

IN THE CHANCERY COURT OF TENNESSEE
FOR THE ELEVENTH JUDICIAL DISTRICT
AT CHATTANOOGA

Chattanooga Publishing Company,

Plaintiff,

v.

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.

No. _____

COMPLAINT TO ENFORCE THE TENNESSEE OPEN MEETINGS ACT

Plaintiff Chattanooga Publishing Co., for its complaint to enforce the
Tennessee Open Meetings Act, states as follows:

INTRODUCTION

1. In 2022, the Chattanooga City Council (the “City Council” or
“Council”), the legislative body for the City of Chattanooga (the “City”), voted to
approve new voting districts for future City Council elections. The City Council
undertook this effort in three stages. First, it created an *ad hoc* committee (the
“Redistricting Committee”) tasked with making a redistricting recommendation to
the City Council. The meetings of the Redistricting Committee were not open to the

public nor were they publicly noticed. Second, members of the City’s staff conducted individual meetings with members of the City Council to flesh out the details of the redistricting maps. These meetings also were not publicly noticed or open to the public. Finally, the City Council, as a whole, held noticed public meetings to vote on and hear feedback from the community on the redistricting plan that had been developed in secret, behind closed doors, by the Redistricting Committee and in individual meetings.

2. The Tennessee Open Meetings Act (“OMA”) makes clear that it is “the policy of this state that the formation of public policy and decisions is public business and shall not be conducted in secret,” Tenn. Code Ann. § 8-44-101(a). This action seeks to make clear that by employing a coordinated strategy of conducting non-public redistricting meetings the City Council violated both the language and the spirit of the OMA. Plaintiff Chattanooga Publishing Company further seeks to enjoin the City Council from continuing to evade its obligations to conduct the City’s business in public.

PARTIES, JURISDICTION, AND VENUE

3. This matter arises under the Tennessee Open Meetings Act, Tenn. Code §§ 8-44-101 to 8-44-201.

4. Plaintiff Chattanooga Publishing Company (“Chattanooga Publishing”), owns and operates the *Chattanooga Times Free Press*, a daily newspaper in Hamilton County, Tennessee; three weekly newspapers in Tennessee; and three magazines in Tennessee. Chattanooga Publishing is a Tennessee corporation with its principal place of business in Chattanooga, Tennessee. As

such, Chattanooga Publishing is a Tennessee “citizen” for purposes of the OMA. Tenn. Stat. 8-44-106(a); *see Mayhew v. Wilder*, 46 S.W.3d 760, 769 (Tenn. Ct. App. 2001) (holding that Tennessee newspapers and newspaper associations “qualify as citizens for the purpose of Tenn. Code Ann. § 8–44–106(a)”).

5. Defendant the City of Chattanooga is Tennessee’s fourth largest city.

6. Defendant the Chattanooga City Council is the City’s legislative body and is charged with redistricting the City Council voting zones every ten years based on the federal census.

7. Defendants Chip Henderson, Jenny Hill, Ken Smith, Darrin Ledford, Isiah Hester, Carol B. Berz, Raquetta Dotley, Marvene Noel, and Demetrus Coonrod were members of the Chattanooga City Council at all times relevant to this Complaint and are being sued in their official capacities as members of the City Council.

8. This Court has jurisdiction pursuant to Tenn. Code Ann. §§ 8-44-106(a), 16-1-101, and 16-11-101.

9. Pursuant to Tenn. Code Ann. § 20-4-101 and/or § 20-4-104, venue for this action is proper in this Court because the cause of action arose in Hamilton County and all or a substantial part of the events or omissions giving rise to the cause of action accrued in Hamilton County.

BACKGROUND

The Open Meetings Act

10. The OMA “is remedial. It should, therefore, be construed broadly to promote openness and accountability in government and to protect the public

against closed door meetings at every stage of a government body's deliberations.

Metro. Air Research Testing Auth., Inc. v. Metro. Gov't, 842 S.W.2d 611, 616 (Tenn. Ct. App. 1992) (citations omitted).

