

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

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

**AGREED SUBMISSION REGARDING
PROPOSED CANDIDATES FOR SPECIAL MASTER**

In accordance with the Court’s orders of September 9, 2015 (ECF No. 212) and September 10, 2015 (ECF No. 213), requiring the parties to identify by today three mutually agreeable special-master candidates who are willing and able to serve in that role if chosen, the parties make the following report.

On September 14, 2015, the parties contacted, in writing, four candidates: Bernard Grofman, Bruce Cain, Richard Engstrom, and Ronald Weber. The parties asked the candidates to respond, by noon (ET) today, whether they would be willing and able to serve as a special master, and, if so, to provide the candidate’s qualifications and to disclose any limitations on availability, any possible conflicts of interest, and the candidate’s fees.

As of noon today, only two of the candidates had responded. Ronald Weber indicated that he was not available to serve as special master, due to a ten-week international trip commencing next week.

Richard Engstrom responded that he is willing and able to serve as special master if chosen by the Court, and that his fee is \$400/hour. He indicated that, while he does not believe

that any conflict of interest would prevent him from serving in this case, he disclosed that he has previously been retained both by Jones Day and Perkins Coie, and that he co-authored an article with Michael McDonald, who was retained by the Plaintiffs as an expert witness in this case. A copy of the parties' correspondence with Professor Engstrom is attached as Exhibit 1. His curriculum vitae is at

<https://regss.socialequity.duke.edu/sites/regss.socialequity.duke.edu/files/field/Dick%20CV%20January%202013.pdf>.

The parties have not received a response—either yes or no—from Bernard Grofman or Bruce Cain. They had only 48 hours to respond (a period that included a recognized multi-day religious holiday). Accordingly, the parties respectfully request that the Court postpone until Friday, September 18 its appointment of a special master, in order to allow Professors Grofman and Cain an additional opportunity to indicate their interest and availability.

The parties would be amenable to continuing their communications with these prospective candidates or to the Court's taking up the communications, as the Court may prefer. It may expedite the process for either the Court or counsel to contact these two candidates by telephone. The parties' e-mails to Professors Cain and Grofman are attached as Exhibits 2 and 3.

Counsel for Plaintiffs and counsel for Intervenor-Defendants grant permission to counsel for Defendants to file this report.

Respectfully submitted,

JAMES B. ALCORN, CLARA BELLE WHEELER
And SINGLETON MCALLISTER, in their official
capacities as members of the Virginia State Board of
Elections

Exhibit 1

From: [Dick Engstrom](#)
To: [Cox, Trevor S.](#)
Cc: [Stafford, William B. \(Ben\) \(Perkins Coie\)](#); jmgore@jonesday.com; [Elias, Marc \(Perkins Coie\)](#); [Raphael, Stuart A.](#); [Hamilton, Kevin J. \(Perkins Coie\)](#); [Michael A Carvin](#)
Subject: Re: potential retention as special master in Personhuballah v. Alcorn (E.D. Va.)
Date: Wednesday, September 16, 2015 12:24:03 PM

Dear Mr. Cox,

I am pleased to have received your inquiry about being a Special Master in the *Personhuballah v. Alcorn* case. I have a flexible schedule coming up as my positions at Duke (Research Associate in the Center for the Study of Race, Ethnicity, and Gender and Visiting Fellow in the Social Science Research Institute at Duke) do not entail teaching. Attached please find a copy of my CV which lists my publications, most of which involved redistricting and/or voting rights. I also have a long career as a consulting or testifying expert in cases involving sections 5 and 2 of the Voting Rights Act and/or *Shaw* racial gerrymandering issues. In many of these cases I have performed racially polarized voting analyses, should that be necessary in this case. I also have served previously as an Special Master in the remedial redistricting portion of the City of Chicago Heights at-large election case and as a Court-Appointed Expert in the remedial portion of the Dallas city council redistricting council redistricting case. Both involved remedial redistricting issues. My fee is \$400 and hour.

