FILED UNDER THE ELECTRONIC BRIEFING RULES

SUPREME COURT

OF THE

STATE OF CONNECTICUT

SC 20661

IN RE PETITION OF REAPPORTIONMENT COMMISSION, EX. REL.

BRIEF AS AMICUS CURIAE SUBMITTED BY THE REAPPORTIONMENT COMMISSION DEMOCRATIC MEMBERS IN SUPPORT OF THE REPORT AND PLAN OF THE SPECIAL MASTER

ATTORNEYS FOR REAPPORTIONMENT COMMISSION DEMOCRATIC MEMBERS

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I. Introduction and Interest of the Amicus Curiae

The Democratic Members of the Reapportionment Commission ("Democratic Members") respectfully submit this brief as Amicus Curiae in support of the Special Master's Report and Plan for Congressional Districts for the State of Connecticut (the "Plan").[1] The Democratic Members have an obvious interest in the redistricting process, in which they have participated from the outset. And they have an interest in the Court's adopting a sound plan, so the public will have confidence in both the process and the Plan itself.

As discussed below, the Plan does just that. It complies in all respects with this Court's December 23, 2021 Order (the "Order") and should be adopted by the Court. In the alternative, if this Court believes that the goal of uniting an additional town within a single Congressional district justifies moving additional residents to a different Congressional district, the Democratic Members respectfully submit that the Court should adopt the Special Master's Alternative Plan for Congressional Districts (the "Alternative Plan"), which also complies with state and federal law.

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[1] No application for permission to appear and file an amicus brief is being submitted because the Democratic Members have already appeared in this proceeding and the Court's December 23, 2021 Order stated that the Court "will accept amicus curiae submissions addressed to the merits of the plan of redistricting and any associated recommendations submitted by Special Master Persily." No party or counsel other than the amicus curiae and its counsel contributed to the writing or costs of this brief.

II. The Special Master's Plan Complies with the Court's December 23, 2021 Order and the Policies Behind It

A. The Special Master's Plan Meets Each of the Requirements of the Court's December 23, 2021 Order

The Order required the Special Master to prepare a redistricting plan, and in doing so to "modify the existing Congressional districts only to the extent reasonably required to comply with the following applicable legal requirements:

a. Districts shall be as equal in population as practicable
b. Districts shall be made of contiguous territory
c. The plan shall comply with the Voting Rights Act of 1965, as amended, 52 U.S.C. § 1001 et. seq., and any other applicable federal law."

Order at 1. The Order also directed that (a) the Special Master "not consider either residency of incumbents or potential candidates or other political data, such as party registration statistics or election returns"; and (b) "[i]n no event shall the plan be substantially less compact than the existing congressional districts, and in no event shall the plan substantially violate town lines more than the existing congressional districts." Id. The Plan complies with all of these requirements.

1. Equal Population

As set forth in the Special Master's Report ("Report"), the Plan achieves the greatest possible equality of population among the state's five Congressional districts, with a deviation of a single person: one district has a population of 721,188, and four districts have a population of 721,189. *See* Report at 6-8.

2. Contiguity

Each of the five districts in the Plan is comprised of contiguous territory.[2]

3. Voting Rights Act

The Special Master's Report (at 8-11) accurately explained that, to establish illegal vote dilution under Section 2 of the Voting Rights Act (the "Act"), a claimant must, as a threshold matter, meet all three of the prongs set forth in *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). In particular, the first prong requires proof that "the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district," *id.* at 51, and that the minority population in the potential election district is greater than 50 percent. Report at 9, citing *Bartlett v. Strickland*, 556 U.S. 1 (2009).

Under that standard, the districts created in the Special Master's Plan create no concerns or potential claims under the Act, as the Special Master rightly concluded that "[r]acial minorities are not geographically concentrated enough to as to comprise fifty percent of the voting age population, let alone the citizen voting age population, of a potential congressional district." Report at 11.

Thus, there is no basis under the Act to reject or alter the Plan.

4. The Plan's Proposed Districts Are Not Less Compact Than The Existing Districts

The Order requires that the Special Master's Plan not "substantially" reduce the districts' compactness, and the Plan honors that requirement, as measured by a comparison of multiple compactness scores between the existing districts and the Plan. *See*

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[2] The one exception is the small and unpopulated Tuxis Island, which can be connected by assigning blocks of water in Long Island Sound to congressional districts. *See* Report at 13-14.

