

IN THE
CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

KATHRYN SZELIGA, et al.,

Plaintiffs,

* No. C-02-CV-21-001816

v.

LINDA H. LAMONE, et al.,

Defendants.

_____ /

NEIL PARROTT, et al

Plaintiffs,

* No. C-OZ-CV021-001773

v.

LINDA H. LAMONE, et al.,

Defendants.

* * * * *

MOTION FOR LEAVE TO FILE AS AMICUS CURIAE

Vanessa Alban, Maureen Roy, Laura Walsh, Robert C. Leib, Steve Mattingly, Bill Hopwood, Jovani Patterson, and Ruth Melson (“Movants”) respectfully move for leave to file the attached amicus brief. The Movants are Maryland voters who live in each of Maryland’s eight congressional districts and whose political-action efforts and votes for Republican candidates are made less effective by the Defendants’ unconstitutional, partisan, and incumbent-protecting gerrymander.

Movants write in support of Plaintiffs, developing and adding context to the arguments raised by the Plaintiffs, in order to compliment them and assist this Court in its decisionmaking. Additionally, Movants’ political experience and redistricting knowledge, as shown in their brief, will assist the Court in its adjudication of this dispute by providing important context.

On March 9, 2022, Movants requested the parties' consent to filing the attached brief. The Parrott Plaintiffs consented on March 9, 2022. The Szeglia Plaintiffs replied with no objection on March 9, 2022. The Defendants consented on March 10, 2022.

In light of the above, Movants respectfully request that the Court grant this motion and accept the attached brief for filing and consideration in these cases.

Dated: March 10, 2022

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH MARYLAND RULE 1-313

I hereby certify that the undersigned is an attorney in good standing admitted to practice before the Court of Appeals of Maryland.

Dated: March 10, 2022

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CERTIFICATE OF SERVICE

Pursuant to MD R EFILING 20-201(g)(1), (3), I hereby certify that on this 10th day of March, 2022, I caused the foregoing to be electronically filed with the Court via the Maryland Electronic Courts (“MDEC”) e-filing system, and service is made electronically by the MDEC system on all persons entitled to service.

Dated: March 10, 2022

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No. C-02-CV-21-001816

* * * * *

**BRIEF OF AMICUS CURIAE
IN SUPPORT OF PLAINTIFFS**

The Maryland Legislature has enacted an unconstitutional partisan and incumbent-protecting gerrymander of the State’s congressional districts. This gerrymander is even more egregious than the Legislature’s 2011 gerrymander, which a panel of three federal district court judges condemned. *Benisek v. Lamone*, 348 F. Supp. 3d 493, 520, 524 (D. Md. 2018) (Bredar, C.J., Niemeyer & Russell, JJ.), *vacated on other grounds by Rucho v. Common Cause*, 139 S. Ct. 2484 (2019). That 2011 gerrymander flipped Maryland’s Sixth Congressional District—a longstanding Republican district—giving the Democrats a 7-to-1 seat advantage in the State. Now, the Legislature has retained that gerrymander and gone one step further by targeting the First Congressional District for partisan gain. This brazen action threatens the freedom, fairness, and

integrity of elections in the State and so violates the Maryland Constitution. Md. Const. Decl. of Rts. art. 7; *accord id.* arts. 6, 24, 40. Amici are Maryland voters that this gerrymander harms, and submit this amicus brief to provide this Court with additional context and legal argument in support of Plaintiffs in these consolidated cases.

Statement of Interest

Amici are Maryland voters from each of Maryland's eight congressional districts who vote and organize for Republican congressional candidates. Amici's interests are directly harmed by the 2021 Congressional Map. Further, Amici respectfully submit that their political experience and knowledge will assist this Court in adjudicating this dispute. Amicus Vanessa Alban lives at 34 Admiral Avenue, Ocean Pines, MD 21811, in District 1. Amicus Maureen Roy lives at 212 Seneca Terrace, Pasadena, MD 21122, in District 2. Amicus Laura Walsh lives at 16135 Ed Warfield Road, Woodbine, MD 21797, in District 3. Amicus Robert C. Leib lives at 3594 Owens Meadow Way, Harwood, MD 20776, in District 4. Amicus Steve Mattingly lives at 7545 Cameron Ridge Road, Hughesville, MD 20637, in District 5. Amicus Bill Hopwood lives at 3940 Southview Court, Jefferson, MD 21755, in District 6. Amicus Jovani Patterson lives at 2205 Elsinore Avenue, Baltimore, MD 21216, in District 7. And Amicus Ruth Melson lives at 4820 Flanders Avenue, Kensington, MD 20895, in District 8. The Legislature's 2021 Congressional Map harms Amici—and voters across Maryland—by diluting the power of their votes on the basis of politics and/or the candidates they support and by diminishing the effects of their political-action efforts through an unconstitutional, partisan, incumbent-protecting gerrymander.

Argument

Multiple provisions of the Maryland Constitution prohibit the Legislature from drawing congressional districts to advance the interests of a political party or incumbent politicians. *See*

infra Part I. Here, the Legislature obviously and egregiously drew its 2021 Congressional Map to advance the interests of the Democratic Party and Democratic Party politicians. *See infra* Part II.

I. The Maryland Constitution Prohibits The Legislature From Adopting A Congressional Map To Advance The Interests Of A Particular Political Party Or Particular Politicians

Several provisions of the Maryland Constitution protect the freedom, fairness, and integrity of elections in Maryland. *See* Compl. ¶¶ 59–82, *Szeliga v. Lamone*, No. C-02-CV-21-001816 (Anne Arundel Cty. Cir. Ct. Dec. 23, 2021) (“*Szeliga* Compl.”); Compl. ¶¶ 86–98, *Parrott v. Lamone*, No. C-02-CV-21-001773 (Anne Arundel Cty. Cir. Ct. Dec. 21, 2021) (“*Parrott* Compl.”).

