

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

NEIL PARROTT, ET AL., *
Plaintiffs, *

v. * No. C-02-CV-21-001773

LINDA LAMONE, ET AL., *
Defendants. *

* * * * *

DEFENDANTS’ MOTION TO DISMISS

On Monday, February 14, 2022, the Court entered an order granting the motion by the Plaintiffs in the above-captioned matter to consolidate this matter with *Szeliga, et al. v. Lamone, et al.*, No. C-02-CV-21-001816 (“No. 1816”). See Order of Feb. 14, 2022 (the “Consolidation Order”). The motion sought consolidation “for the sole purpose of permitting Plaintiffs in this case (1) to brief those points in the recently filed motion to dismiss in [No. 1816] that relate to the instant case, . . . and (2) to appear at the scheduled hearing in [No. 1816] to argue those points.” Pls.’ Mot. at 1-2. The motion was filed expressly without the intent or expectation that it would “restrict the ability of Defendants to make any arguments in their responsive pleadings due February 21, 2022.” Pls.’ Mot. ¶ 10.¹

¹ Because February 21, 2022 is a Court holiday, Defendants’ responsive pleading is due February 22, 2022.

Accordingly, Defendants respectfully file this motion to dismiss pursuant to Md. Rule 2-322, and incorporate by reference the arguments made in their Memorandum in Support of their Motion to Dismiss or, in the Alternative, for Summary Judgment filed in No. 1816 (“Defts.’ Mem.”). In addition, because the Plaintiffs in this matter have asserted a claim that was not presented in No. 1816, *see* Compl. ¶¶ 104-108 (Second Cause of Action alleging violation of Md. Const. art. III, § 4), and was the subject of only indirect argument in Defendants’ Memorandum in No. 1816, *see* Defts.’ Mem. 17-22, Defendants wish to present the following additional points in support of their Motion to Dismiss Plaintiffs’ claim under Article III, § 4.

First, the text of Article III, § 4 supports its limitation to State legislative districting. Article III, § 4 reads in full: “Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions.” Md. Const. art. III, § 4. The term “legislative district” appears in numerous other provisions of the Constitution, and each time it refers unambiguously to State legislative districts and not congressional districts. Article III, § 3 provides that the State “shall be divided by law into legislative districts for the election of members of the Senate and House of Delegates,” with “[e]ach legislative district . . . contain[ing] one (1) Senator and three (3) Delegates.” Md. Const. art. III, § 3. The same provision also provides that it is not intended to “prohibit the subdivision of any one or more of the legislative districts for the purpose of electing members of the House of Delegates into” single-member districts. *Id.* Section 5 sets forth the process for enacting “a plan setting forth the boundaries of the legislative districts for

electing of the members of the Senate and the House of Delegates,” and provides that “the Court of Appeals shall have original jurisdiction to review the legislative districting of the State.” *Id.* art. III, § 5. Section 6 provides that a member of the General Assembly “shall be elected by the registered voters of the legislative or delegate district from which he seeks election.” *Id.* art. III, § 6. Section 13(b) refers to the process that allows “the Governor to fill a vacancy in a legislative or delegate district.” *Id.* art. III, § 13(b). And even elsewhere in the Constitution, references to a “legislative district” unambiguously refer to the State legislature. *See* Md. Const. art. XIV, § 2 (providing that at a constitutional convention “[e]ach County, and Legislative District of the City of Baltimore, shall have . . . a number of Delegates equal to its representation in both Houses at the time at which the Convention is called”).

The import of these provisions is clear: a “legislative district,” when that term is used in the Constitution, is a State legislative district, not a congressional one. Plaintiffs allege the opposite is true, because in two of these provisions the term is qualified by the phrase “legislative districts *for the election of members of the Senate and the House of Delegates.*” Compl. ¶ 93 (citing Md. Const. art. III §§ 3, 5). But in so arguing Plaintiffs ignore the other provisions of the Maryland Constitution where the term “legislative districts” is not qualified in the same manner, and yet clearly refers to State legislative districts. *See, e.g.,* Md. Const. art. III, §§ 3 (“Each legislative district shall contain one (1) Senator and three (3) Delegates,” and “[n]othing herein shall prohibit the subdivision of any one or more of the legislative districts for the purpose of electing members of the House of Delegates” into single-member districts), 6; *id.* art. XIV, § 2. Perhaps most tellingly,

Plaintiffs do not even seem to believe their own theory, as they have brought their challenge in this Court as opposed to the Court of Appeals, which has “original jurisdiction to review the *legislative districting* of the State.” *Id.* art. III, § 5 (emphasis added).

