

**IN THE CHANCERY COURT FOR THE ELEVENTH JUDICIAL DISTRICT
OF TENNESSEE at HAMILTON COUNTY**

CHATTANOOGA PUBLISHING COMPANY)	
)	
Plaintiff,)	NO. 22-0902
)	
v.)	PART 1
)	
CITY OF CHATTANOOGA, CHATTANOOGA)	
CITY COUNCIL,)	
)	
and)	
)	
CHIP HENDERSON, JENNY HILL, KEN SMITH,)	
DARRIN LEDFORD, ISIAH HESTER, CAROL B.)	
BERZ, RAQUETTA DOTLEY, MARVENE NOEL,)	
and DEMETRUS COONROD, IN THEIR OFFICIAL)	
CAPACITY AS MEMBERS OF THE CHATTANOOGA))	
CITY COUNCIL,)	
)	
Defendants.)	

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

This cause came on for hearing on February 12, 2025, upon Plaintiff's Motion for Summary Judgment filed November 6, 2024; Plaintiff's Memorandum of Law in Support of Motion for Summary Judgment; Plaintiff's Statement of Undisputed Material Facts (PSUMF); Defendants' Brief in Opposition to Plaintiff's Motion for Summary Judgment; Defendants' Response to Plaintiff's Statement of Undisputed Material Facts; Stipulation as to Facts on Which Further Proof is Unnecessary; Joint Notice of Filing of Supplement to Exhibit A to Stipulation as to Facts on Which Further Proof is Unnecessary; Defendants' Motion for Summary Judgment filed November 6, 2024; Brief in Support of Defendants' Motion for Summary Judgment; Defendants' Statement of Material Facts Not in Dispute (DSUMF); Supplemental Submission of Evidentiary Materials in Support of

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Defendants' Motion for Summary Judgment; Plaintiff's Response and Opposition to Defendants' Motion for Summary Judgment; Plaintiff's Memorandum of Law in Support of Its Response and Opposition to Defendants' Motion for Summary Judgment; Plaintiff's Response to Defendants' Statement of Material Facts Not in Dispute and Statement of Additional Material Facts (PSAMF); Defendants' Response to Plaintiffs' [sic] Statement of Additional Material Facts; Reply Brief in Support of Defendants' Motion for Summary Judgment; and argument of counsel. On April 17, 2025, at the request of the Court, the Parties filed "Hearing Stipulations," wherein the Parties stipulated to certain exhibits. The Court took the matter under advisement and considered the entire record.

BACKGROUND FACTS NOT IN DISPUTE

Chattanooga Publishing Company, (Plaintiff) filed this action against the City of Chattanooga (City), the Chattanooga City Council (Council) and the individual members of the Council (Councilmembers) to enforce the Tennessee Public Meetings Act T.C.A. 8-44-101 *et. seq.* (PMA). Pursuant to the City Code 8.9, every ten years following publication of the federal census, the Council must reorganize and adjust by ordinance the boundaries of the districts currently established. This process is known as "redistricting."

On September 21, 2021, Council Chair Henderson appointed four Councilmembers, from the Council of nine, to an *ad hoc* committee, the "Redistricting Committee" (or RC). From those four, Henderson tapped Councilmember Berz to chair the RC.

It is undisputed that the Redistricting Committee met three times, on September 30, 2021, on December 9, 2021, and February 15, 2022. No votes were taken at any of these three meetings. The meetings were not noticed nor were minutes taken of any of the three meetings. Members of the City Mayor's administration, including Mr. Anderson and

Mr. Sevigny, (hereinafter “City Staff”), also worked on the project. The Mayor’s Chief of Staff at the time was Joda Thongnopnua. (hereinafter “Chief”). The Council met on March 1, 2022 to discuss redistricting at a noticed public meeting. The new map of the districts was approved at a public meeting on May 3, 2022.

The Parties stipulated as follows:

- (i) On November 17, 2021 City Staff presented the map identified as Exhibit 1 to Committee Chair Berz;
- (ii) On December 9, 2021 the City Staff presented to the RC the map identified as Exhibit 2;
- (iii) On February 15, 2022, City Staff presented to Council the map identified as Exhibit 3;
- (iv) On March 1, 2022 City Staff presented to Council the map identified as Exhibit 4;
- (v) On April 5, 2022 City Staff presented to Council the map identified as Exhibit 5;
- (vi) On April 19, 2022, City Staff presented to Councilmember Noel the map that is identified as Exhibit 6;
- (vii) On April 19, 2022, City Staff presented to Council the map that is identified as Exhibit 7;
- (viii) Exhibit 8 is a map that shows the current new council districts and the old council district prior to the adoption of Ordinance No. 13815.

LEGAL STANDARD FOR ADJUDICATING SUMMARY JUDGMENT

Both Plaintiff and Defendants filed motions for summary judgment. In *CAO Holdings, Inc. v. Trost*, 333 S.W.3d 73, 82 (Tenn. 2010) Justice Koch, in discussing cross motions for summary judgment, opined that just because both sides move for summary judgment, it does not necessarily follow that summary judgment must be granted to one side or the other, even though both sides are arguing that no genuine issues of material fact exist. Rather, with regard to each motion the court must 1) determine whether genuine disputes of material fact with regard to that motion exist and 2) whether the party seeking the summary judgment has satisfied Rule 56's standards for a judgment as a matter of law. Further the court must take care to resolve competing rational inferences in the light most favorable to the party opposing each motion.

As to Count One, for grounds for this motion, Plaintiff asserts that Defendants violated the Public Meetings Act (PMA) by forming a Redistricting Committee of the Council that convened or held informal assemblages in secret to decide and deliberate redistricting issues that are public business. As to Count Two for grounds for its motion for summary judgment, Plaintiff asserts that Defendants circumvented the requirements and spirit of the Public Meetings Act by holding a series of meetings, calls, and emails between individual City Council members and members of City Staff to make decisions to reach a consensus about redistricting.

Plaintiff bears the burden of proof at trial on both of the above grounds. As such *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 888 (Tenn. 2019) sets forth the legal standard for this Court to adjudicate this motion. *TWB Architects* provides that when the moving party bears the burden of proof on the challenged claim at trial, that party must produce at the summary judgement stage, evidence that, if uncontroverted at trial, would

entitle it to a directed verdict. The burden then shifts to the nonmoving party to produce evidence showing that there is a genuine issue of fact for trial. The nonmoving party must demonstrate the existence of facts in the record at the summary judgment stage, which could lead a rational trier of fact to find in favor of the nonmovant. *Rye v. Women's Care Center of Memphis*, 477 S.W.3d 235, 265 (Tenn. 2015).

When ruling on summary judgment motions, courts accept as true the evidence presented by the non-movant, allow all reasonable inferences in favor of the non-movant and resolve any doubts about the existence of a genuine issue of material fact in favor of the non-movant. *TWB Architects*, 578 S.W.3d at 888.

APPLICABLE LAW

T.C.A. 8-44-101(a) provides, "The general assembly hereby declares it to be the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret."

T.C.A. 8-44-102 provides in pertinent part

(a) All meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.

(b)(1) "Governing body" means:

(A) The members of a public body which consists of two (2) or more members, excluding a county mayor in accordance with § 5-6-106(b)(1)(B), with the authority to make decisions for or recommendations to a public body on policy or administration. . . .

...

(2) "Meeting" means the convening of a governing body of a public body to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any on-site inspection of any project or program.

- (c) Nothing in this section shall be construed as to require a chance meeting of two or more members of a public body to be considered a public meeting. No such chance meetings, informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part.

Section 8.2 of the City Code provides

The City shall be divided into nine (9) districts within the geographic boundaries of the city. The city council shall be composed of nine (9) members with each member elected from one of such single districts. The candidate for each council position who receives the majority of his or her district shall be elected. No person shall be elected or appointed as a member of the council who is not at least 21 years of age and who has not been a resident of the district for at least one year preceding his or her election.

Section 8.9 of the City Code provides:

Following publication of each new official decennial federal census, the council shall reorganize and adjust by ordinance the boundaries of the districts currently established. The council's reorganization and adjustment of the district boundaries shall be completed no later than one (1) year prior to the next city election; provided, however, that the council shall have not less than six (6) calendar months within which to reorganize the districts. The adjusted districts shall be as equal in population as practicable. Such reorganization and adjustment of district boundaries shall not affect the qualifications of any council member to fulfill his or her remaining unexpired term.

LEGAL ANALYSIS

I. COUNT ONE

In Count One, Plaintiff alleges that an *ad hoc* committee of the Council, the Redistricting Committee (RC), met and deliberated on redistricting without observing the formalities of the PMA. The Redistricting Committee met three times, on September 30, 2021, on December 9, 2021, and on February 15, 2022 and none of these sessions were open to the public. Plaintiff asserts that these non-public meetings were "convenings" or "informal assemblages" during which the Redistricting Committee deliberated upon public business, *i.e.* redistricting, in circumvention of both the express requirements and the spirit of the PMA.

In support of their motion for summary judgment Plaintiff filed a Statement of Undisputed Material Facts (PSUMF). Plaintiff also submitted various excerpts from depositions of Councilmembers and members of City Staff as well as transcripts from Council meetings.

