

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 12th day of November, 2021.

Present: All the Justices

In Re: Decennial Redistricting Pursuant to
The Constitution of Virginia, art. II, §§ 6 to 6-A,
and Virginia Code § 30-399

ORDER

As required by Virginia Code § 30-399, this Court received on November 1, 2021, timely nominations from the Republican and Democrat leaders of both the Senate and the House of Delegates. The Republican and Democrat leaders each put forth three nominees to serve as Special Master. On November 8, 2021, Senator Saslaw, Majority Leader for Senate Democrats, delivered a letter seeking the disqualification of all three of the Republican nominees (“November 8 letter”). The Court received a separate letter dated November 10, 2021, from Speaker Filler-Corn joining in Senator Saslaw’s request. On November 10, 2021, the Republican leaders submitted their response.

I.

The Court intends to appoint Special Masters who are qualified and do not have a conflict of interest. This Court has not previously addressed the role and requirements for its Special Masters. It is appropriate to do so now. Although the Special Master candidates are to be nominated by legislative leaders of a particular political party, the nominees — upon being appointed by this Court as Special Masters — will serve as officers of the Court in a quasi-judicial capacity. Consequently, the Special Masters must be neutral and must not act as advocates or representatives of any political party. Before being appointed, the Special Masters must warrant that they have no “conflicts of interest,” Code § 30-399(F), that preclude them from prudently exercising independent judgment, dispassionately following the Court’s instructions, and objectively applying the governing decision-making criteria. The Special Masters appointed by this Court will not be permitted to consult with any political parties, partisan organizations, outside experts, or any other person or entity except for their personal support staff and individuals specifically authorized by this Court.

II.

The November 8, 2021, letter from Senator Saslaw indicates that one of the Republican nominees, Thomas M. Bryan, was recently retained and paid by the Virginia Senate Republican Caucus to consult on Virginia redistricting using the 2020 census data. This is the very subject matter for which this Court is called upon to appoint Special Masters. Although Mr. Bryan’s work for the Senate Republican caucus was not disclosed in the nominating materials initially submitted to the Court, Mr. Bryan ultimately disclosed relevant information to the Court in the course of the nominating process. Nonetheless, while the Court does not question Mr. Bryan’s integrity and accepts his reputation as a qualified demographic expert, the Court believes that his work for the Senate Republican Caucus related to the very subject matter for which the Court is called upon to appoint Special Masters creates a conflict. For this reason, the Court

hereby disqualifies Mr. Bryan as a nominee. Upon a review of the Republican submissions, the Court also has concerns about the ability of the remaining Republican nominees to serve in the role of Special Master as described in this Order. Accordingly, by unanimous order of the Court, the Republican leaders are directed to submit to the Clerk by 5 p.m. on November 15, 2021, the names of three or more additional nominees consistent with the criteria set forth in Part I of this Order. *See* Va. Code § 30-399(F) (“the leaders in the [General Assembly] shall each submit to the Court a list of three or more nominees . . .”).

The Court has also reviewed the three nominees put forth by the Democrat leaders. One of these nominees has asserted a condition or reservation that suggests to the Court he may not be willing to serve as Special Master in accordance with Code § 30-399(F) (“The two Special Masters shall work together to develop any plan to be submitted to the Court for its consideration.”). Accordingly, by unanimous order of the Court, the Democrat leaders are directed to submit to the Clerk by 5 p.m. on November 15, 2021, the names of one or more additional nominees consistent with the criteria set forth in Part I of this Order.

It is so ORDERED.



(SEAL)

Chief Justice of the Supreme Court of Virginia