First, Article 7 of the Declaration of Rights recognizes and affirms that “elections ought to be free and frequent” because “the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government.” Md. Const. Decl. of Rts. art. 7; *see Parrott* Compl. ¶¶ 86–91, 99–103; *Szeliga* Compl. ¶¶ 59–64. This Court “construe[s]” this constitutional provision “in relation to [its] purpose,” which is to “provid[e] and encourag[e] the fair and free exercise of the elective franchise.” *State Bd. of Elections v. Snyder*, 435 Md. 30, 61 (2013) (emphasis added). Fair and free elections are “the highest right of the citizen, and the spirit of our institutions requires that every opportunity should be afforded for [them].” *Id.* (quoting *Kemp v. Owens*, 76 Md. 235, 241 (1892)); *see also Nader for President 2004 v. Md. State Bd. of Elections*, 399 Md. 681, 686 (2007). A “fair and free” election under Article 7 allows for the full “political participation” of all qualified voters, consistent with “the principles on which free governments are founded.” *Snyder*, 435 Md. at 61 (quoting *Kemp*, 76 Md. at 241), including voters having “the fullest opportunity to vote for candidates of any political party,” so that they may freely choose who will represent them in government. *Md. Green Party v. Md. Bd. of Elections*, 377 Md. 127, 150–51 (2003) (quoting *Munsell v. Hennegan*, 182 Md. 15, 22 (1943)).

Thus, Article 7 protects whatever is “integral” to “the members of a political party . . . choos[ing] their candidates” and exercising their “right of suffrage.” *Id.* at 151; *accord Snyder*, 435 Md. at 61 (rejecting any interpretation of Article 7 that is “in hostility to the principles on which free governments are founded” (citation omitted)).

Article 7 of the Declaration of Rights is “even more protective of rights of political participation than the provisions of the federal Constitution.” *Md. Green Party*, 377 Md. at 150; *see also Snyder*, 435 Md. at 61; *Parrott Compl.* ¶ 89; *Szeliga Compl.* ¶ 61. Accordingly, whatever protections for free and fair elections may be found within the U.S. Constitution, Article 7 of the Declaration of Rights provides “even more” such protections. *Md. Green Party*, 377 Md. at 150; *see also Snyder*, 435 Md. at 61. Maryland courts have applied Article 7 to numerous kinds of elections, beyond those for the Legislature, including elections for Congress. *See Md. Green Party*, 377 Md. at 135–37, 141 (applying Article 7 to a congressional election); *see also Nader for President 2004*, 399 Md. at 705, 708 (applying Article 7 to a presidential election); *Snyder*, 435 Md. at 52, 61 (applying Article 7 to county-school-board elections); *Parrott Compl.* ¶ 88.

Second, Article 6 of the Declaration of Rights provides that “all persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and, as such, accountable for their conduct: Wherefore, *whenever the ends of Government are perverted*, and public liberty manifestly endangered, and all other means of redress are ineffectual, the People may, and of right ought, to reform the old . . . Government.” Md. Const. Decl. of Rts. art. 6 (emphasis added); *see generally infra* Part II (discussing Article 6 as one source of this Court’s jurisdiction over this Petition). “[T]he ends of Government” within Article 6 include public action taken “solely for the good of the *whole*,” since “all Government of right originates from the People.” Md. Const. Decl. of Rts. art. 1 (emphasis added). Article 6 “sets forth the well-

established doctrine that the duties of public officials are fiduciary in character and are to be exercised as a public trust,” *Kerpelman v. Bd. of Pub. Works*, 261 Md. 436, 445 (1971), meaning that such duties must be exercised for the benefit of all Marylanders equally.

Finally, Article 24 of the Declaration of Rights guarantees Marylanders the equal protection of the law, including on the basis of arbitrary or irrational political classifications, Md. Const. Decl. of Rts. art. 24; *see Md. Green Party*, 377 Md. at 157; *Szeliga Compl.* ¶¶ 70–76, while Article 40 of the Declaration of Rights guarantees every Marylander the right “to speak, write and publish his sentiments on all subjects,” Md. Const. Decl. of Rts. art. 40; *see Szeliga Compl.* ¶¶ 77–82. These provisions ensure electoral fairness and integrity in Maryland by protecting political minorities from disparate treatment in the State’s election laws, *see Md. Const. Decl. of Rts. art. 24*, and preserving their right to freely engage in all lawful political activity, *see id. art. 40*.¹

2. These provisions of the Maryland Constitution prohibit the Legislature from gerrymandering for partisan gain or to protect incumbents. This is because gerrymandered districts “pervert[]” the “ends of Government” for the benefit of politically favored classes of Marylanders, Md. Const. Decl. of Rights art. 6, irrationally harm the political equality of the citizens of this State, *id. art. 24*; unjustifiably burden lawful political activity, *id. art. 40*; and inhibit “free” elections, *id. art. 7*.²

¹ Article I, Section 7 provides that “[t]he General Assembly shall pass Laws necessary for the preservation of the purity of Elections,” Md. Const. art. I, § 7 (emphasis added), and this Court understands this provision to impose a “duty” on the Legislature “of protecting the electoral process in Maryland,” *Cty. Council for Montgomery Cty. v. Montgomery Ass’n, Inc.*, 274 Md. 52, 60 (1975). An election that is “pur[e]” under Section 7 is one that accords with “the nature of our institutions” and “the very essence of democracy” by allowing for the “full exercise of the right of citizenship”—including “the right to vote.” *Smith v. Higinbotham*, 187 Md. 115, 128 (1946). This Court dismissed with prejudice, Order, *Szeliga v. Lamone*, No. C-02-CV-21-001816 (Anne Arundel Cty. Cir. Ct. Feb. 23, 2022) (“Feb. 23 Order”), the *Szeliga* Plaintiffs’ Count II, raising a violation of Article I, Section 7 claim, *Szeliga Compl.* ¶¶ 65–69.

² Amici further assert that gerrymandered districts undermine “the purity of elections,” Md. Const. art. I, § 7, but acknowledging this Court’s dismissal of the *Szeliga* Plaintiffs’ Article I, Section 7 claim, Feb. 23 Order.

a. To begin, partisan and incumbent-protection gerrymandering prevent elections from being “*fair and free*.” *Snyder*, 435 Md. at 61 (emphasis added); Md. Const. Decl. of Rts. art. 7; *accord* Md. Const. Decl. of Rts. arts. 6, 24, 40. Partisan or incumbent-protection gerrymandering is “[t]he practice of dividing a geographical area into electoral districts, often of highly irregular shape, to give one political party [or one preferred candidate] an *unfair* advantage by diluting the opposition’s voting strength.” *In re Legislative Districting of State*, 370 Md. 312, 332 n.14 (2002) (alteration in original) (emphasis added) (quoting Black’s Law Dictionary 696 (7th ed. 1999)). Thus, “partisan gerrymandering . . . subordinate[s] adherents of one political party and entrench[es] a rival party in power,” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 791 (2015), which “leads to results that reasonably seem unjust,” *Rucho*, 139 S. Ct. at 2506.

