

Testimony Regarding Use of Special Masters in Redistricting Submitted by Carol Kuniholm, Fair Districts PA, 4/23/2018

Q. Why does Senate Bill 22 allow redistricting to be done by a Special Master if the Commission is unable to agree on a plan? Isn't there a risk that one person will be politically biased?

A. The Special Master would be appointed by the PA Supreme Court in the rare situation where the Redistricting Commission is unable to agree on a plan.

Special Masters are commonly used in different areas of law when courts need to rely on individuals with specialized expertise to advise them. It is important to note that the Special Master would be bound by the same rules and standards that apply to the Commission itself. Also, the Special Master would not act unilaterally; any remedial plan would have to be approved by the Supreme Court before it could take effect.

The intent in including this in Senate Bill 22 was to expedite resolution in a way that minimized litigation and safeguarded election timelines. Precedent demonstrates this is the avenue courts most often take when the defined process fails to approve a map by a stipulated deadline. Precedent also shows that without a clearly delineated provision for this, legislators will contest the use of a special master, despite clear legal precedent, causing confusion, delay, and unnecessary expense to taxpayers.

The provision for a special master is not an essential part of SB 22; sponsors and advocates have generally agreed the provision could be removed.

SB 22 could also be amended to require that all splits of counties and municipalities be explained in any map drawn by a special master (or in any map enacted) or that a map drawn by a special master, or by the commission itself, be tested by an outside mapping agency (or several) to assess compactness, minimized splits and responsiveness to voters, with an established minimal score.

There may be other avenues to resolve deadlocked commissions. One might be to invite all commissioners to submit their own preferred map, then have an outside mapping agency (or several) assess submitted maps to determine compactness, minimized splits and responsiveness to voters, and institute the map that scores best according to a predetermined scoring criteria.

While current discussion of proposed amendments focuses on partisan makeup of specific PA courts, any constitutional amendment should be designed to serve the public and legislators of all parties fairly well into the future, regardless of party affiliation of justices.

Background Reading:

Special Masters in State Court Complex Litigation: An Available and Underused Case Management Tool, Lynn Jokela and David F. Herr. January 2005.

"Special Masters can reduce court time, litigation costs and bring expertise to bear on complex issues."

Pennsylvania 42 PA. CONS. STAT. ANN. §§ 1558, 1920.51 (West 2002)

Court can appoint a special master at any time after the preliminary conference and master can hear any issue or the entire matter.¹

When Judges Carve Democracies: A Primer on Court-Drawn Redistricting Plans, Nathaniel Persily, June 7, 2005, University of Pennsylvania Law School Penn Law: Legal Scholarship Repository²

Legal Precedent:

"Courts throughout the United States have chosen to appoint special masters to assist in streamlining redistricting litigation. Courts have ruled that in order to "prepar[e] plans in a timely manner, while reconciling the demands of the Constitution the Voting Rights Act, and the redistricting principles ... an exceptional condition [exists] that requires the appointment of a Special Master to assist the court." *Larios v. Cox*, 306 F.Supp.2d 1212, 1213 (N.D.Ga. 2004).³

2001 cycle:

Georgia

Larios v. Cox, 306 F. Supp.2d 1212 (Mar. 1, 2004)

When the General Assembly failed to enact new plans by the March 1, 2004, deadline, the three-judge court appointed a Special Master to draw them. ⁴

Idaho

Smith v. Idaho Commission on Redistricting, 2001 Op. No. 95, 136 Idaho 542, 38 P.3d 121 (Idaho Nov. 29, 2001) ⁵

New York

Rodriguez v. Pataki, No. 02 Civ. 0618 (S.D. N.Y. May 23, 2002)

¹<http://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1027&context=wmlr>

²https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&https_redir=1&article=1073&context=faculty_scholarship

³ [https://www.nmlegis.gov/Redistricting/Documents/Appt Motion to Appoint a Special Master from Martinez Duran and Sanchez.pdf](https://www.nmlegis.gov/Redistricting/Documents/Appt%20Motion%20to%20Appoint%20a%20Special%20Master%20from%20Martinez%20Duran%20and%20Sanchez.pdf)

⁴ <http://www.ncsl.org/research/redistricting/2000s-redistricting-case-summaries.aspx>

