

FILED

04-09-2024

CLERK OF WISCONSIN
SUPREME COURT

IN THE SUPREME COURT OF WISCONSIN

No. 2023AP1399

REBECCA CLARKE, RUBEN ANTHONY, TERRY DAWSON, DANA GLASSTEIN, ANN GROVES-LLOYD, CARL HUJET, JERRY IVERSON, TIA JOHNSON, ANGIE KIRST, SELIKA LAWTON, FABIAN MALDONADO, ANNEMARIE MCCLELLAN, JAMES MCNETT, BRITTANY MURIELLO, ELA JOOSTEN (PARI) SCHILS, NATHANIEL SLACK, MARY SMITH-JOHNSON, DENISE (DEE) SWEET, AND GABRIELLE YOUNG,

Petitioners,

GOVERNOR TONY EVERS, IN HIS OFFICIAL CAPACITY; NATHAN ATKINSON, STEPHEN JOSEPH WRIGHT, GARY KRENZ, SARAH J. HAMILTON, JEAN-LUC THIFFEAULT, SOMESH JHA, JOANNE KANE, AND LEAH DUDLEY,

Intervenors-Petitioners

v.

WISCONSIN ELECTIONS COMMISSION; DON MILLIS, ROBERT F. SPINDELL, JR., MARK L. THOMSEN, ANN S. JACOBS, MARGE BOSTELMANN, AND CARRIE RIEPL, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN ELECTIONS COMMISSION; MEAGAN WOLFE, IN HER OFFICIAL CAPACITY AS THE ADMINISTRATOR OF THE WISCONSIN ELECTIONS COMMISSION; SENATOR ANDRÉ JACQUE, SENATOR TIM CARPENTER, SENATOR ROB HUTTON, SENATOR CHRIS LARSON, SENATOR DEVIN LEMAHIEU, SENATOR STEPHEN L. NASS, SENATOR JOHN JAGLER, SENATOR MARK SPREITZER, SENATOR HOWARD L. MARKLEIN, SENATOR RACHAEL CABRAL-GUEVARA, SENATOR VAN H. WANGGAARD, SENATOR JESSE L. JAMES, SENATOR ROMAIN ROBERT QUINN, SENATOR DIANNE H. HESSELBEIN, SENATOR CORY TOMCZYK, SENATOR JEFF SMITH, AND SENATOR CHRIS KAPENGA, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN SENATE,

Respondents,

WISCONSIN LEGISLATURE; BILLIE JOHNSON, CHRIS GOEBEL, ED PERKINS, ERIC O'KEEFE, JOE SANFELIPPO, TERRY MOULTON, ROBERT JENSEN, RON ZAHN, RUTH ELMER, AND RUTH STRECK,

Intervenors-Respondents.

**APPENDIX IN SUPPORT OF JOINT RESPONSE OF PETITIONERS
AND WRIGHT INTERVENORS REGARDING CONSULTANTS'
FEES AND EXPENSES ALLOCATION**

COUNSEL LISTED ON FOLLOWING PAGE

Mark P. Gaber*
Brent Ferguson*
Benjamin Phillips*
Michael Ortega*
CAMPAIGN LEGAL
CENTER
1101 14th St. NW, Ste. 400
Washington, DC 20005
202.736.2200

Annabelle E. Harless*
CAMPAIGN LEGAL
CENTER
55 W. Monroe St., Ste. 1925
Chicago, IL 60603
202.732.2200

Ruth M. Greenwood*
Nicholas O. Stephanopoulos*
ELECTION LAW CLINIC
AT HARVARD LAW
SCHOOL
4105 Wasserstein Hall
6 Everett Street
Cambridge, MA 02138
617.998.1010

Daniel S. Lenz, SBN 1082058
T.R. Edwards, SBN 1119447
Elizabeth M. Pierson, SBN 1115866
Scott B. Thompson, SBN 1098161
LAW FORWARD, INC.
222 W. Washington Ave.
Suite 250
Madison, WI 53703
608.556.9120

Douglas M. Poland, SBN 1055189
Jeffrey A. Mandell, SBN 1100406
Rachel E. Snyder, SBN 1090427
STAFFORD ROSENBAUM
LLP
222 W. Washington Ave.
Suite 900
P.O. Box 1784
Madison, WI 53701
608.256.0226

Elisabeth S. Theodore*
John A. Freedman*
ARNOLD & PORTER KAYE
SCHOLER LLP
601 Massachusetts Ave. NW
Washington, DC 20001
202.942.5000

Attorneys for Petitioners

Sarah A. Zylstra (Bar No. 1033159)
Tanner G. Jean-Louis (Bar No.
1122401)
BOARDMAN CLARK LLP
1 South Pinckney Street, Suite 410
Madison, WI 53701
(608) 257-9521
szylstra@boardmanclark.com
tjeanlouis@boardmanclark.com

Sam Hirsch*
Jessica Ring Amunson*
Elizabeth B. Deutsch*
Arjun R. Ramamurti*
JENNER & BLOCK LLP
1099 New York Avenue NW, Ste 900
Washington, DC 20001
(202) 639-6000
shirsch@jenner.com
jamunson@jenner.com
edeutsch@jenner.com
aramamurti@jenner.com

*Counsel for Wright
Intervenors-Petitioners*

**Admitted pro hac vice*

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CERTIFICATION BY ATTORNEY

I hereby certify that filed with this brief is an appendix that complies with s. 809.19(2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) portions the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Electronically signed by Daniel S. Lenz
Daniel S. Lenz

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

BOBBY SINGLETON, *et al.*,)
)
Plaintiffs,)
)
v.)
)
JOHN H. MERRILL, *in his*)
official capacity as Alabama)
Secretary of State, et al.,)
)
Defendants.)

Case No.: 2:21-cv-1291-AMM

THREE-JUDGE COURT

EVAN MILLIGAN, *et al.*,)
)
Plaintiffs,)
)
v.)
)
JOHN H. MERRILL, *in his*)
official capacity as Secretary of)
State of Alabama, et al.,)
)
Defendants.)

Case No.: 2:21-cv-1530-AMM

THREE-JUDGE COURT

Before MARCUS, Circuit Judge, MANASCO and MOORER, District Judges.

BY THE COURT:

ORDER APPOINTING SPECIAL MASTER AND APPOINTING EXPERT
CARTOGRAPHER

On January 24, 2022, this three-judge court issued a preliminary injunction barring one of the Defendants in these cases, Alabama Secretary of State John H. Merrill, from conducting congressional elections according to Alabama's 2021 redistricting plan for its seven seats in the United States House of Representatives ("the Plan"). We concluded that the *Milligan* plaintiffs are substantially likely to establish that the Plan violates Section Two of the Voting Rights Act of 1965, 52 U.S.C. § 10301. We also stayed the January 28, 2022 qualification deadline for Alabama's 2022 congressional elections for 14 days, through February 11, 2022, to allow the Alabama Legislature the opportunity to enact a remedial plan. And we ordered two other Defendants, Senator Jim McClendon and Representative Chris Pringle, who co-chair Alabama's Permanent Legislative Committee on Reapportionment ("the Legislators") to advise us if the Legislature was unable to pass a remedial plan within 14 days of the date of the preliminary injunction, so that we could appoint (at the expense of Defendants) an eminently qualified expert to draw on an expedited basis a map that complies with federal law for use in Alabama's 2022 congressional elections.

Since we issued the preliminary injunction, we have held two status conferences and remain unaware of any effort by the Legislature to begin the legislative process of passing a new map. *See* Tr. of Jan. 26, 2022 Hrg. at 13–14; Tr. of Jan. 28, 2022 Hrg. at 13; *Singleton* Doc. 98 at 2. Accordingly, the court has

prepared to assume “the unwelcome obligation . . . to devise and impose a reapportionment plan” for use in Alabama’s next congressional elections. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (internal citation and quotation marks omitted).

