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

GLORIA PERSONHUBALLAH, et al,	)	
Plaintiffs,	)	
v.	)	
JAMES B. ALCORN, et al.,	)	Civil Action No. 3:13-cv-678-REP-LO-AKD
Defendants,	)	

PLAINTIFFS' RESPONSE TO OTHER PARTIES' SUBMISSIONS ON FINAL REPORT OF SPECIAL MASTER

TABLE OF CONTENTS

Page

I. INTRODUCTION

As the various proposals before the Court demonstrate, there are a number of viable ways that the Court can remedy the unconstitutional racial gerrymander of CD 3. And as the Special Master accurately notes, choosing between available alternatives entails tradeoffs. Dkt. #272 ("Report"), at 10. There is not a unique and "perfect" way to remedy the racial gerrymander of CD 3.

Both of the redistricting plans proposed by the Special Master plainly are viable and appropriate remedies. Both proposals appropriately remedy the unconstitutional racial gerrymander of CD 3 by "unpacking" the excessive black voting age population ("BVAP") of the district while respecting traditional redistricting principles. To be sure, they are not what Plaintiffs would have proposed in the first instance. For example, as non-party NAACP notes, the Special Master veritably bent over backwards to protect incumbents by ensuring that no incumbents were drawn into the same district—going so far as to scrap a proposal that would have better protected minority voting opportunities. And the Special Master proposed different changes to the contours of CD 3 than what Plaintiffs have suggested.

In short, neither proposal is *perfect* in Plaintiffs' view. But this is not due to any constitutional deficiency in the Special Master's proposals. It is a function of the Special Master electing to make different, but no less appropriate, tradeoffs than Plaintiffs. Plaintiffs are not surprised that most of the other parties and non-parties who have submitted a response to the Special Master's report share that same view. Defendants would support the implementation of either proposal as an appropriate remedy, Dkt. #272, and the Governor and the NAACP, like Plaintiffs, recognize that the Special Master's proposals are appropriate remedies, even if they prefer their own proposals. *See* Dkt. #278 at 1-3 (both of the Special Master's proposals "correct the constitutional flaws in the enacted version of Congressional District 3," notwithstanding the NAACP's view that its own proposal better-structures CD 4); Dkt. #280 at 1 ("[T]he Governor of Virginia states his general support for the

recommendations submitted by the Special Master, though he believes his proposed plan remains a better map for Virginians.")

Nor are Plaintiffs surprised that Intervenors object to the Special Master's proposals, given their view that the enacted plan should not be changed at all, that CD 3 does not manifest a racial gerrymander, and that the enacted plan manifests (contrary to the Court's express findings) an overriding objective of creating an "8/3" incumbency protection plan.[1] For the reasons explained below, however, Intervenors' objections to the Special Master's proposals are meritless. In the event the Court does not adopt Plaintiffs' proposed remedial plan, it can and should adopt one of the Special Master's proposals.

II. ARGUMENT

A. Plaintiffs Submit That Their Proposed Remedial Plan Is Superior to Either of the Special Master's Proposals, Although All Three Are Appropriate Remedial Plans

For all the reasons set out in Plaintiffs' prior briefing (Dkt. #229, 250, 277), Plaintiffs' proposal best remedies the deficiencies of CD 3 while making necessary population adjustments using appropriate and objective factors (chiefly, following the Commonwealth's county boundaries). If the Court instead selects between the two maps proposed by the Special Master, both of which would constitute appropriate remedies, Plaintiffs submit that "Congressional Plan Modification 16" better implements the Court's Order striking down CD 3 and the framework set out by the Special Master in his Report, for the reasons Plaintiffs have previously described. *See* Dkt. #277 at 5-7. Congressional Plan Modification 16 has a smaller impact on the populations residing in districts outside of CD 3, makes less significant alterations to the existing demographics of CD 3 and CD 4, and (unlike NAACP Plan Modification 6) preserves existing CD 2's approach to contiguity between Hampton and Newport. *Id.*

[1] Non-party Bull Elephant LLC makes similar objections in its own filing.

