

**IN THE SEVENTH JUDICIAL CIRCUIT COURT
IN AND FOR VOLUSIA COUNTY, FLORIDA**

NICHOLAS SAKHNOVSKY, ALICE
JAMES SAKHNOVSKY, DEVON
MORRIS, JAMES NOCE, and
JOSEPHINE POPE,

Plaintiffs,

Case No. _____

v.

CITY OF DAYTONA BEACH,

Defendant.

_____ /

COMPLAINT

1. Plaintiffs bring this action to challenge the redistricting plan currently used to elect the Daytona Beach City Commission (the “Enacted Plan”). The plan violates section 166.0321 of the Florida Statutes, which prohibits municipal districts from being “drawn with the intent to favor or disfavor a candidate . . . or an incumbent . . . based on the candidate’s or incumbent’s residential address.”

2. Furthermore, the Commission failed to give adequate notice of its consideration and passage of the Enacted Plan. Indeed, the Commission’s meeting notices and agendas erroneously published a different map from the one the Commission adopted. This failure violates the mandate of section 286.011(1) of the Florida Statutes that the Commission provide reasonable notice of its meetings.

3. All conditions precedent to suit have been met or waived.

I. PARTIES

4. Plaintiff NICHOLAS SAKHNOVSKY is an elector in Commission Zone 4.

5. Plaintiff ALICE JAMES SAKHNOVSKY is an elector in Commission Zone 4.

6. Plaintiff DEVON MORRIS is an elector in Commission Zone 1.
7. Plaintiff JAMES NOCE is an elector in Commission Zone 2.
8. Plaintiff JOSEPHINE POPE is an elector in Commission Zone 6.
9. Defendant CITY OF DAYTONA BEACH is a Florida municipality. As a municipal corporation established under Florida law, Daytona Beach has the authority to regulate and conducts its elections, including establishing its Commission zone boundaries, but only consistent with state law. Fla. Const. art. VIII, § 2(b); Fla. Stat. § 100.3605.

II. JURISDICTION & VENUE

10. This Court has subject-matter jurisdiction over this action pursuant to section 26.012, Florida Statutes, and article V, section 5(b) of the Florida Constitution, and has authority to grant declaratory and injunctive relief pursuant to sections 86.011 and 26.012(3), Florida Statutes.

11. Venue is proper pursuant to section 47.011, Florida Statutes.

III. FACTUAL ALLEGATIONS

A. Background and Initial Commission Meeting on January 5, 2022

12. The Daytona Beach City Commission is made up of six commissioners each elected from a “zone” or district, and a mayor elected citywide.

13. Since the 2022 elections, the commissioners have been as follows:

Zone	Commissioner	Last Election	Next Election
1	Monica Paris	2022	2026
2	Ken Strickland	2020	2024
3	Quanita May	2022	2026
4	Stacy Cantu	2020	2024
5	Dannette Henry	2022	2026
6	Paula Reed	2020	2024
	Mayor Derrick Henry	2020	2024

14. Commission elections are held in August and November of even-numbered years.

15. Commissioners from Zones 1, 3, and 5 are elected in gubernatorial years. The mayor and commissioners from Zones 2, 4, 6 are elected in presidential years.

16. The Equal Protection Clause requires election districts to be substantially equal in population. *Avery v. Midland Cnty.*, 390 U.S. 474, 485–86 (1968). This is known as the “one person, one vote” doctrine.

17. The 2020 Census showed Daytona Beach had a total population of 71,559.¹ The ideal population for each Commission zone, therefore, was 11,927.

18. The Census revealed that the existing Commission zones were unequal in population in violation of “one person, one vote.” The City thus embarked on the redistricting process.

19. The City hired Albert Hill, an adjunct professor at Daytona State College and former Volusia County GIS manager, to serve as its redistricting consultant, advise it on redistricting, and develop draft maps for the Commission’s consideration.

20. Mr. Hill first met with the City Commission on January 5, 2022, to present an overview of the redistricting process and discuss the criteria that would be used for mapmaking.²

21. During the January 5, 2022 meeting, the Commission instructed Mr. Hill to adhere to these criteria when drafting redistricting plans: (1) minimize population deviation between zones, (2) under-populate zones which were forecasted to experience significant growth, (3) preserve the core of existing zones, and (4) keep communities of interest, which the Commission defined as “any geographically connected population that shares some common social and economic interest,” together. (1/5/22 video at 21:55.)

