

FILED UNDER THE ELECTRONIC BRIEFING RULES

SUPREME COURT
OF THE
STATE OF CONNECTICUT

S.C. 20661

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

REPLY BRIEF SUBMITTED TO THE SPECIAL MASTER BY THE
REPUBLICAN MEMBERS OF THE CONNECTICUT
REAPPORTIONMENT COMMISSION ON THE CONGRESSIONAL
REDISTRICTING PROCESS

SENATOR KEVIN KELLY (CO-CHAIR)
REPRESENTATIVE VINCENT CANDELORA
SENATOR PAUL FORMICA
REPRESENTATIVE JASON PERILLO

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REPLY BRIEF

On December 23, 2021, the Supreme Court issued an order appointing and directing a special master. The order to the special master stated:

In developing a plan, Special Master Persily shall modify the existing congressional districts only to the extent reasonably required to comply with the following applicable legal requirements:

- a. Districts shall be as equal in population as practicable;
- b. Districts shall be made of contiguous territory;
- c. The plan shall comply with the Voting Rights Act of 1965, as amended, 52 U.S.C. § 10101 et seq., and any other applicable federal law.

In drafting his plan, Special Master Persily shall not consider either residency of incumbents or potential candidates or other political data, such as party registration statistics or election returns.

In no event shall the plan be substantially less compact than the existing congressional districts, and in no event shall the plan substantially violate town lines more than the existing congressional districts.

S.C. Order (12/23/21).

The Court set forth a schedule in its December 23, 2021 order. Briefs and proposed maps were due to the Court by January 4, 2022. The special master was ordered to hold a virtual hearing and to submit a plan for redistricting to the Court by January 18, 2022.

On December 28, 2021, the Court issued a “Notice of Reapportionment Public Hearing.” In that notice, the Court scheduled the virtual hearing for Friday, January 7, 2022 at 1:00 p.m.

The January 7th hearing was rescheduled for Monday, January 10th due to inclement weather. Thereafter, the Democrat members of the Commission submitted a reply brief on the afternoon of January 7, 2022. The filing was accepted by the Court without comment.¹ At the outset of the January 10th hearing, Senator Kevin Kelly, representing the Republican members of the Commission, noted that, in light of the Democrat members' filing, the Republican members would also be filing a responsive brief. This is that filing.

I. THE REPUBLICAN MEMBERS' PLAN MEETS THE REQUIREMENTS OF THE COURT'S ORDER

Both the Republican members' plan and the Democrat members' plan take similar approaches to addressing the uneven population

¹ Upon receiving the Court's December 23, 2021 order, the Republican members immediately filed a motion for reconsideration seeking, *inter alia*, an opportunity to brief and argue that the map should be drawn based on traditional redistricting principles rather than the least change standard that was set forth in the Court's order. The Court denied the motion for reconsideration and criticized the Republican members' motion, stating "[w]e do not welcome unsolicited partisan filings and will not permit this Court to merely become an extension of the breakdown of the process the people of the state have commanded." However, the Republican members needed to file the motion for reconsideration or risked waiving their argument for the application of traditional redistricting principles. At the February 6, 2012 argument before the Supreme Court during the 2011 redistricting proceedings, when the Republican members then argued that the Supreme Court should ask the special master to draw a map based on traditional redistricting principles, the argument was made that the Republican members had waived their claim by failing to file a motion for reconsideration of the Court's order to the special master. Thus, the Republican members here had no choice but to file for reconsideration of the Court's order in light of the waiver argument that was made in the last redistricting proceeding.

growth within the state. The Republican members’ plan and Democrat members’ plan are only 2.5% different from one another. This would suggest that both plans succeeded in following similarly strict interpretations of the Court’s order. Despite their similarities, however, there are some differences between the two plans that make the Republican members’ plan superior and more in line with the requirements of the Court’s order and applicable law.

A. The Republicans’ Changes Are “Reasonably Required”

There is nothing unreasonable in the suggested Republican plan. The proposed changes are “reasonably required” in order to fulfill the court’s instructions. The current five congressional districts are a combined 61,303 persons outside of the deviation. Because of the uneven distribution of population gains and losses, both the Democrat members’ plan and the Republican members’ plan move a greater number of persons.