Initially, while not specifically raised in their opposition brief, in their Answer Defendants assert that the RC is a not “governing body” subject to the PMA. The Court determines it must rule on this as a matter of law.

T.C.A. 8-44-102(b)(1)(A) defines “governing body” as (i) the members of a public body; (ii) which consists of two or more members; and (iii) has the authority to make decisions for or recommendations to a public body on policy or administration.

The Redistricting Committee is comprised of Councilmembers. Councilmembers are members of City Council. City Council is a public body. Thus criteria one for the definition of “governing body” is met. The RC consists of four Councilmembers. Thus the second criteria of two or more members of a public body is also met. The issue then, is whether the RC had the authority to *make decisions for or recommendations to Council* on policy or administration.

The Court notes that the minutes of the September 21, 2021 Council meeting reflect that Council Chair Henderson stated, “I have asked Councilwoman Berz to lead a small ad hoc committee consisting of Vice Chair Smith, Councilwoman Dotley, and Councilman Hester. **And what this ad hoc committee would do is basically kind of do the grunt work for us** to gather some data **and look at some options of what a redistricting map could look like.** And so I’ve **tasked** them with *bringing us something forward for discussion* so that we can begin to start the conversation of redistricting.”

Council Chair tasked the RC to do the grunt work for the Council and to look at options of a redistricting map. By Council Chair tasking the RC to do the grunt work for Council, then the RC was to begin the redistricting process for, or to lay the foundation for, redistricting for the Council. By Council Chair tasking the RC to “look at some options of what a redistricting map could look like”, the Council Chair tasked the RC to select from, or at least narrow down from, various choices of maps. That means the RC was to make some decisions. After the RC completed that task, then the Council Chair tasked the RC to bring something forward to the Council for discussion. Thus Council Chair tasked the RC to bring forward to Council recommendation(s) on a redistricting map(s). This Court determines therefor that the RC had the authority to make decisions for and/or recommendations to Council about redistricting. Thus the third criteria for a “governing body” under T.C.A. 8-44-102(b)(1)(A) is likewise met. See, *Dorrier v. Dark*, 537 S.W.2d 888 at 892 (Tenn. 1976) which provides “that it is clear that for the purpose of this Act, the Legislature intended to include any board, commission, committee, agency, authority or any other body by whatever name, whose origin and authority may be traced to State, City, or County legislative action and whose members have authority to make decisions or recommendations on policy or administration affecting the conduct of the business of the people in the governmental sector.”

The Court thus concludes as a matter of law that the Redistricting Committee is a “governing body” for purposed of the PMA.

SEPTEMBER 30, 2021 MEETING OF THE RC

Defendants admit that it was not customary for Council to have an *ad hoc* committee. Defendants admit that prior to the Council’s redistricting, Hamilton County

had engaged in a chaotic and argumentative redistricting which caused an uproar in the community. PSAMF 129

The first meeting of the *ad hoc* Redistricting Committee occurred on September 30, 2021 at City Hall. At that meeting, RC Chair Berz and RC member Dotley met with City Staff and the City Attorney. City Staff brought to the September 30, 2021, RC meeting (1) the 2011 redistricting process following the prior decennial census, (2) the various legal and practical requirements outlined in the State Comptroller's "A Guide to Local Government Redistricting in Tennessee," (State Guide), and (3) a map of the then-current districts shown with their new 2020 census numbers. (page one of Ex. 9 to the Hearing Stipulations). (The Court will refer to this as Map One). PSUMF 30, 36

At that meeting, City Staff informed Berz and Dotley of the legal and practical requirements that Council was to follow during the redistricting process. PSUMF 37. City Staff held the technological expertise required to work with the computer programs used to plot the new district boundaries. PSUMF 40.

Since the Defendants assert that in the redistricting process they relied in part on "the various legal and practical requirements outlined in the State Guide," this Court likewise reviewed the State Guide, and determined that while it specifically mentions "counties," "the purpose of this guide is to assist local government officials with their redistricting responsibilities," Mr. Sevigny also admitted that the State Guide addresses legal and technical concepts to assist all local government in developing new district plans. PSAMF 127.

The Court notes that the State Guide at Chapter 3, entitled "A Guide to Local Redistricting" provides that Step 1 is "County legislative bodies must decide who will be responsible for drawing the district lines. The whole legislative body itself can work in

this capacity, but it may be more appropriate to select a redistricting committee. There are no specific regulations for the composition of the redistricting committee, and it does not have to be limited to members of the county commission.” Further the Guide states that “one member should serve as chair of the redistricting committee. This person will be the main point of contact and will be responsible for communicating with state officials from the Comptroller’s Office and the County Technical Advisory Service (CTAS).”

This Court notes that Council followed the State Guide as to Step 1, as Council Chair Henderson appointed an *ad hoc* Redistricting Committee on September 21, 2021 consisting of Councilmembers Berz, Smith, Dotley, and Hester. Further the Council followed the State Guide as to the next step as Council Chair appointed Councilmember Berz as chair and the main point of contact for the RC. Councilmember Berz referred to herself as point person.

Following the September meeting of the RC, Chair Berz emailed Councilmembers Smith, Ledford, and Hester on October 4, 2021, and writes that “our Redistricting Committee has met once, has requested data and will be **carefully considering** a variety of models that (1) will interrupt the present model as little as possible; and (2) will legally meet the numbers requirement.”

In *Neese v. Paris Special School District*, 813 SW.2d 432, 435 (Tenn. Ct. App. 1990) the court opined that for purposes of the PMA, “ ‘to deliberate’ is **to examine and consult** in order to form an opinion. . . [T]o weight arguments for and against a proposed course of action.’ ”

Thus, in sum, in September, Council Chair appointed an *ad hoc* committee to do the grunt work for Council regarding redistricting. Following this then, in October, RC Chair Berz reported back to certain Councilmembers in an email that the RC had met as a

committee and had begun the “grunt work” with which they were tasked. Council Chair tasked the RC to gather some data. Berz, in her email, stated the RC had requested data. Council Chair tasked the RC to look at some options of what a redistricting map could look like and then bring something to Council for discussion. RC Chair Berz emailed that the RC was carefully considering a variety of models.

Since, the RC was “carefully considering” a variety of redistricting models, the RC examined and consulted in order to form an opinion, and weighed arguments for and against proposed redistricting maps. Thus under the reasoning of *Neese*, the Redistricting Committee deliberated at the September meeting.

Additionally following the September meeting of the RC, the RC reported back to Council at the November 9, 2021, Council meeting. RC Chair Berz reported, “**We** have started looking at data. I chair the committee for redistricting. And **we --we** have a long way to go . . . But ***our committee*** has started working, and **we** have a ways to go. . . **We** have a ways to go yet. . . So **we’re being very deliberate**. And right now we can tell you that its’ not going to be- **-we’re** not adding any districts. It’s not going to be a panic change. It’ll be a very slight change. We have to do it according to the census. And we’ll be getting those data. We’re still looking at--at how various groups are classified, et cetera. We’re waiting for an Attorney General’s opinion.”

Thus in November, RC Chair Berz advised Council that **our Redistricting Committee** had started working, was being very *deliberate*, had a ways to go, but anticipated that after receipt of certain data as to how groups are classified, there would only be a slight change to the proposed redistricting map. Merriam Webster Dictionary provides that “deliberate” used as an adjective as in the foregoing sentence means, “characterized by or resulting from careful and thorough consideration.”

This Court determines that Plaintiff has demonstrated that the Redistricting Committee deliberated about public business in the nonpublic September meeting.

Plaintiff further argues that the September 30, 2021 meeting of the RC attended by City Staff and RC members Berz and Dotley violated the PMA, because the RC made a decision, i.e., it determined that the new map of the districts should interrupt the present model as little as possible. In support of this Plaintiff submits the transcript from the March 29, 2022, Council Meeting wherein RC Chair Berz stated that “I made the decision that we excuse me, not we. That Council’s districts should be disrupted as little as possible.” “I’d make the comment again today, given all that was happening with the county, make as little disruption as possible.” Further in her depo RC Chair Berz testified that “I, as point person, said, ‘make as little disruption as possible, particularly the neighborhood associations.” Plaintiff also submits an email from the RC Chair to a citizen, dated March 17, 2022, wherein Berz advised that, “I asked that Mr. Anderson . . . get the districts in compliance with the law, with as little disruption as possible of existing boundaries.”

In her depo at page 74 RC Chair Berz testified, “Chris had--held three education sessions, which you have records of which you referred to. **I, as point person**, said, ‘make as little disruption as possible,’ based on what was going on with the County at the time.” RC Chair Berz also testified to the incident stating, “It wasn’t even a discussion. It was Chris presenting the information, as I’ve told you, then presenting the various ways the State looked at information, then presenting the various physical boundaries that Chattanooga has.” And I do remember saying, “Well you know what? Council has to make the final decision, but I think you probably should disrupt things as little as possible, particularly neighborhood associations.” She also stated “***I made the decision that we***

would excuse me, not we. That Council's districts should be disrupted as little as possible."

