

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

GLORIA PERSONHUBALLA, et. al,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 3:13-cv-678
v.	)	
	)	
JAMES B. ALCORN, et.al,	)	
	)	
Defendants.	)	

**BRIEF OF ONEVIRGINIA2021 HIGHLIGHTING THE  
PROPOSED REMEDIAL PLANS THAT BEST ADDRESS THE  
SPECIFIC DEFICIENCIES IN THE 3<sup>rd</sup> CONGRESSIONAL DISTRICT  
IDENTIFIED BY THE COURT IN THIS CASE**

In accordance with the Court’s order of September 23, 2015 concerning the filing of briefs in response to the several remedial plans submitted by the parties and non-parties in this matter, OneVirginia2021, Virginians for Fair Redistricting, offers this analysis in order to highlight the plans or portions of plans that best provide the full remedy the Court is obliged to order in this case – a remedy that would address all of the deficiencies in the 3<sup>rd</sup> Congressional District identified in the opinion of this Court. These deficiencies, aside from the predominance of race, include a highly non-compact district, the absence of true contiguity, and numerous political subdivisions and voting precincts that were split solely to create an unconstitutionally gerrymandered congressional district.

**INTRODUCTION**

OneVirginia2021, Virginians for Fair Redistricting, is a corporation formed under the laws of the Commonwealth of Virginia and granted exempt status under Sections 501(c)(3) and 501(c)(4) of the Internal Revenue Code. OneVirginia2021 was organized to initiate a

comprehensive effort to remove gerrymandering from the redistricting process in Virginia, by seeking an amendment to the Constitution of Virginia establishing an impartial Redistricting Commission – independent of the General Assembly – to draw legislative and congressional district lines. The commission would be required to use specific, objective and well-defined redistricting criteria in performing the redistricting function, to invite public participation in the process and to be fully transparent.

At the outset, OneVirginia2021 commends the parties and non-parties for their earnest efforts to address the serious deficiencies in Virginia’s Congressional redistricting plan. These deficiencies are not confined solely to the 3<sup>rd</sup> Congressional District, but exist statewide to establish one of the most gerrymandered Congressional redistricting plans in the country. Several of the plans submitted by the parties and non-parties propose changes not only to the 3<sup>rd</sup> District and its abutting districts, but in addition urge the Court to redraw the Congressional plan statewide – to address redistricting deficiencies in other regions of the Commonwealth. Given, however, this Court’s duty to craft a remedy limited to the “nature and scope of the violation,” White v. Weiser, 412 U.S. 783, 793 (1973), these statewide remedial proposals exceed the scope of the Court’s obligation. On the other hand, they are relevant and should be considered to the extent that they provide guidance for remediating the extreme racial gerrymandering and deviations in compactness, contiguity and political subdivision and precinct splits that render the 3<sup>rd</sup> District and its surrounding districts unconstitutional.

It should be noted that in conducting its review, OneVirginia2021 did not examine the plans in terms of their “partisan performance” or “competitiveness.” This is consistent with the view that redistricting should be guided by adherence to objective and well-defined non-partisan redistricting criteria, including equal population, racial and ethnic fairness, compactness,

contiguity and preserving existing political subdivision and precinct lines. Political data and election results should not be considered in creating redistricting plans, except to the extent that consideration of such data may be necessary to ensure that minorities can elect candidates of their choice. For this reason, OneVirginia2021 has grave concerns about the Defendant-Intervenors' contention that the "overarching priority" in considering a remedial plan must be "incumbency protection and preservation of cores to maintain the 8-3 partisan division" in the Virginia Congressional delegation. This cannot be the Court's "priority" for two reasons. First, incumbency protection should not be construed to mean that districts must be drawn as partisan gerrymanders with the specific intent to guarantee that the same politicians will be elected and re-elected year after year. At best, incumbency protection means that map makers should not deliberately draw incumbents out of their district or pair two or more incumbents together in one district in order to eliminate them altogether. "Incumbency protection would by definition at a minimum require that incumbents not be paired against each other." Vera v. Richards, 861 F.Supp 1304, 1317 (S.D.Tx. 1994), aff'd, Bush v. Vera, 517 U.S. 952 (1996) ("And we have recognized incumbency protection, at least in the limited form of 'avoiding contests between incumbents,' as a legitimate state goal."). And second, unlike compactness and contiguity, incumbency protection is not constitutionally mandated. See Va. Const. Art. II, Sec. 6 ("Every electoral district shall be composed of contiguous and compact territory. . ."). It cannot reasonably be contended that providing incumbents with a safe district to ensure their re-election must be given "overarching priority" over the requirements of the Constitution of Virginia.