I do not believe I have any conflicts of interest in this case. But I think I should disclose the following. I have served as a consultant or testifying expert in a few redistricting matters for Michael Carvin, an attorney in this case. Most recently he retained me a consultant on preclearance matters concerning the South Carolina State Senate redistricting a few years ago. As part of that role, I performed a retrogression analysis and report that was included in the state's submission for preclearance from the Department of Justice. Preclearance was granted. I have also worked for the law firm of Perkins and Coie on challenge to at-large elections in Yakima, WA. The particular lawyers that I worked for in that case were in the firm's Seattle office are not listed on the documents you have provided. I have also co-authored an article, "TITLE" with an expert witness in this case, Michael P. McDonald. As noted above, I do not view any of these relationships as presenting a conflict of interest in this case.

If you desire additional information from me please use this email address or call me at 504-756-1478. Case cites for the Chicago Heights and Dallas cases will be forthcoming, as will my CV.

Thank you, Richard L. Engstrom

From: Cox, Trevor S. <TCox@oag.state.va.us>
Sent: Monday, September 14, 2015 2:34 PM
To: Dick Engstrom

Cc: Stafford, William B. (Ben) (Perkins Coie); jmgore@jonesday.com; Elias, Marc (Perkins Coie); Raphael, Stuart A.; Hamilton, Kevin J. (Perkins Coie); Michael A Carvin
Subject: potential retention as special master in Personhuballah v. Alcorn (E.D. Va.)

Dear Professor Engstrom,

We are writing as counsel to the parties in the redistricting case *Personhuballah v. Alcorn* [formerly *Page v. Judd*], No. 3:13-cv-678 (E.D. Va.), in which a three-judge panel struck down Virginia's Third Congressional District ("CD3") as a racial gerrymander that violates the Fourteenth Amendment to the United States Constitution. See 2015 WL 3604029 (June 5, 2015) (decision attached). The Court – consisting of Judges Robert Payne (E.D. Va.), Liam O'Grady (E.D. Va.), and Albert Diaz (4th Cir.) – is now overseeing the process of adopting a remedial redistricting plan, and plans to engage a special master to assist in the process.

At the Court's direction, we are contacting a number of potential candidates to serve as special master. **We are writing to see if you would be willing and able to serve as a special master if suggested by the parties and appointed by the Court.** Because of a Court-imposed deadline, **we request your response by noon (ET) on Wednesday, September 16.**

The attached decision provides much of the necessary background, but the relevant procedural history of the lawsuit is as follows. Plaintiffs initiated this suit in October 2013 against Defendants, the members of Virginia State Board of Elections. In November 2013, the Republican members of the U.S. House of Representatives moved to intervene as Defendants. Trial was held in May 2014, and the Court awarded judgment for Plaintiffs in October 2014, holding that race had been the predominant factor in the drawing of CD3. The Intervenor-Defendants appealed the judgment to the U.S. Supreme Court. The Supreme Court vacated and remanded for further consideration in light of its decision in *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015).

On June 5, 2015, the Court issued an opinion again holding that CD3 was an unconstitutional racial gerrymander. The Court directed Virginia's General Assembly to adopt a remedial redistricting plan by September 1, 2015. When the General Assembly failed to adopt a plan by that deadline, the Court stepped in to oversee the creation of a remedial plan. After consulting with the parties, the Court notified the parties that it will be appointing a special master to oversee the process, and directed the parties to submit a list of three candidates for the Court's consideration on Wednesday, September 16.

We are writing to see if you would be willing and able to serve as special master if suggested by the parties and appointed by the Court. Although the Court has not provided a complete timeline for the process, the work may begin quickly: the Court has ordered that the parties and any interested non-parties submit remedial plans and supporting materials by Friday, September 18, and any written responses to those submissions by Friday, October 2.

Please let us know by return e-mail **by noon (ET) on Wednesday, September 16** whether or not you would be willing and able to serve as a special master in this case, and if so, your qualifications, any limits on your availability, and any possible conflicts of interest that would

prevent you from serving in this role. Please also indicate the fees that you would charge for your services. (The Court has ordered the Commonwealth of Virginia to pay for any special-master fees, so please provide your government rate.)

Please contact us as soon as possible if you require any further information to evaluate this request. Note that the Court has ordered that communications be with counsel for all the parties, and that communications be in writing.

Thank you for your consideration.