When taken to its “most extreme,” partisan and incumbent-protection gerrymandering amounts to “rigging elections,” *id.* at 2512 (Kagan, J., dissenting) (citation omitted), which is the antithesis of the “fair and free” elections that the Maryland Constitution guarantees, *Snyder*, 435 Md. at 61. The Maryland Constitution’s “right to vote is the right to choose the person for whom the ballot is cast,” meaning that an “election is not free if the elector may not make this choice.” *Jackson v. Norris*, 173 Md. 579, 599 (1973); *accord Munsell*, 182 Md. at 22; *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (“The right to vote freely for the candidate of one’s choice is the essence of a democratic society[.]”). But gerrymandering makes the voter’s choice “meaningless,” *Rucho*, 139 S. Ct. at 2511 (Kagan, J., dissenting)—and thus renders an election “not free,” *Jackson*, 173 Md. at 599—by empowering the politicians themselves to “cherry-pick voters to ensure their reelection,” *Rucho*, 139 S. Ct. at 2512 (Kagan, J., dissenting).

Relatedly, gerrymandering conflicts with the “the nature of our institutions” and “the very essence of democracy,” *Smith*, 187 Md. at 128, marring the “purity” of the elections held under such gerrymandered maps, Md. Const. Decl. of Rts. art. 7; *accord id.* art. 6, 24, 40; Md. Const. art. I, § 7. “The right to formal political representation is fundamental to our state and national democracies,” *In re 2012 Legislative Districting*, 436 Md. 121, 126 (2013), and therefore “[a] fairly apportioned legislature” must “lie[] at the very heart of representative democracy,” *In re Legislative Districting of State*, 370 Md. at 319. Partisan gerrymandering undermines the notion of fair apportionment by “contract[ing] the value of a citizen’s vote” through “placing the citizen in a district where the citizen’s political party makes up a smaller share of the electorate, thereby reducing the citizen’s chance to help elect a candidate of choice.” *Benisek*, 348 F. Supp. 3d at 514.

Gerrymandering benefits a favored class of voters, thus “pervert[ing]” the “ends of Government” by introducing inequalities in the political process. Md. Const. Decl. of Rts. art. 6; *Kerpelman*, 261 Md. at 444. By drawing district lines for partisan or incumbent-protection purposes, gerrymanderers “deprive[] citizens of the most fundamental of their constitutional rights,” including “the rights to participate equally in the political process” through casting a ballot of equal strength. *Rucho*, 139 S. Ct. at 2509 (Kagan, J., dissenting). “Put simply, partisan vote dilution, when intentionally imposed, involves the State penalizing voters for expressing a viewpoint while, at the same time, rewarding voters for expressing the opposite viewpoint”—the very definition of political inequality. *Benisek*, 348 F. Supp. 3d at 514.

The political inequalities caused by gerrymandering do not stop with the dilution of the votes of the disfavored classes. “Members of the disfavored party in the State” inevitably also “face difficulties fundraising, registering voters, attracting volunteers, generating support from independents, and recruiting candidates to run for office (not to mention eventually accomplishing

their policy objectives).” *Gill v. Whitford*, 138 S. Ct. 1916, 1938 (2018) (Kagan, J., concurring) (citations omitted); *see also Rucho*, 139 S. Ct. at 2514 (Kagan, J., dissenting); *accord Benisek*, 348 F. Supp. 3d at 513. This, therefore, “plac[es] a state party at an enduring electoral disadvantage, . . . weaken[ing] its capacity to perform all its functions,” *Gill*, 138 S. Ct. at 1938 (Kagan, J., concurring), and “frustrat[ing]” its “efforts to translate [political] affiliations into political effectiveness,” *Rucho*, 139 S. Ct. at 2514 (Kagan, J., dissenting).

“And the evils of gerrymandering [also] seep into the legislative process itself,” *Gill*, 138 S. Ct. at 1940 (Kagan, J., concurring), underscoring how this practice “pervert[s]” the “ends of Government,” Md. Const. Decl. of Rts. art. 6. “[E]xcessive partisan gerrymandering” creates a “toxic” and “tribal” government, causing an “indifference to swing voters and their views; extreme political positioning designed to placate the party’s base and fend off primary challenges; the devaluing of negotiation and compromise; and the impossibility of reaching pragmatic, bipartisan solutions to the nation’s problems.” *Gill*, 138 S. Ct. at 1940 (Kagan, J., concurring) (citations omitted; alterations omitted); *accord Rucho*, 139 S. Ct. at 2525 (Kagan, J., dissenting).

In *Rucho*, the U.S. Supreme Court held that partisan-gerrymandering claims were nonjusticiable under the U.S. Constitution and underscored this Court’s duty to vindicate such claims under the Maryland Constitution. *Rucho*, however, expressly recognized that “[t]he States” may “actively address[]” partisan gerrymandering “on a number of fronts,” including under “[p]rovisions in state statutes and state constitutions.” 139 S. Ct. at 2507. That is precisely what Maryland has done in Articles 7, 6, 24, and 40 of the Declaration of Rights.

Notably, *Rucho* did *not* conclude that the federal Constitution condones excessive partisan gerrymandering; rather, it held that the federal judiciary lacks the authority to declare when a partisan gerrymander has crossed the constitutional boundary line. *See id.* at 2506–07. So, for

Article 7—along with Maryland’s equal-protection and free-speech guarantees—to be “even more protective” of political-participation rights than the U.S. Constitution on the issue of excessive partisan gerrymandering, *Md. Green Party*, 377 Md. at 150, these state-constitutional provisions must both prohibit this practice and make such a prohibition enforceable in this Court.

Multiple state courts have now held that their State’s broad, election-protection constitutional provisions prohibit partisan and incumbent-protection gerrymandering. For example, in *Harper v. Hall*, ___S.E.2d___, 2022 WL 496215 (N.C. Feb. 14, 2022), the North Carolina Supreme Court held that partisan gerrymandering “violate[s] several rights guaranteed to the people by [its] state constitution,” *id.* at *2–6, including the “free elections clause,” *id.* at *33 (citing N.C. Const. art. I, § 10), because it “can prevent elections from reflecting the will of the people impartially and by diminishing or diluting voting power on the basis of partisan affiliation,” *id.*. Similarly, in *League of Women Voters v. Commonwealth*, the Pennsylvania Supreme Court held that partisan gerrymandering violates Pennsylvania’s Free and Equal Elections Clause, 178 A.3d 737, 741 (2018) (citing Pa. Const. art. I, § 5), “dilut[ing]” the “people’s power” to “select the representative of his or her choice” on an equal basis, *id.* at 809; *see also League of Women Voters v. Ohio Redistricting Comm’n*, ___N.E.3d___, 2022 WL 110261, at *15–27 (Ohio Jan. 12, 2022).

