

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2022-0184, Theresa Norelli & a. v. Secretary of State & a., the court on May 12, 2022, issued the following order:

In furtherance of our opinion issued today, the court hereby appoints Professor Nathaniel Persily to serve as special master in this case. See RSA 490:8 (2010). A special master is a judicial officer with the attendant obligation of impartiality. See Tuftonboro v. Willard, 89 N.H. 253, 260-61 (1938) (stating that the impartiality obligation of Part I, Article 35 of the New Hampshire Constitution applies to court-appointed masters, referees, and auditors); see also N.H. Sup. Ct. R. 38 (definition of “judge” in the Code of Judicial Conduct includes “a referee or other master”). Accordingly, ex parte communications with the special master are prohibited. See N.H. Sup. Ct. R. 38 (Rule 2.9 of the Code); N.H. R. Prof. Cond. 3.5. As a judicial officer, neither the special master nor staff members acting at his direction may be subjected to cross-examination, and all confidential computer and other confidential files prepared by or for the special master in connection with this case are entitled to the same level of protection from production or disclosure as are the confidential materials of the court itself.

The special master shall prepare and issue to the court, no earlier than May 27, 2022, a report and a recommended congressional redistricting plan for New Hampshire pursuant to the criteria set forth in our opinion and this order. The special master’s appointment, although effective immediately, does not preclude the legislature from enacting a congressional redistricting plan on or before May 26, 2022 — the date identified to us as the last date for legislative action in this session on a congressional redistricting plan, unless the legislature were to suspend its rules or to meet in special session.

In developing a recommended congressional redistricting plan, the special master shall use 2020 federal census data, P.L. 94-171, and shall modify the existing congressional districts, as established by RSA 662:1 (2016), only to the extent required to comply with the following criteria and “least change” standards:

1. Districts shall be as equal in population as practicable, in accordance with Article I, Section 2 of the United States Constitution;

2. The redistricting plan shall comply with the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10101 et seq., and any other applicable federal law;
3. Districts shall be made of contiguous territory;
4. To the greatest extent practicable, each district shall contain roughly the same constituents as it does under the current congressional district statute, such that the core of each district is maintained, with contiguous populations added or subtracted as necessary to correct the population deviations, see *Below v. Secretary of State*, 148 N.H. 1, 13-14, 28 (2002);
5. The plan shall not divide towns, city wards, or unincorporated places, unless they have previously requested by referendum to be divided, or unless the division is necessary to achieve compliance with the population equality required by Article I, Section 2 of the United States Constitution; and
6. The special master shall not consider political data or partisan factors, such as party registration statistics, prior election results, or future election prospects.

The New Hampshire Senate Minority Leader and the New Hampshire House of Representatives Minority Leader (the legislative *amici curiae*) previously submitted, with their memorandum of law on the preliminary questions, a proposed congressional redistricting plan that they contend is a “least change” plan. By 5:00 p.m. on May 16, 2022, interested parties, intervenors, and any other person participating or seeking to participate as an *amicus curiae* may submit, through the court’s electronic filing (e-filing) system, their proposed redistricting plan, accompanied by such supporting data, documentation, or memoranda that they deem helpful to the special master’s evaluation of their proposed plan’s compliance with our opinion and this order.

By 1:00 p.m. on May 18, 2022, interested parties, intervenors, and any person participating or seeking to participate as an *amicus curiae* may submit, through the court’s e-filing system, a response to any proposed redistricting plan, including the proposed plan previously submitted by the legislative *amici curiae*.

An in-person hearing before the special master will be held at the court on May 19, 2022, at 1:00 p.m., to provide an opportunity for plan proponents to present arguments in favor of their plans and for opponents of particular plans to respond. Following the hearing, the special master shall select a proposed redistricting plan — or shall formulate one on his own — that he recommends for adoption by the court. The special master’s report and recommended

congressional redistricting plan shall be issued to the court no earlier than May 27, 2022, and then promptly distributed by the clerk's office to persons who have appeared in this case.

If necessary, oral argument on the special master's report and recommendation will be held before the justices of the supreme court on May 31, 2022, at 9:00 a.m.

As stated in our orders of April 11 and May 5, 2022, the court will terminate this proceeding if a congressional redistricting plan is validly enacted by the legislature at any time prior to the close of this case.

MacDonald, C.J., and Hicks, Bassett, Hantz Marconi, and Donovan, JJ., concurred.

**Timothy A. Gudas,
Clerk**

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