

**IN THE CIRCUIT COURT  
FOR ANNE ARUNDEL COUNTY**

KATHRYN SZELIGA, et al.,

\*

*Plaintiff,*

\*

No. C-02-CV-21-001816

v.

\*

LINDA H. LAMONE, et al.,

\*

*Defendants.*

\*

\* \* \* \* \*

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES**

**ANSWER**

Defendants hereby answer the Complaint against them by Plaintiffs Kathryn Szeliga, et al., and state as follows:

**Introduction**<sup>1</sup>

1. Denied.
2. Denied.
3. Denied.

**I. The Parties**

**A. Plaintiffs**

4. The first sentence is admitted. Denied as to the remaining allegations.

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<sup>1</sup> The headings from the Complaint are reprinted herein for ease of reference. To the extent a response to these headings is required, the headings are denied.

5.

a. As to the second sentence, Defendants admit that the plaintiff is a registered Republican but are without sufficient information to admit or deny the remainder of the sentence. Admitted as to the remaining allegations.

b. As to the second sentence, Defendants admit that the plaintiff is a registered Republican but are without sufficient information to admit or deny the allegations in the remainder of the sentence. Admitted as to the remaining allegations.

c. The first sentence is admitted. That the plaintiff is a registered Republican is admitted. Otherwise, defendants are without sufficient information to admit or deny the allegations in the remainder of the paragraph.

d. The first sentence is admitted. That the plaintiff is a registered Republican is admitted. Otherwise, defendants are without sufficient information to admit or deny the allegations in the remainder of the paragraph.

e. The first sentence is admitted. That the plaintiff is a registered Republican is admitted. Otherwise, defendants are without sufficient information to admit or deny the allegations in the remainder of the paragraph.

f. The first sentence is admitted. That the plaintiff is a registered Republican is admitted. Otherwise, defendants are without sufficient information to admit or deny the allegations in the remainder of the paragraph.

g. The first sentence is admitted. That the plaintiff is a registered Republican is admitted. Otherwise, defendants are without sufficient information to admit or deny the allegations in the remainder of the paragraph.

h. The first sentence is admitted. That the plaintiff is a registered Republican is admitted. Otherwise, defendants are without sufficient information to admit or deny the allegations in the remainder of the paragraph.

i. The first sentence is admitted. That the plaintiff is a registered Republican is admitted. Otherwise, defendants are without sufficient information to admit or deny the allegations in the remainder of the paragraph.

## **B. Defendants**

6. Admitted.

7. Admitted.

8. The first sentence is denied. The second sentence is admitted.

## **III. Jurisdiction and Venue.**

9. States a legal conclusion to which no responsive pleading is required. Otherwise admitted.

10. States a legal conclusion to which no responsive pleading is required. Otherwise admitted.

## **IV. The Facts**

### **A. Partisan Gerrymandering**

11. Admitted.

12. The first sentence is denied as to Maryland. Defendants are otherwise without sufficient information to admit or deny the allegations in the first sentence. Denied as to the remaining allegations of the paragraph.

13. Defendants are without sufficient information to admit or deny the allegations in the first sentence. The remaining allegations are admitted.

14. The first two sentences are admitted. The remaining allegations quote from Justice Kagan's dissent in *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), the contents of which speak for themselves.

**B. The Harms of Partisan Gerrymandering**

15. Denied.

16. States a legal conclusion to which no responsive pleading is required. Otherwise denied.

17. States a legal conclusion to which no responsive pleading is required. Otherwise denied.

18. Denied.

**C. The Congressional Redistricting Process in Maryland**

19. The allegations quote from, or purport to characterize, the United States Constitution, the contents of which speak for themselves.

20. Admitted.

21. Denied as to the first sentence. Admitted as to the remaining allegations.

22. The allegations quote from the Maryland Constitution, the contents of which speak for themselves.

**D. The 2011 Maryland Congressional Redistricting Plan**

23. The first sentence is admitted. Admitted that Governor O'Malley was involved in the redistricting process in 2011. The remaining allegations are denied.