B. The Court Should Reject Intervenors' Baseless Objections to the Special Master's Report

The Special Master's proposed plans make no changes to the vast majority of the enacted plan, and all of the changes he did make were, as he explains in detail, the direct result of fixing the racial gerrymander of CD 3. Nonetheless, Intervenors predictably claim that the Special Master still went "too far" in his proposed remedial plans. Indeed, they go so far as to heatedly accuse the Special Master of engaging in racial gerrymandering. These contentions are meritless.

1. Intervenors' Claim That the Special Master Used Race as the Predominant Factor Entirely Misreads the Report

Intervenors first contend that the Special Master "goes too far" in correcting the constitutional violation found by the Court. Dkt. #279 ("Int. Memo"), at 9-14. Intervenors base this assertion in main on their contention that "the special master's plans subordinate traditional principles to race in creating the 'minority opportunity' Districts 3 and 4," Int. Memo at 9, 27-30. As Intervenors would have it, this is because the Special Master supposedly strayed from the remedial task before him to embark on an effort designed to remedy a self-identified violation of Section 2 of the Voting Rights Act in CD 4. *Id.* at 11-13. Intervenors grossly misread the Special Master's Report.

a. It Is Necessary and Appropriate for the Special Master to Consider Race in Adopting a Remedy to a Racial Gerrymander

As an initial matter, the Court should reject Intervenors' contention that it is somehow inappropriate for the Special Master to consider race when ensuring that his proposed remedial plans actually cured the existing racial gerrymander. It is, indeed, difficult to conceive of how the Special Master could determine whether his proposals effectively remedied the racial gerrymander of CD 3 if he was required to turn a blind eye to the racial ramifications of his proposals. *See Abrams v. Johnson*, 521 U.S. 74, 84 (1997) (describing with approval how district court considered race in constructing remedial plan, including rejection of aspects of benchmark plan where necessary to remedy a racial gerrymander, and

creation of a majority-black district); *DeGrandy v. Wetherell*, 794 F. Supp. 1076, 1084 (N.D. Fla. 1992) (in adopting a remedial plan, "the court should consider whether the changes proposed in a redistricting plan make members of racial or language minorities . . . worse off than they were before the change in terms of their ability to participate effectively in the electoral process") (citing *Beer v. United States*, 425 U.S. 130 (1976)); *cf. United States v. Charleston Cnty.*, No. 2:01-0155-23, 2003 WL 23525360, at *2 (D.S.C. Aug. 14, 2003) (describing how district court must assess impact of remedial plan on minority representation for purposes of litigation under Section 2 of the Voting Rights Act) (citing *McGhee v. Granville Cnty.*, 860 F.2d 110, 115 (4th Cir. 1988)).[2]

Given that the Special Master's overriding objective was to cure the General Assembly's misuse of race, it is entirely appropriate that he ensured that his proposed plans did not perpetuate that misuse through "either fragmentation or packing of geographically concentrated minority populations." Report at 8-9.[3] This approach simply confirms that the Special Master acted appropriately and thoughtfully in constructing appropriate potential remedies—not that the Special Master considered race inappropriately.

b. All Changes the Special Master Made to CD 3 and Surrounding Districts Are the Consequence of Remedying the Racial Gerrymander of CD 3

As the Special Master explained, he appropriately took as his starting point the need to reconfigure CD 3 to cure the existing racial gerrymander of the district. As the Court found, CD 3 is fundamentally flawed because the General Assembly used race as the

[2] Intervenors' objections in this regard ring particularly hollow, given their frank acknowledgment that the first factor they pursued in redrawing their own remedial districts was ensuring that CD 3 was a "majority-minority" district. *See* Dkt. #232 at 8. Thus, without conducting any analysis of whether doing so was *necessary* or appropriate in a final remedial plan to be adopted by the Court, Intervenors simply replaced one BVAP threshold (55%) with another (50%).