22. Also at this meeting, Mr. Hill discussed another criterion that would become even

¹ This figure includes recent annexations up to the date the Enacted Plan was adopted.

² The January 5, 2022 meeting recording is available at <https://daytonabeachfl.new.swagit.com/videos/152503>.

more important than the four the Commission formally adopted: keeping each incumbent commissioner in a separate zone by using incumbent addresses as the “basis” for redistricting.

23. Mr. Hill stated: “We must be provided the residences of your current elected officials so that we can identify those census blocks that they fall into, so that they will stay in their district.” (1/5/22 video at 20:31.)

24. He further told commissioners on January 5, 2022: “Census geography will be locked to the current district, and you will remain in your zone. No two of you will be in the same zone.” (1/5/22 video at 20:45.)

25. Following the discussion of the criteria Mr. Hill would use, the Commission instructed him to draft two plans for their consideration.

26. Those drafts, and the Enacted Plan the Commission eventually adopted, were all shaped by an intent to favor the incumbent commissioners by separating their residential addresses.

27. Other redistricting criteria—including the four principles the Commission formally adopted—were subordinated to the overriding goal of keeping each commissioner in their own zone.

B. Other Events in 2022

28. Throughout 2022, Mr. Hill continued gathering information he thought necessary to redraw the City’s map.

29. On May 16, 2022, Mr. Hill emailed Doug Gutierrez, the City’s principal planner, asking: “Can you tell me who is up for re-election. Remember plans have to take into account where commissioners live.”

30. On information and belief, Mr. Gutierrez provided Mr. Hill with the requested information.

31. On November 16, 2022, following the City’s 2022 elections, Mr. Hill wrote again to Mr. Gutierrez to inquire about newly elected Commissioner Monica Paris’s address.

32. Mr. Gutierrez responded with Commissioner Paris’s address.

33. Mr. Hill then replied, sharing that his draft redistricting plans did not move Commissioner Paris into a different district.

C. The January 18, 2023 Meeting and the Splitting of Beachside

34. The Commission again convened to discuss redistricting on January 18, 2023.³

35. At that meeting, Mr. Hill gave a presentation, largely reiterating what he said January 5, 2022, and also sharing draft redistricting Plans A and B.

36. A slide in Mr. Hill’s PowerPoint noted: “Current elected officials must remain in their zone.”

37. One common feature of Plans A and B was that they split the Beachside neighborhood (defined as the spit of land between the Halifax River and the Atlantic Ocean) into three parts, between Zones 1, 2, and 3, with each zone connecting to a portion of the mainland.

38. According to the 2020 Census, Beachside has a population of 12,075, or 148 persons (1.2%) above the ideal population of a Commission zone.

39. Because of its population, Beachside could form one entire Commission zone without being split.

40. It is not necessary to split Beachside or combine any part of Beachside to the mainland to achieve a zone with a constitutionally permissible population.

41. Beachside is a community of interest—a geographically connected population that shares common social and economic interests.

³ The January 18, 2023 meeting recording is available at <https://daytonabeachfl.new.swagit.com/videos/205953>.

42. When questioned about splitting Beachside at the January 18, 2023 meeting, Mr. Hill responded that any alternative would draw “somebody out of their district.” (1/18/23 video at 22:33.)

43. This is because Commissioners Paris, Strickland, and May all live on Beachside.

44. Mr. Hill elaborated on January 18, 2023: “We had to take into account that the census block that you live in had to be locked to you. That was actually our starting point for anything that we did.” (1/18/23 video at 22:37.)

45. Mr. Hill and the Commission split Beachside between Zones 1, 2, and 3 to favor Commissioners Paris, Strickland, and May based on their residential addresses.

D. The March 15, 2023 Workshop

46. On March 15, 2023, the Commission held a workshop to discuss draft Plans A and B, plus a third draft Mr. Hill developed, Plan C.⁴

47. During this meeting, Mr. Hill’s PowerPoint again stated: “Current elected officials must remain in their zone.”

48. Each of Mr. Hill’s draft plans kept each commissioner in their current zone.

49. The Commission narrowed their discussion to Plans B and C during this workshop.

50. During this meeting, Commissioner Strickland asked if there was a rule against incumbent gerrymandering.

51. Commissioner Strickland asked: “Isn’t there a state rule and a federal rule about we’re not supposed to – you’re not supposed to redistrict to make sure that the person that’s sitting in office stays there? Are we exempt from that at the local level?” (3/15/23 video at 42:56.)