### ANALYSIS

Eleven plans were submitted to the Court. Those include, and will be referred to in this brief, as the Plaintiffs' plan, two plans from the Defendant-Intervenors, the Governor's plan, two

plans from the Bull Elephant Media group, the NAACP plan, the Richmond First Club plan, the Rapoport plan, the Peterson plan, and the Garrett plan. This last plan, the Garrett plan, is simply a proposal to conduct Congressional elections at-large, statewide. Each voter would vote for eleven candidates for Congress, and “it would be up to the candidates and political parties to coordinate” who is elected. Given the nature of the violation to be remedied in this instance, there is little justification for imposing at-large Congressional elections on the voters of the Commonwealth. Accordingly, the Garrett plan will not be addressed in this brief in any detail.

Excluding the Garrett plan, every plan provided to the Court is more compact than the plan at issue in this case on at least one of the two most prominent mathematical measures of compactness. Most of the proposed plans also remedy the contiguity issues that have been identified in the current plan. And finally, a number of the plans also reduce the number of counties and cities divided by the current plan as well the number of voter tabulation districts—or precincts—divided among multiple districts.

None of these plans is perfect. Moreover, no plan here so clearly stands above the rest such that OneVirginia2021 is willing to single it out as the best. Four plans, however, provide sound alternative examples of the kinds of improvements that could be made to the current plan and, with minor adjustments, would provide a full remedy. Those include the Richmond First Club plan, the Rapoport plan, Plaintiffs’ plan, and the Peterson plan.

### **Compactness**

There are many different ways mathematically to measure the compactness of a district. Two of the most common measures are the Reock measure, that seeks to express the dispersion of the area of a district, and the Polsby-Popper measure, that examines the jaggedness of the perimeter of a district relative to a circle – the form widely accepted as the most compact shape

for a district. Both of these measures are used extensively by the academic community and the courts. The following tables illustrate the average compactness of the ten submitted plans, as compared to the current plan, utilizing these two measures.

Reock Compactness Scores													Average of Relevant Districts*
District:	1	2	3	4	5	6	7	8	9	10	11	Average	
Current Plan	0.28	0.27	0.19	0.32	0.30	0.26	0.30	0.37	0.20	0.29	0.23	0.27	0.27
Defendant-Intervenor Plan 1	0.28	0.27	0.20	0.32	0.30	0.26	0.29	0.37	0.20	0.29	0.23	0.27	0.27
Defendant-Intervenor Plan 2	0.28	0.27	0.25	0.31	0.30	0.26	0.40	0.37	0.20	0.29	0.23	0.29	0.30
Plaintiff Plan	0.29	0.26	0.24	0.36	0.49	0.32	0.48	0.37	0.23	0.29	0.23	0.32	0.33
NAACP Plan	0.27	0.28	0.47	0.30	0.28	0.29	0.45	0.37	0.21	0.29	0.23	0.31	0.35
Richmond First Club Plan	0.44	0.39	0.39	0.33	0.56	0.41	0.42	0.40	0.23	0.38	0.41	0.40	0.42
Bull Media Plan A	0.31	0.28	0.18	0.33	0.30	0.26	0.33	0.37	0.20	0.29	0.23	0.28	0.29
Bull Media Plan B	0.31	0.28	0.18	0.33	0.43	0.23	0.33	0.37	0.20	0.36	0.41	0.31	0.29
Rapoport Plan	0.26	0.25	0.44	0.54	0.30	0.26	0.34	0.37	0.20	0.29	0.23	0.32	0.37
Governor's Plan	0.34	0.35	0.36	0.33	0.45	0.21	0.41	0.32	0.18	0.35	0.41	0.34	0.36
Sen. Peterson Plan	0.43	0.41	0.40	0.49	0.51	0.32	0.45	0.39	0.21	0.29	0.35	0.39	0.45