/s/ Michael A. Carvin

Michael A. Carvin

John M. Gore

JONES DAY

macarvin@jonesday.com

jmgore@jonesday.com

Counsel for Intervenor-Defendants

/s/ Kevin J. Hamilton

Marc E. Elias

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Counsel for Plaintiffs

/s/ Stuart A. Raphael

Stuart A. Raphael

Trevor S. Cox

OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA

sraphael@oag.state.va.us

tcox@oag.state.va.us

Counsel for Defendants

Exhibit 2

From: Cox, Trevor S.
To: ["bcain@stanford.edu"](mailto:bcain@stanford.edu)
Cc: ["Stafford, William B. \(Ben\) \(Perkins Coie\)";](mailto:Stafford, William B. (Ben) (Perkins Coie)) ["jmgore@jonesday.com";](mailto:jmgore@jonesday.com) ["Elias, Marc \(Perkins Coie\)";](mailto:Elias, Marc (Perkins Coie)) ["Raphael, Stuart A.";](mailto:Raphael, Stuart A.) ["Hamilton, Kevin J. \(Perkins Coie\)";](mailto:Hamilton, Kevin J. (Perkins Coie)) ["Michael A Carvin"](mailto:Michael A Carvin)
Subject: potential retention as special master in *Personhuballah v. Alcorn* (E.D. Va.)
Date: Monday, September 14, 2015 2:32:00 PM
Attachments: [Page v Virginia State Bd. of Elections, 2015 WL 3604029 \(E.D. Va. June 5, 2015\).rtf](#)

Dear Professor Cain,

We are writing as counsel to the parties in the redistricting case *Personhuballah v. Alcorn* [formerly *Page v. Judd*], No. 3:13-cv-678 (E.D. Va.), in which a three-judge panel struck down Virginia's Third Congressional District ("CD3") as a racial gerrymander that violates the Fourteenth Amendment to the United States Constitution. See 2015 WL 3604029 (June 5, 2015) (decision attached). The Court – consisting of Judges Robert Payne (E.D. Va.), Liam O'Grady (E.D. Va.), and Albert Diaz (4th Cir.) – is now overseeing the process of adopting a remedial redistricting plan, and plans to engage a special master to assist in the process.

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Thank you for your consideration.

/s/ Michael A. Carvin

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JONES DAY

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Counsel for Intervenor-Defendants

/s/ Kevin J. Hamilton

Marc E. Elias

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Counsel for Plaintiffs

/s/ Stuart A. Raphael

Stuart A. Raphael

Trevor S. Cox

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tcx@oag.state.va.us

Counsel for Defendants

Exhibit 3

From: Cox, Trevor S.
To: ["bgrofman@uci.edu"](mailto:bgrofman@uci.edu)
Cc: ["Stafford, William B. \(Ben\) \(Perkins Coie\)"; "jmgore@jonesday.com"; "Elias, Marc \(Perkins Coie\)"; Raphael, Stuart A.; "Hamilton, Kevin J. \(Perkins Coie\)"; "Michael A Carvin"](mailto:Stafford, William B. (Ben) (Perkins Coie))
Subject: potential retention as special master in Personhuballah v. Alcorn (E.D. Va.)
Date: Monday, September 14, 2015 2:31:00 PM
Attachments: [Page v Virginia State Bd. of Elections, 2015 WL 3604029 \(E.D. Va. June 5, 2015\).rtf](#)

Dear Professor Grofman,

We are writing as counsel to the parties in the redistricting case *Personhuballah v. Alcorn* [formerly *Page v. Judd*], No. 3:13-cv-678 (E.D. Va.), in which a three-judge panel struck down Virginia's Third Congressional District ("CD3") as a racial gerrymander that violates the Fourteenth Amendment to the United States Constitution. See 2015 WL 3604029 (June 5, 2015) (decision attached). The Court – consisting of Judges Robert Payne (E.D. Va.), Liam O'Grady (E.D. Va.), and Albert Diaz (4th Cir.) – is now overseeing the process of adopting a remedial redistricting plan, and plans to engage a special master to assist in the process.

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Counsel for Plaintiffs

/s/ Stuart A. Raphael

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Counsel for Defendants