52. Commissioner Reed responded: “No, we gotta stay there.” (3/15/23 video at 43:15.)

⁴ The March 15, 2023 meeting recording is available at <https://www.youtube.com/watch?v=11pEU5-PFFo>.

53. The City Attorney responded, saying “No, that’s an appropriate factor. In order to not displace commissioners from their zones, that would be an appropriate factor.” (3/15/23 video at 43:17.)

54. Commissioner May agreed, saying, “That’s the point here, that’s the purpose here.” (3/15/23 video at 43:33.)

55. The City Attorney continued, stating: “It’s appropriate in redistricting to consider the location of the commissioners so you don’t displace them from their zones through this redistricting.” (3/15/23 video at 43:34.)

56. Mr. Hill followed up: “That’s the point that we actually started from.” (3/15/23 video at 43:46.)

57. Mr. Hill reiterated that separating incumbents based on their addresses was the primary redistricting consideration.

58. Shortly after, when discussing a proposed appendage to add several Embry-Riddle dorms to Zone 3 under Plan C, Commissioner Reed commented: “Well yeah, because just like you’ve got the little cutout up there just to get my house – in that little square up there – you cutout and just give Commissioner May the dorms. That’s me, the square ... my house is in that square, that’s to keep me in my zone.” (3/15/23 video at 48:11.)

59. Mr. Hill responded: “The first rule was everybody had to stay in their zone.” (3/15/23 video at 48:38.)

60. Commissioner Reed replied: “That’s correct.” (3/15/23 video at 48:40.)

61. The Commission concluded the meeting by directing Mr. Hill to return with a Plan D incorporating commissioners’ requested changes to Plans B and C.

E. The End of the Redistricting Process

62. The Commission met with Mr. Hill for the penultimate time on June 21, 2023.⁵

63. At this meeting, Mr. Hill introduced Plan D.

64. With one minor change (the movement of a single census block from Zone 3 to Zone 1), Plan D would become the Enacted Plan.

65. Mr. Hill again reiterated to the Commission that “the special considerations that we took into account when we worked on all of these plans was to keep all of you in your current districts.” (6/21/23 video at 54:38).

66. During his presentation on June 21, 2023, Mr. Hill addressed the plans’ treatment of Daytona Beach’s five Community Redevelopment Areas (CRAs).

67. In particular, Mr. Hill explained: “We were unfortunately having to split Midway [the Midtown CRA], because of where seated commissioners live.” (6/21/23 video at 57:03)

68. The Commission took up redistricting for the final time on July 5, 2023.

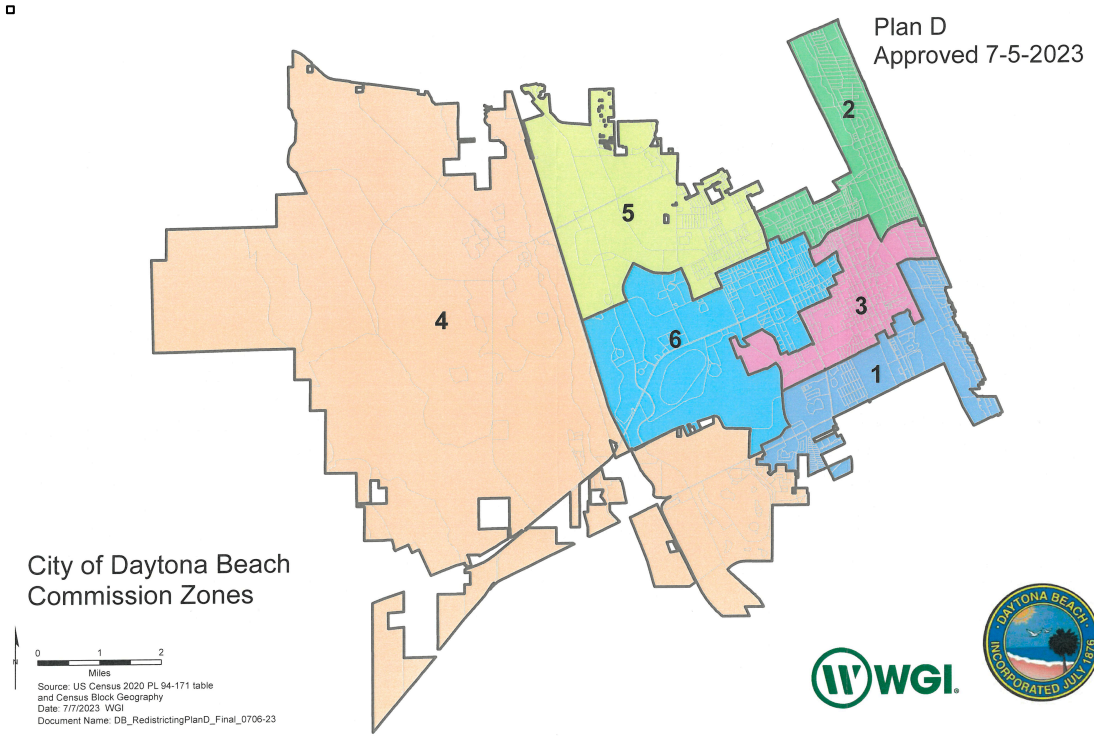
69. The Commission made one small change to Plan D, moving a single census block from Zone 3 to Zone 1.