In further support that Defendants made a decision about redistricting in the nonpublic meeting, Plaintiff submits an email from RC member Dotley in April of 2022 that reads, ". . . the Redistricting Committee asked the mayor's data team to create a proposed map that caused the least amount of disruption, followed the law, and aligned with the census."

The Court determines that Plaintiff has established that at the nonpublic September meeting, the RC made a decision about redistricting, i.e. that the council districts should be disrupted as little as possible.

Plaintiff also argues that the September 21, 2021 RC meeting violated the PMA, because the RC made another decision, i.e., the RC decided to adopt certain guidelines for the redistricting. In support of this, Plaintiff submits the deposition of Mr. Sevigny who testified that City Staff adopted the guidelines that a neighborhood boundary file along with arterial roadways and natural land features should be used as guidelines in redrawing of districts. When asked "how did you determine that those guidelines would be the ones adopted? He answered, "we proposed them to Carol Berz," and "she agreed with it." Moreover, the Mayor's Chief of Staff confirmed this at the March 29, 2022, Council meeting stating "and I do want to be very clear that this administration has no position on the council's redistricting process whatsoever. And we firmly believe that ya'll have the responsibility and purview over the process to choose your maps. And so I just want to underscore that, you know, we were acting on the clear purview and guidance from the redistricting committee."

Step 3 of the State Guide notes that the committee should determine if it wants to adopt guidelines under which the district lines will be drawn. This Court determines that deciding whether to adopt guidelines to construct the map is also a “decision”. And the Plaintiff established that this decision to adopt the above guidelines in the redrawing of districts was made by the RC at the September nonpublic meeting of the RC. See, also, *Souder v. Health Partners, Inc.*, 997 S.W.2d 140, 142 (Tenn. Ct. App. 1998)(Process-level decisions that were not made by vote of the full board was still held to have violated the PMA). Likewise in *State ex rel. Matthews v. Shelby County Bd. of Commissioners*, 1990 WL 29276 *6 (March 21, 1990) the court held that plaintiff stated a claim for violation of the PMA as commissioners had talked about appointees for a vacant position, found none of the candidates to be acceptable, but rather determined a consensus candidate needed to be found. Despite the fact that no vote occurred, the court concluded that the commissioners had deliberated and decided how they were going to fill the vacancy.

Thus the Court determines that if uncontroverted at trial, Plaintiff would be entitled to a directed verdict that the September 21, 2021 RC meeting violated the PMA, because Plaintiff demonstrated that the RC deliberated at the meeting about redistricting; the RC decided that the existing district boundaries should be disrupted as little as possible; the RC decided that neighborhoods should be kept intact and not split across districts; and the RC decided to adopt the recommendations of City Staff to follow arterial roadways and natural land features in the redrawing of districts.

DECEMBER 9, 2021 MEETING OF THE RC

At the December 9, 2021 meeting of the RC, the RC met again with City Staff. Defendants admit that City Staff brought a proposed map, Map 2, to the meeting. PSUMF 51-54.

Plaintiff asserts that the RC made another decision that violated the PMA in this December nonpublic meeting when the RC decided that Councilmembers would meet with City Staff individually regarding the boundaries of their respective districts. In support of this Plaintiff submits the December 9, 2021, email from RC Chair Berz to Council Chair Henderson wherein Berz stated “Redistricting Committee met this morning. **As part of the process** each of our Council members will have an individual session with the data people to be educated about the **latest iteration of the district map.**”

As to the reason why City Staff would meet with Councilmembers individually, RC Chair Berz testified that “I felt like the Council members should have the same information we had. . . I felt it was only correct that each councilperson, before they met with their districts, be advised on whatever information they needed. . . to show courtesy as colleagues, as individual members, **to get them fully up to par.**” So that he/she could speak with their district and make informed decisions. “It seemed proper. As far as I know Chris, *me*, or whoever **met with them and got them up to snuff**, and then it was all brought to a public meeting. They [Council] weren’t having to sit there like deer in the headlights **and being the first to hear about it.**”

This was also noted later at the March 15, 2022 Strategic Planning Committee meeting of Council, wherein RC Chair Berz said, “and as chair I said: We’re not going to have any big discussions now. Take the maps to each of the council members, **get their** input, get their suggestion and **approval** and *then* we’ll bring it forth to the public.

The Council did not discuss whether the December 9, 2021, Proposed Draft (Map Two) should be considered by Council at a noticed public meeting of the Council.

The Court determines that Plaintiff established that at the nonpublic December meeting of the RC, in violation of the PMA, the RC made a decision about redistricting, i.e. to have the individual Councilmembers meet with City Staff about the way their district was drawn.

FEBRUARY 15, 2022 MEETING OF THE RC

On February 15, 2022, City Staff met again with the RC, for the third and last meeting of the Redistricting Committee, wherein City Staff presented a slide presentation entitled, "Redistricting 2/15/22." The February 15, 2022, meeting was attended by Redistricting Committee members Berz, Dotley, Hester, and Smith.

At this meeting City Staff advised the Redistricting Committee that they had created a new map (Map Three) for the Redistricting Committee's consideration. Defendants admit that the RC considered the proposed Map 3 during the February 15, 2022 meeting. PSUMF 90. Defendants even admitted at PSAF 123 that Map 3 was portrayed at the March 1, 2022 Council meeting as the Redistricting Committee's **recommendation**.

Plaintiff submits the depo of Mr. Seigny, who testified that Committee Chair Berz decided at the February 15, 2022, meeting of the Redistricting Committee to place Map Three, on the Council agenda for consideration and deliberation at the March 1, 2022 Strategic Planning meeting.

Thus the Redistricting Committee determined to present Map Three, after the meetings with individual Councilmembers rather than presenting Map Two, or both, to the

City Council. The Court determines this was another decision about redistricting made by the RC that was not made in public in violation of the PMA.

The minutes of the City Council's February 15, 2022 Agenda Session reflect that "Councilmember Berz requested that the **report** from the Redistricting Committee be brought before the Council at the next strategic planning meeting." The transcript from the February 15th agenda session says, "Councilwoman Berz made introductory remarks about **the process** for the ad hoc committee **working** on a redistricting **recommendation.**" At the Council's February 15, 2022, Agenda Session, RC Chair Berz advised the Council that "the **Redistricting Committee has its report ready**, and we would like to present it to council on March 1st. We want to make it clear that none of this has anything to do with the District 8 matters. These districts will stay--all our districts will stay the way they are . . . we followed proper process, and we're ready to bring it forward to Council."

Thus the RC, announced at the Council's agenda session that the Redistricting **Committee** had engaged in a process while working on a **recommendation** regarding redistricting and were ready to present the Committee's report to Council, just as they were tasked to do by Council Chair. T.C.A. 8-44-102 requires this should have been done in a public meeting.

Further the transcript from the Council's Strategic Planning Committee meeting of March 1, 2022, reflects that Council Chair Henderson stated that he was turning the floor over to Councilwoman Berz "*to address the redistricting committee report.*" RC Chair Berz then stated, "Okay. So, the redistricting committee that you appointed has met on a regular basis and we have **our report ready.** . ." Thus both Council Chair and the RC Chair herself stated, on the record, that the **Redistricting Committee** had a report ready.

RC Chair Berz continued, "We met with the folks that had all the demographics for redistricting. We've been through all the rules. At no time did we do any decision-making at all. What we did is that we were educated to the process, to the existing numbers, and then each councilperson met individually with the team as Chris is going to describe with you in just a minute and *now we have the report*. **We think that we have covered everything.** We think that council people are--our council people are satisfied. **And we're required to make a public report, so we're going to do that today.** And then at some point on the agenda this needs to be approved." RC member Dotley stated, "Yes, I just want to say **I enjoyed the process.** I think it is fair, I think it is equitable, and I'm excited to see the report today." Council Chair Henderson asked if there a requirement for any kind of public hearing input session from the public before we vote? RC Chair Berz said, "There is not a requirement for a public hearing."

In his deposition, Council Chair Henderson stated that the report given to Council **was a recommendation from the RC.** Council Chair Henderson also testified that he did not have any information nor was he privy to what went on between the *ad hoc* committee and the administration. Thus since Council Chair deemed that RC's report a recommendation to Council, then the meetings in which the recommendation was formed should have been in public.

The Chief, in his email of March 6, 2022, *which copied the Council* states, "this is a process that is primarily guided and driven by Chattanooga City Council. This year, as in prior administrations, we believe it is appropriate that Chattanooga City Council direct the development and process of determining their new boundaries. The Kelly administration simply helped provide data and render maps **with changes requested by council members** as guided by the process outlined by Chattanooga City Council. **Every**

member of the City Council has been engaged throughout the process.” Thus on March 6, 2022, only five days after the first public meeting on redistricting the Chief addresses a “process” which had transpired regarding redistricting which was not conducted in any public meetings.

In her depo, RC member Dotley testified that the Chief’s email accurately described the Kelly Administration’s involvement in the redistricting process. City Staffer Sevigny, in his depo, testified that this accurately reflected the redistricting process.