After we issued the preliminary injunction, we asked the parties to identify potential Special Masters and map-drawing experts to assist the court in preparing a remedial map if it became necessary for the court to do so. Each set of plaintiffs in these cases and the related case, *Caster v. Merrill*, Case No. 2:21-cv-1536-AMM, as well as the Defendants, submitted names of persons for the court to consider. *See Singleton* Docs. 94 & 95; *Milligan* Docs. 121 & 122; *Caster* Docs. 111 & 112. After we reviewed those submissions and conducted our own research, at a status conference conducted on January 28, 2022, we asked the parties to comment specifically on two candidates: Mr. Richard Allen as a potential Special Master, and Dr. Nathaniel Persily as a potential expert cartographer.

Mr. Allen is an esteemed public servant with eminent knowledge of Alabama state government. After seven years of active-duty military service, he attended the University of Alabama School of Law, where he earned numerous accolades, including the selection by his classmates as the most outstanding graduate in his final year. After he graduated from law school, he clerked for Alabama Supreme Court Chief Justice Howell Heflin and then commenced his private practice at a well-regarded law firm in Montgomery. After Mr. Heflin was elected to the United States

Senate, Mr. Allen served as his Chief Legislative Assistant for a time. He then returned to Montgomery, where he spent fifteen years in private practice before Alabama Attorney General Jeff Sessions tapped him to serve as Chief Deputy Attorney General. Mr. Allen served in that role for ten years: first with Attorney General Sessions, then with Attorney General William H. Pryor Jr., and then with Attorney General Troy King. He then returned to private practice, but not for long before he was tapped again, this time by Governor Bob Riley to serve as Commissioner of the Alabama Department of Corrections. After five years of service in that role, Mr. Allen left to return to his previous work as Chief Deputy Attorney General, serving this time with Attorney General Luther Strange. Mr. Allen then returned to private practice, where he also served for four years as the parliamentary law advisor for then-Lieutenant Governor Kay Ivey. The foregoing narrative recites only one dimension of Mr. Allen's career of service: after he graduated from law school, Mr. Allen spent twenty years as an officer in the United States Army Reserve and retired from military service with the rank of Brigadier General.

Dr. Persily is a distinguished law professor with eminent knowledge of redistricting issues and electoral maps. He earned undergraduate and graduate degrees in political science from Yale University, an additional graduate degree and doctoral degree in political science from the University of California, Berkeley, and

a law degree from Stanford Law School, where he was President of the STANFORD LAW REVIEW. He served as a law clerk to Judge David S. Tatel on the United States Court of Appeals for the D.C. Circuit; then worked as a Professor of Law at Columbia Law School and a Professor of Law at the University of Pennsylvania Law School; and currently works as the James B. McClatchy Professor of Law at Stanford Law School. He has served as a special master or court-appointed expert to craft congressional or legislative districting plans in Georgia, Maryland, Connecticut, New York, North Carolina, and Pennsylvania. He has published numerous articles in leading peer-reviewed journals on issues surrounding the census and redistricting process; he is one of the authors of a leading election-law casebook; and he regularly comments for national television, radio, and newspaper media on election-law and redistricting issues.

The *Milligan* plaintiffs, *Caster* plaintiffs, and Defendants filed responses to the court's request for comments about Mr. Allen and Dr. Persily. *See Milligan* Docs. 126 & 127; *Caster* Docs. 116 & 117. No plaintiffs objected to the appointment of Mr. Allen or Dr. Persily. However, the *Milligan* and *Caster* plaintiffs did request that Mr. Allen and Dr. Persily be appointed as joint special masters. *Milligan* Doc. 127; *Caster* Doc. 116 at 2. Defendants also had no objection to the appointment of Mr. Allen. Moreover, they had no objection to the appointment of Dr. Persily, provided that he had not "discussed this case with counsel for any party or publicly

taken a position on the preliminary injunction.” *Milligan* Doc. 126. Defendants also “note[d] that the district court has provided the Legislature until February 7 to pass a remedial plan,” advised the court that their emergency application for a stay of the preliminary injunction remains pending in the Supreme Court, and “object[ed] to any Court-retained experts incurring costs until after February 7, 2022.” *Id.* at 2–3. The court has since inquired of Dr. Persily and is satisfied that he has neither communicated about this case with counsel for any party nor taken a public position on the preliminary injunction.

Accordingly, we advised the parties in an Order dated February 3, 2022 that if the Legislature was unable to enact a new map as of today’s date, the court would draw on its inherent authority and, pursuant to Federal Rule of Civil Procedure 53, issue a detailed order appointing Mr. Allen as Special Master and appointing Dr. Persily as an expert cartographer, with instructions (1) not to incur costs until February 8, 2022 and, thereafter (2) to consult all parties about the parties’ proposals for drawing a remedial map and to obtain the supporting data at the earliest opportunity after that date. This is that Order.

Pursuant to the court’s inherent authority and Federal Rule of Civil Procedure 53, Mr. Richard Allen is **APPOINTED** Special Master and Dr. Nathaniel Persily is **APPOINTED** as the court’s expert cartographer, with the following authority, responsibility, and instructions:

1. The Special Master and expert cartographer are empowered and charged with the duty to prepare and recommend to the court a remedial map or maps, or to recommend a remedial map or maps proposed by any of the parties, for the court to order Secretary Merrill to use in Alabama's upcoming congressional elections, consistent with the preliminary injunction.

2. In developing a remedial map or maps, or recommending a remedial map or maps proposed by any of the parties, the Special Master and expert cartographer must (a) use 2020 census data; (b) adhere to the requirements of the United States Constitution and the Voting Rights Act; and (c) consider and make all reasonable efforts where possible to defer to the redistricting guidelines promulgated by the Alabama Legislature, which are attached hereto as Appendix A.

3. The Special Master and expert cartographer are authorized to retain appropriate assistants and experts as may be reasonably necessary for them to accomplish their task within the time constraints imposed by this Order. The expert cartographer is authorized to buy any specialized software reasonably necessary to facilitate his work.

4. The Special Master and expert cartographer are authorized to issue appropriate orders as may be reasonably necessary for them to accomplish their task within the time constraints imposed by this Order.

5. The Special Master and expert cartographer may not engage in *ex parte* communications with the parties or their counsel, but may engage in *ex parte* communications with the court as the need may arise.

6. The Special Master and expert cartographer shall consider any proposals, plans, and comments submitted to them by any of the parties to these cases, and they are directed to invite submissions and comments, take testimony, and hold hearings as may be necessary to reasonably assist them to develop a remedial plan (or to recommend a remedial plan that any of the parties has proposed).

7. All reasonable costs and expense of the Special Master and expert cartographer, including reasonable compensation for those persons and any assistants they may retain, shall (subject to the approval of this court) be paid by the State of Alabama. The Special Master and expert cartographer are directed not to incur any costs before February 8, 2022.

8. We are fully aware of the need to have a remedial map in place as soon as is reasonably possible. Accordingly, we direct that the Special Master and expert

cartographer file a report that contains the recommended map(s) and explains the basis for the recommendation(s) not later than **February 22, 2022**.

To facilitate the work of the Special Master and expert cartographer:

1. Defendants are **ORDERED** to notify Dr. Persily in writing and not later than 12:00 pm Central Standard Time Tuesday, February 8, 2022 whether they have a Maptitude license to make available for him to use for his work on this case, or whether it will be necessary for Dr. Persily to acquire one for that purpose (the cost of which ultimately will be taxed to Defendants).

2. The *Milligan* and *Singleton* plaintiffs are **ORDERED** to provide to Dr. Persily not later than 12:00 pm Central Standard Time Tuesday, February 8, 2022:

a. The block equivalency files for the remedial maps offered by the *Milligan* plaintiffs in connection with their claims under the Voting Rights Act (the plans that are referred to in the preliminary injunction as the “Duchin plans” and the “Hatcher plan”).

b. The block equivalency files for the remedial maps offered by the *Singleton* plaintiffs in connection with their claim (the plans that are referred to in the preliminary injunction as the “Whole County Plans”).

