opportunity in Boston City Council, Moon Duchin and Chanel Richardson, MGGG Redistricting Lab, October 25, 2022 	
23	<p>Quotes from Boston City Council Working Session on October 21, 2022, Tabs A-H</p> <ul style="list-style-type: none"> a. Video snippets of quotes (contained in Flash drive in Exhibit 16) 	March 28, 2023
24	Email correspondence of Redistricting Committee	March 28, 2023
25	City of Boston Election Department Ward and Precinct Voter Turnout 2019 & 2021	March 28, 2023
26	Flash drive: Screen recording of Dr. Moon Duchin testimony on April 3, 2023	March 28, 2023
27	Flash drive: Video of Boston City Council Meeting on November 2, 2022	March 28, 2023