The transcript of the Council’s March 1, 2022 Strategic Planning Committee reflects that City Staffer Anderson stated “And I want to stress that **this is the proposal based on your input.**” Later he states, “And, again, this is a presentation from the administration, this is not our dictating to you what it is. You’re free to make these changes. I think I’ve spent a lot of time with each of you, **making changes that you wanted to your districts.** We’re happy to make more if you have them. **But the last word I had from every member of the council is that you were fine with this.**” This again reflects a “decision” made about redistricting prior to the first public meeting.

The first public Council meeting on redistricting was March 1, 2022. Thus before the first public meeting of March 1, 2022, City Staff already had a proposal, Map 3, ready for the meeting. Map 3 was based on changes that each Councilmember wanted in his/her districts as garnered in nonpublic meetings with City Staff.

At the close of the meeting Council Chair Henderson states, “All right. Councilwoman Berz, you did such a fantastic job with that **report**, I’m going to turn the next one over to you as well.”

At the March 8, 2022, Council meeting there was a question about the lack of transparency regarding the redistricting process. RC Chair Berz stated, “So there’s some

miscommunication out there. . . What happened was, there was no secret deliberative meetings. . . What our city did was, our data collection folks came forward with the census and the law and ~~we~~--they massaged some of the district lines to meet the requirements and then presented it to us, along with the law as it stands now. . . So the vote hasn't been taken yet." Berz later added, "I believe the only people that had the right to make a statement *about what the process was* would be the people on the committee. And I---and that is Councilwoman Dotley, Councilman Smith, Councilman Hester, and myself."

Thus the Chair of the Redistricting Committee said the only people who had a right to make a statement about what the redistricting process was, were the members of the Redistricting Committee. And that would mean that the redistricting process was undertaken in nonpublic meetings of the RC.

On April 12, 2022, discussion of redistricting took place at both the Council's agenda and regular Council meetings. Mr. Sevigny advised that changes to Districts 7, 8, and 9 would be necessitated by incorrect data from the State that overrepresented the African-American population in the City thereby resulting in two of the three preferred minority districts losing their predominantly minority status.

When the defect in the data was discovered, City Staff determined there were two options to redraw the area of District 8 to include a greater number of African-Americans in District 8. By this time, Councilmember Noel had been appointed to serve District 8. The choice of the two options was left to Councilmember Noel, because Councilmember Noel had not been involved with the process prior to that point. (The Court notes it is not clear from the record who made this decision on redistricting either.) Councilmember Noel selected Option 2.

Councilmembers Hester, (District 5), and Councilmember Dotley, (District 7), were not consulted relative to the two options. Councilmember Coonrod was informed of Councilmember Noel's choice but was not asked to approve it.

The transcript of the March 15, 2022, Council Strategic Planning Committee reflects that Council Chair Henderson states "the first thing on our agenda this afternoon is redistricting concerns. . . And I'm going to ask Councilwoman Berz who is the chairperson of the redistricting committee, if she would maybe just address these concerns." RC Chair Berz then says, "So, let me say again that there were no secret meetings. There weren't many meetings at all. And what I'm going to do is turn it over to two of my colleagues who were on the committee to make any comments they want about that issue." RC Chair Berz adds **we had--our first meeting was in October to get educated on what the law was and what the numbers show. . . there was no discussion, other than to tell the numbers people to lay out the maps that met the law. And then we met a second time to look at them. Again, we didn't discuss them. This was, gosh, I'm just guessing, in January or February. And as chair I said: We're not going to have any big discussions now. Take the maps to each of the council members, **get their input, get their suggestions and approval and then we'll bring it forth to the public.**"**

Thus even the RC Chair admitted that City Staff obtained the **approval** of Councilmembers regarding a proposed redistricting map prior to the first public meeting of Council on redistricting.

Later in the meeting RC Chair Berz asks the new City Attorney whether any Sunshine regulations have been obviated to which the attorney stated, "Well, I wasn't present in the meetings in that regard."

At the March 29, 2022, Council agenda session, RC Chair Berz says “mayor’s office had nothing to do with any of this. We got the data from the office that crunches the numbers and does the data because they had the program. They gave us the data. Their only instruction was--and it came from me, I take full responsibility, is follow the law.” Council Chair Henderson asks, “So, are there any lingering questions about how the map was put together, how the data was collected?”

At that point Councilmember Coonrod advised that when she asked for information she was told to “go to the committee,” then she adds, “Which the committee was with you three.” Councilmember Coonrod continues to address the RC that “**Before you created this map** based on the numbers that you already had. . .” And she states, “**We just got presented with the information after the fact of whoever drew the map.**” This further demonstrates that Map 3 was created by the RC without the full input of Council, and outside of a public meeting.

RC Chair Berz responds “And where **we drew the lines**, as far as I understand, we were looking at people, not what color they were.” Thus RC Chair Berz stated that the RC drew the lines. This is echoed by RC member Hester who said, “So we’re just trying to be fair and balanced **when we make the decision to stretch our boundaries.**” Thus according to RC member Hester the RC made a “decision” in a nonpublic meeting. He continued, “We were--we wasn’t looking at people--I mean, we wasn’t looking at ethnicity, we’re just looking at numbers of people. It just happened that--when we stretched, doing our boundaries, there was still minorities in those areas. So we were very fair about that.” These comments further reflect that the RC deliberated about redistricting in nonpublic meetings.

RC Chair Berz then stated that “And sometimes when we start politicizing, as we saw our brothers and sisters doing in the county, you can end up having a very difficult situation.” “And so this county has--this committee--**and it’s been a committee of the whole**--there have been no secret meetings of the smaller group--has acted honorably and according to law. If there’s anyone that feels that there have not been sufficient meetings, I have all the copies of the law that people have sent in, tonight and next week will cure that.”

The Council meeting of March 29, 2022, followed the above agenda meeting at which time RC Chair stated, “ I, as chair of the committee, saying follow the law--the instructions were: Follow the law, apply the numbers from the census, which is what the law requires, and make as little disruption to districts as possible.”

At the regular Council meeting held April 26, 2022, RC member Hester stated “there’s a lot of folks out here concerned did we have adequate time, did we investigate this thoroughly.” RC Chair Berz said “you were part of it sir. I guess I could ask you the same thing. But yeah, you were on the original committee.” Councilmember Coonrod stated, “And I would like to have been presented or seen a district--the redistricting map to be inclusive of all the council people and not just, you know, a committee of three.” She added “I would absolutely love for the council to, you know, delay this vote and ***we really think about redoing it as an entire council together.***”

On April 19, 2022, discussion of redistricting took place at the Council’s agenda meeting. The amended map was approved by the Council without dissent at the agenda meeting on April 19, 2022. On April 26, 2022, discussion and public comment on Ordinance 13815 occurred at the regular Council meeting. On May 3, 2022, Ordinance #13185 was approved which established the current and final redistricting map.

Thus the public was never made aware of the discussions that led to the December Map, Map 2, nor to the February Map, Map 3. Nor was the public made aware of why Map 3 was selected over Map 2. In fact, Councilmember Coonrod stated that the Council did not know this either. Instead Council was just presented the map that the RC had recommended without full input of Council.

Additionally returning to the State Guide the Court notes that Step 4 of the State Guide advises,

After receiving maps with population data, and evaluating the existing districts, the actual work will begin. CTAS and the Comptroller's Office can provide counties with technical assistance during this step.

"First: Determine if the committee wants to adopt guidelines under which the district lines will be drawn. The redistricting committee should keep complete records and minutes of meetings and district plans. **Tennessee's Open Meetings Act requires that the committee take and maintain complete minutes and provide adequate public notice of committee meetings.** Guidelines can provide how the committee documents its consideration of traditional districting principles, such as keeping districts compact and contiguous, adhering to the ten-percent standard, and the need to consider majority-minority districts. Documentation is also critical when, on the rare occasion, district plans exceed an overall range of ten percent. Based on disproportionate population distribution between urban and rural area and county physiography problems (e.g. ridge and valley in East Tennessee), it may be difficult to create plans that have an overall range of less than ten percent. **Keeping detailed and accurate records of why and how the committee developed a district plan may prove beneficial if challenged in court. All records, minutes, and district plans are subject to the Tennessee Public Records Act.**" (emphasis added)

The State Guide continues on page 7, "It is important to note that county legislative bodies and **redistricting committees should collect and maintain minutes and records for all redistricting meetings. These bodies should give proper public notice every time they meet. All records generated from these meetings are considered public records and should be available for public inspection.**" At page 26 the State Guide poses the question: "Are local redistricting meetings subject to the open meetings/public records acts?" The Guide then provides the answer, "**Yes, Meeting minutes and records should be collected and maintained for all redistricting meetings. Adequate public notice should be given every time the redistricting committee meets. All records generated from these meetings are public records.**" (emphasis added)

Thus the State Guide advises redistricting committee that their meetings are subject to the Public Meetings Act. Defendants admit they used the State Guide as a reference in the redistricting process.

From all of the above, this Court rules as a matter of law that Plaintiff established that the Redistricting Committee, in each of its three meeting, violated the PMA by deliberating and making decisions about public business in a nonpublic meeting.

This Court, in the interest of judicial economy and efficiency, ruling in the alternative, also determines based, on the same above reasoning, incorporated herein by reference, that the three Redistricting Committee meetings violated the spirit of the PMA.

