IN THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY, MARYLAND

NEIL PARROTT, RAY SERRANO, CAROL SWIGAR, DOUGLAS RAAUM, RONALD SHAPIRO, DEANNA MOBLEY, GLEN GLASS, ALLEN FURTH, JEFF WARNER, JIM NEALIS, DR. ANTONIO CAMPBELL, and SALLIE TAYLOR,	*	
Plaintiffs,	*	Case No. C-02-CV-21-001773
v.	*	
LINDA H. LAMONE, in her official capacity as State Administrator of the Maryland State Board of Elections and WILLIAM G. VOELP, Chair of the Maryland State Board of Elections, and STATE OF MARYLAND,	*	
Defendants.	*	

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Plaintiffs Neil Parrott, Ray Serrano, Carol Swigar, Douglas Raaum, Ronald Shapiro, Deanna Mobley, Glen Glass, Allen Furth, Jeff Warner, Jim Nealis, Dr. Antonio Campbell, and Sallie Taylor ("Plaintiffs") respectfully submit this brief in opposition to Defendants' Motion to Dismiss, filed in this case ("No. 1773") on February 19, 2022 (the "Motion," cites are to "Mot."). As Defendants did in their Motion (*see* Mot. at 2), Plaintiffs incorporate by reference the briefing concerning Defendants' Motion to Dismiss Or, In the Alternative, For Summary Judgment, filed January 31, 2022 in *Szeliga v. Lamone*, No. C-

02-CV-21-001816 ("No. 1816"). Plaintiffs also incorporate by reference the points made in the hearing on that motion on February 16, 2022. As set forth below, the additional arguments raised by Defendants in the instant Motion do not warrant dismissal.

Plaintiffs alleged in their complaint in No. 1773, and argued in their opposition to the motion to dismiss in No. 1816, that "where the drafters of the relevant provisions of the Maryland Constitution intended to refer only to state legislative districts, they did so explicitly," citing as examples Article III, Sections 3 and 5 of the Maryland Constitution. Complaint, ¶ 93; Plaintiffs' Opposition to Defendants' Motion to Dismiss Or, In the Alternative, For Summary Judgment at 15, filed February 11, 2022 ("*Parrott* Feb. 11 Br."); *see* Md. Const. Art. III, §§ 3, 5. Because the reference in Article III, Section 4 to "[e]ach legislative district" was not explicitly restricted to state districts, Plaintiffs argued that it must refer to both state and federal districts. *Id.*; *see* Md. Const. Art. III, § 4.

In the instant Motion, Defendants identify other state constitutional references to legislative districts, which, they claim, are "not qualified" in the text as state districts, "yet clearly refer[] to State legislative districts." Mot. at 3. What they wish to conclude from this is that "a 'legislative district,' when that term is used in the [Maryland] Constitution, is a State legislative district, not a congressional one." *Id*. The fundamental problem with their argument is that *every one* of Defendants' citations is explicitly limited to state legislative districts by the plain text of the clause and section in which it appears. Plaintiffs' point—that the *absence* of any such limitation in Article III, Section 4 means that it applies to congressional districts as well—remains valid.

Defendants cite the language in Article III, Section 3, which provides that "[e]ach

legislative district shall contain one (1) Senator and three (3) Delegates. Nothing 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, or single- and multi-member, districts. Mot. at 3; Md. Const. Art. III, § 3. The references in those clauses to "Delegates" firmly establish the kind of districts being discussed, effectively ruling out congressional districts. So does the first sentence of Section 3: "The State shall be divided by law into legislative districts for the election of members of the Senate and the House of Delegates." *Id*.

Defendants point to Section 6 of the same article, which 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 …" Mot. at 3; Md. Const. Art. III, § 6. The first part of this sentence ruins the point Defendants are trying to make, because it expressly restricts its application to someone who is a "member of the General Assembly."

Defendants cite Section 13(b), which "refers to the process that allows 'the Governor to fill a vacancy in a legislative or delegate district.'" Mot. at 3 (citing Md. Const. Art. III, § 13(b)). But the rest of that clause shows that it applies to state districts: "the Governor [may] fill a vacancy in a legislative or delegate district, as the case may be, *in any of the twenty-three counties of Maryland* …" Md. Const. Art. III, § 13(b) (emphasis added). And the first sentence of Section 13 makes very clear that the entire section is referring to state delegate and senate districts: "In case of death, disqualification, resignation, refusal to act, expulsion, or removal *from the county or city for which he shall have been elected*, of any person *who shall have been chosen as a Delegate or Senator* …"

Md. Const. Art. III, § 13(a)(1) (emphasis added).