24. The allegations quote from, or purport to characterize, prior testimony by former Governor Martin O'Malley, the contents of of which speak for themselves.

25. The allegations quote from, or purport to characterize, the transcript of a deposition by former Governor Martin O'Malley and the decision by the federal court in *Benisek v. Lamone*, 348 F. Fupp. 3d 493 (D. Md. 2018), *rev'd on other grounds by Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), the contents of of which speak for themselves.

26. The first sentence is admitted. Admitted that, as part of a collaborative approach to developing a congressional map in 2011, Governor O'Malley asked Rep. Steny Hoyer to propose a consensus congressional map among Maryland's congressional delegation. The remaining allegations are denied.

27. Admitted that Democratic members of Maryland's congressional delegation, including Rep. Hoyer, were involved in developing a consensus map to provide Governor O'Malley in order to assist with the process of developing a new congressional map for Maryland. The remaining allegations quote from, or purport to characterize, the decision by the federal court in *Benisek v. Lamone*, 348 F. Fupp. 3d 493 (D. Md. 2018), *rev'd on other grounds by Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), the contents of of which speak for themselves.

28. Defendants are without sufficient information to admit or deny the allegations of this paragraph.

29. The allegations quote from, or purport to characterize, the decision by the federal court in *Benisek v. Lamone*, 348 F. Fupp. 3d 493 (D. Md. 2018), *rev'd on other*

*grounds by Rucho v. Common Cause*, 139 S. Ct. 2484 (2019), the contents of of which speak for themselves.

30. The first sentence is admitted. That the GRAC plan altered the boundaries of District 6 by removing territory in, among other counties, Frederick County, and adding territory in Montgomery County, is admitted. The remaining allegations are denied.

31. Admitted.

32. The first sentence is admitted. The remaining allegations quote from “talking points” that were marked at a deposition of then-Senate President, Thomas V. “Mike” Miller, Jr., the contents of which speak for themselves.

33. Admitted.

34. Admitted.

35. Admitted that the congressional districts created through the 2011 Plan were used in the 2012 election. The second sentence is admitted. The remaining allegations are denied.

36. The first sentence is denied. The second sentence contains allegations that quote from Justice Kagan’s dissent in *Benisek*, 348 F. Supp. 3d at 493, the contents of of which speak for themselves.

#### **E. The 2021 Maryland Congressional Redistricting Plan**

37. Admitted.

38. Admitted.

39. Admitted that the LRAC held public hearings across Maryland in part for the purpose of seek public input into the drawing of new congressional districts. Admitted that

the LRAC received testimony and comments from citizens at these public hearings, and in other communications from the public. Admitted that some members of the public who provided testimony indicated that they wanted congressional maps that were not “gerrymandered.”

40. Admitted that, at the conclusion of the public hearings, DLS was directed to produce maps for the LRAC’s consideration. Admitted that one of the stated objectives of the LRAC was to preserve continuity of representation to the extent practicable. The remaining allegations are denied.

41. Admitting or denying the allegation would reveal privileged information, and on that basis the allegation is denied.

42. Admitting or denying the allegation would reveal privileged information, and on that basis the allegation is denied.

43. The first and third sentences are admitted. The second sentence contains allegations that quote from a public letter from LRAC Chair Karl Aro, the contents of which speak for themselves.

44. The first two sentences are admitted. Admitted that Senator Simonaire uttered the statement alleged in the third sentence during the LRAC hearing on November 23, 2021. The remaining allegations are denied.

45. Admitted.

46.

a. Admitted that the current incumbent in CD1 is a Republican. Admitted that under the 2021 Plan, CD1 includes the counties on the Eastern Share and

portions of Harford County and, unlike the 2021 Plan, Anne Arundel County. The allegations describe the district's "estimated vote-share advantage" published by the Princeton Gerrymandering Project, the contents of which speak for themselves. The remaining allegations are denied.

b. Admitted that CD2 includes portions of Baltimore County, Baltimore City, and Anne Arundel County, and does not include an entire county within its geographic footprint. The allegations describe the district's "estimated vote-share advantage" published by the Princeton Gerrymandering Project, the contents of which speak for themselves. The remaining allegations are denied.