Thus Plaintiff has shifted the burden of production to Defendants to demonstrate a genuine issue of fact for trial that the redistricting committee meetings did not violate the requirements or the spirit of the PMA.

DEFENDANTS OPPOSITION as to PLAINTIFF'S MOTION ON COUNT ONE

In Defendants' brief in opposition to Plaintiff's motion for summary judgment on Count One, Defendants argue that the three RC meetings between the RC and the City Staff did not violate the PMA, because no deliberations or decision making occurred at the meetings.

Defendants first argue that there is no affirmative evidence that the RC deliberated at any of the RC meetings. The Court determines this is a mere conclusory statement that does not put facts in dispute.

Defendants then assert that there is a specific denial regarding deliberations at DSUMF #14. However, all DSUMF 14 states is that in accordance with the City Attorney's instructions, no deliberations were made by the RC. Defendants claim that this

“fact” is supported in the record in the City Attorney’s affidavit. However the City Attorney merely testified that she did not observe any deliberations at the RC meetings. Importantly, whether “deliberations,” per the PMA occurred, is a question of law for the Court to determine based on the proof. This Court determined above that Plaintiff submitted proof that substantiates evidence of deliberations at the RC meetings. Thus the City Attorney’s affidavit fails to demonstrate a genuine issue of fact for trial regarding whether deliberations occurred at the meeting.

The only thing that Plaintiff admitted at DSMF 14, was that the RC did not decide whether to add new districts. However, the grounds for Plaintiff’s motion for summary judgment on Count One are not premised on whether Defendants decided to add districts at nonpublic meetings. In other words Defendants are arguing against something that was not raised. Thus this does not defeat Plaintiff’s motion.

Defendants also contend that the September meeting of the RC, as well as the other two meetings, did not violate the PMA because they were merely informational meetings in which City Staff educated the RC on redistricting. Defendants rely on *Flat Iron Partners, LP v. City of Covington*, W2013-02235-COA-R3-CV, 2015 WL 1952290 (April 30, 2015) and *Johnston v. Metro Gov’t of Nashville and Davidson County*, 320 S.W.3d 299, 312 (Tenn. Ct. App. 2009) for the proposition that unless the activities in the back conference room went beyond the provision of information and extended to substantive discussions of positions and attempts to develop a consensus, then this gathering did not constitute a ‘meeting,’ did not involve ‘deliberation,’ and did not violate the Open Meetings Act.” The Court agrees that this is Tennessee law.

In support for this contention Defendants’ likewise submit the affidavit of the City Attorney who testified that it was her *understanding* that the purpose of the RC was to

educate the committee on the legal and practical steps required to comply with the law in the redistricting process and were merely informational meetings. This Court determines that the City Attorney's understanding of what was to transpire at the RC meetings is very different from the facts of what did actually transpire at the meetings. Rather, the Court determined, *supra*, that Plaintiff established that activities did occur in the September meeting that went beyond the provision of information and extended to substantive discussion of redistricting positions. Defendants' reliance on the City Attorney's affidavit fails to demonstrate genuine issues of fact in opposition to Plaintiff's proof above.

In further support of the position that the RC meetings were merely informational, Defendants also submit the depo of RC Chair Berz who testified that Council acts as a whole, and that the redistricting process never kicked in until it came to the public meeting and then the vote. At first blush this appears to be contrary to her statement at the November 9, 2021, Council meeting, wherein RC Chair Berz said, "**We** have started looking at data. I chair the committee for redistricting. And **we --we** have a long way to go . . . But **our committee** has started working, and **we** have a ways to go. . . **We** have a ways to go yet. . . So **we're being very deliberate**. And right now we can tell you that its' not going to be- **-we're** not adding any districts. It's not going to be a panic change. It'll be a very slight change. We have to do it according to the census. And we'll be getting those data. We're still looking at--at how various groups are classified, et cetera. We're waiting for an Attorney General's opinion."

Defendants' proffered deposition testimony of Berz is also seemingly at odds with Berz's October 4, 2021 email to certain Councilmembers wherein she wrote that the RC had met once and will be carefully considering a variety of models that will interrupt the present model as little as possible. Additionally in an email to Council Chair, on

December 9, 2021, Berz wrote, “Redistricting Committee met this morning. **As part of the process** each of our Council members will have an individual session with the data people to be educated about the latest *iteration* of the district map.” Further at the March 15, 2022 Council Strategic Planning Committee meeting Berz said, “and as chair I said: We’re not going to have any big discussions now. Take the maps to each of the council members, get their input, get their suggestion and **approval** and then we’ll bring it forth to the public. At the Council’s February 15, 2022, Agenda Session, Berz advised the Council that “the **Redistricting Committee has its report ready . . . we followed proper process**, and we’re ready to bring it forward to Council.”

Tennessee follows the cancellation rule that contradictory statements by the same witness cancel each other out. *Helderman v. Smolin*, 179 S.W.3d 493 (Tenn. 2005). However, in order to be disregarded under the cancellation rule, the allegedly contradictory statement must be unexplained and neither statement can be corroborated by other competent evidence. *Id.* Further, the cancellation rule does not apply in adjudicating motions for summary judgment. *Id.* Rather this Court is to view the evidence in the light most favorable to the nonmovant if the statements are truly contradictory. *Id.*

To begin with, the Court must determine whether the seemingly irreconcilable statements are truly contradictory. Defendants rely upon Berz’s testimony that the redistricting process never kicked in until it came to a public meeting. However, in another part of her depo, Berz testified, “And I do remember saying, “Well you know what? Council has to make the final decision, but I think you probably should disrupt things as little as possible, particularly neighborhood associations.” She also stated “I made the decision that we would excuse me, not we. That Council’s districts should be disrupted as little as possible.”

Thus the Court determines that Berz's depo testimony that the redistricting process never kicked in until it came to a public meeting is actually only a conclusory statement. It may be that in her opinion the redistricting process did not begin until Council voted on the maps. However, that is different from whether "deliberations" about redistricting occurred prior to the first public Council meeting. Berz admitted in her deposition, in emails, and in public statements to Council that the RC had followed proper process, had made decisions, had gotten approval of individual Councilmembers, and had a report ready. The Court determines this constitutes "deliberations" under the PMA.

Further the Court determines that Defendants' position, that the Redistricting Committee's process from September until February was not deliberative but basically was an educational process undertaken by City Staff, is contrary to the requirements of the City Code.

The Court notes that the first public meeting on redistricting was on March 1, 2022. The final map was adopted on May 13, 2022. Thus even, in drawing all reasonable inferences in the light most favorable to the Defendants as nonmovants, for Defendants' position to be accurate, that is (1) that September through February was just educational, and (2) that the process of redistricting did not start until the first public meeting of March 1, 2022, then the redistricting process would have been completed in a total of less than three months. However, City Code 8.9 provides that the council's reorganization and adjustment of the district boundaries . . . shall have **not less** than six (6) calendar months within which to reorganize the districts." Thus the deliberative process would have violated the City Code.

Looking at it from a different perspective, City Code 8.9 states that "following publication of each new decennial federal census the **council** shall reorganize and adjust

by ordinance the boundaries of the district currently established.” Thus, since the Council--not City Staff--is the body responsible for redistricting, then again, if September through February was just an educational process undertaken by City Staff, then Council’s work did not start until March 1, 2022 which would violate the “not less than six (6) calendar months” requirement set forth in City Code 8.9.

Thus this Court determines that Defendants’ argument that the redistricting process did not begin until March 1, 2022 is unfounded.

In a similar vein Defendants asserts that each of the purported “decisions” made by the RC were in essence made by City Staff before the RC ever met and were “baked in” legal and best practices. Defendants first assert at DSUMF 9, 10 that the law requires there to be no more than 10% variation within the districts, the process cannot take less than six months, and that three majority minority districts and one swing district were appropriate. With those parameters established then, the census data was placed into a software program by City Staff that generated a map. The process used by City Staff was to apply existing Council boundaries to the new census data. Districts 5, 8, and 9 needed to increase based on population while Districts 3, 4, and 7 had room to decrease. Defendants assert that these essentially baked in requirements were presented to the RC at the September meeting and no deliberations occurred. And that was the model essentially proposed by City Staff anyway.

Defendants also argue that the decision to follow arterial roadways and natural land features was simply a decision to follow the best practices of the State Guide. At DSUMF 7 Defendants assert that the Redistricting Committee was formed to conform with the State Guide. Defendants then claimed that the State Guide had guidelines such as keeping neighborhoods together by using the neighborhood boundary file as well as

considering arterial roadways and natural features. Defendants then argue that the RC did not make any of the purported decisions Plaintiff alleges, but rather these were in essence “baked in” legal and best practices that were incorporated by City Staff before they met with the RC and simply confirmed by RC Chair Berz. However, Defendants admitted that the State Guide does not mandate that a public body follow arterial roadways and natural land features for redistricting. PSAMF 126. Further, Defendants admitted that the State Guide does not mandate that a public body align district boundaries with neighborhood boundaries. PSUMF 126-128. Thus Defendants have failed to demonstrate a genuine issue of fact for trial that would preclude entry of summary judgment on Plaintiff’s motion with their reliance on the State Guide. And regardless of whether that was the model essentially proposed by City Staff, the issue is whether the RC agreed or disagreed with the model. That would be a decision made by the RC in a nonpublic meeting.

