

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,)	
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**PLAINTIFFS' STATEMENT OF POSITION REGARDING SUPPLEMENT II TO
THE REPORT BY THE SPECIAL MASTER**

Pursuant to the Court's order of December 15, 2015, Plaintiffs submit this response to the Special Master's second supplement to his Final Report. As the Special Master states, the second supplement to his Final Report does not include any "new" information, but instead further clarifies the methodological approach he used to construct his proposed remedial plans in light of arguments raised by counsel at the December 14, 2015, hearing.

As Plaintiffs stated in their original response to the Special Master's Final Report, both of the Special Master's proposed plans are appropriate and effective remedies. *See* Dkt. #277 at 5. Moreover, as Plaintiffs have explained in detail, it was evident from the Special Master's original report that the Special Master proceeded by first redrawing CD 3 to redress the General Assembly's misuse of race using appropriate redistricting criteria, and then redrew other districts to the extent necessary to effectuate those changes to CD 3. *See* Dkt. #286 at 4-8. The Special Master's supplemental submissions to the Court in advance of and following the December 14 hearing confirm this is how he drew his proposed plans. As he describes, the Special Master's two alternative plans are appropriate, narrowly-tailored remedies to the constitutional violation the Court has identified.

In attempting to sway the Court not to adopt one of the Special Master's proposals, Intervenor grossly mischaracterize the Special Master's methodological approach. The Special Master's first and second supplements carefully and thoroughly explain how Intervenor have misapprehended the Special Master's approach. Specifically, although this was entirely evident from his initial Report, the Special Master has now put beyond all doubt that he (1) did not use race as the predominant factor in constructing his remedial plans, and (2) limited changes to the enacted plan to those necessary to effectuate an effective remedy. Thus, the Special Master's second supplement further demonstrates that the Court could appropriately adopt either of the Special Master's proposals as a final remedy in this matter.

Finally, as the Court considers the Special Master's Report and its supplements, Plaintiffs also note that the Special Master did not consider or address the map that Plaintiffs

submitted in the liability phase, which was the subject of discussion at the December 14 hearing. This was not an oversight by the Special Master. Although not required to meet their burden, *see* Memorandum Opinion at 18 n.12, Plaintiffs proffered that map solely as additional evidence of liability. At no point in these proceedings has Plaintiffs' "liability" map been proposed by any party as a potential *remedy* the Court should adopt. Plaintiffs constructed the liability map before the Court issued its 50-page opinion striking down the enacted plan, and it therefore does not directly respond to or implement fully the Court's decision. Since that decision, the parties and the Court have engaged in a lengthy remedial process that has entailed the engagement of the Special Master, the submission of proposed remedies, and the opportunity for all parties and the Special Master to comment on those proposals. Because no party proposed Plaintiffs' liability map as a remedy, none of the parties (or non-parties) have addressed that map in the remedial phase, the Special Master has not analyzed it, and the Court does not have the benefit of the Special Master's opinion on whether and how that map complies with redistricting criteria as compared with his two proposals. Thus, the record before the Court is simply insufficient to even consider adopting that map as a remedy.

Moreover, adopting the liability map at this point would be in some considerable tension with the remedial process established by this Court. The Court established a fair and structured remedial process, allowing alternative remedial maps to be proposed, analyzed by the Court's Special Master, and review by the parties to this litigation and members of the public wishing to be heard. Disregarding all of the work, analysis, and commentary in favor of a map never proposed by anyone (party or not) would undermine the very process set in motion by the Court to ensure a measured and appropriate approach to the remedial phase of this litigation. With all due respect, adoption of the liability map at this point would be inappropriate.

For the reasons set out in earlier briefing, the Court could adopt either of the Special Master's alternatives as an appropriate remedy, and should order implemented a new remedial plan at the earliest possible date.

Dated: December 23, 2015

Respectfully submitted,

By /s/ Aria C. Branch

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd 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,

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