11. To that end, the OMA requires that “[a]ll meetings of any governing body . . . be public meetings open to the public at all times, except as provided by the Constitution of Tennessee.” Tenn. Code Ann. § 8-44-102(a).

12. The OMA defines a “governing body,” in relevant part, as “[t]he members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.” Tenn. Code Ann. § 8-44-102(b)(1)(A).

13. The OMA defines a “meeting” as “the convening of a governing body of a public body for which a quorum is required in order to make a decision or deliberate toward a decision on any matter.” Tenn. Code Ann. § 8-44-102(b)(2).

14. Meetings must be publicly noticed in compliance with Tenn. Code Ann. § 8-44-103.

15. Members of a governing body may not use “informal assemblages, or electronic communication . . . to decide or deliberate public business in circumvention of the spirit or requirements of” the OMA. Tenn. Code Ann. § 8-44-102(c). The Court of Appeals has referred to this provision as the “loophole closer.” *Matthews v. Shelby Cnty. Bd. of Comm’rs*, 1990 WL 29276, at *5 (Tenn. Ct. App. Mar. 21, 1990).

16. A violation of the OMA may occur regardless of whether the parties involved had a “nefarious intent” to evade the law’s requirements. *Johnston v. Metro. Gov’t of Nashville & Davidson Cnty.*, 320 S.W.3d 299, 311 (Tenn. Ct. App. 2009).

17. Any citizen of Tennessee may bring suit to enforce the OMA. Tenn. Code Ann. § 8-44-106(a).

18. The remedies available to a citizen who brings a complaint to enforce the OMA include, among other things, a permanent injunction and court supervision of the violating parties for a period of one year. Tenn. Code Ann. § 8-44-106(c)–(d).

The City Council

19. The City Council is a “governing body” within the meaning of the OMA, Tenn. Code Ann. § 8-44-102(b)(1)(A), and is vested with the City’s legislative authority.

20. The City Council generally has nine members, each of whom represents a voting district within the City of Chattanooga.

21. At all times relevant to this Complaint, the following individuals were members of the City Council: Chip Henderson (Council Chair from 2020 to 2022), Jenny Hill, Ken Smith, Darrin Ledford (Council Chair from 2022 to present), Isiah Hester, Carol B. Berz, Raquetta Dotley, and Demetrus Coonrod.

22. Additionally, Marvene Noel was appointed to the City Council on an interim basis on March 8, 2022, to represent Chattanooga District 8; she was

elected to the Council by the voters of District 8 in a runoff election on September 15, 2022.

23. Members of the City Council generally are elected every four years.

24. The most recent City Council election was in March 2021.

The City Council's Redistricting Obligations

25. Pursuant to the City of Chattanooga's Code of Ordinances, every ten years, following the publication of the federal decennial census, the City Council must "reorganize and adjust by ordinance the boundaries of the [voting] districts currently established." 8 C.O. § 8.9. This process is known as "redistricting." *Id.*

26. The redistricting process must be complete at least one year before the next scheduled City Council election. *Id.*

27. The City Council must give itself at least six months to work on the redistricting process. *Id.*

28. The most recent federal decennial census was published in 2021, triggering the City Council's redistricting obligations.

29. Given the 2021 publication of the U.S. Census, the City Council is required to complete the redistricting process by March 2024—one year before the March 2025 City Council election. 8 C.O. § 8.9.

Creation of the Redistricting Committee and Initial Outreach to Executive Staff

30. At a public City Council meeting on September 21, 2021, Councilperson Henderson—who was then Chair—announced that he had "tasked" a "small, ad hoc committee" with "gather[ing] some data" and "look[ing] at some

options for what a redistricting map could look like,” so that the Council could “begin the conversation of redistricting.”