II. The 2021 Congressional Map Is An Obvious And Egregious Partisan Gerrymander

1. When considering whether a particular redistricting map violates constitutional prohibitions on partisan and incumbent-protecting gerrymandering, state and federal courts (prior to the U.S. Supreme Court’s decision in *Rucho*, holding such claims nonjusticiable in federal court) interpreting state and federal constitutional prohibitions have concluded that a map was unlawfully partisan after considering several factors. *See League of Women Voters*, 2022 WL 110261, at *24; *Harper v. Hall*, 867 S.E.2d 554, 557 (N.C. 2022); *League of Women Voters*, 178 A.3d at 808;

League of Women Voters v. Detzner, 172 So. 3d 363, 387 (Fla. 2015); *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 1094–96 (S.D. Ohio 2019), *vacated and remanded*, 140 S. Ct. 102 (2019); *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 861–62 (M.D.N.C. 2018), *vacated and remanded*, 139 S. Ct. 2484 (2019); *Whitford v. Gill*, 218 F. Supp. 3d 837, 887–90 (W.D. Wis. 2016), *vacated and remanded*, 138 S. Ct. 1916 (2018).

First, these courts considered whether the “map-drawing process” itself was partisan. *See League of Women Voters*, 2022 WL 110261, at *24–25; *Detzner*, 172 So. 3d at 379–86, 388–89, 392–93; *Householder*, 373 F. Supp. 3d at 1096; *Benisek*, 348 F. Supp. 3d at 517–18. A process may be impermissibly partisan if, for example, it was “directed and controlled by one political party’s legislative leaders,” *League of Women Voters*, 2022 WL 110261, at *25; *see also Householder*, 373 F. Supp. 3d at 1093–96; *Common Cause*, 318 F. Supp. 3d at 861–64; *Whitford*, 218 F. Supp. 3d at 887–90; *League of Women Voters*, 178 A.3d at 817; *Detzner*, 172 So. 3d at 390–93. Other evidence may establish that the process was unlawfully partisan, such as “correspondence between those responsible for the map drawing, floor speeches discussing the redistricting legislation and other contemporaneous statements, and testimony explaining ‘[t]he historical background of the decision,’ including the ‘specific sequence of events leading up to the challenged decisions.’” *Householder*, 373 F. Supp. 3d at 1096 (quoting *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266 (1977) (alteration in original)); *see also Detzner*, 172 So. 3d at 379–86, 388–89, 392–93.

Second, these courts have considered the overall partisan impact or effect of the map—meaning whether the map “diminish[es] or dilut[es]” a “voter’s voting power on the basis of his or her [political] views,” *see e.g., Harper*, 867 S.E.2d at 557; *League of Women Voters*, 178 A.3d at 804; *League of Women Voters*, 2022 WL 110261, at *23, *26; *Benisek*, 348 F. Supp. 3d at 18.

Finally, these courts considered if specific district lines subordinated traditional redistricting criteria for partisan reasons. *See League of Women Voters*, 178 A.3d at 815–21; *League of Women Voters*, 2022 WL 110261, at *26; *Harper*, 867 S.E.2d at 557–58; *Detzner*, 172 So. 3d at 386; *Benisek*, 348 F. Supp. 3d at 520.

2. The 2021 Congressional Map manifestly violates the Maryland Constitution’s prohibition against partisan and incumbent-protection gerrymandering, under all three of the above-described considerations.

a. The Map-Drawing Process Was Partisan. The Democrat-dominated Legislature used the map-drawing process to implement its partisan and incumbent-protection goals. *See League of Women Voters*, 2022 WL 110261, at *24–25; *Detzner*, 172 So. 3d at 379–86, 388–89, 392–93; *Householder*, 373 F. Supp. 3d at 1096; *Common Cause*, 318 F. Supp. 3d at 868–70; *Whitford*, 218 F. Supp. 3d at 890–96; *Benisek*, 348 F. Supp. 3d at 517–19.

In 2011, Democrat Governor O’Malley and the Democrat-dominated Legislature egregiously—and admittedly—gerrymandered Maryland’s congressional map, as a federal three-judge panel concluded. *See Benisek*, 348 F. Supp. 3d at 524–25; *Szeliga* Compl. ¶¶ 24–25. The Governor appointed a redistricting committee stacked 4-to-1 in the Democrats’ favor, which committee also included a self-described “serial gerrymanderer” as an advisor. *Rucho*, 139 S. Ct. at 2493 (citation omitted); *Benisek*, 348 F. Supp. 3d at 504–05; *Szeliga* Compl. ¶ 26. The Governor and his committee expressly sought to “change the overall composition of Maryland’s congressional delegation” for the Democrats’ benefit by “flipping” one long-standing Republican district in the State. *Rucho*, 139 S. Ct. at 2493 (quoting *Benisek*, 348 F. Supp. 3d at 502); *see Szeliga* Compl. ¶ 24. And after the Governor concluded that “flipping the First District” in the Democrats’ favor “was geographically next-to-impossible,” *Rucho*, 139 S. Ct. at 2511 (Kagan, J.,

dissenting); *Benisek*, 348 F. Supp. 3d at 502, “a decision was made to go for the Sixth,” *Rucho*, 139 S. Ct. at 2511 (Kagan, J., dissenting) (citation omitted)—a district previously held by Republicans “for nearly two decades,” *id.* at 2493 (majority op.) (quoting *Benisek*, 348 F. Supp. 3d at 502); see *Szeliga* Compl. ¶¶ 25, 30. The map left the committee on a party-line vote, and then passed the Legislature on a party-line vote, meaning that no Republicans supported it at any stage of the process. *Rucho*, 139 S. Ct. at 2511 (Kagan, J., dissenting); *Benisek*, 348 F. Supp. 3d at 506; see *Szeliga* Compl. ¶ 33.