Exhibit, Population Table

District	Total	Ideal	Deviation	Percentage
First	717654	721189	- 3535	0.5%
Second	699901	721189	- 21288	3.0%
Third	715360	721189	- 5829	0.8%
Fourth	746816	721189	+ 25627	3.6%
Fifth	726213	721189	+ 5024	0.7%

Total Persons Outside of Deviation:

61303

Average Percentage Outside of Deviation:

1.7%

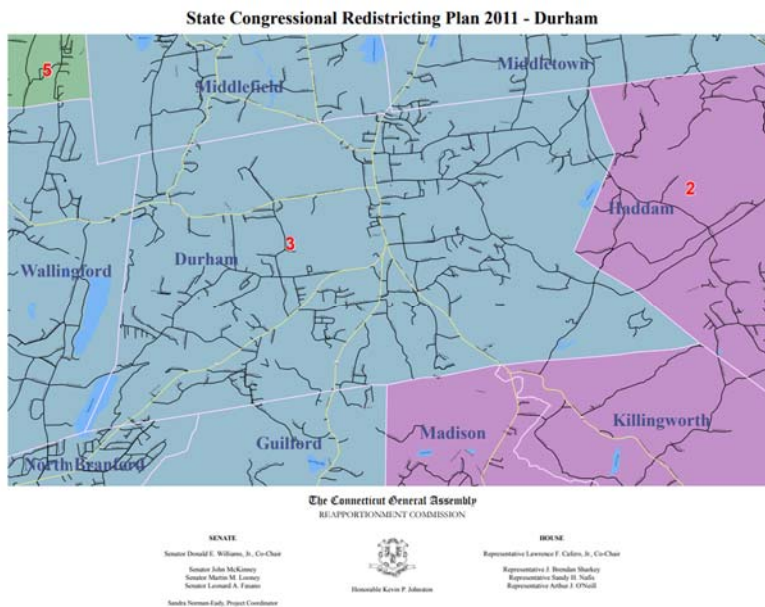
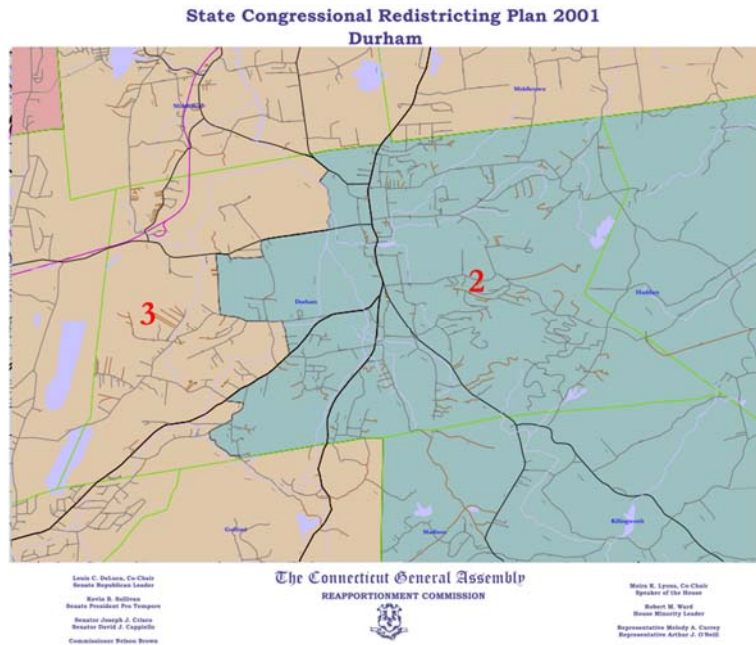
B. Torrington Should Be Wholly In The Fifth Congressional District

Under the current instructions from the Court, it is both possible and desirable to move Torrington wholly into one congressional district. In 2012, Special Master Persily moved the entirety of Durham into the Third District to comply with the Court's order. This eliminated an unnecessary violation of town boundaries and reduced the overall number of split towns from 6 to 5.

The January 3rd, 2012 Order directing the Special Master states, "...in no event shall the plan of the Special Master substantially violate town lines more than the existing congressional districts." Similarly, the December 23rd, 2021 Order directing the Special Master states, "...in no event shall the plan substantially violate town lines more than the existing congressional districts."