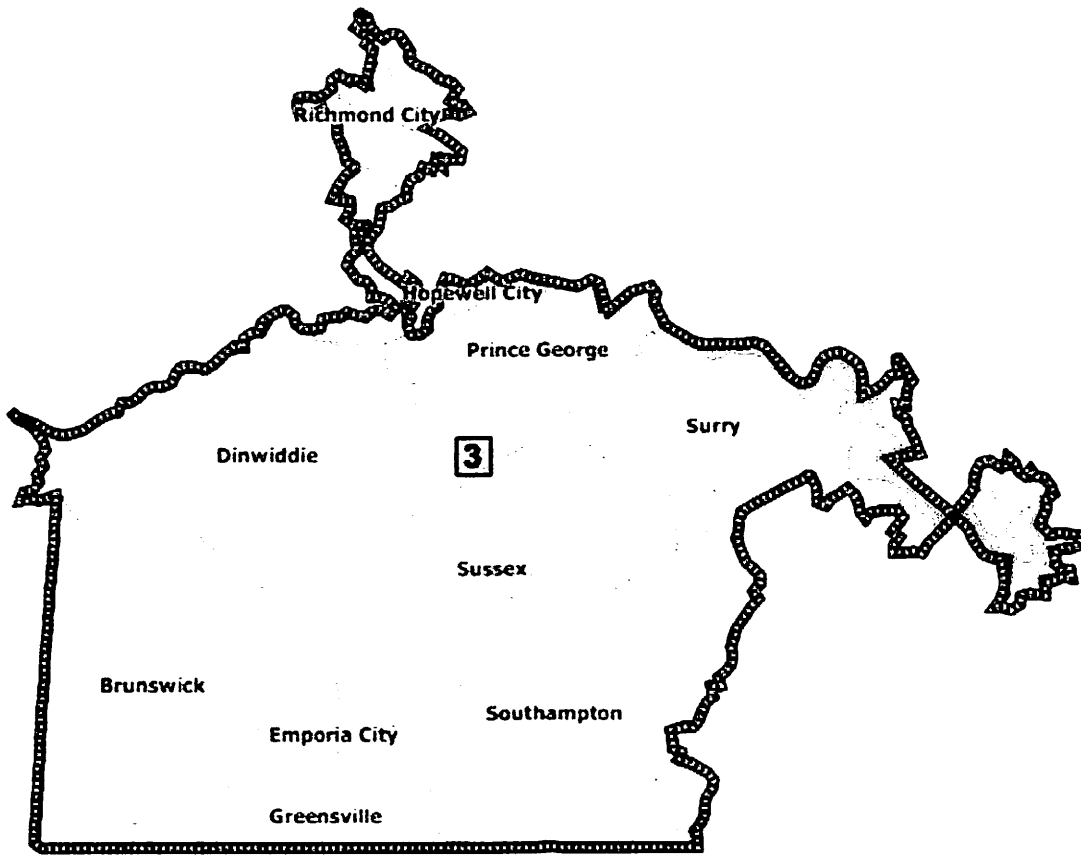
Polsby-Popper Compactness Scores													Average of Relevant Districts*
District:	1	2	3	4	5	6	7	8	9	10	11	Average	
Current Plan	0.18	0.20	0.08	0.20	0.15	0.16	0.13	0.26	0.18	0.12	0.09	0.16	0.16
Defendant-Intervenor Plan 1	0.18	0.24	0.09	0.20	0.15	0.16	0.12	0.26	0.18	0.12	0.09	0.16	0.17
Defendant-Intervenor Plan 2	0.18	0.24	0.10	0.20	0.15	0.16	0.18	0.26	0.18	0.12	0.09	0.17	0.18
Plaintiff Plan	0.21	0.33	0.12	0.20	0.32	0.20	0.29	0.26	0.22	0.12	0.09	0.21	0.23
NAACP Plan	0.18	0.18	0.25	0.13	0.16	0.17	0.11	0.26	0.23	0.12	0.09	0.17	0.19
Richmond First Club Plan	0.34	0.17	0.21	0.24	0.39	0.20	0.28	0.25	0.23	0.24	0.23	0.25	0.26
Bull Media Plan A	0.20	0.29	0.09	0.20	0.15	0.16	0.17	0.25	0.18	0.13	0.09	0.17	0.19
Bull Media Plan B	0.24	0.29	0.09	0.20	0.24	0.16	0.17	0.36	0.18	0.17	0.32	0.22	0.20
Rapoport Plan	0.15	0.25	0.29	0.25	0.15	0.16	0.11	0.26	0.18	0.12	0.09	0.18	0.21
Governor's Plan	0.15	0.21	0.24	0.15	0.15	0.10	0.18	0.13	0.14	0.10	0.17	0.16	0.19
Sen. Peterson Plan	0.31	0.33	0.15	0.25	0.25	0.15	0.28	0.30	0.17	0.17	0.16	0.23	0.26