3. Defendants are **ORDERED** to provide to Dr. Persily not later than 12:00 pm Central Standard Time Tuesday, February 8, 2022, (1) the block equivalency files for the Plan and its predecessor, the plan described in the preliminary injunction as “the 2011 congressional map,” (2) shapefiles for Alabama’s municipalities and current voting districts (precincts), and (3) a shapefile reflecting the location of the current residence of each of Alabama’s current members of the United States House of Representatives.

After the Special Master and expert cartographer file the report and recommendations, this court will hold a public hearing to receive comments and objections, if there are any, to the recommended plan(s).

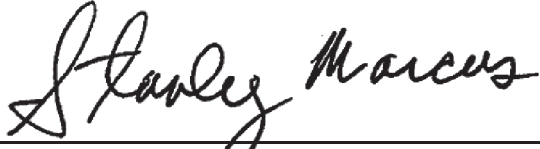
We are mindful that the Legislature has substantially more discretion than we do in drawing a remedial map: state legislatures may consider political

circumstances that courts may not. *See, e.g., Upham v. Seamon*, 456 U.S. 37, 39–43 (1982); *Connor v. Finch*, 431 U.S. 407, 414–15 (1977); *Wyche v. Madison Parish Police Jury*, 635 F.2d 1151, 1160 (5th Cir. 1981). Our instructions to the Special Master and expert cartographer are consistent with these limitations.


We remain hopeful that the Alabama Legislature will take up the task of passing an electoral map that complies with federal law. Nothing in this Order or any previous Order of this court prevents or should discourage the Legislature from taking up that task. “It is well settled that ‘reapportionment is primarily the duty and responsibility of the State,’” *Miller v. Johnson*, 515 U.S. 900, 915 (1995) (quoting *Chapman v. Meier*, 420 U.S. 1, 27 (1975)); that “it is the domain of the States, and not the federal courts, to conduct apportionment in the first place,” *Voinovich v. Quilter*, 507 U.S. 146, 156 (1993); that each State has a “sovereign interest in implementing its redistricting plan,” *Bush v. Vera*, 517 U.S. 952, 978 (1996); that “drawing lines for congressional districts is one of the most significant acts a State can perform to ensure citizen participation in republican self-governance,” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 416 (2006) (citation omitted); and that because “the Constitution vests redistricting responsibilities foremost in the legislatures of the States and in Congress, a lawful, legislatively enacted plan should be preferable to one drawn by the courts,” *id.*

If any party anticipates or encounters any difficulty complying with any aspect of this Order, that party is **DIRECTED** to advise the court without delay.

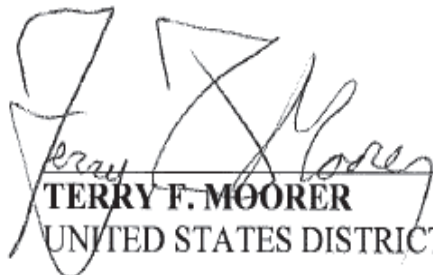
DONE and **ORDERED** this 7th day of February, 2022.



STANLEY MARCUS
UNITED STATES CIRCUIT JUDGE



ANNA M. MANASCO
UNITED STATES DISTRICT JUDGE



TERRY F. MOORER
UNITED STATES DISTRICT JUDGE

APPENDIX A

REAPPORTIONMENT COMMITTEE REDISTRICTING GUIDELINES

May 5, 2021

I. POPULATION

The total Alabama state population, and the population of defined subunits thereof, as reported by the 2020 Census, shall be the permissible data base used for the development, evaluation, and analysis of proposed redistricting plans. It is the intention of this provision to exclude from use any census data, for the purpose of determining compliance with the one person, one vote requirement, other than that provided by the United States Census Bureau.

II. CRITERIA FOR REDISTRICTING

a. Districts shall comply with the United States Constitution, including the requirement that they equalize total population.

b. Congressional districts shall have minimal population deviation.

c. Legislative and state board of education districts shall be drawn to achieve substantial equality of population among the districts and shall not exceed an overall population deviation range of $\pm 5\%$.

d. A redistricting plan considered by the Reapportionment Committee shall comply with the one person, one vote principle of the Equal Protection Clause of the 14th Amendment of the United States Constitution.

e. The Reapportionment Committee shall not approve a redistricting plan that does not comply with these population requirements.

f. Districts shall be drawn in compliance with the Voting Rights Act of 1965, as amended. A redistricting plan shall have neither the purpose nor the effect of diluting minority voting strength, and shall comply with Section 2 of the Voting Rights Act and the United States Constitution.

g. No district will be drawn in a manner that subordinates race-neutral districting criteria to considerations of race, color, or membership in a language-minority group, except that race, color, or membership in a language-minority group may predominate over race-neutral districting criteria to comply with Section 2 of the Voting Rights Act, provided there is a strong basis in evidence in support of such a race-based choice. A strong basis in evidence exists when there is good reason to believe that race must be used in order to satisfy the Voting Rights Act.

1 h. Districts will be composed of contiguous and reasonably compact
2 geography.

3 i. The following requirements of the Alabama Constitution shall be complied
4 with:

5 (i) Sovereignty resides in the people of Alabama, and all districts should be
6 drawn to reflect the democratic will of all the people concerning how their
7 governments should be restructured.

8 (ii) Districts shall be drawn on the basis of total population, except that voting
9 age population may be considered, as necessary to comply with Section 2 of the
10 Voting Rights Act or other federal or state law.

11 (iii) The number of Alabama Senate districts is set by statute at 35 and, under
12 the Alabama Constitution, may not exceed 35.

13 (iv) The number of Alabama Senate districts shall be not less than one-fourth or
14 more than one-third of the number of House districts.

15 (v) The number of Alabama House districts is set by statute at 105 and, under
16 the Alabama Constitution, may not exceed 106.

17 (vi) The number of Alabama House districts shall not be less than 67.

18 (vii) All districts will be single-member districts.

19 (viii) Every part of every district shall be contiguous with every other part of the
20 district.

21 j. The following redistricting policies are embedded in the political values,
22 traditions, customs, and usages of the State of Alabama and shall be observed to
23 the extent that they do not violate or subordinate the foregoing policies prescribed
24 by the Constitution and laws of the United States and of the State of Alabama:

25 (i) Contests between incumbents will be avoided whenever possible.

26 (ii) Contiguity by water is allowed, but point-to-point contiguity and long-lasso
27 contiguity is not.

28 (iii) Districts shall respect communities of interest, neighborhoods, and political
29 subdivisions to the extent practicable and in compliance with paragraphs a
30 through i. A community of interest is defined as an area with recognized
31 similarities of interests, including but not limited to ethnic, racial, economic, tribal,
32 social, geographic, or historical identities. The term communities of interest may,
33 in certain circumstances, include political subdivisions such as counties, voting

precincts, municipalities, tribal lands and reservations, or school districts. The discernment, weighing, and balancing of the varied factors that contribute to communities of interest is an intensely political process best carried out by elected representatives of the people.

(iv) The Legislature shall try to minimize the number of counties in each district.

(v) The Legislature shall try to preserve the cores of existing districts.

(vi) In establishing legislative districts, the Reapportionment Committee shall give due consideration to all the criteria herein. However, priority is to be given to the compelling State interests requiring equality of population among districts and compliance with the Voting Rights Act of 1965, as amended, should the requirements of those criteria conflict with any other criteria.

g. The criteria identified in paragraphs j(i)-(vi) are not listed in order of precedence, and in each instance where they conflict, the Legislature shall at its discretion determine which takes priority.

III. PLANS PRODUCED BY LEGISLATORS

1. The confidentiality of any Legislator developing plans or portions thereof will be respected. The Reapportionment Office staff will not release any information on any Legislator's work without written permission of the Legislator developing the plan, subject to paragraph two below.

2. A proposed redistricting plan will become public information upon its introduction as a bill in the legislative process, or upon presentation for consideration by the Reapportionment Committee.

3. Access to the Legislative Reapportionment Office Computer System, census population data, and redistricting work maps will be available to all members of the Legislature upon request. Reapportionment Office staff will provide technical assistance to all Legislators who wish to develop proposals.