Defendants assert that the next purported offending decision was claimed to have been made at the December 9, 2021, meeting of the RC when it was decided that City Staff would meet with each Councilmember individually. Defendants argue that this decision was made solely by RC Chair Berz. Defendants also state that if a decision was made in the September meeting then it was made solely by RC Chair Berz. Defendants cite in the record to the deposition of Berz who testified, “And I do remember saying, “Well you know what? Council has to make the final decision, but I think you probably should disrupt things as little as possible, particularly neighborhood associations.” “I made the decision that we would excuse me, not we. That Council’s districts should be disrupted as little as possible.”

To begin with Plaintiff, in support of this ground also submitted the email from RC member Dotley email of April 2022, that writes that “the **Redistricting Committee**”

(not just Chair Berz) “asked the mayor’s data team to create a proposed map that caused the least amount of disruption, followed the law and aligned with the census.” RC member Dotley also testified that the Chief of Staff’s email of March 6, 2022 that stated “the Kelly administration simply helped provided data and render maps with changes requested by council members” accurately reflected how the process transpired. Defendants argue that Dotley’s statement is “a statement by an obviously confused Councilperson Dotley that can be construed differently.” However, Defendants submit no countervailing proof to Dotley’s email or her testimony nor to the Chief’s email. Defendants do submit the deposition of RC Chair Berz who testified that the Chief’s email was not correct “because the correct process that happened was exactly as I explained it.”

As Chair Berz had explained it then was,” “I made the decision that we would excuse me, not we. That Council’s districts should be disrupted as little as possible.” At the March 15, 2022 Strategic Planning Committee meeting of Council, RC Chair Berz said, “and as chair I said: We’re not going to have any big discussions now. Take the maps to each of the council members, get their input, get their suggestion and **approval** and then we’ll bring it forth to the public.

However, on December 9, 2021, RC Chair Berz emailed Council Chair Henderson writing “Redistricting Committee met this morning. As part of the process each of our Council members will have an individual session with the data people to be educated about the latest iteration of the district map.”

Defendants argue that since the PMA requires interaction among two or more Councilmembers then the decision made solely by RC Chair Berz is not a violation of the PMA. In support of this argument, Defendants submit the depo of RC Chair Berz wherein she testified, “Chris had--held three education sessions, which you have records of which

you referred to. I, as point person, said, 'make as little disruption as possible,' based on what was going on with the County at the time." She also stated "I made the decision that we would excuse me, not we. That Council's districts should be disrupted as little as possible."

Viewing the evidence in the light most favorable to the nonmovants, then Defendants have demonstrated a genuine issue as to whether only RC Chair Berz made the decision to disrupt the neighborhoods as little as possible and the decision to take the proposed map to individual Councilmembers for their suggestions and approval.

Defendants then argue that a decision by a single Councilmember does not violate the PMA, because T.C.A. 8-44-102(b)(1) requires a convening of two or more members of a governing body. As part and parcel of this argument Defendants assert that the three gatherings of the RC did not violate the PMA, because the Redistricting Committee did not "convene." T.C.A. 8-44-102(b)(2) provides, "Meeting" means the *convening* of a governing body of a public body to make a decision or to deliberate toward a decision on any matter.

Defendants argue that *Fain v. Faculty of Law of University of Tennessee*, 552 S.W.2d 752 (Tenn. Ct. App. 1977) supports their argument.

In *Fain*, law students filed suit against the Dean of the UT College of Law and faculty members seeking an injunction against meetings of faculty and meetings of committees composed of faculty and students being held without notice.

The court in *Fain* stated that the Dean was not a "public body," but rather an administrative officer who reported to the vice-chancellor. The Dean could not formulate policy that governed his college, nor could he make recommendations of policy to the Board of Trustees. As such, any committees created by the Dean, and which derived their

authority from the Dean, did not constitute a meeting of a “governing body” within the provisions of the Public Meetings Act.

Unlike the College of Law Dean in *Fain*, however, in this case Councilmember Berz was part of City Council, which is a public body that does make policy through legislation. In fact, the Redistricting Committee, which Councilmember Berz chaired, was tasked by Council Chair to do the grunt work for Council, to gather data, and look at options for what a redistricting map could look like. And Chair Henderson tasked the RC with bringing something forward to Council for discussion, so that Council could begin to start the conversation of redistricting. City Staffer Sevigny testified that he met with Berz, as chair of the Redistricting Committee, for the very purpose of starting the process of redistricting. Further at the March 29, 2022 Council meeting the Chief of Staff, in discussing the proposed map, stated, “we were acting on the clear purview and guidance from the redistricting committee,” which Councilmember Berz chaired.

Thus *Fain* is distinguished, because here, a member of a public body, Councilmember Berz, was appointed by the chair of that public body, to chair a committee tasked with doing the grunt work for the public body regarding the public policy of redistricting.

Further in *Johnston v. Metro. Gov't of Nashville & Davidson County*, 320 S.W.3d 299, 310 (Tenn. Ct. App. 2009), now Chief Justice Holly Kirby opined that the PMA is remedial in nature and should liberally construed in furtherance of its purpose; that is, it should be interpreted to promote openness and accountability in government.

In construing the statute liberally in furtherance of openness in government, then this Court concludes as a matter of law that under the facts in this case, the RC had the express authority from Council Chair to make decisions about redistricting in meetings

not open to the public. Defendants' argument, that since only one member of the Redistricting Committee (which was the committee tasked with doing the grunt work for Council about redistricting) made the decisions, this cannot violate the PMA, then lacks merit--especially when that one person is the Chair of the Redistricting Committee. That would be a way to evade the application of the PMA. However, the PMA is to be construed so as to frustrate all evasive devices. *State ex rel. Matthews v. Shelby County Board of Commissioners*, 1990 WL 29276 at *5.

This Court concludes as a matter of law that under the facts in this case, even if RC Chair Berz were the only Redistricting Committee member to have made the decisions, then still under the reasoning of *Johnston*, this was a violation of the PMA.

Defendants also argue that Council did not have the power to add districts per the City Charter. Thus Defendants argue that RC Chair Berz's comment at the November Council meeting that, "we're not adding any districts" does not demonstrate a violation of the PMA. However, Plaintiff is not claiming the RC made a decision not to add districts. Berz's comment was that "**We** have started looking at data. I chair the committee for redistricting. And **we** --**we** have a long way to go . . . But *our committee* has started working, and **we** have a ways to go. . . **We** have a ways to go yet. . . So **we're being very deliberate**. And right now we can tell you that its' not going to be- **-we're** not adding any districts. It's not going to be a panic change. It'll be a very slight change. We have to do it according to the census. And we'll be getting those data. We're still looking at--at how various groups are classified, et cetera. We're waiting for an Attorney General's opinion." Plaintiff submits Chair Berz's comments, because she stated publicly that "*our committee* has started working, and **we** have a ways to go" Thus she claimed the whole Redistricting Committee was working. It was not just Chair Berz who was working. Moreover, the

comment indicates that the three meetings were not just receiving information from City Staff. Instead the Redistricting Committee was working and being deliberate.

As to Plaintiff's proof that at their February meeting, the Redistricting Committee decided to place Map 3 on the agenda of the Council's March 1, 2022 Strategic Planning meeting, Defendants even admitted at PSAF 123 that Map 3 was portrayed at the March 1, 2022 Council meeting as the Redistricting Committee's recommendation. Defendants deny, however, that the map was actually the recommendation of the RC. The only support upon which Defendants rely though is that there is no evidence of votes or action taken regarding the map. The Court discerns this is because the Redistricting Committee did not follow the requirements of T.C.A. 8-44-104. Moreover, an actual vote is not required to find a violation of the PMA. Rather merely deliberations will suffice. See, also, *State ex rel. Matthews v. Shelby County Board of Commissioners*. Thus Defendants have failed to demonstrate a genuine issue of fact for trial on this issue.

Defendants also assert that *Baker v. Carr*, 369 U.S. 186 (1962) requires there to be no more than 10% variation among the districts. Thus Defendants argue that there could be no deliberation as to this matter since it is required by law. However, the grounds for Plaintiff's motion for summary judgment as to Count One is not premised on whether the RC deliberating about population variations in districts.

At that point Councilmember Coonrod advised that when she asked for information she was told to "go to the committee," then she adds, "Which the committee was with you three." Later Councilmember Coonrod responds to the RC that "**Before you created this map** based on the numbers that you already had. . ." And she states, "**We just got presented with the information after the fact of whoever drew the map.**" This

further demonstrates that Map 3 was created by the RC without the full input of Council, and outside of a public meeting.

Thus the Court concludes as a matter of law that Plaintiff demonstrated evidence that entitles it to a summary judgment on Count One, because Plaintiff demonstrated that Defendants violated the PMA in the three redistricting committee meetings when they deliberated about the public business of redistricting. Defendants failed to demonstrate genuine issues of material fact in dispute of the evidence proffered by Plaintiff.