31. According to Councilperson Henderson, this “small, ad hoc” committee, *id.*, (hereinafter, the “Redistricting Committee” or the “Committee”) was to be chaired by Councilperson Berz; its other members were to be Councilpersons Smith, Dotley, and Hester.

32. Upon information and belief, the City Council delegated the authority to make decisions for or recommendations to the City Council on redistricting in the City of Chattanooga to the Redistricting Committee.

33. According to Councilperson Berz, between September 2021 and March 2022, the Redistricting Committee met “on a regular basis.”

34. Councilperson Berz further stated, in an email dated March 17, 2022 that was acquired by the Chattanooga Times Free Press in response to a public records request, that “[o]n several occasions, Councilpersons Dotley, Smith, Hester, and I occupied the same space in the Mayor’s large conference room, where Mr. Anderson and his folks educated us regarding the law relative to redistricting and City demographics resultant of the 2020 census.” A true and correct copy of the chain of emails containing Councilperson Berz’s March 17, 2022 email, as obtained by the Chattanooga Times Free Press, is attached hereto as Exhibit A.

35. Upon information and belief, no meetings of the Redistricting Committee were open to the public or properly noticed under the OMA.

36. The Redistricting Committee did not keep minutes of its meetings.
Ex. A. at 1.

37. In or about late September or early October 2021, the Redistricting Committee sought the assistance of staff within the Chattanooga Office of Performance Management and Open Data (“OPMOD”) and Chattanooga Department of Innovation Delivery and Performance (“Innovation Department”)—including Christopher Anderson, Andrew Sevigny, Timothy Moreland, Brent Goldberg, and Dylan Rivera (collectively, the “Executive Staff”)—in developing a new voting districts map.

Early Redistricting Deliberations and Decisions

38. In or about late September or early October 2021, the Redistricting Committee tasked the Executive Staff with developing proposed voting district maps that complied with the legal requirements governing redistricting; as Councilperson Berz later put it, the Redistricting Committee “t[old] the numbers people to lay out the maps that met the law.”

39. At a public City Council meeting on November 9, 2021, Councilperson Berz updated the City Council that the Redistricting Committee “ha[d] been looking at data” but “still had a long way to go.”

40. At that same public City Council meeting on November 9, 2021, Councilperson Berz announced that the Redistricting Committee had decided it was “not adding any districts.”

41. Councilperson Berz later explained another decision made by the Redistricting Committee: “One thing that [the Redistricting Committee] talked

about—that [Councilpersons] Dotley and Hester and I talked about at great length—is that none of this affects District 8.”

42. Upon information and belief, the Redistricting Committee decided other matters related to redistricting and/or deliberated towards other decisions as well.

Development, Review, and Modification of Proposed Voting Districts Map

43. Between September 2021 and December 2021, the Executive Staff developed a proposed voting districts map (the “Proposed Map”) as instructed by the Redistricting Committee. *See* Ex. A (Councilperson Berz explaining, in a March 17, 2022 email, that she “asked that Mr. Anderson do two things: (1) Get the districts in compliance with the law, with as little disruption as possible of existing boundaries and (2) Meet individually with each Councilperson to go over the outcomes”).

44. On December 9, 2021, the Executive Staff met with the Redistricting Committee and presented the Proposed Map, explaining the contours of the Proposed Map’s voting districts and setting forth both the methodology and legal considerations underlying the new district boundaries.

45. Between December 9, 2021 and February 15, 2022, at the direction of the Redistricting Committee, the Executive Staff met individually with each member of the City Council to discuss how the Proposed Map would affect each council member’s voting district. During these individual meetings, the Executive Staff collected feedback from individual council members on the Proposed Map.

46. Between December 9, 2021 and February 15, 2022, the Executive Staff revised the Proposed Map based on feedback it received during its meetings with individual Council members and the Redistricting Committee.

47. On February 15, 2022, the Executive Staff met with the Redistricting Committee and presented the revised version of the Proposed Map for the Redistricting Committee's review.