[3] Although it is difficult to identify the problem with a court-appointed special master ensuring that a proposed remedial plan does not dilute minority voting strength, the Special Master in fact *did not* place the "highest priority" on this consideration, as Intervenors misleadingly suggest. Int. Memo. at 4 (quoting Report at 11). Rather, as the Special Master explains, he placed the "highest priority" on "the first of the three criteria" he lists in his Report, e.g. complying with one-person, one-vote, avoiding improper dilution of minority voting rights, *and* "avoiding use of race as a predominant criterion for redistricting." *See* Report at 8-11.

predominant factor in constructing the district without a strong basis in evidence for its use of race. Specifically, the General Assembly increased the BVAP in an already "safe" district and used a BVAP threshold. Dkt. #170 at 45. In other words, the General Assembly unnecessarily "packed" African-Americans into CD 3.[4] The General Assembly's use of race was shown, in addition to the direct evidence, through the way that the enacted CD 3 split political subdivisions, relied heavily on water contiguity, and ignored principles of compactness, to sweep in disparate African-American communities along the banks of the James River. Dkt. #170 at 26-34; *see also* Report at 11 ("[T]he indicia used by the majority in the Page opinion to infer predominant racial motive included discontiguities in district boundaries that picked up isolated pockets of minority population, the stretch of CD3 between separated areas of the state in a fashion that did not appear in any way compelled by the demography of the state, disregard of city and county lines that appeared linked to race, and the ill-compactness of CD 3").

Thus, as the Special Master correctly noted, his primary task in constructing a remedial plan was to "fix the constitutional infirmities" in the existing CD 3—i.e., "the packing of minority voting strength into a single district" without legal justification. Report at 65. That meant the Special Master had to redraw CD 3 to fix the departures from normal redistricting principles described above. As the Special Master explained, he chose "to remedy the constitutional defects in the present CD3 in the most obvious way, vis-a-vis

[4] Intervenors' contention that "Plaintiffs never set out to prove any 'packing' in District 3," and that Plaintiffs' expert testified that CD 3 does not "pack" African-Americans is a misleading exercise in semantics. Int. Memo. at 12. In fact, the Court summarized Plaintiffs' claims in its Memorandum Opinion as follows: "Plaintiffs brought this action . . . alleging that Virginia used the Section 5 preclearance requirements *as a pretext to pack African-American voters into Virginia's Third Congressional District and reduce these voters' influence in other districts*." Dkt. #170 at 11 (emphasis added). Accordingly, Plaintiffs' expert, Dr. McDonald, testified at trial that General Assembly disregarded traditional redistricting principles "in order to increase the black voting-age population" of CD 3, Tr. 104:2-12, and that the elevated BVAP of CD 3 was "above what was necessary to elect a candidate of choice." Tr. 104:21-24. In the passage Intervenors rely on to claim that Plaintiffs presented no claim of "packing," Dr. McDonald merely testified that he did not believe it possible to draw two majority-BVAP districts in southeastern Virginia and thus in that very technical sense, CD 3 did not manifest "packing" within the meaning of Section 2 of the Voting Rights Act. *See generally id.* at 204:18-205:22.

locating CD3 in the Newport News area." Report at 15. The Special Master determined this was the "most obvious" way to redraw CD 3 because redrawing CD 3 as a "Newport News-Hampton-Portsmouth-Norfolk based district" creates a district that is contiguous, compact, has few political subdivision splits, and "begins already well on its way toward having the necessary population for an ideally sized congressional district and incorporates a substantial portion of the population found in the current CD3." Report at 21.

The Special Master determined that the constitutional violation in CD 3 could *not* be cured by making marginal changes to the existing district. Because the current configuration of CD 3 is inextricably driven by the predominating use of race, recasting CD 3 is "needed to craft a narrowly tailored remedy for the constitutional violation identified in the majority opinion in *Page*." *Id.* at 21; *see also id.* at 25 ("I have addressed state preferences for least change by drawing plans in which a majority of the congressional districts in the state were left unchanged, and others changed only as a result of a constitutionally needed reconfiguration of CD3").[5]