c. Admitted that CD3 includes portions of Harford County, Baltimore County, Baltimore City, Carroll County, Howard County, and Montgomery County. The allegations describe the district's "estimated vote-share advantage" published by the Princeton Gerrymandering Project, the contents of which speak for themselves. The remaining allegations are denied.

d. Admitted that CD4 includes portions of Anne Arundel County, Prince George's County, and Montgomery County. Admitted that Anne Arundel County is part of three congressional districts. The allegations describe the district's "estimated vote-share advantage" published by the Princeton Gerrymandering Project, the contents of which speak for themselves. The remaining allegations are denied.

e. Admitted that CD5 includes Calvert County, St. Mary's County, and Charles County, and portions of Prince George's County. The allegations describe the



district's "estimated vote-share advantage" published by the Princeton Gerrymandering Project, the contents of which speak for themselves. The remaining allegations are denied.

f. Admitted that CD6 includes Garrett County, Allegany County, Washington County, portions of Frederick County, and portions of Montgomery County. The allegations describe the district's "estimated vote-share advantage" published by the Princeton Gerrymandering Project, the contents of which speak for themselves. The remaining allegations are denied.

g. Admitted that CD7 includes portions of Baltimore County, Baltimore City, and Howard County. Admitted that Baltimore County, Baltimore City, and Howard County are each part of three congressional districts. The allegations describe the district's "estimated vote-share advantage" published by the Princeton Gerrymandering Project, the contents of which speak for themselves. The remaining allegations are denied.

h. Admitted that CD8 includes portions of Carroll County, Frederick County, and Montgomery County. Admitted that Montgomery County is part of four separate congressional districts. The allegations describe the district's "estimated vote-share advantage" published by the Princeton Gerrymandering Project, the contents of which speak for themselves. The remaining allegations are denied.

47. Denied.

a. Admitted that District 6 includes Garrett, Allegany, Washington and portions of Frederick and Montgomery Counties. The paragraph contains allegations that quote from Judge Titus's concurrence in *Fletcher v. Lamone*, 831 F. Supp. 2d 887 (D. Md.

2011), the contents of of which speak for themselves. The remaining allegations are denied.

b. Admitted that CD1 includes Maryland's Eastern Shore, Cecil County, and portions of Anne Arundel County, and that it no longer includes portions of Harford County, Baltimore County, and Carroll County. The remaining allegations are denied.

48. Denied.

**F. The 2021 Maryland Congressional Redistricting Plan**

49. Admitted.

50. The first sentence is admitted. The remaining allegations quote from Governor Hogan's letter accompanying his veto of the 2021 Plan, the contents of of which speak for themselves.

51. Admitted.

**G. The 2021 Plan Was Designed to Continue the Partisan Gerrymandering of the 2011 Plan and Flip the Final Majority-Republican District to Democratic Control.**

52. Denied.

53. The first and third sentences are denied. The remaining allegations quote from LRAC Chair Aro's statement during a public hearing of the LRAC, the contents of of which speak for themselves.

54. Denied.

a. The allegations quote from a statement made by Rep. Jamie Raskin to *Slate*, the contents of of which speak for themselves.

b. The allegations quote from the joint statement of Senator Ferguson and Delegate Jones after passage of the 2021 Plan, the contents of which speak for themselves.

55. The first sentence is denied. The second sentence is admitted.

56. Denied.

57. Admitted that CD1 contains portions of Anne Arundel County, and no longer contains portions of Carroll County, northern Baltimore County, and Harford County. The remaining allegations are denied.

58. Admitted that CD1 contains the Eastern Shore and portions of Anne Arundel County, which are located across Chesapeake Bay from one another. The remaining allegations are denied.

## **V. Claims**

### **Count I – Violation of Maryland’s Free Elections Clause (Maryland Declaration of Rights, Article 7)**

59. The foregoing answers to paragraphs 1 through 58 are reasserted and incorporated by reference as if set forth fully herein.