70. The Commission then passed Plan D with that one change unanimously as Ordinance 2023-268. A copy of Ordinance 2023-268 and its attachments is attached as **Exhibit 1**.

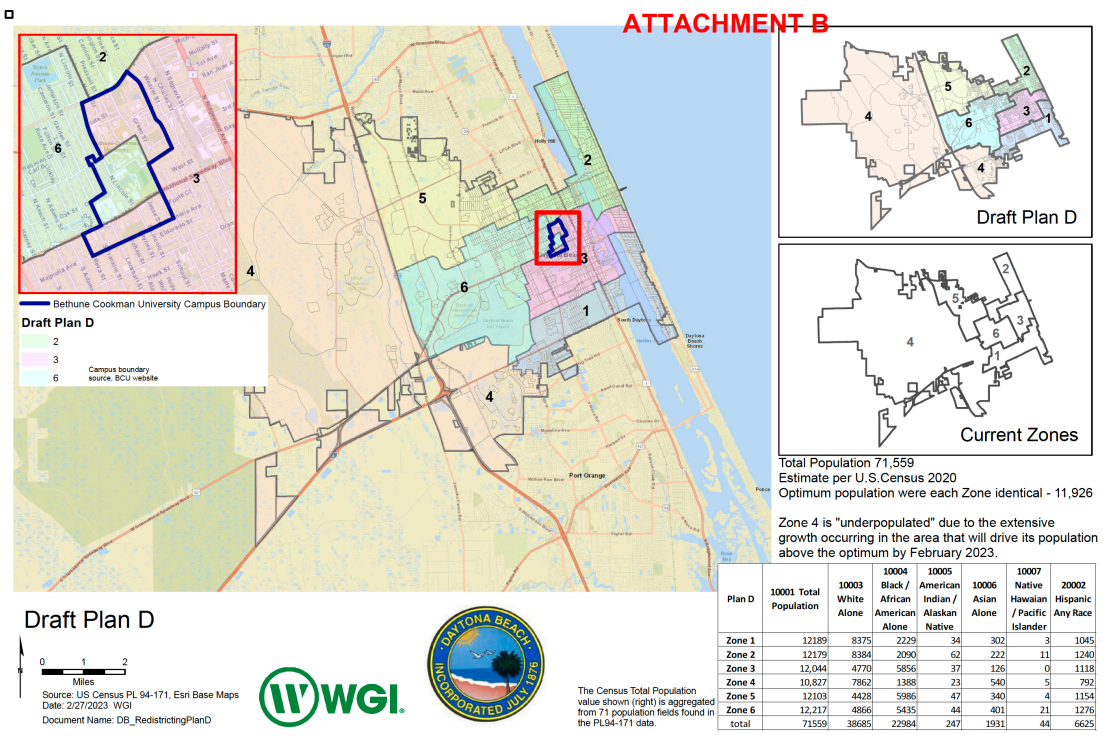
71. The Enacted Plan went into effect on September 1, 2023 and will be implemented in the August and November 2024 elections.