4. In accordance with Rule 23 of the Joint Rules of the Alabama Legislature "[a]ll amendments or revisions to redistricting plans, following introduction as a bill, shall be drafted by the Reapportionment Office." Amendments or revisions must be part of a whole plan. Partial plans are not allowed.

5. In accordance with Rule 24 of the Joint Rules of the Alabama Legislature, "[d]rafts of all redistricting plans which are for introduction at any session of the Legislature, and which are not prepared by the Reapportionment Office, shall be presented to the Reapportionment Office for review of proper form and for entry into the Legislative Data System at least ten (10) days prior to introduction."

IV. REAPPORTIONMENT COMMITTEE MEETINGS AND PUBLIC HEARINGS

1. All meetings of the Reapportionment Committee and its sub-committees will be open to the public and all plans presented at committee meetings will be made available to the public.

2. Minutes of all Reapportionment Committee meetings shall be taken and maintained as part of the public record. Copies of all minutes shall be made available to the public.

3. Transcripts of any public hearings shall be made and maintained as part of the public record, and shall be available to the public.

4. All interested persons are encouraged to appear before the Reapportionment Committee and to give their comments and input regarding legislative redistricting. Reasonable opportunity will be given to such persons, consistent with the criteria herein established, to present plans or amendments redistricting plans to the Reapportionment Committee, if desired, unless such plans or amendments fail to meet the minimal criteria herein established.

5. Notice of all Reapportionment Committee meetings will be posted on monitors throughout the Alabama State House, the Reapportionment Committee's website, and on the Secretary of State's website. Individual notice of Reapportionment Committee meetings will be sent by email to any citizen or organization who requests individual notice and provides the necessary information to the Reapportionment Committee staff. Persons or organizations who want to receive this information should contact the Reapportionment Office.

V. PUBLIC ACCESS

1. The Reapportionment Committee seeks active and informed public participation in all activities of the Committee and the widest range of public information and citizen input into its deliberations. Public access to the Reapportionment Office computer system is available every Friday from 8:30 a.m. to 4:30 p.m. Please contact the Reapportionment Office to schedule an appointment.

2. A redistricting plan may be presented to the Reapportionment Committee by any individual citizen or organization by written presentation at a public meeting or by submission in writing to the Committee. All plans submitted to the Reapportionment Committee will be made part of the public record and made available in the same manner as other public records of the Committee.

3. Any proposed redistricting plan drafted into legislation must be offered by a member of the Legislature for introduction into the legislative process.

4. A redistricting plan developed outside the Legislature or a redistricting plan developed without Reapportionment Office assistance which is to be presented for consideration by the Reapportionment Committee must:

a. Be clearly depicted on maps which follow 2020 Census geographic boundaries;

b. Be accompanied by a statistical sheet listing total population for each district and listing the census geography making up each proposed district;

c. Stand as a complete statewide plan for redistricting.

d. Comply with the guidelines adopted by the Reapportionment Committee.

5. Electronic Submissions

a. Electronic submissions of redistricting plans will be accepted by the Reapportionment Committee.

b. Plans submitted electronically must also be accompanied by the paper materials referenced in this section.

c. See the Appendix for the technical documentation for the electronic submission of redistricting plans.

6. Census Data and Redistricting Materials

a. Census population data and census maps will be made available through the Reapportionment Office at a cost determined by the Permanent Legislative Committee on Reapportionment.

b. Summary population data at the precinct level and a statewide work maps will be made available to the public through the Reapportionment Office at a cost determined by the Permanent Legislative Committee on Reapportionment.

c. All such fees shall be deposited in the state treasury to the credit of the general fund and shall be used to cover the expenses of the Legislature.

Appendix.

ELECTRONIC SUBMISSION OF REDISTRICTING PLANS

REAPPORTIONMENT COMMITTEE - STATE OF ALABAMA

The Legislative Reapportionment Computer System supports the electronic submission of redistricting plans. The electronic submission of these plans must be via email or a flash drive. The software used by the Reapportionment Office is Maptitude.

The electronic file should be in DOJ format (Block, district # or district #, Block). This should be a two column, comma delimited file containing the FIPS code for each block, and the district number. Maptitude has an automated plan import that creates a new plan from the block/district assignment list.

Web services that can be accessed directly with a URL and ArcView Shapefiles can be viewed as overlays. A new plan would have to be built using this overlay as a guide to assign units into a blank Maptitude plan. In order to analyze the plans with our attribute data, edit, and report on, a new plan will have to be built in Maptitude.

In order for plans to be analyzed with our attribute data, to be able to edit, report on, and produce maps in the most efficient, accurate and time saving procedure, electronic submissions are REQUIRED to be in DOJ format.

Example: (DOJ FORMAT BLOCK, DISTRICT #)

SSCCCTTTTTTBBBBDDDD

SS is the 2 digit state FIPS code

CCC is the 3 digit county FIPS code

TTTTTT is the 6 digit census tract code

BBBB is the 4 digit census block code

DDDD is the district number, right adjusted

Contact Information:

Legislative Reapportionment Office

Room 317, State House

11 South Union Street

Montgomery, Alabama 36130

(334) 261-0706

1 For questions relating to reapportionment and redistricting, please contact:

2 Donna Overton Loftin, Supervisor

3 Legislative Reapportionment Office

4 donna.overton@alsenate.gov

5 Please Note: The above e-mail address is to be used only for the purposes of
6 obtaining information regarding redistricting. Political messages, including those
7 relative to specific legislation or other political matters, cannot be answered or
8 disseminated via this email to members of the Legislature. Members of the
9 Permanent Legislative Committee on Reapportionment may be contacted through
10 information contained on their Member pages of the Official Website of the
11 Alabama Legislature, legislature.state.al.us/aliswww/default.aspx.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

BOBBY SINGLETON, et al.,)
)
Plaintiffs,)
)
v.)
)
WES ALLEN, in his official)
capacity as Alabama Secretary of)
State, et al.,)
)
Defendants.)

Case No.: 2:21-cv-1291-AMM

THREE-JUDGE COURT

EVAN MILLIGAN, et al.,)
)
Plaintiffs,)
)
v.)
)
WES ALLEN, in his official)
capacity as Alabama Secretary of)
State, et al.,)
)
Defendants.)

Case No.: 2:21-cv-1530-AMM

THREE-JUDGE COURT

MARCUS CASTER, et al.,)
)
Plaintiffs,)
)
v.)
)
WES ALLEN, in his official)
capacity as Secretary of State of)
Alabama, et al.,)
)
Defendants.)

Case No.: 2:21-cv-1536-AMM

Before MARCUS, Circuit Judge, MANASCO and MOORER, District Judges.

BY THE COURT:

ORDER

In 2022, this Court preliminarily enjoined the Secretary of State from conducting elections using the 2021 congressional districting plan enacted by the Alabama Legislature (“the 2021 Plan”) upon finding that the 2021 Plan likely violated Section 2 of the Voting Rights Act, 52 U.S.C. § 10301 (“VRA Section Two”). *See Singleton* Doc. 88; *Milligan* Doc. 107; *Caster* Doc. 101. On February 7, 2022, the Court issued a conditional order appointing a Special Master and Expert Cartographer. *See Singleton* Doc. 102; *Milligan* Doc. 130; *Caster* Doc. 120. Specifically, the Court appointed (at the expense of Defendants) Mr. Richard Allen as Special Master and Dr. Nathaniel Persily as an expert cartographer should they become necessary to assist the Court in the event the Court determined it had to prepare a new map. *Id.*

On July 21, 2023, the Alabama Legislature approved and Governor Ivey signed into law a new congressional districting map (“the 2023 Plan”). On July 24, 2023, Dr. Persily withdrew from his appointment as the Court’s cartographer. As a result, the Court directed the parties to submit three to five names of proposed cartographers for the Court’s consideration by Friday, July 28, 2023. *See Singleton* Doc. 141; *Milligan* Doc. 187; *Caster* Doc. 166. Defendants submitted four names

as proposed cartographers. *See Singleton* Doc. 151; *Milligan* Doc. 197; *Caster* Doc. 175. The three sets of Plaintiffs collectively submitted five proposed cartographers. *See Singleton* Doc. 150; *Milligan* Doc. 198; *Caster* Doc. 174.