Operating under identical instructions in 2012, the special master unified the town of Durham into a single congressional district. Thus, unifying a town into a single congressional district is clearly a desirable goal permitted by the Court's order. As demonstrated in the Republican members' plan and the Democrat members' second plan, only four splits are necessary to achieve equal population.

Exhibits: 2001 Durham Map, 2011 Durham Map



Torrington is an integral part of the Fifth District. If the town is to be wholly incorporated into a single district, it is clear that it should be placed into the Fifth District. Currently Torrington has 35,515

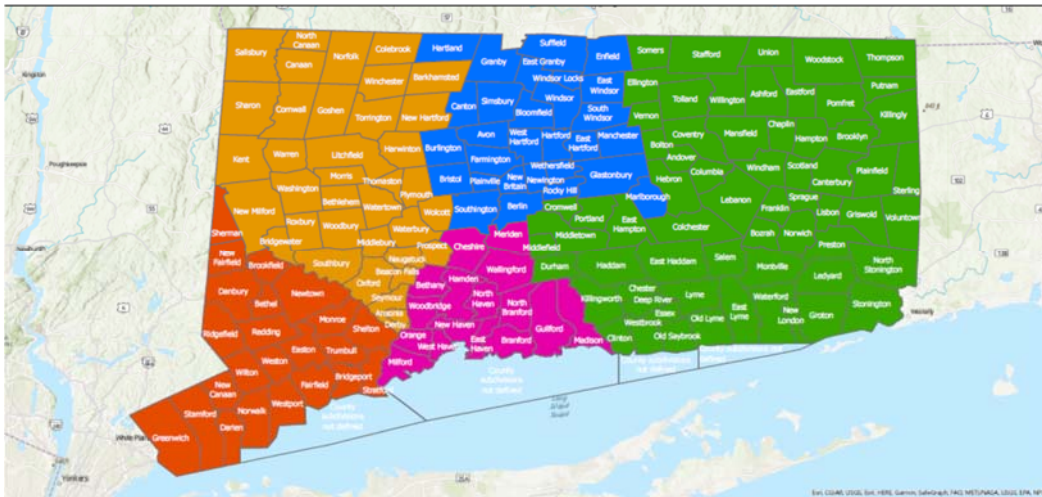
residents, of which the majority, 20,462 reside in the Fifth District. Placing the entirety of Torrington within the First District would disrupt more town residents than if it were placed in the Fifth District.

Exhibit: Torrington Population Table

District	Population	Percent
First	15,053	42.4%
Fifth	20,462	57.6%
Total	35,515	100.0%

Indeed, prior to 1965, when Connecticut also had five congressional districts, Torrington had been in the Fifth District and New Britain had been in the First District.

Exhibit: 1964 map



C. The Voting Rights Act

As acknowledged in the Democrat members’ brief, the Republican members’ plan does not violate the requirements of the

Voting Rights Act. Compared to the Republican members' plan, the Democrat members' plan unnecessarily reduces minority populations in the Third District and the First District for no reasons other than political ones.

Further, it would be possible to increase diversity in the Fifth District by simultaneously wholly incorporating Torrington and Waterbury into the Fifth District. Such a proposal would require the movement of other towns such as Avon, Canton and Simsbury in whole or part. However, such a proposal might not comply with a strict interpretation of the Court's current order.

Exhibit, demographics comparison tables: Republican Members' Plan vs. Democrat Members' Plan, Avon, Canton, and Simsbury vs. Torrington and Waterbury (part)

Republican Member's Plan									
DISTRICT	Total Population				Voting Age Persons				
	White	Black	Hispanic	Minority	Voting Age	White	Black	Hispanic	Minority
First	59.79%	16.19%	17.81%	40.21%	79.86%	63.08%	15.33%	15.54%	36.92%
Second	80.27%	4.06%	9.25%	19.73%	81.24%	82.33%	3.93%	7.70%	17.67%
Third	63.26%	14.42%	17.70%	36.74%	80.68%	66.73%	13.41%	15.10%	33.27%
Fourth	60.23%	12.14%	21.62%	39.77%	77.02%	62.45%	11.99%	19.85%	37.55%
Fifth	68.55%	7.08%	20.04%	31.45%	79.06%	71.75%	6.70%	17.18%	28.25%