[\* The "relevant districts" are the unconstitutional Third district and the immediately surrounding districts (districts 1, 2, 3, 4, and 7 on the current plan). Due to different numbering systems present in the Richmond First Club and Peterson plans, different numbered districts are affected. In the Richmond First Club Plan, districts 2, 3, 4, 5, and 7 were used in this calculation; in the Peterson Plan, districts 1, 2, 3, 4, and 5 were used.]

In reviewing these tables, as noted above, a number of the proposed remedial plans changed not only the 3<sup>rd</sup> District and the surrounding districts, but instead redrew all districts, creating an entirely new map. As we have suggested, for purposes of this case it would be inappropriate to substantially redraw other districts except to the extent that they are subject to a ripple effect caused by redrawing the 3<sup>rd</sup> District and its immediate neighbors. Therefore, it may be helpful to reference the average of the "relevant districts" noted above. This brief's discussion of districts will be limited to districts in the immediate area of the 3<sup>rd</sup> District. Should the Special Master elect to use one of these plans that makes changes to other parts of the map we would urge him to blend this region's new districts with the existing districts throughout the rest of the state.

That said, it is also critical to remember that the compactness requirement in Article II, Sec. 6 of the Virginia Constitution requires *each* district to be compact. Thus, while an average may be informative, it alone cannot be used to ensure that the compactness requirement has been satisfied. Every district must be compact. Judged by these measures, two plans in particular stand out for the most dramatic improvements in compactness. These are the plans submitted by the Richmond First Club and by Senator Peterson. According to both compactness measures, looking at the average compactness of all the districts as well as the average of the relevant districts, these plans are the two highest scoring plans.

The Peterson plan has the highest average compactness among the relevant districts. While the current plan has a Reock score of .27 and a Polsby-Popper score of .16, the Peterson plan has a Reock score of .45 and a Polsby-Popper score of .26. These significantly improved scores reflect district shapes that are less stretched out over wide areas and that have cleaner and less jagged borders than the current districts. Of the relevant districts, the lowest district scores are in District 3 which has a perfectly reasonable .40 Reock score but a questionable .15 Polsby-Popper score. In this case the interocular eye-ball test quickly reveals the problem.



While there is a large core to the area of the district, oddly shaped narrow appendages extend to the north and east to include small areas that actually compose the majority of the population of the district. To the north, the appendage extends to include substantial population

from the city of Richmond while excluding the surrounding area. Along the way it twice passes through necks of territory less than a mile wide. To the east this district stretches the meaning of contiguity to extend through a passage a fraction of a mile wide across the James River and into Hampton, Norfolk, and Portsmouth. Accordingly, while this plan as a whole is one of the most compact and even in District 3 is a dramatic improvement over the current plan, if this plan is to be used by the Special Master as a model for a new plan improvements must be made to address the seriously non-compact appendages in the 3<sup>rd</sup> District.