The Court has scheduled a remedial hearing on the *Milligan* and *Caster* Plaintiffs' objections to the 2023 Plan on August 14, 2023, which will be immediately followed by a hearing on the *Singleton* Plaintiffs' motion for preliminary injunction. As the Court has repeatedly emphasized, we are acutely aware of the exigent nature of these proceedings and the limited time available to resolve the objections, issue a ruling, and, to the extent it becomes necessary after ruling, assume "the unwelcome obligation . . . to devise and impose a reapportionment plan" for use in Alabama's next congressional elections. *Wise v. Lipscomb*, 437 U.S. 535, 540 (1978) (opinion of White, J.) (citation and quotation marks omitted).

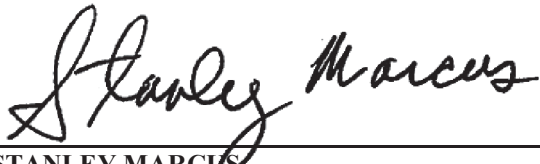
The Court reviewed the parties' submissions and conducted our own research as to the candidates' credentials and experience. As noted in the submissions, Mr. Ely has extensive experience as a map-drawer, consultant, and expert on districting plans. He has drawn maps and provided expert consulting services for cities, counties, and other legislative bodies in Texas, California, Utah, Pennsylvania, Ohio, Massachusetts, and Illinois. He has also previously recommended remedial plans to a federal district court to remedy a Voting Rights Act in his capacity as a special master in a redistricting case in Louisiana. Based on the current information before


the Court, the Court finds David R. Ely well qualified to serve as the Court's cartographer in this case.

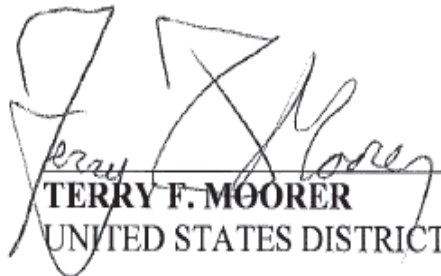
We invite the parties to submit any comments or objections to the appointment of Mr. David Ely as an expert cartographer on or before **5:00 p.m. CDT on Friday, August 4, 2023.**

This order does not alter the appointment of Mr. Richard Allen as the Court's Special Master.

DONE and ORDERED this 2nd day of August, 2023.


STANLEY MARCUS
UNITED STATES CIRCUIT JUDGE


ANNA M. MANASCO
UNITED STATES DISTRICT JUDGE


TERRY F. MOORER
UNITED STATES DISTRICT JUDGE

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6 UNITED STATES DISTRICT COURT
7 FOR THE WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 SUSAN SOTO PALMER, *et al.*,

10 Plaintiffs,

11 v.

12 STEVEN HOBBS, *et al.*,

13 Defendants,

14 and

15 JOSE TREVINO, *et al.*,

16 Intervenor-Defendants.

CASE NO. 3:22-cv-05035-RSL

ORDER REGARDING RETENTION
OF KARIN MAC DONALD

17 This matter comes before the Court on the “Parties’ Joint Submission of Proposed
18 Special Master Candidates.” Dkt. # 244. The parties have been unable to reach an
19 agreement on a remedial legislative district map proposal, and the Court finds that the
20 assistance of an election administration and redistricting expert in assessing proposed
21 remedial plans and making modifications to those plans will be helpful. The Court further
22 finds that Karin Mac Donald, with her background in assisting government entities and
23 independent commissions with redistricting matters, her emphasis on public service, and
24 her commitment to non-partisanship, is the best candidate for this position.
25
26

ORDER REGARDING RETENTION OF KARIN MAC DONALD - 1

1 The Court has confirmed Ms. Mac Donald's ability and willingness to assist in this
2 litigation and will send her the constitutional and statutory provisions regarding
3 redistricting considerations in Washington State, the testimony and reports of the experts
4 who appeared at trial, the Memorandum of Decision, the Order establishing the schedule
5 for the parties' submissions of proposed remedial plans, plaintiff's December 1, 2023,
6 filing, a copy of this Order, and any other materials she may need from the docket.
7 Plaintiffs are directed to send Ms. Mac Donald the block assignment and geojson files used
8 to view their proposed remedial maps (as emailed to the Court on December 1, 2023),
9 along with the Dropbox link where the html files can be downloaded and viewed in a
10 browser window. Ms. Mac Donald's preferred email address is
11 karinmacdonald.q2@gmail.com. All subsequent submissions in opposition to or support of
12 plaintiffs' proposed remedial plans shall be sent directly to Ms. Mac Donald on or before
13 the date they are filed with the Court.

17 Ms. Mac Donald is hereby retained to assist the Court in evaluating the remedial
18 maps proposed by the parties. As is her normal procedure, she will be working with two
19 other individuals on this matter. The goal of the remedial mapping process is to provide
20 equal electoral opportunities for both white and Latino voters in the Yakima Valley region,
21 keeping in mind the social, economic, and historical conditions discussed in the
22 Memorandum of Decision and traditional redistricting principles, such as population
23 equality, compactness, contiguity, respect for political subdivisions, and preservation of
24 communities of interest. If modifications to the proposed maps are necessary in order to


ORDER REGARDING RETENTION OF KARIN MAC DONALD - 2

1 meet that goal, Ms. Mac Donald shall further assist in suggesting options and making the
2 modifications.

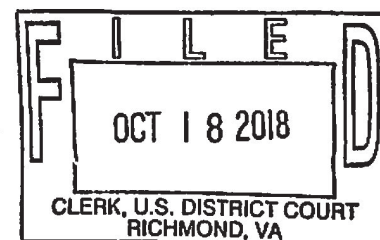
3
4 In light of the limited time between the submission of the reply memoranda and the
5 deadline for transmitting the revised maps to the Secretary of State, the Court anticipates a
6 collaborative process between itself and Ms. Mac Donald. No formal report will be
7 generated. The Court will, however, schedule a hearing in the beginning of March to
8 discuss the Court's preferred remedial option and will make clear in its decision the extent
9 to which Ms. Mac Donald's input and analysis impacted the choice of remedy.
10

11 Because redistricting is the State's responsibility, the State of Washington shall pay
12 the hourly rates of Ms. Mac Donald and her two collaborators for their services in this
13 matter. Ms. Mac Donald's hourly rate is \$275. The State's attorney is directed to contact
14 her regarding the details of billing and payment.
15

16
17 Dated this 20th day of December, 2023.

18
19 
20 Robert S. Lasnik
21 United States District Judge
22
23
24
25
26

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division



GOLDEN BETHUNE-HILL,
et al.,

Plaintiffs,

v.

Civil Action No. 3:14-cv-852

VIRGINIA STATE BOARD OF
ELECTIONS, et al.,

Defendants.

ORDER

Pursuant to Fed. R. Civ. P. 53, and having considered the parties' briefing on the matter, the Court hereby appoints Dr. Bernard Grofman as Special Master to assist and advise the Court on the redistricting remedy. The Commonwealth of Virginia shall be responsible to pay the fees of the Special Master with the right to seek apportionment thereof at the end of the case.

It is so ORDERED.

/s/ REP
Robert E. Payne
Senior United States District Judge
For the Court

Richmond, Virginia
Date: October 18, 2018

2018 WL 8060397

Only the Westlaw citation is currently available.
United States District Court, M.D. North Carolina.

Sandra Little COVINGTON, et al., Plaintiffs,

v.

State of NORTH CAROLINA, et al., Defendants.

1:15-CV-399

|

Signed 03/22/2018

Attorneys and Law Firms

Allison Jean Riggs, Jaclyn A. Maffetore, Southern Coalition for Social Justice, Durham, NC, [Caroline P. Mackie](#), [John Ward O'Hale](#), [Edwin M. Speas, Jr.](#), Poyner Spruill, LLP, Raleigh, NC, for Sandra Little Covington, et al.

