

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

GLORIA PERSONHUBALLA	)	
Plaintiff,	)	
	)	
v.	)	Case No. 3:13-cv-678 REP/LO/AD
	)	
JAMES B. ALCORN, et al.	)	
Defendants.	)	

**BRIEF IN SUPPORT OF REMEDIAL PLAN  
ON BEHALF OF BULL ELEPHANT MEDIA LLC**

Bull Elephant Media LLC “TBE”] hereby submits the following brief in support of remedial Plan A [“TBE Plan A”] and remedial Plan B [“TBE Plan B”] [collectively the “TBE Plans”]. This Brief and the TBE Plans are being submitted pursuant to the authority granted to non-parties under paragraph 3 of the Court’s Order of September 3, 2015. All information includible in PDF form as Exhibits A and B, and the underlying data for the Plans, are being submitted via physical delivery to Judge’s chambers for Judge Robert E. Payne in Richmond.

About Bull Elephant Media, LLC

TBE was founded in 2013 as the holding company for an online news outlet, TheBullElephant.com, to “provide unique coverage of politics and policy in Virginia and elsewhere, giving particular emphasis to those issues and concerns important to conservative and libertarian grassroots Republicans.” TBE’s equity holders and contributors are not political professionals. Although each TBE contributor is responsible for his or her own content, writers at TBE have been publicly critical of the Virginia redistricting process and actions (or inactions) taken by relevant parties and non-parties leading up to the order requiring the appointment of a

Special Master.<sup>1</sup> Among TBE's contributors are three Virginia licensed attorneys with election law experience.

## **I. Overview**

The TBE Plans were created with the idea that the deficiencies of the Third Congressional District as found by the Court are capable of remedy without entirely ignoring the formal preference as stated by the General Assembly in the 2012 plan. TBE looked at a handful of factors routinely utilized in performing a redistricting analysis and sought to make modifications to the existing Congressional redistricting plan. TBE Plan A focuses on the problems inherent in and around the 3rd Congressional District. Only the 1st, 2nd, 3rd, 4th and 7th Districts are affected. TBE Plan B is a more comprehensive statewide approach.

## **II. Standards for Redistricting**

Having reviewed the Brief of nonparty OneVirginia2021 (Document No. 214) TBE concurs with the legal standards as stated on page four with a substantial caveat. It is true that if a legislature fails to pass a redistricting plan the Court has broad powers of revision. The preference of the General Assembly as stated in the existing plan should still be given deference and the remedial plan enacted by the Court should be tailored to the problem at issue. Given this analysis the TBE Plans were created with the following standards.

1. Preservation of the Political Desires of the General Assembly through its one and only formally enacted plan following the 2010 decennial census.
2. Equalization of voting strength.

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<sup>1</sup> This point is made to emphasize that although TBE may be viewed as partisan in nature, TBE does not serve the interests of incumbents for purely partisan purposes. TBE encourages the Court to look on the TBE Plans with a fresh perspective understanding that they have not been adjusted with the input of any Virginia member of Congress or member of the General Assembly. For examples of critical writings of TBE contributors please see: <http://thebullelephant.com/?s=redistricting>  
<http://northernvirginalawyer.blogspot.com/p/road-to-redistricting-litigation-in.html>

3. Preservation of political divisions and precincts.
4. Contiguity.
5. Compactness.
6. Preservation of a majority-minority district in the 3rd Congressional District with a Black Voting Age Population [“BVAP”] as close to the BVAP of the 3rd Congressional District for the 2002 plan (53.1%), to avoid the twin problems of minority cramming and minority vote dilution.

### **III. TBE Plan A**

As previously indicated, TBE Plan A fixes the problems in and around the 3rd Congressional District that led to the Court’s adverse ruling, namely an emphasis on racial division that yielded a super majority minority district, a lack of contiguity, and a lack of compactness.

1. The existing redistricting plan was used as a baseline.
2. The Congressional Districts have been equalized so that each district is less than 1,000 people different than the ideal population of 727,366.<sup>2</sup>
3. Areas of Norfolk, Hampton, Newport News and Richmond are far less balkanized than under the existing plan, and no precincts are split.
4. The 3rd Congressional district can be traveled entirely by motor vehicle without crossing into any other districts. Similarly, there are no narrow landbridges connecting adjacent precincts to maintain the bare appearance of contiguity.

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<sup>2</sup> The software program utilized by TBE does not allow for precinct splits. Although this necessitates the benefit of unified precincts, it also results in two potential issues. 1. The districts in both plans have not been equalized down to the single person level. 2. The 5th, 6th, 8th, 9th, 10th, and 11th Congressional Districts appear not to be perfectly equalized in TBE Plan A. As long as only those modifications to the 1st, 2nd, 3rd, 4th, and 7th are accepted from TBE Plan A there should be no serious equalization problems with the remaining districts.

5. All of the affected districts now have fewer protuberances and no tangentially attached precincts.
6. The Third Congressional District has a BVAP of 52.1% under TBE Plan A. This is four percentage points fewer than the current redistricting plan, and only one percentage point less than the 2002 plan.

TBE Plan A can be seen and understood in the attached PDF Maps (Exhibit A), and the two data sets submitted to Judge's Chambers on CD ("TBE Plan A CD Demographics," and "TBE Plan A Precinct Demographics").

#### **IV. TBE Plan B**

In the event the Court is inclined to look at a more wholesale adjustment to Virginia's Congressional Districts despite the absence of any readily identifiable racial considerations throughout the rest of the Commonwealth, there are serious issues with compactness that could be addressed. TBE Plan B is designed to address some of these additional issues of compactness and to avoid division of political boundaries and precincts, while still adhering largely to the preferences of the General Assembly, as expressed in the 2012 plan.

1. The existing redistricting plan was used as a baseline.
2. The Congressional Districts have been equalized so that each district is less than 1,000 people different than the ideal population of 727,366.<sup>3</sup>
3. Areas of Norfolk, Hampton, Newport News, Richmond, and northern Virginia are far less balkanized than under the existing plan, and no precincts are split.

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<sup>3</sup> The software program utilized by TBE does not allow for precinct splits. Although this necessitates the benefit of unified precincts, it also results in two potential issues. 1. The districts in both plans have not been equalized down to the single person level. 2. The 5th, 6th, 8th, 9th, 10th, and 11th Congressional Districts appear not to be perfectly equalized in TBE Plan A. As long as only those modifications to the 1st, 2nd, 3rd, 4th, and 7th are accepted from TBE Plan A there should be no serious equalization problems with the remaining districts.

4. The 3rd Congressional district can be traveled entirely by motor vehicle without crossing into any other districts. Similarly, there are no narrow landbridges connecting adjacent precincts to maintain the bare appearance of contiguity.
5. All of the districts now have fewer protuberances and no tangentially attached precincts.
6. The Third Congressional District has a BVAP of 52.1% under TBE Plan A. This is four percentage points fewer than the current redistricting plan, and only one percentage point less than the 2002 plan.

TBE Plan B can be seen and understood in the attached PDF Maps (Exhibit B), and the two data sets submitted to Judge's Chambers on CD ("TBE Plan B CD Demographics," and "TBE Plan B Precinct Demographics").

Dated: September 17, 2015

Respectfully Submitted,  
Bull Elephant Media LLC,  
By Counsel

BY: \_\_\_\_\_ /s/  
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**Certificate of Service**

I hereby certify that on this 17th day of September, 2015, I will electronically file the foregoing with the Clerk of Court using the Court's CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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