The plan proposed by The Richmond First Club on the average is slightly less compact than the Peterson plan but avoids the most egregious compactness issues that are present in the Peterson Plan's 3<sup>rd</sup> District. The Richmond First Club's proposal includes a third district that scores an impressive .39 on the Reock measure and a much more modest .21 Polsby-Popper. While not ideally shaped this district only includes one extension from its core area. That extension is much less narrow and reaches into Hampton, Norfolk, and Portsmouth to include substantial population.

The least compact district in this plan is actually the 2<sup>nd</sup> District with a Polsby-Popper score of only .17. While oddly shaped, this lower score exists because the district's more jagged edges actually follow county lines and the state border. If the Special Master were to make adjustments to this plan, exchanging population and territory between the 2<sup>nd</sup> and 4<sup>th</sup> districts in this plan, compactness could likely be improved thus making it a much stronger plan in this regard.

A number of other plans merit particular attention regarding compactness. First is the Rapoport Plan which includes the most compact 3<sup>rd</sup> District with a Reock Score of .44 and a Polsby-Popper score of .29. District 4 in this plan is also a standout with a Reock score of .54



(the second highest Reock score of any district in any of the proposed plans) and a Polsby-Popper score of .25. If the Special Master were to address the compactness issues in districts 1 and 7 - largely in the northern parts of these districts where changes would not impact new districts 2, 3, or 4 - this new section of the map would be suitably compact. The Plaintiffs' plan likewise improves on the average scores under the Reock measure and has the third best average score among all the plans under the Polsby-Popper measure. While the Plaintiffs' version of the 3<sup>rd</sup> District does not score as highly as some of the other proposals and could be problematic, it has much more eyeball appeal in that it eliminates the bizarre shapes and appendages, particularly in Central Virginia, existing under the current plan

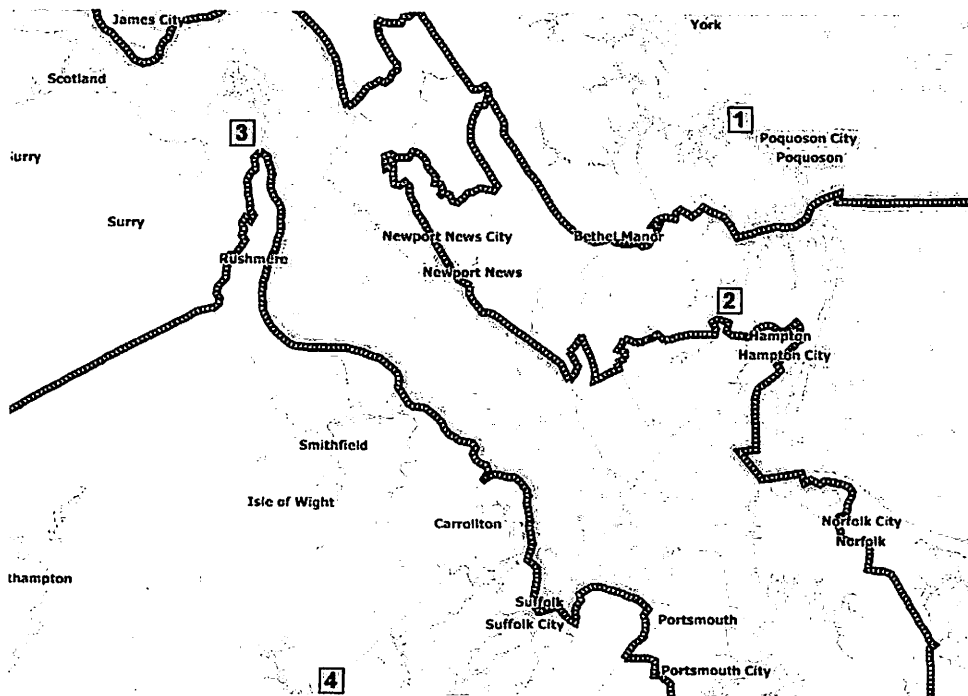
The versions of the 3<sup>rd</sup> District in both the Governor's plan and the NAACP plan also merit mention for the unique way in which they create compact 3<sup>rd</sup> districts. Unfortunately, other relevant districts in those plans do not exhibit the same level of compactness. And finally, it should be noted that the Defendant-Intervenors' plans and the Bull Elephant Media plans are among the worst performers under both compactness measures, including both average compactness and 3<sup>rd</sup> District compactness.