72. Below is a map of the Enacted Plan, as attached to Ordinance 2023-268:

⁵ The June 21, 2023 video recording is available at <https://daytonabeachfl.new.swagit.com/videos/247875>.



73. The Commission meeting agendas for both the June 21 and July 5, 2023 meetings included the following map for Plan D (the “Noticed Plan D”):



74. The complete June 21, 2023 Agenda Summary for the redistricting agenda item,

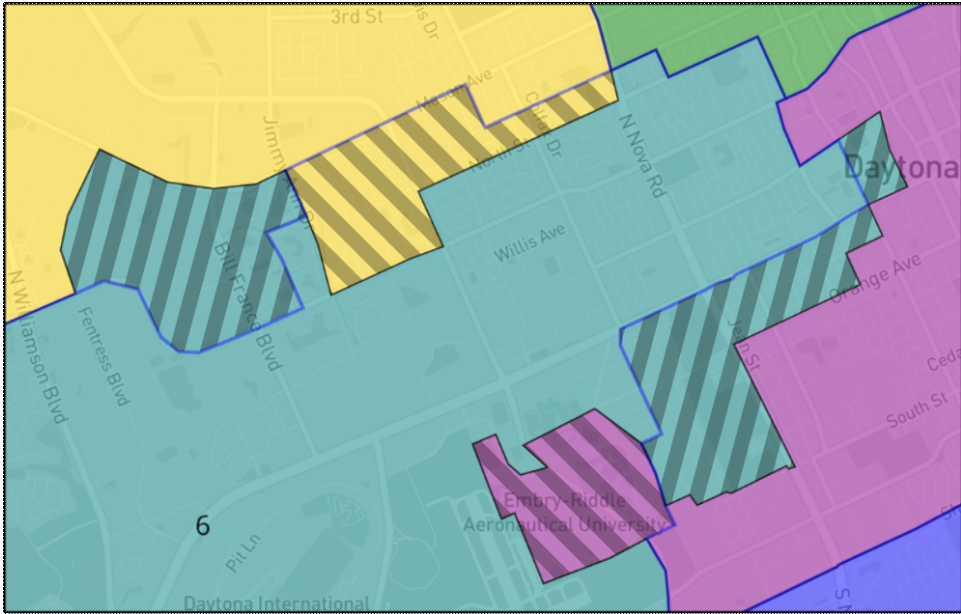
including “Attachment B” with a map purporting to be Plan D, is attached as **Exhibit 2**. The complete July 5, 2023 Agenda Summary for the redistricting agenda item, including “Attachment B” with a map purporting to be Plan D, is attached as **Exhibit 3**.

75. The Noticed Plan D was the only depiction of Plan D members of the public had access to before the June 21 and July 5 meetings.

76. There are differences between the true Plan D (“Actual Plan D”) and the Noticed Plan D.

77. These differences appear along the Zone 3/6 border and the Zone 5/6 border.

78. The hatched areas in the map below highlight the differences between the Enacted Plan/Actual Plan D and the Noticed Plan D. The colored zones depict the Enacted Plan and Actual Plan D; the Noticed Plan D boundaries are overlaid in blue lines:



79. The Noticed Plan D places 1,906 residents in Zone 5 whom the Actual Plan D and the Enacted Plan place in Zone 6.

80. The Noticed Plan D places 1,831 residents in Zone 6 whom the Actual Plan D and the Enacted Plan place in Zone 5.

81. The Noticed Plan D places 1,595 residents in Zone 3 whom the Actual Plan D and the Enacted Plan place in Zone 6.

82. The Noticed Plan D places 1,713 residents in Zone 6 whom the Actual Plan D and the Enacted Plan place in Zone 3.

83. Together, these 7,045 misallocated people constitute 9.8% of the City's residents.

84. One of the differences between the two maps is that the Actual Plan D splits the Embry-Riddle campus between Zones 3 and 6, while the Noticed Plan D keeps the whole campus in Zone 6.

85. Another difference is that more of the Bethune-Cookman University area is kept in a single zone (Zone 3) under the Noticed Plan D, compared to Actual Plan D.

86. Further, Zone 6 Commissioner Reed's residence would have moved out of Zone 6 under the Noticed Plan D, while her residence stays in Zone 6 under the Actual Plan D.

87. During the redistricting process, members of the public advocated for keeping the Bethune-Cookman and Embry-Riddle campuses intact in single zones.