[Alexander McClure Peters](#), [James Bernier, Jr.](#), N.C. Department of Justice, [Thomas A. Farr](#), [Michael Douglas McKnight](#), [Phillip John Strach](#), Ogletree Deakins Nash Smoak & Stewart, P.C., Raleigh, NC, for State of North Carolina, et al.,

ORDER

[James A. Wynn, Jr.](#), United States Circuit Judge, [Thomas D. Schroeder](#) and [Catherine C. Eagles](#), United States District Judges

*1 To assist in evaluating remedial districts drawn by the State after a number of legislative districts were held unconstitutional and to draw alternative maps for some of those districts, the Court appointed a Special Master. After considering the bill submitted by the Special Master and the Legislative Defendants' objections, the Court finds the amount of the bill to be reasonable and overrules the objections. The Special Master's work was helpful to the Court, and his fees are very reasonable, especially considering the detailed work he did on a short schedule.

Procedural History

In May 2015, the Plaintiffs filed suit challenging the constitutionality of nine state Senate districts and nineteen state House districts as racial gerrymanders. Doc. 1. In August 2016, this Court unanimously held that the challenged House and Senate districts were unconstitutional. [Covington v. North Carolina](#), 316 F.R.D. 117, 124 (M.D.N.C. 2016). The Supreme Court summarily affirmed. [North Carolina v. Covington](#), 137 S. Ct. 2211 (2017) (mem).

In August 2017, the North Carolina General Assembly enacted redistricting plans intended to remedy the constitutional violations. Doc. 184. The Plaintiffs objected to 12 of the 116 remedial districts. Doc. 187. After completion of briefing and a hearing on October 12, 2017, this Court found that 9 of these objections potentially had merit, identified specific concerns, and gave notice of its intent to appoint a Special Master to be paid by the State. Doc. 202. On November 1, 2017, the Court appointed Dr. Nathaniel Persily as Special Master. Doc. 206.

On November 14, 2017, the Special Master provided a draft plan to the parties for their comments and suggestions. Doc. 213. On December 1, 2017, the Special Master submitted his recommended remedial plans to the Court, along with a report explaining

his process and why the recommended plans remedied the identified legal problems. Doc. 220. After a hearing, this Court approved the General Assembly's 2017 Plans as modified by the Special Master's recommended plans. Doc. 242.

On February 20, 2018, the Court ordered the Clerk to file the Special Master's Statement of Fees, Minute Entry 2/20/2018, which was done. Doc. 251. The Legislative Defendants object to being ordered to pay the Special Master's fees. Doc. 253. Neither the State nor the Plaintiffs filed a response or objection to the fee statement.

Analysis and Findings

Under the Federal Rules of Civil Procedure, special masters are to be paid by one or more parties or from a fund within the court's control. *Fed. R. Civ. P. 53(g)*. Rule 53(g) provides the Court with the discretion in deciding who should pay the Special Master. *Id.*; see *Moore v. Tangipahoa Par. Sch. Bd.*, 843 F.3d 198, 202 (5th Cir. 2016) (holding that “[t]he fixing of fees and costs for a special master rests within the court's discretion”); *Morgan v. Kerrigan*, 530 F.2d 401, 427 (1st Cir. 1976) (noting that trial courts have “broad discretion in fixing the amount of such compensation and in determining which of the parties to charge”); cf. *Newton v. Consol. Gas Co.*, 259 U.S. 101, 104 (1922) (recognizing district court's discretion under previous rules). If the district court allocates payment among more than one party, it must consider “the nature and amount of the controversy, the parties’ means, and the extent to which any party is more responsible than other parties for the reference to a master.” *Fed. R. Civ. P. 53(g)(3)*.

*2 Rule 53(g) itself contemplates consideration of the extent to which one party is more responsible than other parties for the reference to a master, and it is well-established that a district court can appropriately consider the fact that one party's conduct necessitated the lawsuit. See, e.g., *Gary W. v. Louisiana*, 601 F.2d 240, 246 (5th Cir. 1979) (district court does not abuse its discretion by taxing losing party with full share of the master's fee); *Morgan*, 530 F.2d at 427 (no abuse of discretion where district court determined that master was to be compensated for services by the school district against which the desegregation suit was brought); *Hart v. Cmty. Sch. Bd. of Brooklyn, N.Y. Sch. Dist. No. 21*, 383 F. Supp. 699, 767 (E.D.N.Y. 1974) (awarding costs of master against the defendant with ability to pay when school authorities, city, state, and federal agencies had supported unlawful racial segregation that required a school desegregation suit).

The Special Master in this case worked on a short time frame. There were a number of districts involved, the Court imposed significant restrictions on his work in order to insure that state policy preferences were accommodated, and the task required significant technical skill. In two weeks, the Special Master prepared a draft report so that the parties would have an opportunity to participate in his review and redrawing of districts. Just over two weeks later, the Special Master filed a clear, detailed, and thorough report which was valuable and helpful to the Court and allowed the Court to resolve the case in a prompt manner.

The Court has reviewed the Special Master's bill and finds it reasonable and, given the circumstances, well below what might have been charged. In a case involving a significantly less complicated remedial plan for a single congressional district in a neighboring state, the district court required the State to pay fees and expenses of the Special Master in the sum of \$80,788.64. Order, *Personhuballah v. Alcorn*, No. 3:13-cv-678, Doc. 304 (E.D.Va. Jan. 29, 2016); see also *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 556 (E.D. Va. 2016) (appointing special master to redraw Virginia's Third Congressional District). While the Special Master's hourly rate in *Personhuballah* was \$400 per hour, Special Master's Fee Statement, *Personhuballah v. Alcorn*, No. 3:13-cv-678, Doc. 302 (E.D.Va. Jan. 12, 2016), and the Special Master here charged an hourly rate of \$500 for his own time, Doc. 251 at 1, a significant amount of work was done by an associate who charged only \$250 an hour. *Id.* Moreover, in the expectation that his fee will be paid within one month of the Court's order, the Special Master has agreed to waive compensation for his expenses (approximately \$16,700) and to reduce his fee by 10 percent, meaning that his effective rate is \$450 per hour. See *id.* While the defendants retained someone to review part of the Special Master's work at a lower hourly rate, the Legislative Defendants have presented no evidence that any expert with qualifications remotely approaching Dr. Persily's experience and expertise was available on short notice to conduct the necessary work in such a short time frame.

The matters at issue in this case have a high degree of public importance. Election of state legislators is a meaningful part of the civic life of citizens and the need for districts which comply with the federal and state constitutions is of obvious consequence.

Having considered the time necessarily spent by the Special Master, the thoroughness of the Special Master's services, the public importance of the matter involved, the difficulty of the issues presented, the Special Master's appreciable background and distinction, the typical hourly rate in comparable matters, and the assistance the Special Master provided to a final disposition of the issues referred to him, the Court finds that the fees and expenses requested by the Special Master are reasonable.

*3 The Court further concludes that it is appropriate to require the State of North Carolina to pay the Special Master's fees and expenses. It was the State of North Carolina that enacted the unconstitutional districting plan in 2011 that necessitated this lawsuit and the need for a remedial redistricting process. It was the State of North Carolina which enacted remedial plans which gave rise to serious questions about their constitutionality and as to whether they were, in fact, remedial. The Plaintiffs bear no responsibility for the need for a Special Master, and it would be unfair to require them to pay for the services of a Special Master when it was the State's actions that led to the need for those services. Indeed, the Advisory Committee Note to [Rule 53](#) specifically indicates that "parties pursuing matters of public interest, for example, may deserve special protection" when it comes to deciding responsibility for payment of the Special Master's fees.

The Legislative Defendants' Objections.

The Legislative Defendants raise four objections in their Statement of Position. Doc. 253. First, the Legislative Defendants contend that the State of North Carolina should not be responsible for Dr. Persily's fees and expenses because appointing a Special Master was "not necessary" to cure the constitutional deficiencies. Doc. 253 at 5. Specifically, they contend that this Court should have afforded the State another opportunity to remedy the unconstitutional districts and that the General Assembly could have easily provided an "alternative" districting plan by the December 1, 2017, deadline. *Id.* at 5-6. They also point out that the General Assembly could have provided an alternative plan for less than the \$124,125 charged by Dr. Persily. *Id.* at 6-7.

