

**STATE OF CONNECTICUT
SUPREME COURT**

SC 20661

**IN RE PETITION OF REAPPORTIONMENT
COMMISSION, EX REL.**

DECEMBER 27, 2021

**RESPONSE TO MOTION FOR RECONSIDERATION OF
DECEMBER 23, 2021 ORDER APPOINTING AND DIRECTING SPECIAL MASTER**

The Democratic Members of the Reapportionment Commission, Martin Looney, Bob Duff, Matthew Ritter, and Jason Rojas, respectfully submit this brief response in opposition to the motion for reconsideration of this Court's order appointing Professor Nathaniel Persily as Special Master and providing directives for the Special Master proceedings.

Professor Persily is eminently qualified to serve as Special Master, and this Court's confidence in his ability to impartially serve in that role is well-founded. He is a chaired professor at Stanford Law School and one of the nation's preeminent scholars on election law, election administration, voting rights, and redistricting.¹ In addition to his scholarly credentials, he has served as a special master or court-appointed expert to draft redistricting plans for Georgia, Maryland, New York, North Carolina, Pennsylvania, and Connecticut, making him one of the most, if not the most, informed, qualified, and experienced redistricting special masters in the country. Even the motion for reconsideration doesn't question Professor Persily's credentials or qualifications.

¹ Professor Persily has also served as the Senior Research Director for the Presidential Commission on Election Administration, and, among other honors, has been named a Guggenheim Fellow and an Andrew Carnegie Fellow.

Instead, the motion suggests that the Court exhibited partiality in appointing Professor Persily, by “rejecting” the names put forward by the Republican members of the Commission and accepting the person “publicly advocated for” by the Democratic members. The Court did no such thing. The Court was very clear in its December 9, 2021 order that it was seeking agreed-upon Special Master nominees from the Commission as a whole, and not inviting separate submissions from Republicans and Democrats. The Court removed any doubt about that when it issued its December 21, 2021 order stating that the Court would appoint a Special Master on its own if it did not receive names from the Commission by 5 p.m. that day and making it clear that it would not accept any additional filings on the issue from either of the two parties. When that deadline passed, the Court did not select Professor Persily as the Democrats’ proposed Special Master, because the Democrats had not submitted any proposed neutrals to serve in that role before the Court issued its Dec. 21, 2021 order.² Nor did it reject the candidates proposed by the Republicans. The Court did exactly what it said it would do – when the Commission failed to submit agreed-upon candidates, the Court appointed a Special Master of its own choosing, without regard to preferences of the parties.

The motion also raises the unfounded concern that, because Professor Persily served as the Special Master in Connecticut in 2011, he will be “partial to abiding by his prior work” and therefore will be “substantially unfair” to Republicans. In 2011, both Republicans and Democrats proposed Professor Persily to the Court to serve as a neutral Special Master. That’s exactly what he did. He neutrally and meticulously followed this Court’s directives in producing the redistricting plan the Court adopted. There is no reason

² Needless to say, a comment in a CT News Junkie article is not the same as a submission to this Court.

to believe he will do anything other than neutrally and meticulously follow the Court's directives now.

Finally, the motion proposes that the Court appoint two Special Masters, one Republican nominee and one Democratic nominee, as the Virginia Supreme Court did this year. But the Virginia Court did not choose that two-master process of its own accord, as the motion for reconsideration would have this Court do; the Virginia Court was statutorily required to select two special masters, one each from lists submitted by legislative leaders of each party. (Virginia Code § 30-399(F)). There is no similar requirement in Connecticut, there is no similar precedent in Connecticut, and this Court specifically rejected a process in which the parties would propose their own partisan candidates to serve as Special Master.³ Moreover, having two, party-proposed special masters would risk making the decision-making process more difficult and protracted, a significant risk given the tight constitutional deadline of February 15th to complete the redistricting process.⁴

³ The motion for reconsideration (p. 6) contends that the Connecticut constitution's "bipartisan approach to redistricting" supports appointing one special master for each party. The constitutional provision the motion refers to requires appointment of a bipartisan reapportionment commission when redistricting is a political process within the legislative branch. When that process fails, however, redistricting falls to the Supreme Court, where it is decidedly *not* a political process, as this Court has repeatedly made clear.

⁴ The motion for reconsideration (p. 7) also briefly suggests that the Court should withdraw its directives to the Special Master (which mirror the ones successfully implemented by the Special Master in the last redistricting) and instead let the parties brief what the standards for redistricting should be. The Court's directives are entirely proper: they reflect the Court's stated goal of not trying to replicate the political process and avoiding political considerations, by authorizing changes to the existing district lines only as needed to meet applicable constitutional and statutory requirements.

For these reasons, we respectfully request that the Court deny the motion for reconsideration and allow the proceedings before the appointed Special Master to move forward pursuant to the Court's instructions.

Respectfully submitted,

REAPPORTIONMENT COMMISSION
DEMOCRATIC MEMBERS MARTIN
LOONEY, BOB DUFF, MATTHEW
RITTER, AND JASON ROJAS

BY: /s/ Aaron S. Bayer
Aaron S. Bayer
Paul Tuchmann
Wiggin and Dana LLP
265 Church Street
P.O. Box 1832
New Haven, CT 06508-1832
(203) 498-4400
abayer@wiggin.com
ptuchmann@wiggin.com
Juris No. 067700

CERTIFICATE OF COMPLIANCE

In accordance with Practice Book 62-7(b), I hereby certify that the foregoing document:

- (1) has been delivered electronically to the last known e-mail address of each counsel of record for whom an e-mail address has been provided,
- (2) has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rules, statute, court order or case law, and
- (3) complies with all applicable rules of appellate procedure.

Dated: December 27, 2021

By: /s/ Aaron S. Bayer
Aaron S. Bayer

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of December 2021, a copy of the foregoing was served by e-mail upon all docketed counsel of record as follows:

Maura Murphy Osborne
Michael K. Skold
Office of the Attorney General
165 Capitol Ave, 5th Flr
Hartford, CT 06106
(860) 808-5020
Maura.murphyosborne@ct.gov
Michael.skold@ct.gov

Proloy K. Das
Murtha Cullina LLP
280 Trumbull Street
Hartford, CT 06103
(860) 240-6000
pdas@murthalaw.com

By: /s/ Aaron S. Bayer
Aaron S. Bayer