### **Contiguity**

As described in our previous brief to the Court, while water contiguity may be acceptable under the Virginia Supreme Court's "separated by water" contiguity interpretation, water contiguity upriver or downstream without a line of sight does not provide true contiguity and is therefore impermissible. Wilkins v. West, 571 S.E.2d 100, 109 (Va. 2002). The following plans satisfy the contiguity requirement of the Virginia Constitution: the Plaintiffs' Plan; the NAACP

plan; the Richmond First Club plan; Bull Elephant Media plans A & B; the Rapoport plan; and the Governor's plan.

The other three plans stretch the meaning of contiguity right up to the breaking point. Both plans put forward by the Defendant-Intervenors share the same contiguity issue. They maintain line of sight only because Mulberry Island in Fort Eustis hangs off the edge of the Newport News area of the peninsula allowing a line of sight with Portsmouth. Rather than being across the river, this district continues down the river with an intervening land mass. Thus it should not be considered true contiguity and these plans should not be considered. The following figure illustrates this lack of true contiguity in the Defendant-Intervenors' plans.



Likewise, the 3<sup>rd</sup> District in the Peterson plan includes areas along the coast of Isle of Wight County and “across” the river in Newport News. While most of the Newport News section of the district is downriver, there is a stretch less than half a mile wide where they are directly across. The Peterson plan technically meets the contiguity requirement but does not meet the ideal of true contiguity that should guide the Special Master in recommending a remedial plan.

**Splits in Political Subdivisions and Voting Precincts**

While splitting counties, cities and voting precincts is to be avoided, there is an extent to which this is unavoidable in drawing a congressional district plan. Meeting the strict “one person, one vote” standard requires that congressional districts be nearly perfectly equal in population, and thus this means that some political subdivisions and voting precincts will inevitably be divided. Of interest is the fact that Bull Elephant Media’s two proposals only break one voting precinct apiece. This is explained, however, by the fact that Bull Elephant Media’s plans do not meet the requirement of nearly perfect population distribution. In order to adopt those plans the Special Master would need to make significant changes inevitably breaking additional voting precincts in the process.

Splits		
	County/City Splits	Precinct Splits
Current Plan	17	23
Defendant-Intervenor Plan 1	16	28
Defendant-Intervenor Plan 2	17	28
Plaintiff Plan	12	19
NAACP Plan	14	25
Richmond First Club Plan	20	47
Bull Media Plan A	21	1
Bull Media Plan B	24	1
Rapoport Plan	13	28
Governor's Plan	18	18
Sen. Peterson Plan	29	16

A number of the proposed plans divide fewer cities and counties or fewer voting precincts than the current plan. The Plaintiffs' plan is clearly the best performer under this criterion in that it reduces both the number of county/city splits as well as the number of voting precinct splits. Also notable are the NAACP plan and Rapoport plan which decrease the number of county/city splits while only making slightly more splits among voting precincts. All three of these plans achieve these results while still meeting the strict one person, one vote requirement.

An outlier on the other extreme is the Richmond First Club plan which breaks a few more counties/cities than the current plan but breaks the most voting precincts. Should the Special Master elect to use portions of this plan as a model, this is an issue that should be addressed. Fortunately, the splits appear relatively easy to cure. This plan did meet the perfectly equal population requirement but the Special Master could likely achieve the same result while breaking far fewer voting precincts. Also, easy fixes likely could be made to reduce the county splits as four of those county splits involve fewer than 25 people needing to be moved in or out of the district in which the county is situated.