Given that the State of North Carolina drew the original unconstitutional districts and drew the districts which had obvious problems in failing to remedy those constitutional defects, the Court was not required to rely exclusively on the State for another remedial plan. The Special Master's work here helped the Court evaluate the allegedly remedial districts drawn by the State and allowed the Court to enter a remedial order well before the filing period for the 2018 elections. The State's contention that the Special Master was unnecessary is without merit.

Second, the Legislative Defendants contend that the Court should apportion the Special Master's fees equally between the parties because the Supreme Court may reverse all or part of this Court's decision. Doc. 253 at 8. Even if this is so, that is not a reason to require the Plaintiffs to pay part of the expenses. It is undisputed that the State enacted unconstitutional districts in 2011, and the use of Special Masters in the remedial context is well-established as helpful to courts with the responsibility of evaluating plans by state legislatures which allegedly cure the constitutional violations. Here, the Court needed the assistance of a Special Master to determine if the State cured those constitutional violations and, if not, to provide a constitutional remedy. The Legislative Defendants also say that the Plaintiffs should pay part of the fees and expenses because at least one third-party is funding the Plaintiffs' litigation fees and expenses, *id.*, but they do not explain why this makes a difference in who should pay the Special Master's fees. The Legislative Defendants also say that the Plaintiffs are more responsible than the Legislative Defendants for the Special Master's appointment, *id.* at 9, but this argument would essentially punish the Plaintiffs for seeking to have their constitutional rights enforced by the Court.

Third, the Legislative Defendants contend that if the Court orders the State to pay the Special Master's fees and expenses, this order should be treated as an "interim allocation" because, should the State prevail at the U.S. Supreme Court, it would be unfair for the State to bear the Special Master's expenses. *Id.* at 9; *see also* [Fed. R. Civ. P. 53\(g\)\(3\)](#). While [Rule 53](#) permits the court to make an "interim allocation" which may later "be amended to reflect a decision on the merits," *id.*, this Court has

already reached a decision on the merits. Moreover, as discussed *supra*, the Special Master's assistance was helpful to the Court in evaluating the State's remedial plan, and it is not necessary that the State's remedial plan be held unconstitutional in order to require the State to pay the Special Master's fee.

*4 Finally, the Legislative Defendants contend that if the State pays the Special Master's fees and expenses, the Special Master should be required to make all of his work product available to the public. Doc. 253 at 10. This issue is unrelated to the question of who should pay the Special Master.

It is **ORDERED** that the State of North Carolina is directed to render payment in the amount of \$124,125 to Dr. Nathaniel Persily not later than thirty days from the date of the entry of this Order.

All Citations

Not Reported in Fed. Supp., 2018 WL 8060397

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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

GLORIA PERSONHUBALLAH, et al.,

Plaintiffs,

v.

Civil Action No. 3:13cv678

JAMES B. ALCORN, et al.,

Defendants.

ORDER

This matter is before the Court on the STATEMENT OF FEES AND EXPENSES OF THE SPECIAL MASTER, filed on January 12, 2016. (ECF No. 302). The total amount requested by the Special Master is \$80,788.64, including \$79,500.00 in fees and \$1,288.64 in expenses. The Court directed the parties to file any statements of position on the statement of fees and expenses by January 22, 2016. (ECF No. 301). No party filed any statement of position. Thus, the Statement of Fees and Expenses of the Special Master (ECF No. 302) stands without objection.

The compensation of a Special Master is governed by Fed. R. Civ. P. 53(g), which provides the Court with the discretion to fix the Special Master's compensation and charge the costs to any party. Having considered the time necessarily spent by the Special Master, the thoroughness of the Special Master's services, the public importance of the matter involved, the difficulty of the issues presented, the Special Master's

appreciable background and distinction, the typical hourly rate in comparable matters, and the assistance the Special Master provided to a final disposition of the issues referred to him, the Court finds that the fees and expenses requested by the Special Master are reasonable.

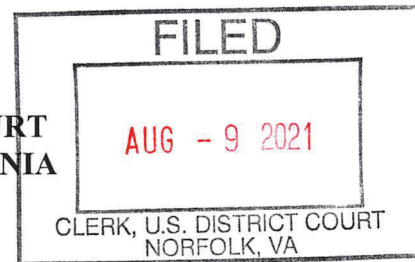
Therefore, in accordance with the agreement of the parties, as set forth on the record on September 2, 2015, and the Court's Order entered September 25, 2015 (ECF No. 241), the Commonwealth of Virginia is directed to render payment in the amount of \$80,788.64 to Dr. Bernard Grofman for his fees and expenses not later than thirty days from the date of the entry of this Order.

It is so ORDERED.

_____/s/ REPA
For the Court
Robert E. Payne
Senior United States District Judge

Richmond, Virginia
Dated: January 29, 2016

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**



**LATASHA HOLLOWAY et. al.,
Plaintiff,**

v.

CIVIL ACTION NO. 2:18-cv-69

**CITY OF VIRGINIA BEACH, et. al.,
Defendant.**

ORDER CONDITIONALLY APPOINTING SPECIAL MASTER

On March 31, 2021, the Court entered a judgment declaring the City of Virginia Beach's at-large method of election illegal. ECF No. 242. On May 25, 2021, the Court ordered the Parties to submit proposed remedial plans by July 1, 2021 to redress the at-large system of election for the Virginia Beach City Council. ECF No. 252. On July 1, 2021, the Court instructed the Parties to submit their responses and replies to the proposed remedial plans by July 30, 2021. ECF No. 259. Given the nature of this matter and the Court's previous findings, the Court has concluded that the appointment of a Special Master is appropriate under Rule 53(a)(1) of the Federal Rules of Civil Procedure to assist the Court in the remedy phase of this case.

All Parties submitted briefs setting forth arguments, proposed remedial plans, and credentials for potential candidates for Special Master. The Court has carefully reviewed the Parties' submissions, the candidates' credentials and experience, and the arguments offered both in favor of, and against, certain candidates. Based on the information before the Court, the Court finds that Dr. Bernard N. Grofman is best qualified to serve as Special Master in this case. Without objection from either party, on August, 4, 2021, the Court informed parties of its intent to select Dr. Grofman as a Special Master. ECF No. 274. Dr. Grofman has extensive experience addressing issues like those presented therein, and there is no suggestion that Dr. Grofman would investigate

the appropriate remedy in this matter in a partisan manner. *See* ECF No. 261 at Exhibit 3. Notably, both parties recommended that Dr. Grofman be appointed as Special Master in this case. *See* ECF Nos. 260, 261, 273.

Accordingly, it is **ORDERED** that **Dr. Bernard N. Grofman**, Distinguished Professor of Political Science at the University of California, Irvine, is conditionally appointed Special Master for the purpose of submitting a Report and Recommendation of a legally sound remedial plan that addresses the violations in Virginia Beach's at-large election system, that the Court enjoined in its ruling of March 31, 2021, *see* ECF No. 242, and complies with the Federal and State Constitutions and the Voting Rights Act.

The Report and Recommendation may include color maps showing the proposed remedial plan maps Plaintiffs and Defendants submitted at trial and in their respective proposed remedial briefs. *See* ECF Nos. 260; 261 at Exhibit 1. However, no new maps may be presented by the Parties. While the evidence of proposed maps will be limited to the maps in the record, the Special Master's Report and Recommendation need not be confined to these maps. The Special Master may consider all the evidence in making his recommendation to the Court and may develop his own plan if necessary.

The Special Master shall have the authority granted by Rule 53(c) to perform his duties fairly and efficiently, including: reviewing evidence on the record; evaluating the Parties respective proposed remedies; setting a date, time, and place for hearings; presiding over hearings; conducting telephone conferences; reviewing/drafting remedial plans; and making recommendations.