In addition, the session laws that proposed the 1969 and 1972 amendments to Article III, §§ 2-6 confirm that the General Assembly intended that these provisions would apply solely to the State legislative districting process. In 1969 the General Assembly passed legislation, subsequently ratified by the voters, which repealed and reenacted Sections 2, 4 and 6 of Article III, and added a new Section 3 to fill what had been a vacant provision of the Constitution. *See* 1969 Md. Laws ch. 785, ratified Nov. 3, 1970. Prior to the 1969 amendments, Article III, § 4 provided that the General Assembly “shall have the power to provide by Law, from time to time, for altering and changing the boundaries of the existing Legislative Districts of the City of Baltimore, so as to make them as near as may be of equal population; but said district shall always consist of contiguous territory.” Md. Const. art. III, § 4 (1969). In that version of § 4, “Legislative Districts” unmistakably referred to the legislative districts of the State, since prior to 1966 Baltimore City was the only jurisdiction in the State in which members of the General Assembly were elected to represent discrete legislative districts. *See* Md. Const. art. III, § 5 (1965) (“The members of the House of Delegates shall be elected by the qualified voters of the Counties, and the Legislative Districts of Baltimore City, respectively”); *see* 1965 Md. Laws special session, chs. 2, 3 (requiring for the first time that counties allocated more than 8 delegates be divided into districts). Otherwise, it would not have made sense to impose the “contiguity” or “equal population” requirements of pre-1966 article III, § 4, on only those

congressional districts located in Baltimore City. Chapter 785 of 1969 modified article III, § 4 by removing the reference to Baltimore City, and providing generally that “[e]ach legislative district shall consist of adjoining territory and shall be compact in form,” and that the “ratio[s] of the number[s] of Senators” and “Delegates shall be substantially the same in each legislative district.” Md. Const. art. III, § 4 (1971). At the same time, Chapter 785 added provisions establishing that the State shall be divided into “legislative districts” for the elections of Senators and Delegates, *id.* art. III, § 3 (1971), and providing a process for developing a “plan for legislative districting and apportionment,” *id.* art. III, § 5. The preamble of the bill described its purpose as “establishing the membership of the General Assembly; providing for the creation of legislative districts; providing for the election of members to the General Assembly and *relating generally to the General Assembly of Maryland.*” 1969 Md. Laws ch. 785 preamble (emphasis added). Nothing in the 1969 amendments suggests any intent to extend the reach of these provisions to congressional districts.

In 1972, these provisions were repealed and reenacted with amendments, which the voters ratified. *See* 1972 Md. Laws ch. 363, ratified Nov. 7, 1972 (repealing and re-enacting, with amendments, Article III, §§ 2-5). Article III, § 4 was amended to add requirements that “each legislative district” be drawn with “due regard . . . to natural boundaries and the boundaries of political subdivisions.” *Id.* And here, too, the preamble of the legislation noted that the sections of the Constitution being repealed and reenacted “establish[ed] the membership and the districts for the election *of members of the General Assembly and generally relating thereto.*” *Id.* preamble (emphasis added). The General

Assembly was clear: Sections 2 through 5 of Article III, as reenacted in 1972, relate to the General Assembly, not to Congress.

CONCLUSION

For the foregoing reasons, the motion to dismiss or, in the alternative, for summary judgment should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on this 19th day of February, 2022, the foregoing Motion to Dismiss or, in the Alternative, for Summary Judgment and accompanying Memorandum were filed and served electronically by the MDEC system on all persons entitled to service:

/s/ Andrea W. Trento

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