Once the Special Master took this "obvious" approach to redrawing CD 3 by centering the district in Newport News/Portsmith rather than maintaining a serpent winding down the James River in search of pockets of black voters, he made necessary adjustments to the boundaries of the districts surrounding CD 3 for population equality reasons. He retained CD 2 as a district running along the eastern shore. Report at 22. He likewise retained CD 1 and CD 7 in their same basic configurations, making only necessary population equality

[5] Intervenors' claim that the "special master admits that he does not make only the 'minimal . . . changes in CD 3' required to remedy th[e] *Shaw* violation," Int. Memo at 2, is thus patently incorrect, and Intervenors' reliance on *Upham v. Seamon*, 456 U.S. 37 (1982) is entirely misplaced. In *Upham*, the Department of Justice had refused preclearance of two districts in south Texas under Section 5 of the Voting Rights Act, and found no Section 5 issue with the remaining districts. Nonetheless, the district court implemented a remedial plan that drastically altered districts in *northeast* Texas (in Dallas County), without finding any constitutional violation in those districts and without any indication that altering districts in northeast Texas was reasonably necessary to cure the Voting Rights Act violation in *southern* Texas. *See generally id.* at 40-41. This bears no resemblance to this case, where the Special Master has limited changes to districts immediately surrounding CD 3, and has expressly indicated that his alterations to those surrounding districts are required for an effective remedy. *See Abrams*, 521 U.S. at 86 (approving remedial plan that made "substantial changes to the existing plan" where necessary to cure existing constitutional infirmity).

modifications. *Id.* Finally, District 4 was "largely drawn as a 'residual' district after the other four districts have been redrawn," and is comprised of a "substantial portion of current CD4" and a portion of CD 3 that the Special Master found necessary to remove from CD 3 to remedy the constitutional violation. *Id.*

As the Special Master explains, the fact that CD 4 contains a larger minority population in his proposed plans than under the enacted plan "in no way reflects race as a predominant motive." *Id.* at 16. Rather, his two proposals "naturally reflect the underlying demography of the state, i.e., the fact that there are two distinct minority population concentrations in central and southeastern Virginia." *Id.* at 15; *see also id.* at 38 ("[D]rawing two such 'minority opportunity to elect' districts follows naturally from the population demography and geography of minority population concentrations in that part of Virginia and from the decision to remedy the constitutional violation in current CD3.").

As the Special Master explains, the primary reason that the substantial minority population in the Richmond area and to its east and south is "fragmented" in the enacted plan is the tortured, race-based construction of current CD 3. Thus, "a more substantial minority population is found in CD4 in these plans than in CD4 in the current plan because the fragmentation of minority population in the Richmond area and eastward and south, due in large part to the tortuous way CD3 is presently configured, is remedied when CD3 is redrawn in a constitutional way and the remaining districts are drawn to reflect this change." *Id.* at 16.

There is no conceivable way that the Special Master could devise an effective remedial plan to cure a racial gerrymander without considering race at all. But contrary to Intervenors' mischaracterizations, the Special Master emphasized time and again that he did *not* use race as the predominant factor in developing his proposals. Rather, as set out above and explicated throughout his Report, the Special Master found that once CD 3 was redrawn using traditional redistricting principles rather than race as the predominant factor, the natural

consequence given the Commonwealth's demographics is that CD 3 and CD 4 have significant, though not majority, African-African populations. As summarized by the Special Master:

> In the process of rectifying the constitutional violations found in current CD3, and without using race as a predominant factor, but simply taking into account the demography and geography and present political subunits of the State in terms of standard good government districting criteria, the two illustrative remedial maps create a second district (CD4) in which African-American voters now possess a realistic opportunity to elect candidates of choice.

Id. at 4.

In short, the Report accurately states that remedying the constitutional violation in CD 3 had the nearly "automatic" consequence of locating a significant minority population in CD 4. *Id.* at 15-16. The Special Master's consideration, and explication, of how his proposed plans would impact minority voting rights is entirely appropriate. And only in Intervenors' imagination did the Special Master indicate that he "completely redraws District 4 for the *avowed purpose* of providing minority voters with a 'realistic opportunity . . . to elect candidates of choice.'" Int. Memo. at 3 (quoting Report at 4) (emphasis added).