In 2021, the Legislature perpetuated this partisan gerrymander in the 2011 Congressional Map with their 2021 Congressional Map. See *Benisek*, 348 F. Supp. 3d at 524–25; *Szeliga* Compl. ¶¶ 39–44. On November 9, 2021, in a cover letter accompanying the Legislative Redistricting Advisory Committee’s (“LRAC”) proposed maps, Democrat-appointed Chair Aro explained that the Democrat-controlled LRAC drew districts with the intent, “to the extent practicable, [to] keep Marylanders in their existing districts,” Md. Gen. Assemb., *Legislative Redistricting Advisory Commission Draft Congressional Concept Maps* (Nov. 9, 2021)³—that is, the already-gerrymandered 2011 districts. See *Szeliga* Compl. ¶ 43. Other Democrat proponents of the 2021 Congressional Map agreed. After passing that map, Democrat Senate President Bill Ferguson and Democrat House Speaker Adrienne emphasized that the map “keep[s] a significant portion of Marylanders in their current districts, ensuring continuity of representation.” Speaker Adrienne A. Jones (@SpeakerAJones), Twitter (Dec. 8, 2021, 8:18 PM).⁴ In short, the 2021 Legislature enshrined within the 2021 Congressional Map precisely the same impermissible partisan and incumbent-protection intent found in the 2011 Congressional Map.

³ Available at <https://redistricting.lls.edu/wp-content/uploads/MD-20211109-Legislature-proposed-congressional-districts.pdf> (all websites last visited Mar. 10, 2022).

⁴ Available at <https://twitter.com/SpeakerAJones/status/1468751987944660993>.

The Legislature did not settle with the mere continuation of the prior gerrymander; instead, it also strengthened the gerrymander in a manner that would have made even Governor O'Malley and his commission blush. In 2011, Governor O'Malley and other Democratic leaders conceded that they could not “flip” the First District because the resulting lines “would have to jump across the Chesapeake Bay,” *Benisek*, 348 F. Supp. 3d at 502, which “was geographically next-to-impossible,” *Rucho*, 139 S. Ct. at 2511 (Kagan, J., dissenting). But in 2021, the Legislature showed no such restraint, gerrymandering the First District to give Democrats a strong chance of winning *all eight* congressional seats. As Representative Jamie Raskin bragged, Maryland Democrats “have not only a political right, but . . . an ethical duty, to do whatever we can to fight fire with fire” in retribution for Republicans “trying to gerrymander us into oblivion from Texas to Georgia to North Carolina to Michigan to Wisconsin.” Jim Newell, *Democrats Could Have Gerrymandered Away A GOP Seat. Why Didn't They?*, Slate (Dec. 10, 2021).⁵

Governor Hogan, for his part, proposed a map that did not take partisanship into account. In January 2021, he created the Maryland Citizens Redistricting Commission (“MCRC”) by executive order. Md. Exec. Order 01.01.2021.02 (Jan. 12, 2021) (hereinafter “Exec. Order”);⁶ *see Parrott Compl.* ¶ 26. The MCRC members included three Republicans, three Democrats, and three Independents, all selected to be independent from legislative influence, to be impartial, and to be representative of the State’s diversity and geographical, racial, and gender makeup. Exec. Order, *supra*, at 2–3; *see Parrott Compl.* ¶ 26. The MCRC proposed a map that would have likely given one district back to Republicans, creating a 6-2 split. Md. Citizens Redistricting Comm’n,

⁵ Available at <https://slate.com/news-and-politics/2021/12/maryland-redistricting-democrats-gerrymandering-andy-harris.html>.

⁶ Available at <https://governor.maryland.gov/wp-content/uploads/2021/01/execorder.pdf>.

Final Maps for Submission 12–20 (Nov. 5, 2021);⁷ *see also* Parrott Compl. ¶¶ 28–30. That map received an “A” grade from the Princeton Gerrymandering Project., *Redistricting Report Card: Maryland 2021 Citizens Commission Final Draft Congressional Map*, Princeton Gerrymandering Project;⁸ *see* Parrott Compl. ¶ 31. Thus, a bipartisan process that generated workable maps for the State was not only possible, but readily available.

b. The Map Has An Overwhelmingly Partisan Effect. As Plaintiffs will show, the 2021 Congressional Map will have an overwhelmingly partisan effect—just as the Legislature intended—and give the Democratic Party seven “safe” districts and a strong chance at the eighth. *See* Szeliga Compl. ¶¶ 55–56; Parrott Compl. ¶ 72. In District 1, the last Republican district in Maryland, the Legislature’s gerrymander changed the district from one that was overwhelmingly Republican to one that Democrats have a strong chance of winning. *See What Redistricting Looks Like In Every State, Maryland*, Fivethirtyeight.com (Feb. 22, 2022);⁹ Szeliga Compl. ¶¶ 57–58; Parrott Compl. ¶ 72. The 2021 Congressional Map will also ensure that Representatives Ruppertsberger and Hoyer survive any primary in Districts 2 and 5, respectively.

The 2011 gerrymander—which the 2021 Congressional Map perpetuated and strengthened, *see supra* pp. 11–13—had the precise partisan effect that the Legislature intended, as the federal three-judge panel found. *See Benisek*, 348 F. Supp. 3d at 506. For the life of the map, the Sixth District *always* elected a Democratic Representative and *never* a Republican Representative—meaning that the First District remained the sole Republican holdout in Maryland, like the Legislature planned. *See supra* pp. 11–12. Additionally, incumbent-

⁷ Available at <https://redistricting.maryland.gov/Documents/Final-Rec/2021-1105-Maryland-Redistricting-Final-Maps-for-Submission-Book.pdf>.

⁸ Available at <https://gerrymander.princeton.edu/redistricting-report-card?planId=rec0XDaejLCSbXPBs>.

⁹ Available at <https://projects.fivethirtyeight.com/redistricting-2022-maps/maryland/>.

Representatives Ruppertsberger and Hoyer won in every election under the map’s tenure, consistent with the Legislature’s express design.