Democrat Member's Plan									
DISTRICT	Total Population				Voting Age Persons				
	White	Black	Hispanic	Minority	Voting Age	White	Black	Hispanic	Minority
First	60.34%	15.79%	17.72%	39.66%	79.86%	63.62%	14.96%	15.45%	36.38%
Second	80.13%	4.11%	9.29%	19.87%	81.22%	82.20%	3.97%	7.74%	17.80%
Third	63.99%	14.31%	16.86%	36.01%	80.91%	67.39%	13.30%	14.35%	32.61%
Fourth	60.26%	12.13%	21.62%	39.74%	76.98%	62.48%	11.98%	19.86%	37.52%
Fifth	67.39%	7.56%	20.93%	32.61%	78.88%	70.65%	7.14%	18.00%	29.35%

Comparison									
DISTRICT	Total Population				Voting Age Persons				
	White	Black	Hispanic	Minority	Voting Age	White	Black	Hispanic	Minority
First	-0.55%	0.40%	0.09%	0.55%	0.00%	-0.54%	0.37%	0.09%	0.54%
Second	0.14%	-0.05%	-0.04%	-0.14%	0.02%	0.13%	-0.04%	-0.04%	-0.13%
Third	-0.73%	0.11%	0.84%	0.73%	-0.23%	-0.66%	0.11%	0.75%	0.66%
Fourth	-0.03%	0.01%	0.00%	0.03%	0.04%	-0.03%	0.01%	-0.01%	0.03%
Fifth	1.16%	-0.48%	-0.89%	-1.16%	0.18%	1.10%	-0.44%	-0.82%	-1.10%

Town	Total Population					Voting Age Persons				
	All Persons	White	Black	Hispanic	Minority	Voting Age	White	Black	Hispanic	Minority
Avon	18,932	77.45%	2.18%	4.84%	22.55%	77.03%	81.14%	1.95%	4.00%	18.86%
Canton	10,124	89.55%	1.46%	4.08%	10.45%	78.94%	91.37%	1.31%	3.25%	8.63%
Simsbury	24,517	84.41%	2.23%	5.45%	15.59%	76.89%	86.87%	2.05%	4.37%	13.13%
Torrington	35,515	76.69%	3.52%	15.30%	23.31%	81.56%	80.24%	3.32%	12.05%	19.76%
Waterbury*	39,836	43.14%	18.11%	39.29%	56.86%	76.41%	47.75%	16.92%	34.80%	52.25%

*Waterbury Third District Portion in Republican Member's Proposal

D. Traditional Redistricting Principles

The Republican members submit that the special master, as a court-appointed expert, should use that expertise to recommend to the Court that it consider a good government map created with traditional redistricting principles. Indeed, there is no reason that the Court should defer to the 2012 congressional map. Up until the compromise in 2001, Connecticut's congressional maps followed these widely accepted principles.

The failure to apply traditional redistricting principles frustrates the ability to create a map through negotiation and compromise. Members of commissions in the past have known that if they failed to draw districts, the state constitution would vest jurisdiction in the Supreme Court which would then draft its own map, without regard to political winners and losers. This context provided the commission members with strong incentives to reach agreement. Indeed, the Connecticut Supreme Court has previously signaled that the failure to agree on a map could lead to changes that would be unsatisfactory to both sides: "Agreement by politically sophisticated decisionmakers in the first instance may be made more likely by the in terrorem effect of the knowledge that otherwise a court untutored in political realities would undertake so politically sensitive an assignment." *Fonfara v. Reapportionment Comm'n*, 222 Conn. 166, 184 (1992).

