

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

GLORIA PERSONHUBALLAH, et al,

Plaintiffs,

v.

JAMES B. ALCORN, et al.,

Defendants &
Intervenor-Defendants

Civil Action No. 3:13cv00678

**PLAINTIFFS' STATEMENT OF POSITION REGARDING SPECIAL MASTER
REPORT**

I. INTRODUCTION

Pursuant to the Court's Order dated October 22, 2015 (Dkt. #263), Plaintiffs respectfully submit this statement of position regarding Special Master Bernard Grofman's Final Report. *See* Dkt. #272. For the reasons set out below and in their prior remedial phase briefing, Plaintiffs ask the Court to adopt Plaintiffs' proposed remedial plan. As between the two plans proposed by the Special Master, Plaintiffs submit that the Court should adopt Current Congressional Modification 16 ("Congressional Plan 16") rather than NAACP Modification 6 ("NAACP Plan 6").

II. ARGUMENT

A. The Court Should Adopt Plaintiffs' Proposed Remedial Plan

As Plaintiffs explained in earlier briefing (Dkt. #229, 250), Plaintiffs' proposed plan cures the fundamental constitutional deficiency by reducing the artificially inflated BVAP in CD 3, while at the same time preserving the basic structure of the existing districts under the current plan and improving that plan with respect to *every objective metric*. Plaintiffs have thoroughly described their proposed remedial plan in earlier briefing, and will not repeat that full discussion here. In brief, Plaintiffs submit that their remedial plan accomplishes the remedial task before the Court in an appropriately neutral, objective, and circumspect fashion, as is appropriate for a map to be adopted by a court overseeing the redistricting process.

As explained in Plaintiffs' earlier briefing (*see generally* Dkt. #250), Plaintiffs' proposed plan is superior to all of the plans proposed by Intervenor or non-parties. The Special Master does not recommend that the Court adopt any of the existing proposed plans before it. *See generally* Dkt. #272 at 26-28. But, although the Special Master recommends against the Court adopting most of the proposed remedial plans because they make alterations outside the districts abutting CD 3, he specifically denounces Intervenor's proposed plans because they "do not deal with the constitutional infirmities in CD 3 via a

narrowly tailored remedy.” *Id.* at 27. For example, the Special Master notes that Intervenor split Newport News three times “in ways that appear race related” without any justification, *id.* at 27, and retains CD 3 as a “highly ill-compact” district with a “relatively large number of total city/county splits.” *Id.* at 28 n.18.

Plaintiffs’ proposed remedial plan is, moreover, preferable to either of the Special Master’s proposals. As an initial matter, Plaintiffs’ proposed plan performs favorably with regard to objective redistricting factors when compared to both of the Special Master’s proposed remedial plans.

Plaintiffs’ remedial plan is just as compact as the Special Master’s proposals, if not more so:

Measures of Compactness—Planwide Mean¹		
Plan	Reock	Polsby-Popper
Plaintiffs	0.32	0.22
NAACP Plan 6	0.32	0.20
Congressional Plan 16	0.31	0.19

Moreover, Plaintiffs’ proposed remedial plan also is superior to the Special Master’s proposals with respect to the number of political subdivision splits:

	Plaintiffs	NAACP Plan 6	Congressional Plan 16
Number of Political Subdivisions Split (Overall)	12	13	14
Number of Political Subdivisions Split (Affecting Population)	9	13	14

¹ Under the Reock and Polsby-Popper measures, the higher number indicates a more compact district.

The primary difference between the Special Master's proposals and Plaintiffs' is that Plaintiffs propose less substantial changes to CD 3. Because Plaintiffs kept CD 3 in basically its present configuration, Plaintiffs retained it as a majority-BVAP district, and made different adjustments to existing boundaries to re-achieve population equality. As Plaintiffs have noted, it is far from apparent that maintaining CD 3 as a majority-minority district is required under Section 2 of the Voting Rights Act. *See generally* Dkt. #229 at 4, Dkt. #250 at 17. The Special Master's thorough report further supports that conclusion—the Court *could* adopt a remedial plan that reduces the BVAP of CD 3 well below 50%. *See generally* Dkt. #272 at 34-42. Nonetheless, Plaintiffs submit that retaining CD 3 as a majority-BVAP district best strikes the balance between curing the unconstitutional racial gerrymander of CD 3 and avoiding making unnecessarily sweeping alterations to CD 3 that fundamentally alter the nature of the district through the judicial process.

The Special Master's report addresses Plaintiffs' proposed remedial plan only briefly, rejecting it out of hand primarily because Plaintiffs' plan makes modest revisions to a handful of districts that do not adjoin CD 3 directly (CD 5, 6, and 9).² *See* Dkt. #272 at 26. But Plaintiffs' proposed changes to these districts are relatively minor, and were done to re-achieve population equality after adjusting the boundaries of CD 3 and to improve the objective characteristics of these districts and of the plan as a whole. Plaintiffs improved the compactness and reduced the number of political subdivision splits in these three districts:

District	Number of Splits Enacted	Number of Splits Plaintiffs	Reock Enacted	Reock Plaintiffs	Polsby-Popper Enacted	Polsby-Popper Plaintiffs
5	3	2	0.30	0.49	0.15	0.32
6	2	2	0.26	0.32	0.16	0.20
9	2	1	0.20	0.23	0.18	0.22

² Like the Special Master, Plaintiffs' proposed remedial plan makes no alterations to districts in northern Virginia (CD 8, 10, and 11).

