

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

Common Cause Florida, et al.,

Plaintiffs,

Michael Arteaga, et al.,

Intervenor-Plaintiffs,

Case No. 4:22-cv-109-AW/MAF

v.

Laurel M. Lee, in her official capacity
as Florida Secretary of State,

Defendant.

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**DEFENDANT SECRETARY OF STATE LAUREL LEE’S
SUPPLEMENTAL MEMORANDUM REGARDING SPECIAL MASTERS**

Defendant Secretary of State Laurel Lee files her supplemental memorandum regarding the parties’ proposed special masters, ECF No. [64], should this Court find the appointment of one or more special master(s) necessary.

I.

The Secretary proposes Sean Trende as a special master. His curriculum vitae is attached to this memorandum. **Ex. 1.** In brief, Mr. Trende was appointed by the Virginia Supreme Court to serve as one of two redistricting special masters. *See* Redistricting Appointment Order, *In Re: Decennial Redistricting Pursuant to the*

Constitution of Virginia, art. III, §§ 6 to 6-A, and Virginia Code § 30-399, <https://bit.ly/3x0PY94>. While he was recommended by the State’s Republican legislators, he is well-versed in elections and redistricting matters.

II.

The Plaintiffs propose Professor Nathaniel Persily as a special master. The Secretary objects to Professor Persily. To be sure, he is experienced in redistricting matters, including serving as a special master and expert in Connecticut, North Carolina, and Pennsylvania redistricting litigation. *See In Re: Petition of Reapportionment Commission Ex Rel.*, No. 20661 (Conn. 2021); *Covington v. North Carolina*, No. 1:15-cv-00399 (M.D.N.C. 2017); *League of Women Voters v. Commonwealth*, 178 A.3d 737 (Pa. 2018). He was even advanced as a possible special master in Virginia’s redistricting litigation by the State’s Democratic legislators. *See* Letter from Speaker Eileen Filler-Corn to Clerk of Court Muriel-Theresa Pitney (Nov. 1, 2021), <https://bit.ly/3KeQCmV>.

But there are serious concerns over Professor Persily’s past work, namely the partisan bias associated with that work. The Secretary is not the first to raise this concern. Parties in the Connecticut, North Carolina, and Virginia redistricting cases have also raised concerns over Professor Persily’s perceived bias in favor of Democrats and left-leaning organizations. *See* Motion for Reconsideration En Banc, 5, *In re: Petition of Reapportionment Commission ex rel.*, No. 20661 (Conn. Dec.

23, 2021) (“Connecticut Motion”) (“[T]he Court may not have been made aware of the partisan perceptions associated with its chosen special master,” Professor Persily.); Legislative Defendants’ Opposition to Appointment of Nathaniel Persily as Special Master, 10-12, *Covington v. North Carolina*, No. 1:15-cv-00399 (M.D.N.C. Oct. 30, 2017) (“North Carolina Response”) (providing “a few examples of possible bias”); Letter from Sen. Tommy Normet & Del. Todd Gilbert to Clerk of Court Muriel-Theresa Pitney (Nov. 12, 2021) (“Virginia Letter”), <https://bit.ly/3j7nPFf>.

When Professor Persily served as an expert in Pennsylvania’s redistricting litigation—that State’s preferred term for a court-appointed special master, *see League of Women Voters*, 178 A.3d at 143 n.7 (noting that Professor Persily was “the expert this Court engaged”)—the *New York Times* stated that his map was “better for Democrats—by nearly every measure—than the maps that Democrats themselves proposed.” Nate Cohn, *Democrats Didn’t Even Dream of This Pennsylvania Map. How Did It Happen?*, N.Y. Times (Feb. 21, 2018), <https://nyti.ms/3jd5CWB>. Professor Persily’s “map ma[de] Democratic-tilting choices so consistently that it is hard not to wonder whether it was part of an intentional effort to achieve partisan balance in a state that is fairly evenly divided.” *Id.* His map gave “a huge lift to Democrats” electoral “chances” and made Democrats “favored to gain around four” congressional “seats in the state.” *Id.* The

Wall Street Journal editorial board referred to Pennsylvania’s redistricting process as a “coup.” Editorial Board, *Pennsylvania’s Redistricting Coup*, Wall St. J. (Feb. 20, 2018), <https://on.wsj.com/3Kkn5sm>.

When Professor Persily served as a redistricting special master in North Carolina’s redistricting litigation, the media flatly stated that his “redrawn election maps would help Democrats.” Colin Campbell & Bruce Henderson, *Redrawn Election Maps Would Help Democrats*, News & Observer (Nov. 28, 2017), 2A. The media also reported that at least one draft of Professor Persily’s “plan appear[ed] to make it easier for Democrats to defeat Republican incumbents in four House races and two Senate races.” Anne Blythe, *In NC Redistricting Case, Federal Judges Tell Lawmakers to Use Stanford Professor’s Maps*, Charlotte Observer (Jan. 20, 2018), <https://bit.ly/3Kj3IQd>.