The 2021 Congressional Map’s partisan effect is even more pronounced. For example, the Princeton Gerrymandering Project gave the 2021 plan an “F” grade, based on political favoritism, geographical compactness, and other factors. *Redistricting Report Card: Maryland 2021 LRAC Final Recommended Congressional Map*, Princeton Gerrymandering Project;¹⁰ see Parrott Compl. ¶ 76. And Fair Maps Maryland, a nonpartisan anti-gerrymandering group, described the map as having a “level of gerrymandering” that rises to “voter suppression.” Meagan Flynn, *Maryland General Assembly Passes New Congressional Map Solidifying Democrats’ Power*, Wash. Post (Dec. 8, 2021).¹¹ Even other Maryland Democrats thought the 2021 map went too far, with Democratic Congressman Kweisi Mfume describing it as “overreach” that “lock[ed] out” Republican voters. *Id.*

c. Specific Lines Subordinate Traditional Redistricting Criteria For Partisan Reasons.

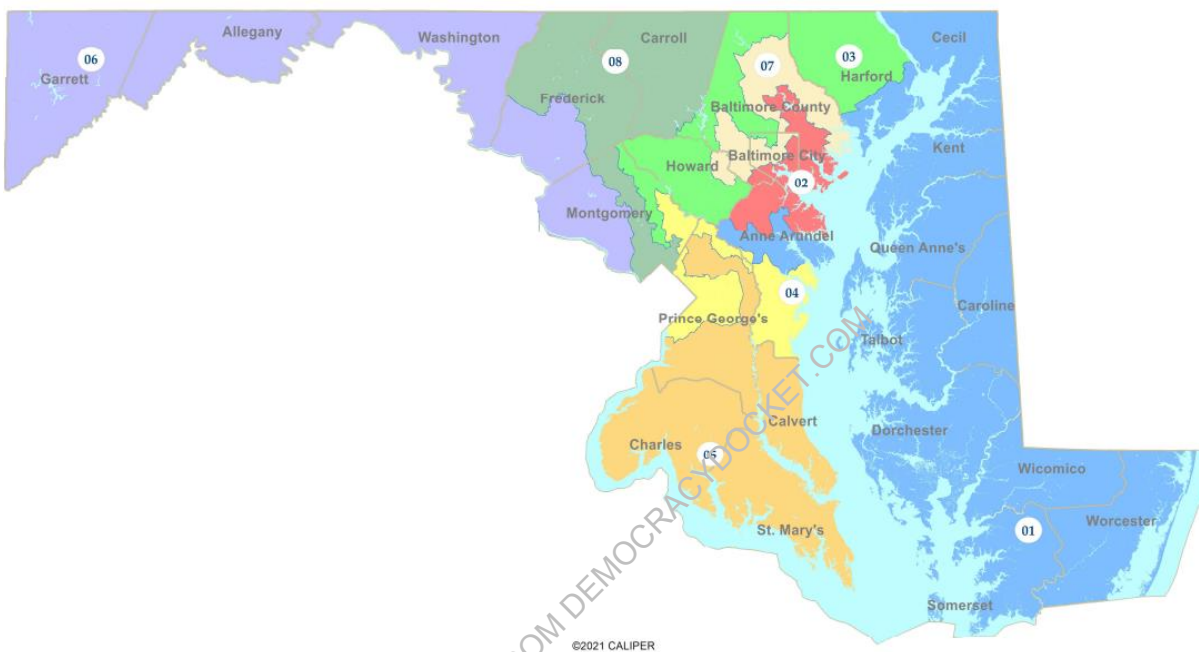
Finally, multiple district lines subordinate traditional redistricting criteria for no discernible reason other than partisanship, providing still more evidence of impermissible partisan intent.

i. The 2021 Congressional Map’s District 1 boundaries egregiously reach across the Chesapeake Bay and far inland to grab suburban voters in Anne Arundel County, for the purpose of increasing Democrats’ chances in this district. These largely Democrat voters added to District 1 have little in common with the largely Republican, rural Eastern Shore counties of Worcester, Somerset, Wicomico, Dorchester, Talbot, Caroline, Queen Anne’s, Kent, Cecil, and part of Harford, which have traditionally been in District 1. Further, this jump across Chesapeake Bay

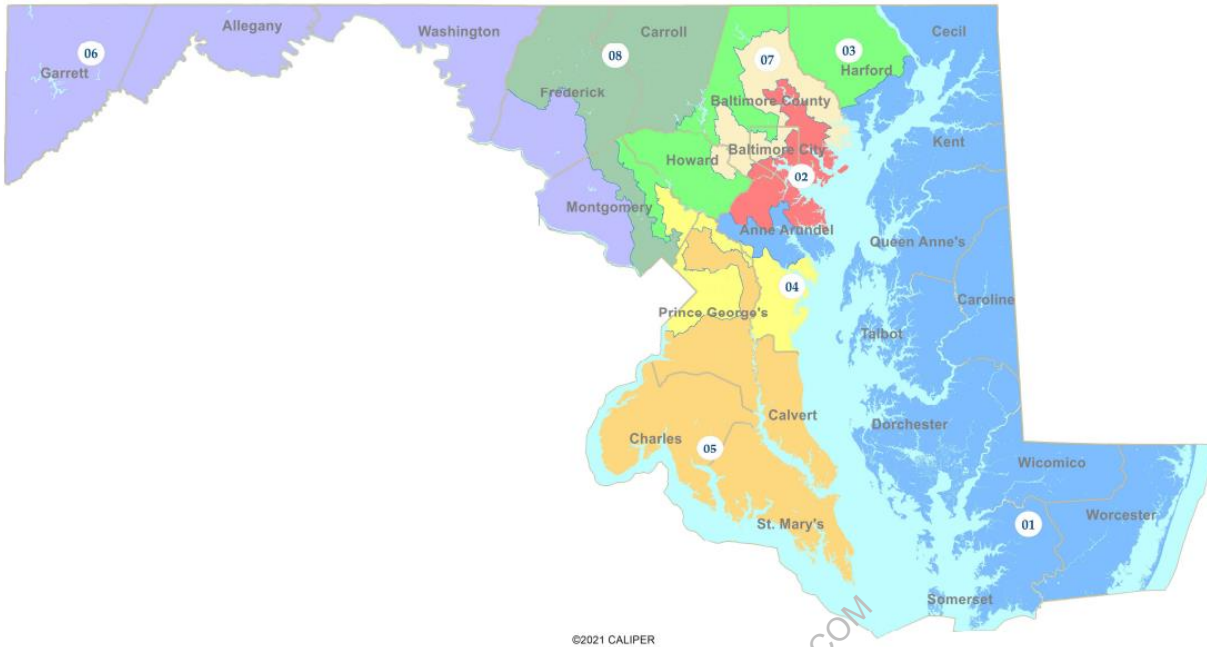
¹⁰ Available at <https://gerrymander.princeton.edu/redistricting-report-card?planId=rectT3e34TouwaqH0>.