### **Voting Rights Compliance**

In holding that the 3<sup>rd</sup> Congressional District was a racial gerrymander, this Court noted that the 2012 congressional redistricting plan was not informed by a racial bloc voting or other, similar type of analysis. Instead, the Virginia General Assembly adopted a racial "threshold" mandating that all majority-minority districts should have a minimum black voting age population (VAP) of 55%. It is noted that virtually all of the proposed plans reduce the black VAP in their majority-minority district to within a few tenths of 50%. In some of these plans, the majority-minority district has been relocated or significantly redrawn. It is unclear whether

historical voting results may be employed to determine racial electoral performance in these new districts. Moreover, a few of the plans create an additional “influence” district that attains a black VAP of roughly 40%. It is unclear whether the other parties have provided detailed racial bloc voting analyses to support their proposals. In considering a remedial plan, it is anticipated that the Court will commission and review suitable racial bloc voting analyses as may be necessary to determine whether the proposed districts will allow minority voters to elect candidates of their choice.

### CONCLUSION

Considering the many factors discussed above, OneVirginia2021 does not offer a blanket recommendation for any single plan as submitted. Several plans have features that are significant improvements over the current plan. On the other hand, four plans stand out as providing sound alternative examples of the kinds of improvements that could be made to the current plan and, with minor adjustments, would provide a full remedy. We recommend that the Special Master give special consideration to the Richmond First Club plan, the Rapoport plan, the Plaintiffs’ plan and the Peterson plan. With adjustments as described above, and substituting these new models into the Central Virginia, Peninsula and Tidewater sections of the existing congressional plan, the result would create a new congressional map that corrects all of the deficiencies in the existing plan and ensures fair representation for voters in Virginia.

Dated: October 7, 2015

Respectfully submitted,

ONEVIRGINIA2021

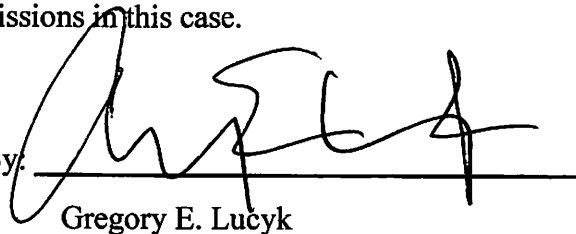
By 

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*Counsel for OneVirginia2021*

**CERTIFICATE OF SERVICE**

I hereby certify that on October 7, 2015, I filed an original and one copy of this document with the Clerk of the Court, which will enter this document into the CM/ECF system, and the system will send a notification of such filing to counsel of record for the parties. I further certify that I will provide a copy of this document by electronic email delivery to the organizational and individual non-parties that filed plans or submissions in this case.

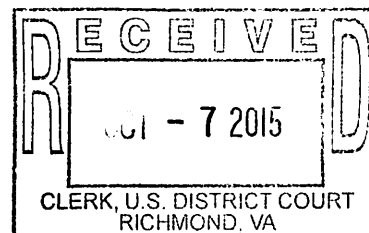
By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read 'G. Lucyk', is written over a solid horizontal line. The signature is stylized and cursive.

Gregory E. Lucyk

GREGORY E. LUCYK, ESQUIRE  
300 SENECA ROAD  
RICHMOND, VIRGINIA 23226  
804-288-1634

October 7, 2015



Honorable Fernando Galindo  
Clerk  
United States District Court  
Eastern District of Virginia  
701 East Broad Street  
Richmond, VA 23219

RE: Gloria Personhuballah, et. al, v. James B. Alcorn,  
et. al, C.A. No. 3:13-cv-678

Dear Mr. Galindo,

In accordance with the Court's order of September 23, 2015, enclosed please find for filing in the referenced matter an original and one copy of a **Brief of OneVirginia2021 Highlighting The Proposed Remedial Plans that Best Address the Specific Deficiencies in the Third Congressional District**. This brief will be served on other counsel of record and non-parties as noted in the Certificate of Service.

Thank you for your attention.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Gregory E. Lucyk".

GREGORY E. LUCYK  
Attorney at Law

Enclosure