2. The Special Master Considered Appropriate Factors In Crafting His Remedial Proposals

a. Intervenors Yet Again Advance the Thoroughly-Discredited Contention That Delegate Janis's Overriding Purpose in Drawing the Enacted Plan Was to Create an "8/3" Partisan Map

Intervenors' second primary objection to the Special Master's plan is that it does not "maintain the 8-3 partisan split" that the Court supposedly found was a key factor behind the creation of the enacted plan. While one must admire Intervenors' undiminished persistence, this contention has been repeatedly rejected by this Court as contrary to the record, and repetition has hardly made it more persuasive. It should be summarily rejected (again) and for precisely the same reasons it has been twice rejected by this Court.

Plaintiffs refer the Court to Plaintiffs' prior briefing and the relevant passage of the Court's Memorandum Opinion rejecting Intervenors' "politics" arguments. *See, e.g.*, Dkt. #250 (Plaintiffs' Memorandum Regarding Proposed Remedial Plans of Intervenors and Non-Parties), at 4-6; Dkt. #154 (Plaintiffs' Reply Brief Regarding *Alabama Legislative Black Caucus v. Alabama*), at 10-12; Dkt. #170 (Memorandum Opinion), at 34-41. In brief, as the Court found, although Intervenors "offered *post-hoc political justifications* for the 2012 Plan in their briefs, neither the legislative history as a whole, nor the circumstantial evidence in the record, supports" Intervenors' claim that political considerations determined the specific contours of districts in the enacted plan. *See* Dkt. #170 at 37 (emphasis added). The enacted plan is obviously *not* a naked "incumbency protection plan," *id.* at 24, given that the plan's architect, Del. Janis *disavowed* any consideration of partisan performance when drawing the enacted plan, *id.* at 38, and his redistricting criteria never once mention partisan performance. *See* Pl. Ex. 5; *see also* Pl. Ex. 43, at 3-7, 18-20. In any event, it would be inappropriate for the Court to adopt a "remedial" plan designed to implement a gross partisan gerrymander. *See* Dkt. #250 at 6 (collecting cases holding that courts should not engage in partisan gerrymandering when adopting a remedial redistricting plan). To the extent that advancing political considerations is appropriate at all, the Special Master's proposals addressed such considerations by ensuring that no incumbents were drawn into the same district. Indeed, the Special Master in fact subordinated other traditional redistricting criteria to avoid drawing into the same district two incumbents who live mere miles apart. Report at 23-25, 53-54.

b. Intervenors Greatly Overstate the Significance of "Core Preservation" in the Enacted Plan and, Regardless, Remedying a Racial Gerrymander Necessitates Altering CD 3 and Surrounding Districts

Intervenors' flights of revisionist fancy are no more compelling when turned to "core preservation." As Intervenors now would have it, "it is *undisputed* that core preservation was the *most* important neutral state districting criterion to the Legislature," Int. Memo at 6, and thus the Court somehow must somehow reverse the racial gerrymander of CD 3 without

making any meaningful changes to the existing districts. There are several rather dramatic flaws with this contention.

As an initial matter, and most fundamentally, *of course* the Special Master's proposed remedial plans do not perfectly trace the contours of existing districts. They could not do so and still constitute an effective remedy for the General Assembly's racial gerrymander of CD 3. The General Assembly took a "safe" majority-BVAP district and further packed African-Americans into the district by hopscotching the James River to unite disparate pockets with high BVAP, despite the utter dearth of any evidentiary support for doing so. As the Special Master ably describes, Report at 29-41, there is no justification for straying from traditional redistricting principles to maintain CD 3 at anything close to its current BVAP. Redrawing a new version of CD 3 whose raison d'etre is *not* scooping up available pockets of black voters obviously entails changing CD 3 and surrounding districts. Any interest in core preservation must give way to making the changes appropriate to effectively remedy the constitutional violation found by the Court.