The Court expects the Special Master to perform his duties based on the extensive evidence currently on the record; however, the Special Master also has authority to take evidence and

conduct evidentiary hearings if he deems it necessary. The Special Master is authorized to retain appropriate assistants, experts, and staff as may be reasonably necessary to accomplish this task within the time constraints imposed by this Order. If the Special Master orders evidentiary hearings, all pleadings shall be filed with the Court via the Court's CM/ECF filing system. The Special Master's reports, orders, and decisions shall be filed in the record and served pursuant to Rule 53(d).

The Parties shall comply with all reasonable requests of the Special Master, and the Parties shall make their experts available to the Special Master, and the Parties and their experts are expected to fully and reasonably cooperate with the Special Master in the process of formulating an appropriate remedial plan.

Pursuant to Rule 53(b)(2)(B), the Special Master is permitted to communicate *ex parte* with the Court at any time, and the Court advises the Parties that these communications will remain primarily procedural. However, considering the time constraints before the Special Master, the Court may need to have substantive *ex parte* communications with the Special Master. To the extent such communications are necessary, this Order authorizes those communications. The Special Master is not permitted to communicate *ex parte* with any Party or counsel for any Party in this matter. The Special Master may not have *ex parte* communications regarding his duties pursuant to this Order outside of the Court and any assistants or experts retained to assist him.

Pursuant to Rule 53(b)(2)(C), the Special Master shall maintain orderly files consisting of all documents submitted to him by the Parties and any written orders, findings, and recommendations. All other materials should be preserved until relieved of this obligation by the Court. The Special Master shall preserve all datasets used in the formulation of redistricting plans, and any drafts considered but not recommended to the Court, in their native format.

Pursuant to Rules 53(f)(3)-(5), the Court shall review all factual findings made or recommended by the Special Master for clear error, all legal conclusions made or recommended by the Special Master *de novo*, and review procedural matters for abuse of discretion. The Parties will be afforded an opportunity to submit responses and/or objections to the Report and Recommendation, which the Court will consider prior to rendering a final decision and order.

To the extent reasonably practical, the Special Master shall submit his Report and Recommendation to the Court **on or before November 15, 2021**. The Parties shall file any response and/or objection to the Report and Recommendation **within twenty (20) days of the report**. The Court will issue a ruling approving or rejecting the Special Master's recommendation as soon as thereafter practicable. Leave to extend the deadlines set forth herein shall be freely given upon motion setting forth the grounds for the relief requested.

Rule 53(g) provides the Court with the discretion in deciding who should pay the Special Master. Since the Court determined that Defendants supported the unlawful at-large electoral system that necessitated this suit and after considering the Plaintiffs' financial means, and that Plaintiffs are represented Pro Bono, the Court finds that all costs of the Special Master, including reasonable compensation to the Special Master and any assistants, experts, or staff, shall be subject to approval by this Court and shall be borne entirely by the Defendants, and paid in full within forty-five (45) days after Court approval. *See United States v. Cline*, 388 F.2d 294, 296 (4th Cir. 1968) (holding that the fees of the special master should be borne by the party "largely blamable for the need of..." the suit); *see also, Covington v. North Carolina*, No. 1:15-CV-399, 2018 WL 8060397, at *1 (M.D.N.C. Mar. 22, 2018) (holding similarly); *Moore v. Tangipahoa Par. Sch. Bd.*, 843 F.3d 198, 202 (5th Cir. 2016) (holding that "[t]he fixing of fees and costs for a special master rests within the court's discretion"); *Morgan v. Kerrigan*, 530 F.2d 401, 427 (1st Cir. 1976)


(noting that trial courts have “broad discretion in fixing the amount of such compensation and in determining which of the parties to charge”). The Special Master’s rate shall be \$450 per hour. The Special Master shall preserve all records of time and expenses incurred.

Finally, this Order appointing Dr. Bernard Grofman as Special Master in this matter is contingent upon Dr. Grofman submitting an affidavit pursuant to Federal Rule of Civil Procedure 53(b). Thus, **IT IS ORDERED** that Dr. Grofman shall file an affidavit disclosing whether there is any ground for disqualification under 28 U.S.C. § 455 **no later than August 16, 2021**.

The Clerk is **DIRECTED** to electronically provide this Order to all parties.

IT IS SO ORDERED

Norfolk, Virginia
August 9, 2021



Raymond A. Jackson
United States District Judge
UNITED STATES DISTRICT JUDGE

STATE OF NEW YORK
SUPREME COURT : COUNTY OF STEUBEN

Index No. E2022-0116CV

TIM HARKENRIDER, GUY C. BROUGHT,
LAWRENCE CANNING, PATRICIA CLARINO,
GEORGE DOOHER, JR., STEVEN EVANS, LINDA
FANTON, JERRY FISHMAN, JAY FRANTZ,
LAWRENCE GARVEY, ALAN NEWPHEW,
SUSAN ROWLEY, JOSEPHINE THOMAS, and
MARIANNE VOLANTE,

Petitioners,

-against-

ORDER

GOVERNOR KATHY HOCHUL, LIEUTENANT
GOVERNOR AND PRESIDENT OF THE SENATE
BRIAN A. BENJAMIN, SENATE MAJORITY LEADER
AND PRESIDENT PRO TEMPORE OF THE SENATE
ANDREA STEWART-COUSINS, SPEAKER OF THE
ASSEMBLY CARL HEASTIE, NEW YORK STATE
BOARD OF ELECTIONS, and THE NEW YORK STATE
LEGISLATIVE TASK FORCE ON DEMOGRAPHIC
RESEARCH AND REAPPORTIONMENT,

Respondents.

PRESENT: Hon. Patrick F. McAllister
Acting Supreme Court Justice

The Legislature has failed to submit revised maps as ordered by this court. Instead the Respondents filed an appeal that stayed this court's order. The court has reviewed the Decision of Hon. Stephen K. Lindley, Justice of the Supreme Court dated April 8, 2022. Based on that Decision this court has retained Jonathan Cervas to serve as special master to prepare and draw a new neutral, non-partisan Congressional map. The court is taking this action because the case is one in which the parties desire and the public need requires a speedy determination of the controversy over a non-partisan Congressional map. The statutory filing period for declaration of Congressional candidacy has already expired. However, a new period can be designated in the event the Court of Appeals upholds the decision to strike the currently enacted map. In discussing the matter with Dr. Jonathan Cervas the court has prepared the following time line:

The parties, any other interested parties, and any person seeking to participate as an intervenor or *amicus curiae* shall file and submit any proposed complete Congressional Map or any proposed single congressional district map, or any community of interest map to the court and Dr. Cervas for consideration by April 22, 2022:

The parties, any other interested parties, and any person, shall submit any reply or response to the opposing parties' submission to the court and the special master by April 29, 2022;

The parties, any other interested parties, and any person shall appear before Dr. Jonathan Cervas for a hearing on May 6, 2022 at 9:30 a.m. in person at the Steuben County Courthouse in Bath, New York;

Dr. Jonathan Cervas shall complete his proposed 2022 preliminary Congressional redistricting map by May 16, 2022;

The parties, and any other interested parties and any person shall submit any written opposition to the proposed map by May 20, 2022; and

The final non-partisan Congressional redistrict map shall be issued by May 24, 2022;

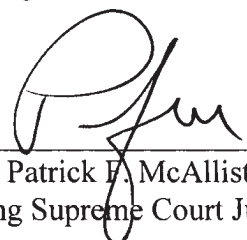
The information collected by, or submitted to, the IRC including any minutes of public hearings shall be made available to Dr. Jonathan Cervas and his research assistants;

The State of New York shall pay to Dr. Cervas a total sum not to exceed \$90,000.00 as and for the work on preparing the Congressional map for 2022. Dr. Cervas shall submit a voucher for payment upon completion of his work at a rate of \$450.00 per hour. Dr. Cervas shall be free to retain assistants to help him in preparing the map. The payment for the assistants shall be through Dr. Cervas and be included within the \$90,000.00 cap.

NOW, therefore, upon consideration of all papers and proceedings heretofore had herein, and after due deliberation, it is

Dated: April 18, 2022

ENTER


Hon. Patrick F. McAllister
Acting Supreme Court Justice