

FILED UNDER THE ELECTRONIC BRIEFING RULES

SUPREME COURT
OF THE
STATE OF CONNECTICUT

S.C. 20661

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

BRIEF SUBMITTED 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
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NATURE OF THE PROCEEDINGS

Article Third, § 6 of the Connecticut Constitution requires a decennial reapportionment of General Assembly and Congressional districts. Article Third, § 6b provides that, if the General Assembly is unable to adopt a redistricting plan by September 15th, the Governor must appoint a Commission designated by the president pro tempore of the senate, the speaker of the house of representatives, the minority leader of the senate and the minority leader of the house of representatives, each of whom shall designate two members of the commission. The eight members of the Commission then designate an elector to serve as a ninth member. In accordance with these provisions, the Governor appointed the Commission to devise a reapportionment plan in accordance with the 2020 census data. The Commission members are: Senator Kevin Kelly, Co-Chair, Senator Martin Looney, Senator Bob Duff, Senator Paul Formica, Representative Matthew Ritter, Co-Chair, Representative Vincent Candelora, Representative Jason Rojas, Representative Jason Perillo and John McKinney.

Article third, § 6c of the state constitution requires the Commission to submit a plan of districting for congressional districts to the Secretary of the State by November 30, 2021. By statute, the deadline for the federal government to send census data to the states was April 1. However, due to delays in counting and processing the census data, the federal government did not release the census data to the states until August 12, 2021. Despite the over four-month delay in receiving the census data, the Commission was able to agree on and timely submit a districting plan for state House and Senate seats. The Commission was unable to submit a congressional districting plan by November 30, 2021. The Secretary of the State certified that fact to the Chief Justice as required by the state constitution.

Article Third, § 6d vests original jurisdiction in the Supreme Court if a redistricting plan is not filed by November 30th and a registered voter files a petition with the Court. The constitutional provision grants the Court broad authority to take steps to effectuate a redistricting plan, but it must ensure that a plan is filed with the Secretary of the State by February 15th.

On December 2, 2021, the members of the Commission, as registered voters, filed a petition with the Court, requesting that the matter be remanded to the Commission to permit consideration of congressional redistricting until December 21, 2021. On December 6, 2021, the Court issued an order scheduling a hearing on the Commission's petition on December 9, 2021. The order asked counsel for the Commission to be prepared to address the following:

1. The status of the commission's consideration of the alteration of the state's congressional districts;
2. The commission's views on the following: (a) whether the court should appoint a special master to assist the court in this matter; (b) if so, the factors to be considered in appointing a special master; (c) the process and procedures to be employed by the special master; (d) the scope of the duties of the special master; (e) the legal and policy parameters governing the redistricting map to be proposed by the special master; and (f) any other matters deemed relevant by the commission;
3. An interim report detailing the progress of the alteration of the congressional districts.

S.C. Order (12/6/21).

At the hearing, the assistant attorney general representing the Commission reported on the status of the Commission's consideration of a congressional map. The assistant attorney general did not make

any representations on behalf of the Commission as to the second paragraph of the Court's order.

After the hearing, the Court granted the requested extension but ordered that an interim report be filed by December 15, 2021, which was to include the names of three individuals the Commission would propose to serve as a special master for the Court should a map not be adopted by December 21. On December 15, 2021, the Commission filed its interim report stating that it was continuing to work on reaching an agreement on congressional districting and requesting that the time to propose special masters be extended until the December 21st deadline. On December 16, 2021, the Court granted the Commission's request.

On December 21, 2021, the Commission reported that, "[a]lthough the Commission members continue to discuss proposals that have been exchanged, and will continue to do so even if this Court appoints a special master, the Commission members agree that the matter should now return to this Court in accordance with the provisions of article third, § 6 of the Connecticut constitution, as amended."

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).