Moreover, Intervenors grossly inflate the role of core preservation in the enacted plan. The alleged principle of core preservation *does not appear* in the Senate Criteria that the Intervenors previously argued provides "a preexisting 'framework" against which to judge the Enacted Plan." *Compare* Dkt. #106 at 18 *with* Pl. Ex. 5. In fact, the "most important" non-racial criterion other than population equality is titled "[c]ontiguity and [c]ompactness." Pl. Ex. 5.

To the extent the General Assembly did give consideration to maintaining existing district cores, it betrayed no slavish devotion to them, as this Court has already held. *See* Dkt. #170 at 32 ("The evidence similarly undercuts the dissent's contention that the boundaries of the Third Congressional District reflect an allegiance to the traditional redistricting principle of preserving district cores"). CD 3, for example, needed 63,976 additional residents to meet the ideal population, but instead of just adding people to equalize

population, the General Assembly first removed nearly 59,000 residents from CD 3. *Id.* at 33. The General Assembly "moved over 180,000 people in and out of the districts surrounding the Third Congressional District to achieve an overall population increase of only 63,976 people." *Id.* This massive dissection of district populations was in large measure necessitated precisely because the General Assembly could not otherwise meet its racial goals in CD 30—removing white voters and adding black voters to CD 3 to comply with the General Assembly's self-imposed BVAP threshold. *Id.* at 33-34.

Indeed, as Intervenors themselves note, there is one overriding reason why CD 3 and surrounding districts were initially drawn in their present configuration back in the 1990s: *race*. As Intervenors put it, in 1997, "District 3 was adopted as a *Shaw* remedy"—i.e., as a purposefully-created majority-minority district. Int. Memo at 23; *id.* at 12 (describing the enacted version of CD 3 as a "majority-black and urban Richmond-Norfolk configuration" that was "adopted as a *Shaw* remedy" (quoting *Moon v. Meadows*, 952 F. Supp. 1141, 1151 (E.D. Va. 1997)); *see also* Dkt. #231 (Memorandum in Support of Remedial Congressional Districting Plan Submitted by the Governor of Virginia), at 2-5 (describing how General Assembly, in 1991, first purposefully constructed CD 3 as a serpentine majority-BVAP district along the James River). In short, to the extent core preservation *was* a factor in constructing the enacted CD 3, the General Assembly's effort to ensure it "kept together the 'two distinct minority population concentrations' around Richmond and Norfolk," Int. Memo at 4 (quoting Report at 15), this simply reinforces the predominating use of race to structure enacted CD 3 and surrounding districts. Preserving the cores of CD 3 and surrounding districts is synonymous with preserving the existing racial gerrymander of CD 3.

Finally, the Special Master in fact took great pains to avoid making unnecessary changes to the enacted plan. Other than making natural changes to CD 3 and CD 4 as set out above, the Special Master made no changes at all to six districts, and made only minimal

changes to the other districts surrounding CD 3—to an extent comparable to the changes the enacted plan made to the benchmark plan:

Percentage of Core Retained			
District	Enacted Plan[6]	Congressional Plan Modification 16[7]	NAACP Plan Modification 6[8]
1	76%	82%	80%
2	85%	87%	66%
3	83%	54%	56%
4	96%	52%	55%
5	90%	100%	100%
6	92%	100%	100%
7	90%	77%	68%
8	85%	100%	100%
9	90%	100%	100%
10	89%	100%	100%
11	71%	100%	100%

Courts tasked with drawing a remedial map are "called on . . . to correct—not follow—constitutional defects in districting plans." *Abrams*, 521 U.S. at 85-86. The Court should reject Intervenors' attempt to, through the guise of "core preservation," preserve the very defects in the enacted plan that led this Court to strike it down.

C. Intervenors' Remaining Objections to the Special Master's Plan Are Also Meritless

The Court can give short shrift to Intervenors' two remaining objections to the Special Master's proposed remedial plans.

[6] As compared to the benchmark plan in effect during the 2000s.
[7] As compared to the enacted plan.
[8] As compared to the enacted plan.