48. On February 15, 2022, the Redistricting Committee put consideration and deliberation of the Proposed Map on the agenda for the City Council's March 1, 2022 public Strategic Planning Session.

49. On March 1, 2022, Mr. Anderson and Mr. Sevigny presented the Proposed Map at the City Council's public Strategic Planning Session.

50. During the March 1, 2022 presentation of the Proposed Map at the City Council's public Strategic Planning Session, Mr. Anderson and Mr. Sevigny provided a very general overview of the process utilized to reach consensus among the members of the City Council on the Proposed Map.

51. During the March 1, 2022 presentation, Mr. Anderson stated that "the lines" drawn on the Proposed Map "reflect hours and hours, really hundreds and hundreds of hours, of staff time spent with" the City Council. "And I want to stress," Mr. Anderson said, "that this is the proposal based on [the City Council's] input." Mr. Anderson also told the City Council, "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 want them, but the last word I have from every member of the

Council is that you're fine with this." Mr. Anderson continued: "As you know, we've been working on this now for about six months, and I really appreciate all of the one-on-one quality time I've gotten to spend with all of you." "I think that," Mr. Anderson said, "what you're going to see today will offer no surprises—it will be what I think everyone is expecting."

52. Also during the March 1, 2022 presentation of the Proposed Map at the City Council's public Strategic Planning Session, Mr. Sevigny told the City Council, "We also used, as Chris [Anderson] said, individual council input" in creating the Proposed Map, "so we'd come to you individually and say, 'What are you interested in having in your district, and what works for you?'"

53. During that same public meeting, Councilperson Henderson asked Mr. Anderson, "Every council person has seen this particular map, correct?" Mr. Anderson replied, "Yes, sir, that's correct." "Or at least," said Councilperson Henderson, "their portion of the district?" "Yes, sir," said Mr. Anderson, "there are no changes to that map, to anyone's district, that that person hasn't seen."

54. After the presentation of the Proposed Map at the City Council's public Strategic Planning Session, Councilperson Berz said at the March 1, 2022 meeting that, "The next step would be to set it for vote."

55. Also on March 1, 2022, the Proposed Map was posted on Chattadata, a City website available to the public.

56. According to a document detailing the redistricting timeline produced by the City to the Chattanooga Times Free Press in response to a public

records request, between March 2 and March 29, 2022, the Executive Staff collected additional feedback on the Proposed Map from individual members of the City Council. A true and correct copy of that document, as obtained by the Chattanooga Times Free Press, is attached hereto as Exhibit B.

57. On March 29, 2022, the City Council held a meeting at which members of the public were permitted to comment on the Proposed Map; each interested member of the public was given two minutes to speak.

58. During the City Council's public Agenda Session on April 19, 2022, Mr. Sevigny delivered a presentation in which he explained that the data underlying the Proposed Map contained errors, and that remedying these errors required changing the boundaries of voting districts 1, 7, and 8.

59. Mr. Sevigny's presentation on April 19, 2022 included an updated version of the Proposed Map.

60. During his presentation on April 19, 2022, Mr. Sevigny said, "We did meet with Councilman Noel here late last week to go over District 8, and we made some more modifications, actually, to the map."

Adoption of Proposed Map

61. By a public vote on April 26, 2022, the City Council passed the "first reading" of Ordinance #13815 to adopt the Proposed Map.

62. By a public vote of May 3, 2022, the City Council approved Ordinance #13815, adopting the Proposed Map.

63. At no point was the public privy to the deliberations and decisions made by the Redistricting Committee and during the individual meetings with

members of the City Council that were critical to developing the redistricting map presented at the March 1, 2022 City Council Strategic Planning Session, or the deliberations and decisions of Councilmembers made prior to the presentation of a new redistricting map at the Council’s public Agenda meeting on April 19, 2022.

