SUPREME COURT

OF THE

STATE OF CONNECTICUT

SC 18907

IN RE PETITION OF REAPPORTIONMENT
COMMISSION, EX. REL.

PROCEEDINGS BEFORE SPECIAL MASTER

BRIEF OF THE REAPPORTIONMENT COMMISSION DEMOCRATIC MEMBERS MARTIN LOONEY, SANDY NAFIS, BRENDAN SHARKEY, AND DONALD WILLIAMS IN SUPPORT OF REDISTRICTING PLAN SUBMITTED TO SPECIAL MASTER

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Introduction

In response to the Supreme Court's January 3, 2012 Order (the "Order"), the Democrats on the Reapportionment Commission respectfully submit this brief, accompanied by their proposed congressional redistricting plan, supporting data, and exhibits.[1] As discussed below, the proposed plan complies with the strict requirements set forth in the Court's Order, making only those changes in existing district lines that are reasonably necessary to comply with the Court's directives.

I. The Proposed "Least Changes" Redistricting Plan Submitted by the Reapportionment Commission Democrats Comports with the Requirements of the Court's January 3, 2012 Order and Applicable Law

The Court's January 3rd Order charges the Special Master with preparing and recommending a congressional redistricting plan and requires the Special Master 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 is practicable.
b. Districts shall be made of contiguous territory.
c. The plan shall comply with 42 U.S.C. § 1973(b) and with other applicable provisions of the Voting Rights Act and federal law."

Order ¶ 2 (emphasis added). Other provisions of the Court's Order require that, after modifying the existing districts to comply with these three requirements of Paragraph 2, the resulting plan neither substantially lessen compactness nor violate town lines more than the existing congressional districts. Order ¶ 3. Finally, Paragraph 4 precludes the Special Master from considering political data or residency of congressional candidates. Order ¶ 4.

[1] All exhibits referenced in this brief are included in the accompanying Appendix. Data from the 2010 U.S. Census was used to generate the exhibits that are tables and maps. A larger version of those exhibits that are maps are being provided as well to the Special Master and the Court.

The Order's limits on the issues to be considered by the Special Master are consistent with guidance from the U.S. Supreme Court that requires judicial deference to existing state redistricting plans,[2] and with the experience of other state courts that have adopted "least change" plans when the legislative process has failed to produce a plan.[3]

The redistricting plan submitted by the Reapportionment Commission Democrats (*see* Exh. 2 and 3, hereinafter referred to as the "Proposed Plan") follows the Court's Order and makes only those changes to the existing, 2001 district lines (*see* Exh. 1 for a map of the current district lines) that are reasonably required to comply with each of the three legal requirements specified in Paragraph 2 of the Order. A detailed explanation of the minimal changes made to existing district lines in the Proposed Plan is appended (*see* Exh. 4). The Proposed Plan is a "least changes" plan that, in accordance with the express terms of the Court's Order, defers to the policy and political choices reflected in the 2001 redistricting

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[2] U.S. Supreme Court jurisprudence provides for deference to state policies "'expressed in statutory and constitutional provisions or in the reapportionment plans proposed by the state legislature'" and no substitution of a court's "own reapportionment preferences for those of the state legislature." *Upham v. Seamon*, 456 U.S. 37, 40-41 (1982) (quoting *White v. Weiser*, 412 U.S. 738, 794-95 (1973)); *see Abrams v. Johnson,* 521 U.S. 74, 85, 102 (1997). Thus, in conforming a state redistricting plan to constitutional requirements, a "court's modifications of a state plan ***are limited to those necessary to cure any constitutional or statutory defect.***" *Upham,* 456 U.S. at 43 (citing *Connor v. Finch*, 431 U.S. 407, 414 (1977)) (emphasis added). *See also Gaffney v. Cummings,* 412 U.S. 735, 749-50 (1973).

[3] *See Alexander v. Taylor*, 51 P.3d 1204, 1211-12 (Okla. 2002) (upholding selection of 2001 redistricting plan that came closest to "continuing the legislative policies of the 1991 Plan[.]"); *Below v. Gardner*, 963 A.2d 785, 794-95 (N.H. 2002) (using existing state senate districts as the "benchmark" because they reflect "the last validly enacted plan and [are] the 'clearest expression of the legislature's intent'"); *accord Perrin v. Kitzhaber*, 83 P.3d 368, 370-71 (Or. Ct. App. 2004) (Oregon court adopted plan that "minimize[d] disruption of the existing Congressional districts"). *See generally* Brief of Reapportionment Comm'n Dem. Members on Sp. Master Considerations, Dec. 30, 2011, pp. 5-7).

lines (*see* Exh. 5 for an overlay of the 2001 lines and the Proposed Plan). Finally, as discussed below, the Plan also satisfies all other terms of the Court's Order.