Later that same day, the Republican members of the Connecticut Reapportionment Commission filed a motion for reconsideration of the Court's order. The motion asked this Court to follow the Virginia model and appoint two special masters and order that the map be drawn based on traditional redistricting principles rather than the least change standard that was set forth in the Court's order. On December 28, 2021, the Court denied the motion for reconsideration.¹

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

Later that same day, 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 and a second map on the afternoon of January 7, 2022. The filing was accepted without comment. 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. On January 13th, the Republican members filed a reply brief.

On January 18th, the special master submitted his report and plan. The report includes a “Recommended Plan” and an “Alternative Plan.” The “Recommended Plan” is similar to the Democrats’ first proposed map. The “Alternative Plan” is similar to the Democrats’ second proposed map.

STATEMENT OF FACTS

Based on the 2020 census data, Connecticut’s total population is 3,605,944. This is an increase from the 2010 census data, which reported a population of 3,366,474. The 2020 census data creates a target

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 needed to file for reconsideration of the Court’s order in light of the waiver argument that was made in the last redistricting proceeding.

population of 721,189 people for each of Connecticut's five congressional districts.

I. THE CONGRESSIONAL MAP SHOULD BE DRAWN BASED ON TRADITIONAL REDISTRICTING PRINCIPLES

The Republican members reiterate their contention that the congressional map should be drawn based on traditional redistricting principles. The U. S. Supreme Court has described traditional redistricting principles to include compactness, contiguity, conformity to political subdivisions, and respect for communities of interest. *See Bush v. Vera*, 517 U.S. 952, 959-960 (1996); *Miller v. Johnson*, 515 U.S. 900, 919-920 (1995). The current congressional map, which was adopted in 2001 and subjected to only minimal changes in 2012, does not honor the principles of compactness or communities of interests. The “lobster claw” that makes up the First District proves the point. *See Shaw v. Reno*, 509 U.S. 630, 647 (1993) (“reapportionment is one area in which appearances do matter.”).

The history of the “lobster claw” goes back to a political gerrymander designed to provide two incumbent members of Congress the opportunity to run for re-election. Based on the 2000 census results, Connecticut's congressional delegation was reduced from six to five. The members of the 2001 Reapportionment Commission produced a map that would allow representatives from the Fifth District, a resident of Danbury, and from the dissolved Sixth District, a resident of New Britain, to run against each other for the newly-redrawn Fifth District seat. This created the First District's bizarre shape, which fails to comport with traditional redistricting principles. The Republican members submit that a map based on traditional redistricting principles, referred to by the Stanford Redistricting Project as a “good

government” map, would be more fair and representative of the Connecticut electorate than the “least change” map called for in the Court’s December 23, 2021 order. See <https://drawcongress.org/state/connecticut/>.

In sum, while the Republican members have a proposed a map that fully comports with this Court’s directives on the standards that the Special Master should apply in drawing the congressional districts, they respectfully request that the Court prepare a “good government” map for the 2022 redistricting.

A. The State Constitution Vests This Court With The Authority To Fix The Current Political Gerrymandered Map

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, this 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.

B. The U.S. Supreme Court Has Recognized That State Courts Should Fix Political Gerrymanders

In *Rucho v. Common Cause*, 139 S.Ct. 2484 (2019), the U.S. Supreme Court held that federal courts lack jurisdiction to adjudicate claims of political gerrymandering. In reaching that conclusion, the Court emphasized that it “does not condone excessive partisan gerrymandering” but that it is up to *state* courts based on their state constitutions to address partisan gerrymandering. *Id.* at 2507.

The importance of curing gerrymandered maps was set forth in Justice Kagan’s dissent in *Rucho*:

The partisan gerrymanders in these cases deprived citizens of the most fundamental of their constitutional rights: the rights to participate equally in the political process, to join with others to advance political beliefs, and to choose their political representatives. In so doing, the partisan gerrymanders here debased and dishonored our democracy, turning upside-down the core American idea that all governmental power derives from the people. These gerrymanders enabled politicians to entrench themselves in office as against voters' preferences. They promoted partisanship above respect for the popular will. They encouraged a politics of polarization and dysfunction. If left unchecked, gerrymanders like the ones here may irreparably damage our system of government.

Rucho v. Common Cause, 139 S. Ct. 2484, 2509 (2019).