¹¹ Available at <https://www.washingtonpost.com/dc-md-va/2021/12/08/maryland-congressional-redistricting-map/>.

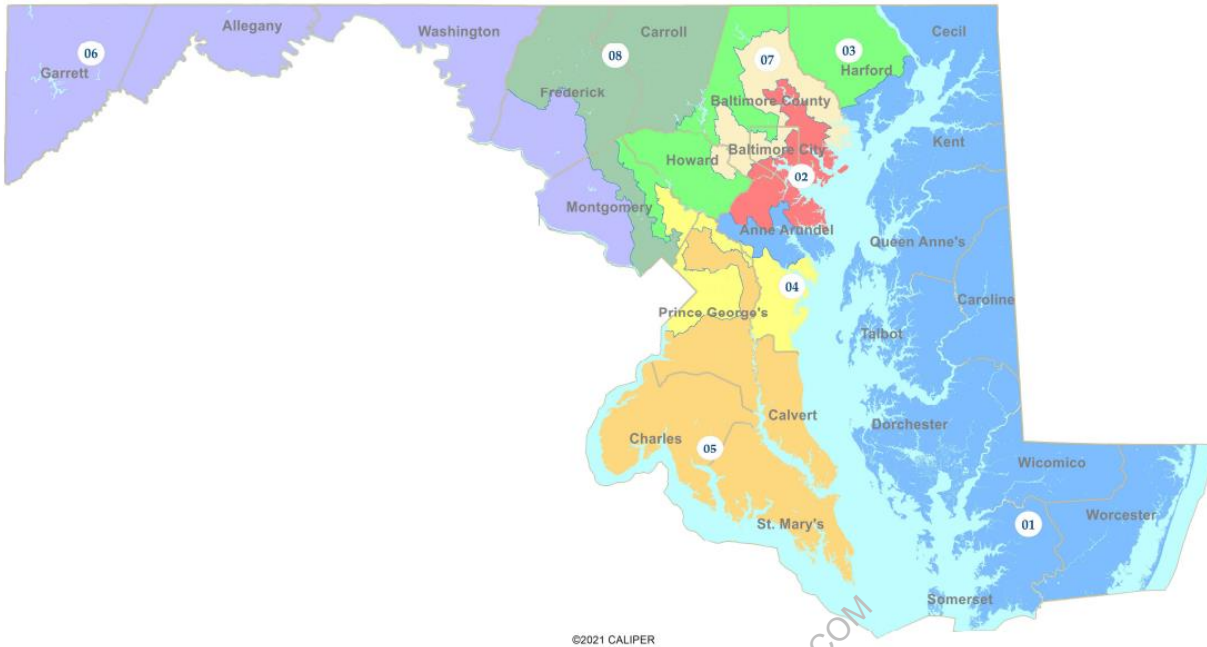
for District 1 was the “geographically next-to-impossible” alteration that even Governor O’Malley and his commission was unwilling to make. *See supra* p. 13. As a result of the Legislature’s plainly partisan changes to District 1, Democrats now have a strong chance of winning this seat and sweeping all eight of Maryland’s districts.



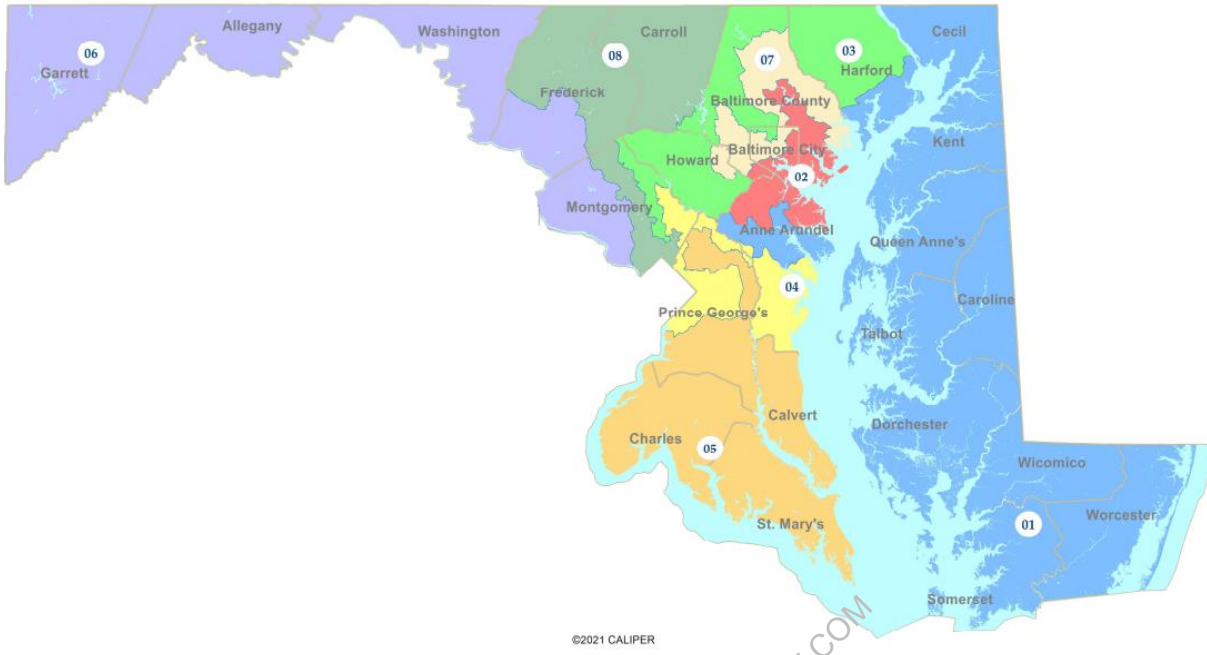
ii. The 2021 Congressional Map’s treatment of District 6 continues the Legislature’s extreme partisan gerrymander of this District from the 2011 Congressional Map. Historically, and prior to 2011, District 6 included Maryland’s five most northwestern counties: Garrett, Allegheny, Washington, Frederick, and Carroll. But in the 2011 redistricting, the Legislature redrew the district to favor Democrats. Specifically, it shifted half of Frederick County and over half of Carroll County into District 8, while leaving the other three counties in District 6. Then, it added a portion of Montgomery County that had previously been part of District 8. This reconfiguration cracked Republican voters between the two districts, diluting their votes and flipping District 6 to a Democrat district. The 2021 Congressional Map retained this egregious partisan gerrymander.