First, Intervenors argue that "the special master's 'good government' criteria of avoiding locality splits does not support entry of either of his proposals as a judicial remedy in this case." Int. Memo. at 27. Their argument on this point is difficult to follow. Intervenors appear to be arguing that the Special Master's proposals do not split dramatically fewer political subdivisions than the enacted plan. Given his refusal to make changes to most of the districts in the existing plan, that is true and comes as no surprise. But Intervenors concede, as they must, that the Special Master's proposed versions of CD 3—the district at issue here—split fewer localities than the enacted CD 3. *Id.* And they concede that one of his proposals splits fewer localities than the enacted plan, and the other matches the enacted plan. *Id.* By any objective measure, then, the Special Master's proposals manifest respect for political subdivisions to at least the same extent as the enacted plan, while redressing the splits in enacted CD 3 that followed racial lines.[9] Intervenors' discussion of locality splits provides no reason to reject the Special Master's proposals.

Second, Intervenors suggest that CD 4 in the Special Master's proposed remedial plans is less compact than the version of CD 4 in the enacted plan. The Court need do nothing more than look at the maps of the three plans side-by-side to reject that assertion. In fact, as the Special Master states, his iterations of CD 4 are substantially more compact under the Reock measure of compactness than the enacted CD 4.[10]

[9] Intervenors' objection that NAACP Plan Modification 6 splits one more locality in CD 4 than the enacted plan is specious, given that the extra split was prompted solely by the Special Master taking care to avoid pairing two incumbents. *See* Report at 23-24.

[10] The Special Master accurately calculated the Polsby-Popper score of the enacted plan and his proposed remedial districts, but Intervenors are correct that the Special Master's Reock calculations appear to reflect an apparent (but irrelevant) calculation error. Int. Memo. at 24. Intervenors do not bother to conduct a proper analysis of the issue, preferring instead to attempt to manufacture an issue with which to challenge the Special Master. Due to an apparent calculation error, the Special Master systematically undervalues the Reock score of both the enacted plan's districts *and* his proposals. But the error is simply irrelevant: Even measured with corrected Reock scores, the districts the Special Master proposes altering are substantially more compact than both the enacted plan and Intervenors' proposals. *See* Declaration of Kevin J. Hamilton in Support of Plaintiffs' Response to Other Parties' Submissions on Final Report of Special Master, ¶ 5 & Exs. A-C. That the Special Master made a minor calculation error is both true and utterly irrelevant to the issue before the Court.

III. CONCLUSION

The Special Master has proposed two viable, appropriate remedial plans for the Court's consideration. Plaintiffs favor their own plan over both alternatives, but not because they believe there is any flaw in the Special Master's proposals. Unable to attack the Special Master's proposals or his Report on their own merits, Intervenors instead resort to gross mischaracterizations. The Court should adopt Plaintiffs' proposed remedial plan. Alternatively, if the Court picks one of the Special Master's proposals, Plaintiffs submit that Congressional Plan Modification 16 better implements this Court's Order and the remedial framework articulated by the Special Master

Dated: December 1, 2015

Respectfully submitted,

By /s/ John K. Roche
John K. Roche (VSB# 68594)
Marc Erik Elias (admitted *pro hac vice*)
John Devaney (admitted *pro hac vice*)
Perkins Coie LLP
700 13th St. N.W., Suite 600
Washington, D.C. 20005-3960
Phone: (202) 434-1627
Fax: (202) 654-9106
Email: JRoche@perkinscoie.com
Email: MElias@perkinscoie.com
Email: JDevaney@perkinscoie.com

Kevin J. Hamilton (admitted *pro hac vice*)
Perkins Coie LLP
1201 Third Avenue, Ste. 4900
Seattle, WA 98101-3099
Phone: (206) 359-8000
Fax: (206) 359-9000
Email: KHamilton@perkinscoie.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of December, 2015, I filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the counsel of record in this case.

Respectfully submitted,

By /s/ John K. Roche
John K. Roche (VSB# 68594)
Perkins Coie LLP
700 13th St. N.W., Suite 600
Washington, D.C. 20005-3960
Phone: (202) 434-1627
Fax: (202) 654-9106
Email: JRoche@perkinscoie.com

Attorneys for Plaintiffs