Here, the current map, and its lobster claw, were the result of a political gerrymander. That is precisely why this Court should not apply a least change standard, but rather should draw the congressional map based on traditional redistricting principles. The political 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. There is no reason for this Court to apply extreme deference to the existing congressional map.

C. The “Least Change” Standard Perpetuates A Gerrymandered Map

As the Special Master acknowledges in his report, the Special Master’s proposed map is not the fairest or best map:

[The Court] did not authorize me to formulate a plan that I considered the “best” or “fairest” for Connecticut or to take account of any number of districting principles that the Commission or a state legislature might consider in formulating its plan.

Special Master Report at p. 3. The Republican members advocated for a good government map, but the Special Master noted that it was for this Court, not the Special Master, to make that decision. See Special Master’s Report at 4 (“Of course, some disagreed with the Court’s order and the specified criteria, and would urge the Court to reconsider a “least change” approach, in favor of a “good government” approach – one that would maximize compactness, represent communities of interest, or promote competition. **Such arguments are proper for the Legislature, the Commission, or the Court itself to consider**, not a Special Master operating under specific constraints that the Court has set.”) (Emphasis added.).

The Court’s application of a least change standard necessarily advances the interests of the party favored by the current map.

The decision to preserve existing districts has obvious political consequences. By adopting this principle in its plan, the court reinforces the partisan bargain (or lack thereof) underlying the plan it has invalidated. It gives its imprimatur to the current district arrangements regardless of their political bias and regardless of the additional protection such a strategy gives to incumbents. More than anything--perhaps even more than avoiding a pairing with another incumbent--incumbents want to

keep the districts that elected them intact. Thus, the decision to follow a principle of preserving district cores or configurations inadvertently is often a decision in favor of preserving safe seats for incumbents.

Nathaniel Persily, When Judges Carve Democracies: A Primer on Court-Drawn Redistricting Plans, 73 Geo. Wash. L. Rev. 1131, 1161 (2005).

The Court's order instructed the Special Master to draw a map without regard to political factors such as voter registration and election results. However, the Democrat members introduced this subject in their brief before the Special Master. The Democrats argued that the current map is competitive, based off congressional election results from 2002, 2004, and gubernatorial elections in 2014 and 2018. These are irrelevant measures when it comes to evaluating whether the map is competitive for federal candidates running in the current decade. A more accurate reflection of competitiveness 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 +14. The current map favors the Democrats and should be revisited for political competitiveness.

**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	35.5%	38.5%	36.3%	30.4%	36.2%	35%
Second	42.5%	44.8%	45.8%	36.4%	42.2%	44%
Third	36.3%	38.7%	40.4%	30.2%	37.5%	39%
Fourth	44.1%	45.3%	36.6%	36.3%	36.8%	34%
Fifth	45.3%	47.6%	45.8%	39.7%	44.0%	44%

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

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

There is nothing in the state constitution that limits this Court to drawing a congressional map based on a least change standard. This Court should reconsider its standard and create a good government map using traditional redistricting principles.

II. IF THE COURT APPLIES A “LEAST CHANGE” STANDARD, THEN THE REPUBLICAN MEMBERS’ PROPOSED MAP SHOULD BE ADOPTED

The Republican members’ plan is superior to the Democrats’ plan and to Special Master’s “Recommended Plan” and “Alternative Plan.”

A. The Republicans’ Changes Are “Reasonably Required”

There is nothing unreasonable in the suggested Republicans’ 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