In the interests of judicial economy and efficiency, ruling in the alternative based on Plaintiff's proof, *supra*, the Court determines that if the three meetings were not convenings under the PMA, they were informal assemblages used to deliberate public business. Further ruling in the alternative, if the meetings of the RC did not violate the requirements of the PMA, they violated the spirit of the PMA.

II. COUNT TWO

Plaintiff, in Count Two of its Complaint, alleges that at the direction of the Redistricting Committee, Councilmembers individually met with City Staff in nonpublic meetings and made decisions about the redistricting map that circumvented both the express requirements of and the spirit of the PMA in violation of T.C.A. 8-44-102(c).

As grounds for the motion Plaintiff asserts that Defendants held a series of meetings, calls, and emails between City Staff and individual Councilmembers to make decisions to reach a consensus about redistricting.

T.C.A. 8-44-102(c) provides in pertinent part that "No such chance meetings, informal assemblages, or electronic communication shall be used to decide or deliberate public business in circumvention of the spirit or requirements of this part."

The transcript of the March 15, 2022, Strategic Planning Committee meeting reflects that Berz stated, “And as chair I said: We’re not going to have any big discussions now. Take the maps to each of the council members, **get their input, get their suggestions and approval and then we’ll bring it forth to the public.**”

Plaintiff demonstrated that at least by December 9, 2021, there was a new iteration of the map, Map 2. Moreover, following the December meeting of the RC, City Staff met with Councilmembers individually concerning Map Two, the December 9, 2021 Map. This December 9, 2021, Map Two, was not the same map that was finally adopted by the City Council.

Defendants admit that on January 11, 2022 City Staffer Anderson briefed Council Chair Henderson individually on how the proposed map affected Henderson’s district. Defendants admit that in his meeting with City Staff, Council Chair Henderson voiced an objection or concern to the proposed transfer of a northern portion of his District 1 to District 3. Henderson told City Staff that “part of my Hixson district that had . . . just come in to District 1 in 2013 was removed, and I felt like that was sort of battenning around.” He also told City Staff that he “didn’t feel comfortable with the change,” and that he had concerns about that,” and he “couldn’t support the map or at least had objections to the map as it was proposed.” On a later iteration of the Proposed Map, the area Councilmember Henderson objected to losing from his District 1 to District 3, was restored to his District. Following this meeting between Council Chair Henderson and Mr. Anderson, City Staff changed the map to include Hixson in District 1 as shown in the March 1, 2022 map.

Defendants admit that after the December 9, 2021 RC meeting, City Staff briefed Councilmember Smith individually on Map 2 on December 14, 2021.

These two meetings occurred three months before the first public Council meeting regarding redistricting of March 1, 2022. Further, since the redistricting map had changed to a new iteration, then decisions about the map were made in meetings that were not open to the public in violation of the PMA.

On January 11, 2022, City Staffer Anderson briefed Councilmember Ledford individually on how the proposed map affected Mr. Ledford's district.

On January 18, 2022, City Staffer Anderson briefed Councilmember Hill individually on how the proposed map affected Ms. Hill's district.

On February 3, 2022, City Staffer Anderson had a Zoom meeting with Councilmember Coonrod as to how the proposed map affected her district. Councilmember Coonrod requested revisions to the proposed map specifically that moved Mill Town and Highland Park from District 8 to her District 9. Councilmember Coonrod also asked City Staffer Anderson to move the Save a Lot grocery store on Glass Street from District 8 into her District 9. This required a one block change in the district line. PSUMF 80. At a meeting on February 10, 2022, City Staffer Anderson presented a map to Councilmember Coonrod that included Highland Park, Mill Town and the grocery store on Glass Street in her District 9. At that time, the Council seat for District 8 was vacant.

In either January or February of 2022 City Staffer Anderson also had individual telephone calls relative to the proposed map with Councilmembers Dotley, Hester, and Berz, who also happen to be on the Redistricting Committee. There were no changes to the Proposed Map as a result of these calls.

In his depo, Mr. Sevigny testified that City Staff spent an average of maybe an hour or two with each individual Councilmember regarding their respective district.

At the March 1, 2022 Council meeting City Staffer Anderson spoke and said “I really appreciate all of the one-on-one quality time I’ve gotten to spend with all of you at various times *during that process*. I think that what you’re going to see today will offer no surprises. **It will be what I think everyone is expecting.**” RC Chair Berz then stated, ‘One thing that we talked about, that Councilman Hester and Councilwoman Dotley and I talked about at great length. None of this affects the District 8.” Hester, Dotely and Berz make up three of the four members of the RC.

City Staffer Sevigny stated, “We also used the neighborhood boundary file as guidelines. I think we really wanted to stress keeping neighborhoods together. I’ve heard and I’m sure you-all have heard some issues where neighborhoods felt like they were broken up among council districts. So we’re going to keep neighborhoods together. . . **And then we also used, as Chris stated, individual council input.**” On March 1, 2022, City Staffer Anderson told the City Council, “I think I’ve spent a lot of time with each of you **making the changes you wanted to your district.** Thus City Staff revised the proposed maps based on feedback it received during its meetings with individual Councilmembers making the changes that Councilmembers requested. Thus the meetings resulted in direct actions taken about redistricting.

City Staffer Anderson later showed the proposed map and stated,” there are no changes to that map, to anyone’s district, that that person hasn’t seen. There’s probably a few tweaks here and there that **some of you haven’t seen all, but it’s not your districts that have been tweaked if you haven’t seen it.**”

Plaintiff demonstrated then that decisions were made about redistricting and changes were made to the map in the individual meetings that were not public, between a Councilmember and City Staff. Not only that, but the entire Council was not even aware

of what the proposed map would be prior to the first public meeting. Rather each Councilmember only knew how their district appeared.

Thus the Court determines that Plaintiff demonstrated that Defendants circumvented the PMA by holding a series of private discussions between Councilmembers and City Staff wherein deliberations regarding redistricting occurred. Further these individual meetings resulted in map changes. These decisions were made about redistricting in meetings that were not open to the public. And the Chair of the RC instructed the City Staff to go get the individual Councilmembers' **approval**, and **THEN** Council would bring the map forward to the public. Thus Council was attempting to reach a consensus prior to the first public meeting. That is in violation of what the PMA requires.

Further on March 8, 2022, Ms. Noel was appointed to represent District 8. On April 13, 2022 she met with City Staff. On April 14, 2022, City Staff emailed Noel two options for her district. Noel forwarded the email to Councilmember Coonrod. Councilmember Noel chose Option 2. In her deposition Councilmember Noel testified that City Staff, in an email, gave her two options for how her district lines would be drawn. One option would split Alton Park and put the area south of East 38th Street into her district, District 8. The other option would not split Alton Park but would instead split the Glenwood area between Districts 8 and 9. The City noted in the email to her that they could not put the entirety of Glenwood into District 8 without making radical changes to Districts 9 and 5. Councilmember Noel testified that "I chose the option--that would keep me in the Glenwood area."

The decision that Councilmember Noel got “first dibs on” how the lines would be drawn to adjust for the new corrected numbers from the State is likewise a matter that should have been discussed in public.

The Court determines that Plaintiff has produced evidence at this summary judgment stage that if uncontroverted at trial would entitle it to a directed verdict that the serial meetings between City Staff and individual Councilmembers were informal assemblages used to decide public business in circumvention of the PMA. Thus the burden now shifts to Defendant to produce evidence showing there is a genuine issue of fact for trial.

DEFENDANTS’ PROOF IN OPPOSITION

In their brief in opposition to Plaintiff’s motion as to Count Two, Defendants argue that City Staff’s meetings with individual Councilmembers did not violate the PMA, because they did not involve “meetings by proxy using City Staff as intermediaries.” In the alternative Defendants argue that in the event there was a violation of the PMA, subsequent public meetings cured the violation.

Defendants do not dispute that individual Councilmembers met with City Staff about redistricting and the boundaries respective to their districts. Nor do Defendants dispute that changes were made to the proposed map after City Staff met with Councilmembers Henderson, Coonrod and Noel.

So Defendants do not submit proof that demonstrates genuine issues of material fact that would preclude summary judgment on this issue.

Rather Defendants argue that the individual Councilmembers meeting with City Staff to discuss the redistricting map as it pertains to their respective districts is not a violation of the PMA, because was no intent or attempt to circumvent the PMA.

Defendants further argue that each Councilmember only expressed his/her preferences to City Staff without consulting or securing the agreement of another Councilmember. Thus since two or more Councilmembers did not convene then the PMA was not violated.

The Court determines that whether or not two Councilmembers convened, the purpose of the individual Councilmembers meeting with City Staff, was to discuss redistricting. This is public business that should be discussed in a public meeting. (The Court further notes Councilmember Noel forwarded the email containing the two options for her district to Councilmember Coonrod. This is a communication between two Councilmembers.) Further these meetings with individual Councilmembers and City Staff were not chance meetings in the hall. They were planned scheduled meetings with the purpose to discuss redistricting at the direction of the Redistricting Committee. Redistricting is public business. One cannot discuss how one wants the boundaries of his/her district to appear without affecting another council district. And the public had a right to hear the discussion that Council Chair Henderson wanted part of Hixson back in his district and that this change was made. The public had a right to hear that Councilmember Coonrod wanted a grocery store and Mill Town in her district and whether that change was made to the map and why it was or was not made. Likewise the public had a right to know that Councilmember Noel was given options by City Staff, as to how her district could appear and then she chose the option that included the Glenwood area.