Defendants refer to a provision regarding state constitutional conventions, which states: "Each County, and Legislative District of the City of Baltimore, shall have in such Convention a number of Delegates equal to its representation in both Houses at the time at which the Convention is called." Mot. at 3; Md. Const. Art. XIV, § 2. A "Legislative District of the City of Baltimore" is clearly a state entity and not a congressional district. The entire provision, moreover, refers to a *state* constitutional convention. It speaks of "calling a Convention for altering *this* Constitution," meaning the Maryland Constitution in which it appears. *Id*. (first sentence) (emphasis added)

Defendants conclude this argument by asserting that "tellingly, Plaintiffs do not even seem to believe their own theory" because they did not sue in the Court of Appeals, which has "'original jurisdiction to review the *legislative districting* of the State.'" Mot. at 3-4 (quoting Md. Const. Art. III, § 5). But Defendants have emphasized the wrong part of that sentence. It speaks of "the legislative districting *of the State*"—and Article III, Section 5 amply confirms that that is the subject of its provisions. Its first sentence states that "the Governor shall prepare a plan setting forth the boundaries of the legislative districts for electing [] the *members of the Senate and the House of Delegates*," and it refers throughout to the districts pertaining to *those* elections. Md. Const. Art. III, § 5.

In sum, the plain text of all of the provisions cited by Defendants restricts their meaning to *state* legislative districts. By contrast, Article III, Section 4 provides, in its entirety: "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. There is no reference to the state, to state delegates, to state senators, or to membership in the General Assembly.

Much of the rest of Defendants' motion is taken up with constitutional provisions that were proposed but never adopted. Mot. at 4-5. As argued in Plaintiffs' brief opposing dismissal in No. 1816 and in the hearing on that motion, such provisions are not convincing evidence of legislative intent. *Parrott* Feb. 11 Br. at 13-15.

As a final point, implicit in Defendants' motion, and explicit in their argument on February 16, 2022, was the contention that if Article III, Section 4 applies only to state legislative districts and not to federal congressional districts, then Plaintiffs' claim under Article 7 of the Maryland Declaration of Rights must also fail because there are no standards for determining when gerrymandering has occurred. This is incorrect. The mechanics of gerrymandering are well understood. As long as the evidence establishes that neutral districting criteria were subordinated to partisan concerns and afforded an unfair partisan advantage, gerrymandering should at least be presumed. *See generally Harper v. Hall*, No. 413PA21, 2022-NCSC-17 (Feb. 14, 2022), slip op., ¶ 163, (available at https://appellate.nccourts.org/opinions/?c=1&pdf=41183) (declining to impose an "exhaustive set of metrics or precise mathematical thresholds" but determining that, "as the trial court's findings of fact indicate, there are multiple reliable ways of demonstrating the existence of an unconstitutional partisan gerrymander"); *Vieth v. Jubelirer*, 541 U.S. 267, 348 (2004) (Souter, J. dissenting) (a plaintiff pursuing a political gerrymandering claim should begin by showing that the district of his residence paid little heed to those "traditional redistricting principles whose disregard can be shown straightforwardly").

Although this is a case of first impression in Maryland, the approach adopted by the Pennsylvania Supreme Court is instructive. Applying a "broad interpretation" to a comparable "free and equal" clause in the Pennsylvania Constitution, the Court held that a congressional district plan violated that provision by subordinating "the neutral criteria of compactness, contiguity, minimization of the division of political subdivisions, and … population equality" to "extraneous considerations such as gerrymandering for unfair partisan political advantage." *League of Women Voters v. Commonwealth*, 645 Pa. 1, 117, 122 (2018). Plaintiffs respectfully submit that applying a similarly broad interpretation to Article 7 of the Maryland Declaration of Rights would be appropriate to give it meaning in the context of partisan gerrymandering.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss should be denied.

Dated: February 20, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on February 20, 2022 the foregoing Plaintiffs' Opposition to Defendants' Motion To Dismiss, was filed and served electronically via the Court's MDEC system, and served by e-mail to counsel for Plaintiffs in *Szeliga v. Lamone* at the following address:

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