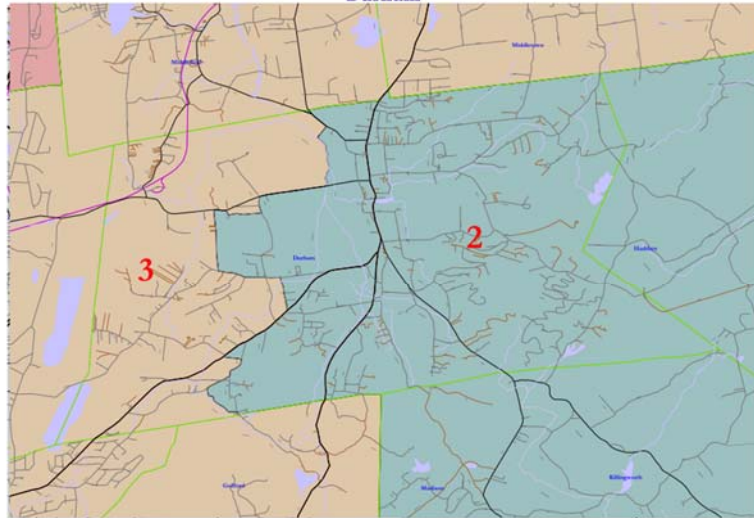
Under the current instructions from the Court, it is both possible and desirable to move Torrington wholly in the Fifth congressional district. In 2012, Special Master Persily moved the entirety of Durham into the Third District to comply with the Court’s order. This eliminated an unnecessary violation 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 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
State Congressional Redistricting Plan 2001
Durham

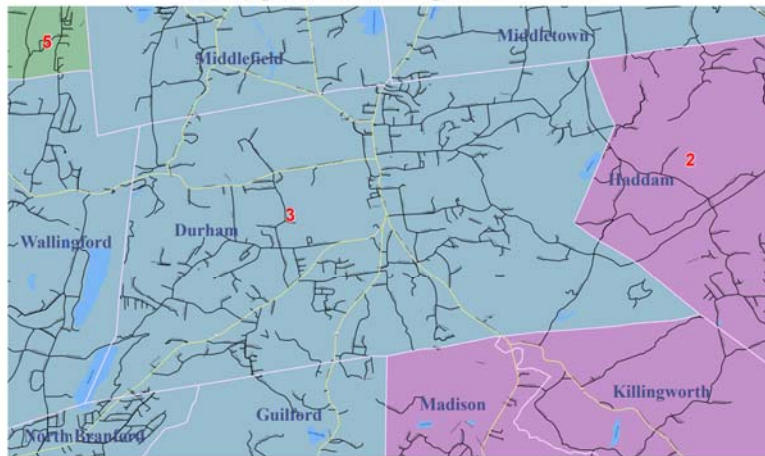


Sen. C. DeLoe, Co-Chair
 Senate Republican Leader
 Sen. B. Sullivan
 Senate President Pro Tempore
 Sen. Joseph J. Crisco
 Sen. David J. Cappillo
 Committee on Redistricting

The Connecticut General Assembly
 REAPPORTIONMENT COMMISSION

Rep. R. Lynch, Co-Chair
 Speaker of the House
 Rep. W. Wood
 House Minority Leader
 Representative Wolody A. Cuning
 Representative Arthur J. O'Neill

State Congressional Redistricting Plan 2011 - Durham



The Connecticut General Assembly
 REAPPORTIONMENT COMMISSION

SENATE
 Senator Donald E. Williams, Jr., Co-Chair
 Senator John McKinney
 Senator Martin M. Loney
 Senator Leonard A. Fiaschi
 Andrea Norman-Early, Project Coordinator



Honorable Kevin P. Johnson

HOUSE
 Representative Lawrence F. Cahill, Jr., Co-Chair
 Representative J. Brandon Markey
 Representative Sandy D. Saffo
 Representative Arthur J. O'Neill

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

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 Plan vs. Democrat Plan, Avon Canton and Simsbury vs. Torrington and Waterbury

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

CONCLUSION

This Court should reconsider its December 23rd order and direct the drafting of a congressional “good government” map based on traditional redistricting principles. Alternatively, this Court should adopt the Republican members’ proposed “least change” map.

Respectfully submitted,

REPUBLICAN MEMBERS OF THE
REAPPORTIONMENT
COMMISSION

SENATOR KEVIN KELLY,
REPRESENTATIVE VINCENT
CANDELORA, SENATOR PAUL
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CERTIFICATION

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

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

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

(3) this e-brief contains 3,654 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
Proloy K. Das, Esq.