A. Equal Population

Paragraph 2.a of the Order requires that the Special Master's recommended plan contain districts "as equal in population as is practicable." Under Article I, § 2 of the U.S. Constitution – and the Connecticut Constitution, Article third § 5, which requires that Congressional districting comply with federal constitutional standards – virtual equality in population in each of the districts is required. *Karcher v. Daggett,* 462 U.S. 725, 730 (1983). There have, however, been only minor population shifts since the last redistricting in 2001, and, as the chart below reflects,[4] very few changes to existing district lines are therefore required to equalize the population in the districts:

	Current Population	New Required Population	Change Required	Percent Change Required
1	710,951	714,819	3,868	0.54%
2	729,771	714,819	-14,952	-2.09%
3	712,339	714,819	2,480	0.35%
4	706,740	714,819	8,079	1.13%
5	714,296	714,819	523	0.07%

The Proposed Plan complies with the constitutional requirement of virtual equality in population, providing perfect equality of population in Districts 1, 2 and 3 (population of 714,819) and a deviation of a single person in Districts 4 and 5 (population of 714,820). The Proposed Plan makes no changes at all in 164 of the 169 towns in the State, all of which would remain in their current Congressional districts. With respect to the six towns that were split in the 2001 redistricting, the Proposed Plan makes no change to one

[4] The calculations in this chart are based on the 2010 U.S. Census Bureau data.

(Torrington), and reunites one small town so that it will no longer be split between two districts (placing all of Durham in the 3rd District). For the other four towns that are currently split (Glastonbury, Middletown, Waterbury and Shelton), the Proposed Plan shifts the line slightly between the two districts.

B. Contiguity

In the Proposed Plan, all five Congressional districts remain contiguous.

C. Voting Rights Act

Paragraph 2.c of the Court's Order directed the Special Master to ensure compliance with the Voting Rights Act of 1965, as amended ("the Act") and as interpreted in federal case law. No Voting Rights Act questions were raised about the 2001 congressional districts, and only minimal population shifts have occurred since that plan was adopted. As a result, no changes to the current congressional districts are "reasonably required to comply with" the Act. Not surprisingly, then, the Proposed Plan – which, as explained above, makes only those minimal changes needed to equalize the size of each district – also fully complies with the Act.

Section 2 of the VRA broadly prohibits any "voting qualification or prerequisite to voting or standard, practice, or procedure . . . which results in a denial or abridgment of the right . . . to vote on account of race or color," or on the account of a person's membership in a "language minority group." 42 U.S.C. § 1973(a); *id.* § 1973b(f)(2). Corrective action under this Act is required only:

> if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

42 U.S.C. § 1973(a). The Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), explained that a violation exists only if it is shown:

> 1) that the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district;
>
> 2) that the minority group is politically cohesive; and
>
> 3) that, in the absence of special circumstances, bloc voting by the white majority usually defeats the minority's preferred candidate.

Id. at 50-51; *see also Growe v. Emison*, 507 U.S. 25, 40-41 (1993). If these preconditions have been shown to exist, a series of objective factors are then considered to determine whether the totality of circumstances reveals an impermissible dilution of minority voting strength. *Gingles*, 478 U.S. at 36-37.

Here, there is no minority (or group of minorities) that is sufficiently large and geographically compact to constitute a majority in a single-member district, *see League of United Latin American Citizens (LULAC) v. Perry*, 548 U.S. 399, 433 (2006) (focus for first *Gingles* prong is on compactness of minority population), let alone satisfy all three *Gingles* factors. In these circumstances, the Act does not require a minority district to be drawn. *See Bartlett v. Strickland*, 129 S. Ct. 1231, 1249 (2009) (plurality opinion) (Act does not require minority district to be drawn where racial and language minorities would make up less than 50 percent of the voting age population).

As the attached maps and data indicate, Connecticut's minority populations are spread across geographic areas of the State. (*See* Exh. 6, 7, and 8.) Without drawing a geographically contorted district based solely (and impermissibly) on race, it is not possible to create a district in which either of the Black/African American or the Hispanic/Latino

voting-age population approaches – let alone crosses – the 50 percent threshold.[5] 129 S. Ct. at 1249; *see also Bush v. Vera*, 517 U.S. 952, 979 (1996) (creating minority-majority district with tortuous lines is impermissible racial gerrymander); *cf. LULAC*, 548 U.S. at 433 ("[T]here is no basis to believe a district that combines two farflung segments of a racial group with disparate interests provides the opportunity that § 2 requires or that the first *Gingles* condition contemplates.").[6]

The Proposed Plan, like the existing districts upon which it is based, fully complies with the Voting Rights Act and conforms to the principles in the Court's Order, ¶ 2.c.