F. The Enacted Plan

88. The Enacted Plan was drawn with the intent to favor every Commission incumbent based on each's residential address.

89. "[O]bjective indicators of intent," such as "irregular appendages or bizarre lines," confirm this intent to favor incumbents. *GRACE, Inc. v. City of Miami*, No. 1:22-cv-24066, 2023 WL 4853635, at *21 (S.D. Fla. July 30, 2023) (quoting *In re Senate Joint Resol. of Legis. Apportionment 1176*, 83 So. 3d 597, 670 (Fla. 2012)).

90. Several of the enacted zones feature irregular shapes.

91. The Enacted Plan split Beachside between Zones 1, 2, and 3, with each slice

connected to a chunk of the mainland.

92. Commissioners Paris, Strickland, and May each live in a different slice of Beachside.

93. On the mainland, the Zone 3/6 border splits not only the Midtown CRA, but also the campuses of Bethune-Cookman University and Embry-Riddle Aeronautical University.

94. The Zone 3/6 border runs one city block (some 700 feet) from Commissioner Reed's residence, keeping her address within Zone 6.

95. Meanwhile, Zone 4 connects two noncontiguous portions in both the Enacted Plan and the Noticed Plan.

96. Part of Zone 4 is located west of I-95, while a smaller, disconnected part centers on the Pelican Bay area, south of Beville Road.

97. Commissioner Cantu lives in the Pelican Bay portion of Zone 4.

CLAIMS FOR RELIEF

Count One: Gerrymandering in Violation of Fla. Stat. § 166.0321

98. Plaintiffs restate and incorporate by reference the allegations of paragraphs 1 through 97 above as though fully set forth herein.

99. Section 166.0321, Florida Statutes, provides in relevant part:

Districts may not be drawn with the intent to favor or disfavor a candidate for member of the governing body or an incumbent member of the governing body based on the candidate's or incumbent's residential address. Any ordinance enacted or adopted by a municipality on or after July 1, 2023, which is in conflict with this section is void.

100. The Commission and its consultant drew each of the zones in the Enacted Plan with the intent to favor each incumbent commissioner based on their residential addresses.

101. They did this by preserving the sitting commissioners in each of their zones.

102. As described above, the Commission's intent to favor incumbents based on their residential addresses drove specific choices in the map, including the splitting of Beachside.

103. Ordinance 2023-268 was enacted on July 5, 2023.

104. Ordinance 2023-268 is in conflict with section 166.0321 and is void.

**Count Two: Failure to Provide Reasonable Notice of Meeting
in Violation of the Sunshine Law, Fla. Stat. § 286.011(1)**

105. Plaintiffs restate and incorporate by reference the allegations of paragraphs 1 through 97 above as though fully set forth herein.

106. Section 286.011(1), Florida Statutes, requires a commission of a municipal corporation to "provide reasonable notice of all [its] meetings."

107. "[T]he Sunshine Law was enacted in the public interest to protect the public from 'closed door' politics and, as such, the law must be broadly construed to effect its remedial and protective purpose." *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983).

108. Section 286.011 "should be construed so as to frustrate all evasive devices." *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010) (quoting *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974)).

109. By notifying the public that the Commission would meet to debate and vote on a map that was significantly different from the one it was actually considering, the Commission failed to give reasonable notice of its meetings.

110. "[W]here officials have violated section 286.011, the official action is void ab initio." *Sarasota Citizens for Responsible Gov't*, 48 So. 3d at 762.

111. Ordinance 2023-268 is therefore void under section 286.011(1).

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare Ordinance 2023-268 void and unlawful in violation of section 166.0321;
- B. Declare Ordinance 2023-268 void and unlawful in violation of section 286.011(1);
- C. Enjoin the City, its officers, and its agents from implementing, enforcing, or conducting any further elections under the Enacted Plan;
- D. Order a new redistricting plan that remedies the statutory violations alleged herein, and conforms with all other legal requirements;
- E. Order the City to hold special elections to limit the harm to Plaintiffs should adequate relief be unavailable prior to the next regularly scheduled elections;
- F. Award Plaintiffs their costs of suit and reasonable attorney fees pursuant to sections 57.112(2) and 286.011(4), Florida Statutes;
- G. Grant any such other relief the Court deems appropriate.

Respectfully submitted this 16th day of January, 2024,

/s/ Nicholas L.V. Warren

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