iii. Next, the 2021 Congressional Map's drawing of District 2 continues and strengthens the incumbent-protection gerrymander of this district from the 2011 Congressional Map. Specifically, as in 2011, District 2 splits Baltimore City and reaches a finger up into Baltimore County to grab white, suburban Democratic voters. Meanwhile, it continues to divide African American communities of interest within Baltimore between Districts 1, 3, and 7. Finally, it still includes parts of Anne Arundel County, and deliberately fails to contain any whole county within its boundaries. These shifts seek to protect Representative Ruppertsberger in a primary challenge by packing the white, suburban Democratic voters who form his primary-voter base into the district, while simultaneously splitting African American communities of interest across districts, which communities are more likely to prefer a different Democratic candidate in a primary election. Put another way, this gerrymander ensures that Representative Ruppertsberger's white voter base will outnumber the African American communities of interest in his district, thus effectively guaranteeing that he will win any primary.



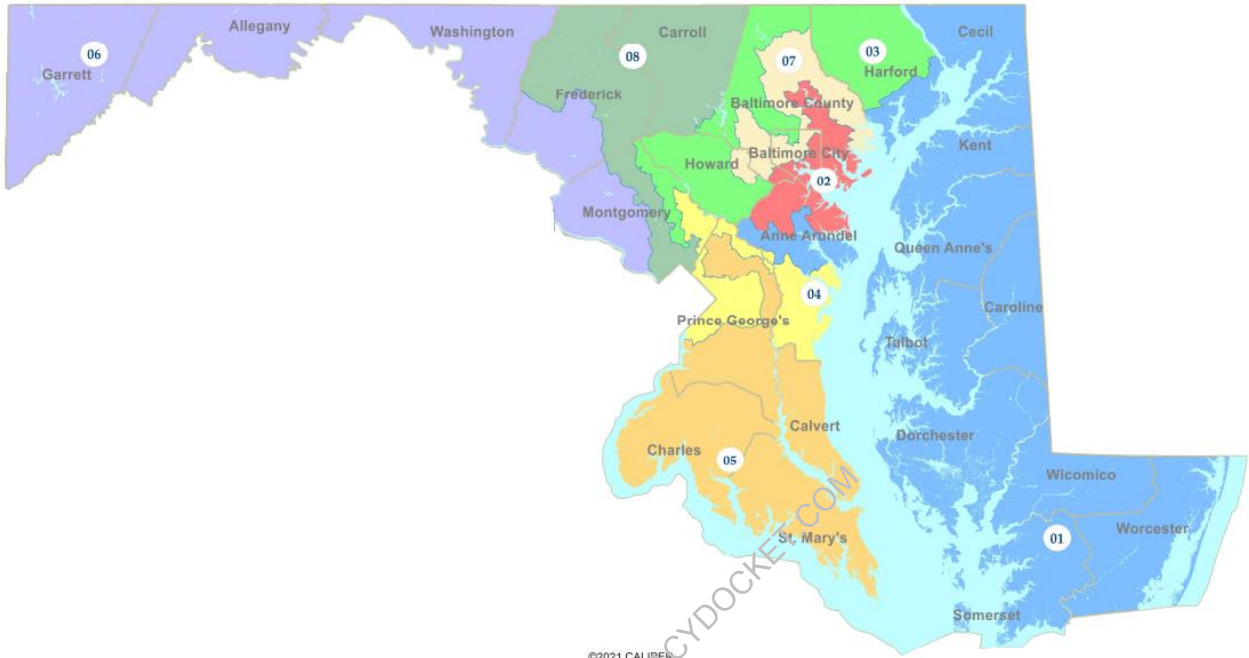
iv. Similarly, the 2021 Congressional District Map perpetuates the 2011 Congressional Map's incumbent-protection gerrymander of District 5, for the benefit of incumbent Representative Steny Hoyer in any primary election. This district continues to cover the rural area of Calvert County, St. Mary's County, and Charles County, and then reaches up in a long, hook-like appendage into more-urban Prince George's County. By continuing to draw District 5 in this exceedingly odd way, the 2021 Congressional Map combines two dissimilar areas while splitting African American communities of interest among multiple districts. This protects Representative Hoyer in a primary election in the same way as District 2's incumbent-protection gerrymander for Representative Ruppertsberger—it packs white Democratic voters that form Representative Ruppertsberger's base into the district, while splitting African American communities of interest across districts, which communities would likely prefer a different Democratic candidate in a primary election. Accordingly, these changes insulate Representative Hoyer from other Democratic challengers that may appeal to the African American voter base.



v. Finally, consistent with the above, the 2021 Congressional Map draws Districts 3, 4, 7, and 8 in the service of the partisan and incumbent-protecting gerrymanders in Districts 1, 3, 5, and 6. Districts 3 and 7 are now two awkward, nested “C” shapes to protect Steny Hoyer in District 5 and Dutch Ruppersberger in District 2, while still maintaining enough Democratic voters to keep the districts safe. District 4 is almost bisected by District 6’s hook that reaches into Prince George’s County. And voters in District 8 remain scrambled with voters from District 6 in defense of the 2011 gerrymander to flip District 6.

Final Recommended Congressional Map

MD General Assembly Legislative Redistricting Advisory Commission



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Conclusion

This Court should declare that the 2021 Congressional Map is unconstitutional and invalid. This Court should enjoin Defendants from conducting any elections under the 2021 Congressional Map and postpone all upcoming election deadlines until a constitutional map is in place.

Dated: March 10, 2022

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document complies with Md. Rule 20-201.1, that the document does not contain any restricted information or, if it does contain restricted information, a redacted submission has been filed contemporaneously pursuant to Md. Rule 20-201.1(c).

Dated: March 10, 2022

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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that on this 10th date of March, 2022, I caused the foregoing Petition to be electronically filed with this Court via the Maryland Electronic Courts (“MDEC”) system:

Dated: March 10, 2022

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CERTIFICATE OF SERVICE

Pursuant to MD R EFILING 20-201(g)(1), (3), I hereby certify that on this 10th day of March, 2022, I caused the foregoing to be electronically filed with the Court via the Maryland Electronic Courts (“MDEC”) e-filing system, and service is made electronically by the MDEC system on all persons entitled to service.

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