* * *

For the reasons discussed above, the Proposed Plan satisfies the three legal requirements specified in Paragraph 2 of the Court's Order and modifies the existing district lines only to extent reasonably necessary to do so.

II. The Proposed Plan Does Not Create Districts That Are Substantially Less Compact Than The Existing Congressional Districts and Does Not Cross Town Lines More than The Existing Congressional Districts

As discussed above, Paragraph 2 of the Court's Order requires the Special Master to modify the existing Congressional districts only to the extent reasonably necessary to

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[5] Only one town, Bloomfield, has a Black/African American voting age population that exceeds 50%, and no town has a Hispanic/Latino population that exceeds 50%. (*See* Exh. 8.) Thus, it is almost certainly physically impossible to draw a contiguous majority-minority district based on either of those groups.

[6] Minority influence districts – where the minority population is sufficiently large to *influence* an election result, but is still too small to *control* the result – are not required under § 2. *See Bartlett v. Strickland*, 129 S. Ct. 1231, 1249 (2009) (plurality opinion) ("[T]he lack of [influence] districts cannot establish a § 2 violation") (citing *LULAC*, 548 U.S. at 445 (opinion of Kennedy, J.)). And, while a plan that has been drawn in order to undermine the voting power of minorities may violate the Equal Protection Clause, *see Miller v. Johnson*, 515 U.S. 900, 915-16 (1995), the Proposed Plan here has not been drawn based on racial considerations and effectively preserves the proportional minority population in each Congressional district.

make the districts contiguous, as equal in population as possible, and in compliance with the Voting Rights Act and relevant federal law. Paragraph 3 of the Order further requires that, in doing so, the Special Master's recommended plan not make the districts "substantially less compact than the existing districts" and not "substantially violate town lines more than the existing congressional districts." The Proposed Plan complies with both of these additional provisions.

A. Compactness

Consistent with Connecticut law, Paragraph 3 of the Order does not direct or permit the Special Master to modify existing districts for the purpose of improving compactness.[7] Instead, the Court has directed the Special Master, in modifying the existing district lines to meet the three legal requirements in Paragraph 2 of the Order, to ensure that the new proposed districts are not substantially less compact than the existing districts. Order ¶ 3.

A visual comparison of the existing congressional districts with the Proposed Plan (*see* Exh. 5) shows that the Plan does not create districts that are substantially less compact than the existing districts. Using traditional geometric compactness standards to analyze and compare the compactness of the existing and proposed district lines shows minimal deviation, i.e., the proposed districts are substantially as compact as the existing districts. (*See* Exh. 9.)

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[7] The Connecticut Constitution does not include compactness as a redistricting requirement or criterion, as some state constitutions do (*see, e.g.*, Md. Const., art. III, § 4; Alaska Const. art. VI, § 6). To the extent it is considered, compactness is not a legal requirement but a policy consideration that the political branches may take into account in redistricting deliberations. (*See* Brief. of Reapportionment Comm'n Dem. Members on Sp. Master Considerations, Dec. 30, 2011, pp. 8-9, 13). Here, the Court has instructed the Special Master to respect and not substantially reduce the compactness that the political branches agreed upon through the 2001 redistricting process.

The Proposed Plan thus fully complies with this Court's instruction that "in no event shall the plan of the Special Master be substantially less compact than the existing congressional districts[.]"

B. Town Lines

As noted above, the Proposed Plan makes no changes at all in 164 of the 169 towns in the State, all of which would remain in their current congressional districts. It reunites one small town, Durham, so that it will no longer be split between two districts. In the Proposed Plan, therefore, only five towns remain split between districts (Glastonbury, Middletown, Waterbury, Torrington, and Shelton). Because the existing 2001 congressional districts split six towns between districts, the Proposed Plan divides fewer towns and therefore satisfies this aspect of Paragraph 3 of the Court's Order.

* * *

As required by the Court's Order, the Proposed Plan offered by the Reapportionment Commission Democrats defers to the policy and political choices reflected in the 2001 redistricting plan and makes only those changes to the existing district lines that are reasonably necessary to comply with the law. That Plan therefore complies with the Supreme Court's January 3rd Order.

CONCLUSION

For the reasons discussed above, the Reapportionment Commission Democrats respectfully request that the Special Master recommend the Proposed Plan to the Connecticut Supreme Court.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief complies with all of the provisions of the Connecticut Rules of Appellate Procedure § 67-2.

Aaron S. Bayer

CERTIFICATION

This is to certify that on this 6th of January 2012, a copy of the foregoing Brief of the Reapportionment Commission Democratic Members in Support of Redistricting Plan Submitted to Special Master and the accompanying Appendix was served by email upon all counsel of record, as listed below. If counsel require a hard copy, please advise the undersigned.

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