COUNT I

Violation of Tennessee Open Meetings Act

Redistricting Committee

64. Plaintiff incorporates by reference the allegations set forth in paragraphs 1–63 above.

65. The Redistricting Committee is a “governing body” within the meaning of Tenn. Code Ann. § 8-44-102(b)(1)(A) because it had the authority to make decisions for, or recommendations to, a public body on policy or administration.

66. Between September 2021 and March 2022, the Redistricting Committee repeatedly violated the OMA by convening meetings to make decisions and/or to deliberate toward decisions regarding redistricting in the City of Chattanooga.

67. The Redistricting Committee violated the OMA because its meetings were not publicly noticed pursuant to Tenn. Code Ann. § 8-44-103.

68. The Redistricting Committee violated the OMA because it did not keep minutes of its meetings pursuant to Tenn. Code Ann. § 8-44-104(a).

69. The Redistricting Committee violated the OMA because it did not hold its votes in public pursuant to Tenn. Code Ann. § 8-44-104(b).

70. The Redistricting Committee violated the OMA because its meetings were not open to the public as required by Tenn. Code Ann. § 8-44-102(a).

71. The Redistricting Committee violated the OMA because it held informal assemblages to decide and deliberate public business in circumvention of both the express requirements of and the spirit of the OMA.

COUNT II

Violation of Tennessee Open Meetings Act

Individual Meetings with the Executive Staff in Circumvention of the OMA

72. Plaintiff incorporates by reference the allegations set forth in paragraphs 1–71 above.

73. The OMA provides that “[n]o 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.” Tenn. Code Ann. § 8-44-102(c).

74. At the direction of the Redistricting Committee, the Executive Staff held separate meetings with individual Councilmembers to deliberate on and decide the contours of the Proposed Map presented to the City Council on March 1, 2022, and the updated version of the Proposed Map presented to the City Council on April 19, 2022.

75. On information and belief, none of the meetings between individual City Council members and members of the Executive Staff in relation to the Executive Staff’s preparation and modification of the Proposed Map were open to the public or preceded by OMA-compliant public notice.

76. The deliberations and decision-making that took place in the closed meetings between individual members of the City Council and members of the Executive Staff regarding the contents of the Proposed Map were the types of discussion, deliberation, and decision-making that would be expected to take place and, under the OMA, are required to take place at a properly noticed meeting, in the presence of the public and either the entire Redistricting Committee or the City Council as a whole.

77. The Executive Staff's meetings with individual members of the City Council violated the OMA because they were informal assemblages to decide and deliberate public business that circumvented both the express requirements of and the spirit of the OMA. *See* Tenn. Code § 8-44-102(c).

78. The Executive Staff's meetings with individual members of the City Council at the direction of the Redistricting Committee also violated the OMA because they were not publicly noticed and were not open to the public as required by Tenn. Code Ann. § 8-44-102(a) and § 8-44-103.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully request that this Court:

A. File written findings of fact and conclusions of law holding pursuant to Tenn. Code § 8-44-106(b) that (1) the meetings of the Redistricting Committee violated the OMA and (2) that the individual meetings between members of the City Council and the Executive Staff violated the OMA;

B. Enjoin Defendants from further violations of the Tennessee Open Meetings Act pursuant to Tenn. Code § 8-44-106(c), including but not limited to (1)

convening ad hoc committees made up of members of the Council to make decisions or to deliberate toward a decision on any matter, which are closed to the public and held without public notice, failing to take minutes of such meetings as required by the OMA, and voting in private and (2) the use of nonpublic individual meetings between members of the City Council and City staff to circumvent the requirements of the OMA;

C. Retain jurisdiction over the parties and subject matter pursuant to Tenn. Code § 8-44-106(d) for a period of one year from the date of entry of its final judgment, and order Defendants to report in writing semi-annually to the Court on compliance with the Tennessee Open Meetings Act;

D. Grant Plaintiffs an award of their reasonable expenses and costs incurred in this action to the fullest extent allowed under law or statute, including attorneys' fees if permitted; and

E. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

Dated: December 15, 2022

s/ Paul R. McAdoo

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