

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,

/s/ Lon F. Povich
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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

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SECOND AFFIDAVIT OF SABINO PIEMONTE

I, Sabino Piemonte, on oath hereby do depose and say as follows:

1. I am employed by the City of Boston as the Head Assistant Registrar of Voters for the Elections Department. I have personal knowledge of the matters stated in this Affidavit.

2. I submit this Affidavit in support of the City's Supplemental Opposition to Plaintiff's Motion for Preliminary Injunction Following Plaintiffs' Second Amended Complaint.

3. Attached as **Exhibit A** to this Affidavit is a true and accurate copy of the 2023 Municipal Election Calendar.

4. Using records from the City's elections database, I gathered the following information about the current voter registration status of the six new individual plaintiffs in this action:

	Address	District Voter was registered to vote in prior to 2022 Redistricting	District Voter was registered to vote in after 2022 Redistricting
Rasheed Walters	30 Fendale Ave 02124	4	4
Gladys Bruno	103 Mercer Street 02127	2	3
Zheng Huanhua	9 Gavin Way	3	3
Carmen Luisa Garcia Terrero	7 McDonough Way 02127	3	3
Carmen Garcia-Rosario	66 Crowley Rogers Way 02127	2	2
Eleanor Kasper	125 West Third St 02127	2	3

Signed under the pains and penalties of perjury this 27 day of March, 2023.

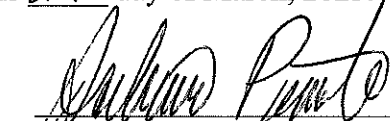

 Sabino Piemonte

EXHIBIT A



CITY OF BOSTON
2023 ELECTION CALENDAR
 BOARD OF ELECTION COMMISSIONERS
 BOSTON CITY HALL - ROOM 241

PRELIMINARY MUNICIPAL ELECTION AND MUNICIPAL ELECTION

SIGNATURE REQUIREMENTS

1500 Certified Signatures of Registered Voters required for **At Large City Councillor**

200 Certified Signatures of Registered Voters required for **District City Councillor**

Residency Requirement for **District City Councillor**:: Candidates running for District City Councillor must have been an inhabitant of said district at least one year preceding the election (St. 1982, Chapter 605, Section 6). For Election Day November 7, 2023, candidates must have resided in their district prior to November 8, 2022.

The Boston Election Department will certify only up to an additional 20% more than the requirement.

DEADLINE DATES

April 19th	9:00 a.m. -- First hour and day for making application for nomination papers at the Boston Election Department in Boston City Hall Room 241. In order for candidates to receive nomination papers, a statement of Candidacy must be completed by the candidate (not a representative), in the Election Commission office.
May 2nd	9:00 a.m. -- First hour and day for distribution of nomination papers from the Boston Election Department in Boston City Hall Room 241.
May 16th	5:00 p.m. -- Last hour and day for making application and distribution of nomination papers at the Boston Election Department in Boston City Hall Room 241.
May 23rd	5:00 p.m. -- Last hour and day for filing nomination papers at the Boston Election Department in Boston City Hall Room 241.
June 27th	5:00 p.m. -- Last hour and day for registrars to complete certification of signatures.
July 5th	5:00 p.m. -- Last hour and day for filing withdrawals or objections to nomination of candidates for City Offices at the Boston Election Department in Boston City Hall Room 241.
July 5th	5:00 p.m. -- Last hour and day for filing withdrawals of nomination of candidates for City Offices where substitutions can be made at the Boston Election Department in Boston City Hall Room 241.
July 5th	5:00 p.m. -- Last hour and day for filing substitutions caused by withdrawals or ineligibility at the Boston Election Department in Boston City Hall Room 241.

Important dates for Municipal Elections and Voter registration deadline

September 2nd 5:00 p.m. -- Last hour and day for registration of voters for Preliminary Municipal Election.

September 2nd – September 8th **Early Voting** – schedule to follow

September 12th 7:00 a.m. to 8:00 p.m. -- **PRELIMINARY MUNICIPAL ELECTION.**

October 28th 5:00 p.m. -- Last hour and day for registration of voters for Municipal Election.

October 28th – November 3rd **Early Voting** – schedule to follow

November 7th 7:00 a.m. to 8:00 p.m. -- **MUNICIPAL ELECTION.**

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SECOND AFFIDAVIT OF MICHELLE LAIBSON GOLDBERG

I, Michelle Goldberg, on oath hereby do depose and say as follows:

1. I am employed by the Boston City Council as the Staff Director for the Council. I have personal knowledge of the matters stated in this Affidavit.

2. I submit this Affidavit in connection with the City’s Supplemental Opposition to Plaintiff’s Motion for Preliminary Injunction Following Plaintiffs’ Second Amended Complaint.

3. Attached as **Exhibit A** to this Affidavit is a true and accurate chart listing each of the City Council’s meetings concerning the 2022 redistricting process between September 28, 2021 and November 2, 2022. The chart includes the date of each meeting, the type of meeting, its subject, and its location. The last four columns of the chart contain links, where available, to the true and accurate versions of the public notices, minutes, video, and unofficial transcripts of each meeting.

4. Attached as **Exhibit B** to this Affidavit are minutes of the meeting that occurred at the Condon School in South Boston on October 19, 2022. These minutes were referenced in the Boston City Council’s response to the October 25, 2022 Open Meeting Law complaint attached to my first Affidavit at Exhibit F.

Signed under the pains and penalties of perjury this 27th day of March, 2023.