In addition, Professor Persily has a history of publicly criticizing Republican-controlled state legislatures. In 2017, he stated that the North Carolina General Assembly’s and the Texas Legislature’s redistricting actions were motivated by a “mix of racial discrimination and partisan greed.” Michael Wines, *For Voting Rights Advocates, Court Decision Is ‘Temporary Victory,’* N.Y. Times (May 16, 2017), <https://nyti.ms/38wiR2L>. He similarly told the media that “redistricting plans in North Carolina and Virginia were ‘motivated by the incumbents in order to screw their opponents’ and publicly opin[ed] about the ‘high correlation between party and

race’ in North Carolina redistricting litigation.” North Carolina Response at 11-12 (citing sources).

Professor Persily even criticized Florida over litigation concerning Amendment 4 and its enacting legislation—legislation that was produced by the Republican-controlled Florida Legislature and signed into law by a Republican Governor. According to Professor Persily, “[i]t has been a very long slog to change public opinion on the re-enfranchisement of felons, and it took millions of dollars and a lot of effort to get” Amendment 4 “passed.” Patricia Mazzel & Michael Wines, *How Republicans Undermined Ex-Felon Voting Rights in Florida*, New York Times (Apr. 30, 2021), <https://nyti.ms/3ubDmtQ>. “The idea that felons would then have to pay money in order to vote after being enfranchised is depressing.” *Id.*

Unsurprisingly, Democratic caucuses in different states have advocated for and supported Professor Persily to be their special master in redistricting cases. *See* Connecticut Motion at 5 (Connecticut and Virginia).

III.

The Plaintiff-Intervenors propose Professor Michael McDonald as their special master. The Secretary objects to Professor McDonald. There are concerns over Professor McDonald’s perceived bias against the State. Professor McDonald is currently suing the State in a case before this Court, where he alleges that the State (through one of its universities) has “adopted a policy of censoring faculty members

who participate in lawsuits against the State of Florida’s policies.” Amended Complaint, ECF No. [19], *Austin v. Univ. of Fla. Bd. of Trs.*, No. 1:21-cv-00184 (N.D. Fla. 2021). He has also served as an opposing expert witness against the State in a challenge to Senate Bill 90. *See League of Women Voters of Fla. v. Lee*, No. 4:21-cv-00186 (N.D. Fla. 2021).

Not only that, Professor McDonald has made public comments criticizing Florida’s redistricting process, generally, and Republicans, specifically. Among other things, he has Tweeted the following:

“Florida is playing with fire in the upcoming special redistricting session. The primary dispute between the governor and the legislature is over the use of race in congressional redistricting.” @ElectProject, Twitter (Mar. 31, 2022), <https://bit.ly/3uZIEI3>.

“The U.S. Supreme Court will deploy the constitutional principle—as intended by the Founders—that whatever map most helps Republicans is the one used in the 2022 midterm elections.” @ElectProject, Twitter (Apr. 4, 2022), <https://bit.ly/3NNYDlj>.

“It’s heartbreaking to see all the investment and effort made to make the Florida university system one of the best in the world, only to be flushed down a toilet because Republicans won’t actually live up to their free speech rhetoric.” @ElectProject, Twitter (Mar. 8, 2022), <https://bit.ly/3jez8eS>.

“Understanding why DeSantis uses the same Orwellian doublespeak about the ‘Free State of Florida’ while trampling on Floridians’ freedoms as Russia uses with Ukraine.” @ElectProject, Twitter (Mar. 15, 2022), <https://bit.ly/3x6KfP5>.

“Is there any wonder [Justice] Alito feels free to make-it-up-as-he-goes to favor Republicans at every decision when McConnell used the same make-it-up-as-he-goes rationales to pack the court with Republican

appointees?” @ElectProject, Twitter (Mar. 8, 2022),
<https://bit.ly/3v4e9ke>.

IV.

Given the concerns over Professor Persily’s and Professor McDonald’s perceived biases, the Secretary objects to them serving as experts in this case. She also puts forth the name of and credentials of Mr. Trende for this Courts consideration for appointment.

Respectfully submitted,

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LOCAL RULE 7.1(F) CERTIFICATION

The undersigned certifies that this memorandum contains 1,260 words, excluding the case style and certifications.

/s/ Mohammad O. Jazil
Mohammad O. Jazil

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2022, I electronically filed the foregoing with the Clerk of Court by using CM/ECF, which automatically serves all counsel of record for the parties who have appeared.

/s/ Mohammad O. Jazil
Mohammad O. Jazil.