Report at 17. The Special Master acknowledged that "a more compact redistricting plan could easily be drawn," but doing so "would go well beyond the mandate issued by this Court" and "might involve moving hundreds of thousands of people out of their current districts." *Id.*

5. The Plan Does Not Divide More Towns Than The Existing Districts

Under the current Congressional maps, five towns are divided between two Congressional districts. Under the Plan, the same five towns (and no more) remain divided between two Congressional districts. Therefore, the Plan complies with this aspect of the Order. (The Special Master offered an alternative plan to unite one of the split towns, recognizing that it would move more people to new districts than is required under the Plan he recommended. *See* Part III *infra.*)

6. The Plan Moves The Smallest Number of People Necessary To Comply With The Court's Order

The Special Master's plan implements the Order's directive to "modify the existing congressional districts only to the extent reasonably required" to comply with the requirements of equality of population, contiguity, and compliance with state and federal law (principally the Act). It does so by moving only 71,736 people to new districts, thus "moving the fewest voters as possible out of their current districts" while only moving people within already-split towns and not moving any town from one district to another. Report at 27.

B. The Special Master's Plan is Consistent with the Purpose of and Policies Behind the Court's December 23, 2021 Order

This Court has clearly conveyed that, if it must exercise its authority to create legislative maps because the Legislature and Commission were unable to reach agreement, it will do so in a manner

unaffected by any political considerations. *See* Order at 1 (barring Special Master from considering political information). This approach preserves the Court's and the Special Master's independence and political neutrality and preserves public confidence in the redistricting process. Requiring a "least changes" map, which the Special Master has drawn, avoids politicizing the redistricting process, anchoring the Court's redistricting authority to the political legitimacy of the most recent bipartisan redistricting agreement, in 2001.

In his Report, the Special Master recognized and honored this imperative of avoiding decisions that could be seen as involving political judgments. For that reason, he declined to recommend as his primary plan one that would unite Torrington in a single district because deciding whether to unite Torrington in the First District or the Fifth District "involves a political judgment." Report at 32. "[B]ecause electoral consequences clearly inform the parties' arguments as to where Torrington should be placed, a decision to unite the town and place it in one or another district would necessarily be viewed as trying to bias the plan in favor of one party or the other." *Id.* at 32-33.

Therefore, he recommended a least-changes plan that moved the fewest people to new districts: "To be sure, every decision in a redistricting plan has electoral consequences, but abiding by a least-change approach ties the Special Master's Plan to the mast of the existing districts and limits available choices in a way that can help immunize against charges of political manipulation." Report at 33.[3]

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[3] For that reason, the Special Master properly rejected arguments to reconsider the "least change" approach and instead adopt a so-called "good government" approach (i.e., redrawing the districts from scratch, so as to "maximize compactness, represent communities of interest, or

The Court's decision to order a "least-changes" map is consistent with decisions of the United States Supreme Court, as well as the high courts of a number of states faced with the responsibility of drawing legislative districts in the wake of a failure of the legislature to do so. *See Upham v. Seamon*, 456 U.S. 37, 40-41, 43 (1982); *Hippert v. Richie*, 813 N.W.2d 374, 380 (Minn. 2012); *Alexander v. Taylor*, 51 P,3d 1204, 1211-12 (Okla. 2002); *Below v. Gardner*, 963 A.2d 785, 794-95 (N.H. 2002). It is also consistent with the Court's approach in the last redistricting cycle, which similarly required, and successfully resulted in, a politically neutral, least-changes map.

III. If the Court Decides to Prioritize Uniting a Split Town in a Single District, the Special Master's Alternative Plan Is The One that Best Complies with This Court's Order.

The Special Master offered an alternative "in case the Court is persuaded by the arguments that more towns should be united or split in different ways." Report at 44. The Alternative Plan (*see* Report, Ex. 7) would unite within the First District the town of Torrington, which is currently split between the First and the Fifth districts. While that plan would serve legitimate purposes and comply with most of the requirements of the Court's Order,[4] it would contravene the Court's

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promote competition"), recognizing that such substantial revisions would involve inherently legislative and political choices and contravene this Court's Order. Report at 4.

[4] The Alternative Plan complies with the Order's directives to achieve (a) equality of population; (b) contiguous districts; (c) compliance with the Voting Rights Act and any other applicable state or federal laws; (d) not creating districts that are "substantially" less compact than the

primary directive to the Special Master: to make changes to the existing maps "only to the extent reasonably required" to equalize the districts' population and meet the other requirements of the Order. In particular, uniting Torrington in the First District requires moving a total of at least 87,174 people into new districts, which is approximately 15,400 more than would be required to move under the Special Master's recommended, least-changes Plan. Report at 32.