This Court notes that the General Assembly intended T.C.A. 8-44-102(c) to be a loophole closer. *State ex rel. Matthews v. Shelby County Bd. Of Commissioners*, 1990 WL 39276 at * 5. (Tenn. Ct. App. March 21, 1990). This provision permits courts to grant relief when the challenged conduct, though violating the purposes of the Act, does

not squarely fall within the literal definitions of the Act. *Id.* “The Act must apply when public officials meet in secret to deliberate and make decisions affecting the public’s business with the intent to hold an open meeting to announce the decision at a later time.” *Id.* RC Chair Berz told City Staff to go get the individual Councilmembers’ **approval** and **then** they would present the map to the public. This violates T.C.A. 8-44-102(c).

The Defendants next argue that neither Mr. Anderson nor Mr. Sevigny acted as a conduit for deliberations among the Councilmembers outside of public meetings and did not strive to achieve a consensus. The Court determines that this is merely a conclusory statement without factual support. Defendants admitted at PSUMF 89 that district lines were adjusted based on City Staff meetings with individual Councilmembers. Further the transcript of the Council’s March 1, 2022 Strategic Planning Committee reflects that City Staffer Anderson stated “And I want to stress that **this is the proposal based on your input. . . But the last word I had from every member of the council is that *you were fine with this.***” Defendants do not dispute that statement. Councilmember Coonrod at the March 29, 2022 Council Agenda Session stated that she was told by City Staff, “you don’t want to be the councilperson that’s not going along with everything.” Defendants do not dispute her statement.

Defendants also argue that they did not intend to violate the PMA nor did they intend to use City Staff as a conduit to obtain a consensus. However, a Court is not required to find an **intent to violate** in order to find a violation of the PMA. Rather a violation of the PMA can occur regardless of whether the parties involved have a nefarious intent to evade the law. Now-Chief Justice Kirby opined in *Johnston v. Metro Gov’t of Nashville*, 320 S.W.3d 299, 311 (Tenn. Ct. App. 2009) that a public body’s motives and intentions are not controlling. *Id.* A violation of the Act can occur

inadvertently if the communication has the effect of circumventing the spirit or requirements of the Act. *Id.* In *Johnston* Chief Justice Kirby noted that some of the email exchanges demonstrated councilmembers were clearly weighing arguments for and against the ordinance. These exchanges mirror the type of debate and reciprocal attempts at persuasion that would be expected to take place at a council meeting, in the presence of the public and the council as a whole. Thus the court held that the emails were communications were used to deliberate public business in circumvention of the spirit or requirements of the PMA.

The Public Meetings Act is remedial in nature and thus should be liberally construed in favor of the public in furtherance of its purpose. *Neese v. Paris Special School District*, 813 S.W.2d 432, 436 (Tenn. Ct. App. 1990). It should be interpreted to promote openness and accountability in government. *Johnston v. Metro Gov't of Nashville*, 320 S.W.3d 299, 310 (Tenn. Ct. App. 2009). The Open Meetings Act is designed to prohibit the evil of closed-door operation of government without permitting public scrutiny and participation. *Dorrier v. Dark*, 537 S.W.2d 888, 895 (Tenn. 1976). Here the Plaintiff established that the public was not allowed to go beyond and behind the decisions reached and be appraised on the pros and cons involved in any of the Councilmembers decisions regarding their districts in their private meetings with City Staff that led to changes in the maps.

Redistricting Committee Chair Berz instructed City Staff to go get the individual Councilmembers' approval. After securing their approval then Council would present the map to the public. The Court concludes as a matter of law Plaintiff has demonstrated that Defendants used informal assemblages to deliberate public business in circumvention of the spirit and requirements of the PMA.

Accordingly, from all of the above, the Plaintiff's motion for summary judgment is GRANTED on both Count One and Count Two of Plaintiff's complaint.

INJUNCTION

For relief, Plaintiff does not seek to have the map voided. Rather Plaintiff seeks injunctive relief.

T.C.A. 8-44-106 provides in pertinent part that

(c)The court **shall** permanently enjoin any person adjudged by it in violation of this part from further violation of this part. Each separate occurrence of such meetings not held in accordance with this part constitutes a separate violation.

(d) The final judgment or decree in each suit shall state that the court retains jurisdiction over the parties and subject matter for a period on one (1) year from date of entry, and the court shall order the defendants to report in writing semiannually to the court of their compliance with this part.

In *Zselvay v. Metropolitan Government of Nashville*, 986 S.W.2d 581, 584 (Tenn. Ct. App. 1998), the court noted that the Public Meetings Act does not make a distinction between technical and substantive violations of its provisions. In *Zselvay*, the Board of Parks and Recreation did debate the issue in public but failed to note that in its minutes. It later performed a valid and necessary remedial action by subsequently amending its minutes to reflect the action taken. The Middle Section directed the trial court to impose the statutory injunction and impose judicial oversight.

The Middle Section determined that "strict compliance with the Act is a necessity if it is to be effective." *Id.*, at 585. The court determined that the injunction of T.C.A. 8-44-106 provided the appropriate remedy to the facts of that case. The court noted that "the Legislature obviously felt that the use of injunction and the application of judicial oversight to the activities of a governmental body in violation of the Act was the best guarantee of subsequent compliance.

The City argues that the redistricting Map is in compliance with *Brown v. Board of Commissioners*, 722 F. Supp. 380 (E.D. Tenn. 1989). However, Plaintiff has not filed a voting rights action challenging the appropriateness of the Map itself. Rather Plaintiff alleges that the Map was produced in violation of the requirements of the Public Meetings Act. Thus Plaintiff challenges the process not the result.

Defendants next argue that even if the Court determines that the Redistricting Committee meetings violated the Public Meetings Act, the violation was “cured” as new and substantial reconsideration regarding the Map occurred subsequently by the entire Council in public meetings. The Parties then argue whether or not a “cure” in fact occurred.

Here Plaintiff challenges the lack of transparency in producing the map. The Court need not consider whether a cure occurred, as the Court agrees with Plaintiff that under *Zselvay* the injunction provides the appropriate remedy for the facts of this case.

Defendants further argue that an injunction would be to no avail as it can only be for year and the next census is not until 2030. The point, however, is not to be open and transparent only about redistricting. The PMA requires transparency in all meetings of any governing body. The statute does state the Court retains jurisdiction over the parties and the “subject matter.” The Court in reviewing *Zselvay* notes that strict compliance with the PMA is a necessity for it to be effective. The Court determines the subject matter is broader than just redistricting then, but rather the subject matter includes all City Council business.

Thus this Court will likewise impose the statutory injunction on City Council as the best guarantee of its subsequent compliance with the PMA.

ATTORNEYS FEES

Plaintiff seeks recovery of its attorneys' fees.

T.C.A. 8-44-106(e) provides, "If a court finds that a governing body knew that a meeting of the body was subject to the requirements of this part and **willfully refused to comply**, the court may, **in its discretion**, assess all or part of the reasonable costs incurred by the petitioners in enforcing the provisions of this part, including reasonable attorneys' fees, against the governing body. . . ."

In this case, the Court did not try the case and nor did the Court make findings of fact. Rather the Court ruled on summary judgment. As such the Court did not weigh the evidence and make a finding that Defendants willfully refused to comply with the PMA. Therefore without a finding of willful refusal to comply with the PMA, the Court in its discretion does not award attorney's fees to Petitioner.

WHEREFORE it is hereby

ORDERED that Plaintiff's Motion for Summary Judgment as to Count One of its Complaint is **GRANTED**, because Plaintiff established that the Redistricting Committee in non-public meetings deliberated and made decisions about public business in violation of both the language and spirit of the Public Meetings Act; It is further

ORDERED that Plaintiff's Motion for Summary Judgment as to Count Two of its Complaint is **GRANTED** as Plaintiff established that non-public meetings of individual Councilmembers with City Staff to discuss redistricting matters were informal assemblages used to deliberate public business in circumvention of both the requirements and the spirit of the Public Meetings Act; It is further

ORDERED that this Court hereby retains jurisdiction over the City Council and the Council's business for a period of one year from date of entry of this judgment; It is further

ORDERED that the Court enjoins City Council from further violation of the Public Meetings Act; It is further

ORDERED that City Council shall report to the Court in writing semiannually regarding its compliance with the PMA; it is further

ORDERED that Plaintiff's request for attorney's fees is DENIED.

Costs taxed to Defendants.

ENTER:

A handwritten signature in cursive script, reading "Pamela A. Fleenor", written over a horizontal line.

PAMELA A. FLEENOR
CHANCELLOR, PART 1

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this Order has been placed in the United States Mail addressed to the following:

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This the 3rd day of July, 2025.

Robin L. Miller, Clerk and Master

By: SWR YN
Deputy Clerk