60. The allegation quotes from Maryland’s Declaration of Rights, the contents of which speak for themselves.

61. The allegation quotes from *Md. Green Party v. Md. Bd. of Elections*, 377 Md. 127, 150 (2003), the contents of which speak for themselves.

62. The allegation states a legal conclusion to which no responsive pleading is required. Otherwise denied

63. The allegation states a legal conclusion to which no responsive pleading is required. Otherwise denied.

a. Denied.

b. Denied.

c. Denied.

d. Denied.

e. Denied.

64. Denied.

**Count II – Violation of Purity of Elections  
(Maryland Constitution, Article I, § 7)**

65. The foregoing answers to paragraphs 1 through 64 are reasserted and incorporated by reference as if set forth fully herein.

66. The allegation quotes from Maryland's Constitution, the contents of which speak for themselves.

67. Denied.

68. Denied.

69. The first sentence is denied. The second sentence states a legal conclusion to which no responsive pleading is required. Otherwise denied.

**Count III – Violation of Equal Protection  
(Maryland Declaration of Rights, Article 24)**

70. The foregoing answers to paragraphs 1 through 69 are reasserted and incorporated by reference as if set forth fully herein.

71. The allegation quotes from Maryland's Constitution, the contents of which speak for themselves.

72. The allegation states legal conclusions to which no responsive pleading is required. Otherwise denied.

73. Admitted that CD6 has been won by a Democratic candidate since 2012. Admitted that between 1994 and 2010, CD6 had been won by a Republican, and between 1971 and 1992 by a Democrat.

74. Denied.

75. The allegation states a legal conclusion to which no responsive pleading is required. Otherwise denied.

76. The allegation states a legal conclusion wo which no responsvie pleading is required. Otherwise denied.

**Count IV – Violation of Freedom of Speech  
(Maryland Declaration of Rights, Article 40)**

77. The foregoing answers to paragraphs 1 through 58 are reasserted and incorporated by reference as if set furth fully herein.

78. The allegation quotes from Maryland's Declaration of Rights, the contents of which speak for themselves.

79. The allegation states legal conclusions to which no responsive pleading is required. Otherwise denied.

80. Denied.

81. The allegation states legal conclusions to which no responsive pleading is required. Otherwise denied.

82. Denied.

## **VI. Request for Relief**

Defendants deny that plaintiffs are entitled to any of the requested relief set forth in subparagraphs (a) through (d) of their Complaint.

### **AFFIRMATIVE DEFENSES**

1. Maryland law contains no provision pertaining to congressional redistricting that could serve as a basis for relief in this case.

2. The allegations in the complaint fail to state a claim upon which relief can be granted.

3. To the extent the complaint constitutes a challenge to the validity of Maryland's 2011 congressional districting plan, plaintiffs' claims are foreclosed by the result of the 2012 referendum in which the People of Maryland overwhelmingly voted to approve the 2011 plan.

4. To the extent the complaint constitutes a challenge to the validity of Maryland's 2011 congressional districting plan, plaintiffs' claims were rendered moot by

the repeal of the 2011 plan and enactment of Maryland's 2021 congressional districting plan.

5. To the extent the complaint constitutes a challenge to the validity of Maryland's 2011 congressional districting plan, plaintiffs' claims are barred by laches.

6. Plaintiffs have not been injured by any of the alleged misconduct.

Respectfully submitted,

BRIAN E. FROSH  
Attorney General of Maryland

/s/ Andrea W. Trento

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ANDREA W. TRENTO  
Assistant Attorney General  
Attorney No. 0806170247  
STEVEN M. SULLIVAN  
Assistant Attorney General  
Attorney No. 9706260005  
Office of the Attorney General  
200 Saint Paul Place  
20th Floor  
Baltimore, Maryland 21202  
atrento@oag.state.md.us  
(410) 576-6472  
(410) 576-6955 (facsimile)

March 10, 2022

Attorneys for Defendants

**CERTIFICATE OF SERVICE**

I certify that, on this 10th day of March, 2022, the foregoing Answer and Affirmative Defenses was filed and served electronically by the MDEC system on all persons entitled to service:

/s/ Andrea W. Trento

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