However, if the Court believes that unifying Torrington within a single Congressional district is important and warrants moving more people into new congressional districts than a least-changes plan would do, the Special Master's Alternative Plan would accomplish that goal in a way that best complies with the Order. While the Alternative Plan would move 87,174 people into new congressional districts, the plan proposed by the Republican Members of the Redistricting Commission (the "Republican Members") and considered by the Special Master would unite Torrington but would require 124,981 people to move into a new district, i.e., it would move 37,807 more people than the Special Master's Alternative Plan would move.[5]

The Special Master's Alternative Plan is based solely on moving fewer people to new districts, in order to comply as closely as possible with the least-changes approach mandated by this Court's Order. He

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existing districts; and (e) not splitting more towns than are split by the existing maps.

[5] The Republican Members' proposed plan would move 53,245 more people statewide than the Special Master's least-changes Plan does, i.e., it would move about 3.5% of the state's total population as opposed to the less than 2% that would be moved under the least-changes Plan.

specifically eschewed consideration of the political implications of uniting Torrington in either the First District or the Fifth District, recognizing that those considerations are legitimate only "for the Commission or the legislature." Report at 32. If the Court decides to prioritize uniting Torrington in a single congressional district, it should adopt the Alternative Plan.

IV. Adopting the Special Master's Plan or Alternative Plan Would Raise No Other Policy Concerns

A number of arguments were raised in the proceedings before the Special Master that challenged the legitimacy of the Court's "least changes" approach. In particular, questions were raised about the legitimacy and continued relevancy of the district lines drawn in 2001, which was referred to as a "gerrymandered" map, and the risk that a least-changes approach would disincentivize good faith negotiations in the legislative redistricting process. Neither concern is well founded.

The 2001 map is not the product of "gerrymandering" as that term is generally understood, i.e., it did not result from a majority party imposing its will to create politically unfair district lines – as has occurred in other states. On the contrary, the 2001 map reflects an agreement negotiated by the two, equally represented parties on the reapportionment commission. That they faced unusually difficult circumstances – a reduction from 6 districts to 5 districts that resulted in pitting an incumbent Republican and Democratic against one another – underscores that the map drawn was the successful result of bipartisan negotiation. Since 2001, the population of those districts has changed very little and therefore few changes in the district lines have been necessary. Those lines are no less legitimate today now than they were when they were initially drawn. And while the irregularly shaped First District could at some point be made neater and more compact, that is an inherently political task that the Court is not

suited to undertake, as both the Court and the Special Master have recognized.

Nor have any party's representatives on the Commission shirked their responsibility to engage in serious, good faith negotiations, in favor of having a Court-mandated plan. This year, the parties' good faith efforts in a time-compressed process resulted in bipartisan maps for both the state House and Senate, which were completed in mid-November. The parties negotiated in good faith on Congressional redistricting as well, but they reached an impasse and failed to timely agree on a plan.

In the wake of that impasse, the State is fortunate to have as a back-up a politically neutral judicial redistricting process, in which the Court does not seek to replicate the legislative process or make inevitably political choices, and instead limits modifications to the existing districts "to those necessary to cure any constitutional or statutory defect." *Upham v. Seamon,* 456 U.S. 37, 43 (1982).

V. CONCLUSION

The Amicus Curiae Reapportionment Commission Democratic Members respectfully submit that the Court should accept the Special Master's recommended Plan or, if the Court chooses to prioritize uniting an additional town in a single congressional district, it should accept his Alternative Plan.

Respectfully submitted,

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CERTIFICATIONS

The undersigned hereby certifies, pursuant to Practice Book § 67-2A, that:

(1) A copy of the brief has been sent electronically to each counsel of record in compliance with § 62-7, except for counsel of record exempt from electronic filing pursuant to § 60-8, to whom a paper copy of the brief has been sent; and

(2) The electronically submitted brief was delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address was provided; and

(3) The electronically submitted brief and the filed paper brief have been redacted or do not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order, or case law, unless the brief is filed pursuant to § 79a-6; and

(4) The brief filed with the appellate clerk is a true copy of the brief that was submitted electronically; and

(A) The brief has a word count of 2,401, it is filed in compliance with the Practice Book, and either no deviations from the guidelines were requested, or none were approved; and

The brief complies with all provisions of this rule.

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