



SUPREME COURT
STATE OF CONNECTICUT

SC 20661

IN RE PETITION OF REAPPORTIONMENT COMMISSION EX REL.

December 27, 2021

Order

The motion for reconsideration en banc dated December 23, 2021, filed by the Republican members of the Connecticut Reapportionment Commission on the Congressional Redistricting Process (commission) is hereby DENIED.

I

The people of our state, speaking through the state constitution, have directed that our leaders undertake the reapportionment process in the manner prescribed by article third, § 6, thereof. Whatever the current political makeup of our state legislature and our congressional districts, the people of our state have provided both political parties with equal representation on the commission. See Conn. Const., art. III, 6 (b). Through this constitutional process, the people of our state expect a reapportionment process that reflects a compromise between the interests of those political parties.

Upon the inability of the commission to agree on a plan to apportion our five United States congressional districts equally, the people of our state, through our state constitution, have entrusted this task to this Court, a nonpartisan institution. To the extent we have invited participation, to this point we have invited it only on a bipartisan basis. We asked the commission to agree on three special master candidates, and we have always stated that, if the commission could come to an agreement on a plan of apportionment, we would welcome its submission to the Court. Neither has been forthcoming from the commission as a whole.

We do not welcome unsolicited partisan filings and will not permit this Court to merely become an extension of the breakdown of the process the people of the state have commanded.

II

It is useful to briefly summarize the procedural background. The authority, composition, and duties of the commission are set forth in article third, § 6 (b) and (c), of the Connecticut constitution, as amended. Section 6 (c) specifically mandates: "The commission shall . . . submit a plan of districting to the secretary of the state by the thirtieth day of the November next succeeding the appointment of its members." The commission failed to discharge its constitutional mandate within the time allotted with respect to Connecticut's United States congressional districts. See Letter from Secretary of the State Denise Merrill to Chief Justice Richard A. Robinson (December 1, 2021).

By petition dated December 2, 2021 (petition), the members of the commission, as electors, invoked the original jurisdiction of this court by filing a petition in accordance with article third, § 6 (d), of the Connecticut constitution.

By notice dated December 6, 2021, the Court notified the commission that it would hold a status conference via the Microsoft Teams platform on December 9, 2021, to discuss the petition. The notice ordered counsel for the commission to appear at the status conference and to be prepared to discuss, among other things, "[t]he commission's views on the following: (a) whether the court should appoint a special master to assist the court in this matter; (b) if so, the factors to be considered in appointing a special master; (c) the process and procedures to be employed by the special master; (d) the scope of the duties of the special master; (e) the legal and policy parameters governing the redistricting map to be proposed by the special master; and (f) any other matters deemed relevant by the commission."

The status conference went forward as scheduled on December 9, 2021. The Court thereafter granted the petitioners' request to remand the matter to the commission to resume and complete its work. See Order of Connecticut Supreme Court (December 9, 2021); see also Conn. Const., art. III, § 6 (d) (providing that "said court may compel the commission, by mandamus or otherwise, to perform its duty or to correct any error made in its plan of districting, or said court may take such other action to effectuate the purposes of this article").

In addition to providing the commission with additional time to adopt a redistricting plan, this Court's order of December 9, 2021, required the commission to file an interim report, no later than 5 p.m. on December 15, 2021, apprising the court of the status of the commission's efforts to alter the congressional districts. The order also expressly directed the commission to include in its status report the names, addresses and telephone numbers of three individuals whom the commission as a whole would propose to serve as a special master to the court should the commission fail to adopt a plan of redistricting by 12 p.m. on December 21, 2021.

The commission filed a status report on December 15, 2021, indicating that it was "not at an impasse and remains hopeful that an agreement can be reached."

The status report, however, did not comply with this Court's December 9 order insofar as the commission failed to provide or propose any names of persons to serve as a special master to the Court should the commission fail to adopt a plan of redistricting within the prescribed time. Without having filed any motion for extension of time, and without providing the court with any prior notice of its intentions, the status report represented: "[B]ecause the commission is not at an impasse and remains focused on performing its constitutional duty to create a congressional plan of districting, it hereby requests a six day extension, until December 21, 2021, in which to submit names of potential special masters to this Court. Specifically, the commission interprets this Court's order as requiring the commission to reach a consensus about three names to propose as potential special masters. Given the time constraints the commission is under . . .the commission requests that it be afforded a short extension of up to six days, until December 21, 2021, in which to submit names of special masters so that it can focus its efforts on the important constitutional task before it."