Michelle A Goldberg

Michelle Laibson Goldberg

EXHIBIT A

BOSTON CITY COUNCIL – REDISTRICTING MEETINGS

No	Date	Type	Subject	Location	Public Notice	Minutes*	Video	Transcripts (Unofficial)
1	9/28/2021	Hearing	Docket #0860	Virtual	PDF	PDF	Link	Doc
2	3/24/2022	Committee Meeting	Listening Session: Districts 3,7,8	Virtual	PDF	PDF	Link	Doc
3	3/31/2022	Committee Meeting	Listening Session: Districts 4,5,6	Virtual	PDF	PDF	Link	Doc
4	4/7/2022	Committee Meeting	Listening Session: Districts 1,2,9	Virtual	PDF	PDF	Link	Doc
5	8/4/2022	Hearing	Docket #0881	Iannella Chamber	PDF	PDF	Link	Doc
6	9/16/2022	Working Session	Docket #1098	Virtual	PDF	PDF	Not recorded	Not recorded
7	9/20/2022	Working Session	Docket #1098	Piemonte Room	PDF	PDF	Not recorded	Not recorded
8	9/23/2022	Working Session	Docket #1098	Virtual	PDF	PDF	Not recorded	Not recorded
9	9/26/2022	Working Session	Docket #1098	Piemonte Room	PDF	PDF	Not recorded	Not recorded
10	9/27/2022	Working Session	Docket #1098	Piemonte Room	PDF	PDF	Not recorded	Not recorded
11	9/29/2022	Hearing	Docket #1098	Iannella Chamber	PDF	PDF	Link	Doc
12	9/30/2022	Working Session	Docket #1098	Iannella Chamber	PDF	PDF	Link	Doc
13	10/7/2022	Working Session	Docket #1098, 1186, 1215, 1216	Iannella Chamber	PDF PDF- Revised	PDF	Link	Doc
14	10/11/2022	Committee Meeting	Public Testimony	Iannella Chamber	PDF	PDF	Link	Doc
15	10/17/2022	Working Session	Docket #1098	Iannella Chamber	PDF	PDF	Link	Doc

No	Date	Type	Subject	Location	Public Notice	Minutes*	Video	Transcripts (Unofficial)
16	10/20/2022	Committee Meeting	Public Testimony	Community Academy of Science and Health	PDF PDF - Revised	PDF	Link	Doc
17	10/21/2022	Working Session	Dockets #1186, 1215, 1216, 1273, 1275	Curley Room	PDF PDF - Revised PDF - Second Revised	PDF	Link	Doc
18	10/24/2022	Working Session	Dockets #1186, 1215, 1216, 1273, 1275	Piemonte Room	PDF	PDF	Link	Doc
19	10/24/2022	Hearing	Dockets #1186, 1215, 1216, 1273, 1275	Iannella Chamber	PDF	PDF	Link	Doc
20	10/25/2022	Working Session	Dockets #1186, 1215, 1216, 1273, 1275	Iannella Chamber	PDF	PDF	Link (1 of 2) Link (2 of 2)	Doc (1 of 2) Doc (2 of 2)
21	10/26/2022	City Council Meeting	MATTERS RECENTLY HEARD FOR POSSIBLE ACTION: Dockets #1186, 1215, 1216, 1273, 1275	Iannella Chamber	PDF	PDF	Link	Doc
22	11/2/2022	City Council Meeting	REPORTS OF COMMITTEES: Docket 1275: The Committee submits a report recommending that the ordinance ought to pass in a new draft.	Iannella Chamber	PDF	PDF	Link	Doc

*Select Minutes available at <https://boston.legistar.com/Calendar.aspx>

EXHIBIT B



Boston City Council

Meeting Minutes

Please note: This was not an official meeting of the Boston City Council or its committees and was not staffed or attended by Central Staff.

DATE: October 19, 2022

LOCATION: Condon School, 200 D St, South Boston

TIME: 6:00 PM

COUNCIL MEMBERS PRESENT: Frank Baker, Liz Breadon, Tania Fernandes Anderson, Michael Flaherty, Ed Flynn, Julia Mejia, Erin Murphy

ISSUES DISCUSSED:

Councilors spoke about redistricting in general and the requirements of the Voting Rights Act. Councilors gave their opinions about maps and maps corresponding to dockets before the Council were displayed, including the map Docket #1275 that was filed at the Council Meeting earlier that day. Councilors were seated together upfront and answered questions.

The event centered on community comment, with the bulk of concerns around proposed maps that would further divide South Boston into two districts, specifically the Anne Lynch Homes at Old Colony and West Broadway Development into District 2 and District 3. Comments stated that a map that splits South Boston will negatively impact neighbors, communities of color, seniors, veterans, and persons with disabilities who live in these housing developments, and dilute the voting power of these communities with common interests.

Comments in favor of Docket #1275 argued that it would strengthen political opportunities for people of color; comments opposed argued that severe overhauls are not necessary for the current districts to stay in compliance with the Voting Rights Act.

DOCUMENTS PRESENTED: Redistricting maps. Members of the public may have disseminated literature.

INFORMATION REQUESTED: N/A

VOTES TAKEN: None

NEXT MEETING: October 20, 2022. The full schedule of formal Redistricting hearings and working sessions held can be found on boston.gov/public-notices and boston.gov/redistricting.

Approved by:

A handwritten signature in black ink, appearing to read "ma", written over a horizontal line.

Michelle A Goldberg, Staff Director
Boston City Council

Date: 11/10/2022