Ultimately, the unconstitutional CD 3 was not drawn in isolation, and Plaintiff therefore submit that it is unnecessary to adopt a bright line rule restricting changes to districts that happen to border current CD 3 when a more holistic approach would cure the constitutional violation and improve the map on all objective indicia of race-based redistricting.

For all the reasons above and in Plaintiffs' prior remedial briefing, the Court should adopt Plaintiffs' proposed remedial plan.

B. As Between the Two Plans Proposed By the Special Master, the Court Should Adopt Congressional Plan 16

Both of the Special Master's proposed plans accomplish the remedial task before the Court by eliminating the racial gerrymander of CD 3 and re-achieving population equality, and doing so by reference to traditional redistricting criteria appropriately considered by the Court. Plaintiffs believe the Court could adopt either proposal as an appropriate remedial plan. That said, Plaintiffs submit that Congressional Plan 16 is the superior plan. Congressional Plan 16 is a clean, visually appealing plan that best implements the guiding principles set out by the Special Master.

The Special Master used neutral, traditional redistricting criteria to draw his proposals. *See* Dkt. #272 at 8-10. Of key significance, the Special Master adopted a "least change" approach, under which he: (1) made no "changes in a majority of the present districts, and confine[d] all changes to the district in which the constitutional defect has been found and the districts immediately adjacent to that district"; (2) kept each incumbent's residence in his or her current district; and (3) redrew other districts to "generally reflect the present shape of the equivalent districts in the current map." *Id.* at 4. Should the Court adopt the Special Master's framework, Congressional Plan 16 better comports with these goals.

First, Congressional Plan 16 has much less impact on the populations residing in districts outside of CD 3. The table below reflects the population retained in the Special Master's proposed districts as compared to the current plan, by absolute number and

percentage. The data are taken from the “Core Constituency” reports made available on the DLS website per the Court’s November 17 Order (Dkt. #273).

District	Congressional Plan 16	NAACP Plan 6
1	593,046 (81.53%)	525,747 (72.26%)
2	604,158 (83.06%)	483,547 (66.48%)
4	379,314 (52.15%)	398,201 (54.75%)
7	558,610 (76.80%)	491,311 (67.55%)

Thus, while NAACP Plan 6 preserves somewhat more of the core of current CD 4, it alters the composition of the districts abutting CD 3 far more than Congressional Plan 16. Overall, NAACP Plan 6 reallocates 236,322 more people between districts (not counting CD 3) than does Congressional Plan 16. Thus, Congressional Plan 16 better comports with the Special Master’s focus on core preservation in the districts affected by the changes to CD 3.

Second, Congressional Plan 16 makes less significant alterations to the existing demographics of CD 3 and CD 4. Both of the Special Master’s proposals reduce the BVAP of CD 3 below 50%. The change in NAACP Plan 6 is, however, significantly greater. NAACP Plan 6 reduces the BVAP of CD 3 from 56.3% to 42.3% and increases the BVAP of CD 4 from 31.3% to 42.0%. *See* Dkt. #272, tbl. 1-2. Congressional Plan 16 manifests the same basic changes, but to a lesser degree, decreasing the BVAP of CD 3 to 45.3% and increasing the BVAP of CD 4 to 40.9%. As set out above, Plaintiffs concur with the Special Master’s assessment that the Voting Rights Act would not appear to *mandate* drawing CD 3 as majority-BVAP, but believe the racial gerrymander of CD 3 can be undone with less significant modifications to the district’s demographics than those proposed by the Special Master. Accordingly, Plaintiffs favor Congressional Plan 16’s more circumspect approach to redrawing CD 3.

The final primary difference between the two proposals is in the way the Special Master addresses contiguity in CD 2, which drives county boundary splits in CD 3. *See* Dkt. #272 at 2-3. As the Special Master explains, creating contiguity in CD 2 necessitates either splitting Hampton to allow for the I-64 Hampton Roads Bridge Tunnel to connect Hampton and Newport, or relying on water boundaries to connect the pieces of CD 2. *Id.* Congressional Plan 16 manifests the first approach—a district traversable by bridge. *Id.* This is the same approach taken under the enacted plan. Thus, it would appear that Congressional Plan 16 better serves the Special Master’s goal of minimizing changes to surrounding districts, by preserving existing CD 2’s approach to contiguity.

Taken as a whole, Congressional Plan 16 better enacts and adheres to the criteria used by the Special Master in constructing his proposed remedial plans. Should the Court select between the Special Master’s two proposals, Plaintiffs believe the Court should select Congressional Plan 16.

III. CONCLUSION

For the reasons stated above, the Court should adopt Plaintiffs’ proposed remedial plan. In the event the Court instead selects between the Special Master’s proposals, Plaintiffs submit that the Court should adopt Congressional Plan 16.

Dated: November 24, 2015

Respectfully submitted,

By /s/ John K. Roche

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of November, 2015, I caused the foregoing to be electronically filed with the Clerk of this Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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