⁵ <http://www.ncsl.org/research/redistricting/2000s-redistricting-case-summaries.aspx>

Plaintiffs challenged the current congressional districts as in violation of equal population requirements and requested the court to draw new districts if the Legislature failed to do so. A Special Master was appointed on April 26, 2002. ⁶ *Larios v. Cox*, 306 F. Supp.2d 1212 (Mar. 1, 2004)

When the General Assembly failed to enact new plans by the March 1, 2004, deadline, the three-judge court appointed a Special Master to draw them. ⁷

In 2011 cycle:

Connecticut

In Petition of Reapportionment Comm'n, No. SC 18907 (Conn. Sup. Ct.): Republican legislators requested that the state supreme court appoint a special master to draw district lines, based on the failure of the state's backup commission to do so.

"This step was recommended by Republican legislators, who cited precedent for special master arrangements in California, New York and Nevada."⁸

Nevada

Guy v. Miller, No. 11-OC-00042-1B (Nev. Dist. Ct., Carson City): a challenge in state court to the unequal population of current districts, based on legislative inability to agree on congressional and state legislative districts within the 2011 legislative session, resulted in appointment of a special master to draw district maps.⁹

Virginia

Personhuballah v. Alcorn (aka *Cantor v. Personhuballah*, *Wittman v. Personhuballah*, and *Page v. Va. State Bd. of Elections*), No. 3:13-cv-00678 (E.D. Va.), No. 14-518 & No. 14-1504 (S. Ct.): a challenge in federal court to an alleged racial gerrymander without adequate justification under the Voting Rights Act resulted in appointment of a special master.¹⁰

New York:

"A panel of three federal judges appointed a special master yesterday to help draw the Congressional districts in New York State. . . The appointment marked the third time in the last 20 years that the courts named a special master for the task."¹¹

Florida:

"After months of feuding, the Florida House and Senate reached a redistricting truce on Thursday and asked the court to hire an expert to draw a new map revising the state Senate boundaries instead of conducting a five-day trial next month.

⁶ <http://www.ncsl.org/research/redistricting/2000s-redistricting-case-summaries.aspx>

⁷ <http://www.ncsl.org/research/redistricting/2000s-redistricting-case-summaries.aspx>

⁸ https://www.cga.ct.gov/red2011/documents/final/Repub_position.pdf

⁹ <http://redistricting.lls.edu/cases.php>

¹⁰ <http://redistricting.lls.edu/cases.php>

¹¹ <http://www.nytimes.com/2002/04/27/nyregion/special-master-is-named-to-help-redraw-new-york-s-congressional-districts.html>

"The appointment of a consultant would streamline this litigation and reduce the burden to the parties and Florida's taxpayers by eliminating the need for costly discovery and a five-day evidentiary hearing," wrote the Senate lawyers to Leon County Circuit Court Judge George Reynolds. "It would also eliminate any suspicion that the adopted map was laden with improper intent."

"Florida courts have relied on special masters before to draw redistricting maps when legislators couldn't reach agreement over how to draw their political lines. Courts hired experts to draw the congressional map in the redistricting cycle of 1992."¹²

New Mexico:

Motion for appointment of a special master: "Recognizing the unique nature of redistricting litigation, in recent redistricting cases around the nation, courts have appointed special masters with expertise in demography to assist the court in developing and evaluating redistricting plans. **When a special master has assisted the court, the redistricting process has been a more efficient, more economical, and less partisan process, benefitting the citizens of the state where a special master was used.**"¹³

Special Masters have also been used in states to provide reports, review proposed maps, assess complaints and give recommendations to the court.

In 2001 redistricting: Idaho, Maryland

In 2011: Virginia¹⁴

¹² <http://miamiherald.typepad.com/nakedpolitics/2015/11/house-and-senate-reach-a-truce-over-senate-maps.html>

¹³ [https://www.nmlegis.gov/Redistricting/Documents/Appt Motion to Appoint a Special Master from Martinez Duran and Sanchez.pdf](https://www.nmlegis.gov/Redistricting/Documents/Appt%20Motion%20to%20Appoint%20a%20Special%20Master%20from%20Martinez%20Duran%20and%20Sanchez.pdf)

¹⁴ <http://redistricting.dls.virginia.gov/2010/court-ordered-redistricting.aspx>

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