On December 16, 2021, the Court granted the commission's last minute request for extension of time, giving the commission until 12 p.m. on December 21, 2021, to submit, jointly, the names of the commission's three proposed special masters.

On December 21, 2021, the commission filed a final report with the Court reporting that it had failed to adopt a plan of redistricting. Notwithstanding the commission's representations in the status report, the commission also failed to provide the court with a list of three names of proposed special masters on December 21, 2021, or at any time thereafter. On that same day, without seeking or obtaining permission from the Court to deviate from the prescribed procedures, the Republican members of the commission filed a document entitled "Proposed Special Masters," which contained three names of individuals for consideration to serve as special master.

Later on December 21, 2021, this Court issued an order stating that neither the commission's Final Report nor the Republican members' proposed special masters filing were in compliance with the Court's order of December 9, 2021, and, if the commission members could not agree on names to serve as special master by 5 p.m., the Court would proceed to appoint a special master without further input. No names were submitted by the commission in response.

By order dated December 23, 2021, the Court appointed Nathaniel Persily as special master to assist the court in this matter. The order of December 23, 2021, contains various deadlines and directives that will not be repeated here.

Later on December 23, 2021, the Republican members of the commission (movants) filed the present motion for reconsideration. Specifically, the movants request that "(1) Nathaniel Persily not serve as the special master in this redistricting proceeding; (2) this Court appoint two special masters in order to preserve the public's confidence in the fairness of the redistricting process; and (3) the Court not set standards to be applied by the special master(s) without the opportunity for the parties to brief and be heard on the issue."

In support of their motion, the movants argue that the Court, by appointing Nathaniel Persily as special master, "risks deviating from its goal of ensuring that its role in the redistricting process does not have any appearance of partisanship." The movants claim that an appearance of partisanship arises because the Court did not appoint a special master from among the three names submitted by them on December 21, 2021, and, instead, selected an individual whose name had been "publicly presented" as the person supported by the Democrats in an online news article. Motion for Reconsideration 4–5, citing H. McQuaid, "Missed Deadlines, Outside Pressure Thwart Congressional Maps," CTNewsJunkie, December 21, 2021 ("Last week, Senate President Martin Looney said constitutional law professor Nathaniel Persily would be among those favored by Democrats. Persily served as the special master during the 2011 redistricting process."). Moreover, "to ensure that there is no appearance of partisan interests in drawing the congressional maps," the movants recommend that this Court appoint two special masters, one proposed by the Republicans and one by the Democrats.

III

This Court has a constitutional obligation to establish a plan of redistricting by February 15, 2022, which is less than eight weeks away. It intends to fulfill that obligation. The movants' suggestion of procedural unfairness borders on frivolous. All members of the commission, Republicans and Democrats alike, have been aware from the outset of the time sensitive nature of the task at hand. We will not countenance the claim that the Court appointed a special master without giving the movants an opportunity to participate or be heard. The commission, and all of its members, were given every opportunity to provide input regarding, among other things, the selection of a special master. The topic was expressly identified in the notice dated December 6, 2021. By order dated December 9, 2021, the members of the commission were required to submit proposed names by December 15, 2021. At the request of the commission, that deadline was extended to December 21, 2021, by which time the commission assured the Court that it "believes it will be able to reach a consensus about names to propose in due course if it becomes necessary." When it failed to meet that deadline, this Court had no option but to move ahead and to rely on its own resources.

The movants' suggestion of partisanship is likewise rejected in the strongest possible terms. It should surprise no one that the Court selected a nationally recognized expert in the area of redistricting to assist it when the petitioners chose to offer this Court no bipartisan assistance. Nathaniel Persily was selected by the Court on the merits and without any consideration of politics whatsoever. He ably served the Court as special master in connection with the redistricting plan adopted in 2012. See *In re Petition of Reapportionment Commission*, 303 Conn. 798, 800, 36 A.3d 661 (2012). His background familiarity with Connecticut's congressional districts should assist him in meeting the requirements set forth in this Court's order of December 23, 2021.

The motion for reconsideration en banc is denied. Any further submissions shall comply with the procedures set forth in the Court's order of December 23, 2021.

IT IS SO ORDERED.

Keller, J., did not participate in the consideration of or the decision on this motion.

By the Court,

/s/
Carl D. Cicchetti
Chief Clerk

Notice Sent: December 28, 2021
Counsel of Record
Office of the Secretary of the State

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