However, when the map prepared by the Court's special master is limited to changes only necessary to equalize population and otherwise required by federal law, the "in terrorem" effect of the Court's role is vitiated and any incentive for the party that is advantaged by the current map to make concessions is eliminated. Concomitantly, a party disadvantaged by this intransigence is denied any effective means of redress. In short, application of the "least change" standard directly creates gridlock. The state constitutional process does not contemplate that, in the absence of an agreement by

the Commission members, a status quo congressional plan would remain in place. As the Supreme Court made clear in *Fonfara*, the success of the constitutional process for redistricting relies in part on the Court being willing to actively draw a map without regard to what lawmakers might desire. Applying the traditional redistricting principles of compactness, contiguity, conformity to political subdivisions, and respect for communities of interest to the congressional map would assuredly remove the “lobster claw” and permit the Connecticut electorate to have a good government map. For this reason, the Court should apply that standard.

E. There Should Be No Deference To The 2012 Map

The Democrat members argue in their brief that the current map is reflective of a bipartisan compromise and is therefore a valid starting point. This is both factually inaccurate and irrelevant. The compromise that produced the map in 2001 was the result of unique and special circumstances that were relevant 20 years ago but are not relevant today. Unlike in 2001, there has been no change in the number of Congressional seats for Connecticut. There is simply no reason for the Court to perpetuate what was a temporary compromise that was unique to the 2002 election. Moreover, the current map that was created in 2012 was not reflective of any bipartisan commission process. Rather, it was created by Special Master Persily under the standards set by the Court in 2012. The Democrat members’ claim that the current congressional map should be entitled to extreme deference is not reasonable.

F. Political Competitiveness

The Court’s order instructs the special master to draw a map without regard to political factors such as voter registration and election results. Despite these instructions, the Democrat Members introduce this subject in their brief. The Democrats argue in their brief

that the current map is bipartisan and fair, based off congressional election results from 2002, 2004, as well as gubernatorial elections in 2014 and 2018. These measures are poorly suited when it comes to evaluating the map for congressional candidates running in the current decade. A more accurate reflection of partisan fairness would consider statewide federal races such as United States Senate and Presidential elections. According to the nationally recognized Cook Political Report, all five congressional districts rank as more Democratic than the nationwide average. The Cook Political Report Partisan Voting Index (PVI) rankings are calculated using an average of the two most recent presidential elections; 2020 and 2016. Rankings are expressed as D +N for a district that votes more Democratic than average or R +N for a district that votes more Republican than average. Connecticut's districts range from D +2 to D +12.

**Exhibits: Statewide Federal Election Results, PVI Rankings,
Cook Political Report Article**

Republican Percentage of Vote						
District	2012 President	2012 US Senate	2016 President	2016 US Senate	2018 US Senate	2020 US President
First	35.6%	38.6%	36.3%	30.4%	36.2%	35.3%
Second	42.6%	44.9%	45.8%	36.4%	42.2%	43.5%
Third	36.3%	38.7%	40.4%	30.2%	37.5%	38.8%
Fourth	44.0%	46.3%	36.6%	36.3%	36.8%	34.5%
Fifth	45.3%	47.8%	45.8%	39.7%	44.0%	43.9%

District	Cook Report PVI
First	D +11
Second	D +2
Third	D +8
Fourth	D +12
Fifth	D +2

<https://www.cookpolitical.com/analysis/national/pvi/introducing-2021-cook-political-report-partisan-voter-index>

CONCLUSION

For all of the reasons set forth in the Republican members’ principal and reply briefs, the special master should recommend adoption of the Republican members’ proposed “least change” map because it is in accord with the Supreme Court’s December 23, 2021 order. Additionally, the special master, as the Court’s chosen expert, should also recommend to the Court that it reconsider its directive and allow for the drafting of a congressional “good government” map based on traditional redistricting principles.

Respectfully submitted,

REPUBLICAN MEMBERS OF THE
REAPPORTIONMENT
COMMISSION

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CERTIFICATION

The undersigned attorney hereby certifies, pursuant to Connecticut Rule of Appellate Procedure § 67-2, that:

(1) the e-brief with appendix complies with all provisions of this rule;

(2) the e-brief with appendix is filed in compliance with the optional e-briefing guidelines and no deviations were requested

(3) this e-brief contains 2034 words;

(4) the e-brief with appendix has been redacted or does not contain any names or other personal identifying information that is prohibited from disclosure by rule, statute, court order or case law;

(5) the e-brief with appendix 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.

/s/ Proloy K. Das
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