

**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,

Case No. C-02-CV-21-001773

Plaintiffs,

v.

LINDA H. LAMONE, in her official
capacity as State Administrator of the
Maryland State Board of Elections,
WILLIAM G. VOELP, Chair of the
Maryland State Board of Elections,
and the STATE OF MARYLAND,

Defendants.

[PROPOSED] INTERVENOR-DEFENDANT'S MOTION TO DISMISS

INTRODUCTION

On December 9, 2021, the Maryland General Assembly enacted House Bill 1 (“HB1”), which establishes Maryland’s congressional districts for the next 10 years, including for purposes of the imminent February 22 primary candidate filing deadline. HB1, which was proposed to the General Assembly by the Legislative Redistricting Advisory Committee, is the result of months of deliberations and public testimony. Plaintiffs, Republican voters from across Maryland’s eight congressional districts, ask this Court to take the extraordinary step of striking

down these congressional maps based on two Maryland constitutional provisions that, by their terms, expressly apply only to *state legislative* elections. Plaintiffs have therefore failed to state a cause of action for which relief may be granted, and the Court should dismiss Plaintiffs' suit.

LEGAL STANDARD

Maryland Rule 2-322(b) provides for the dismissal of a complaint for failure to state a claim upon which relief can be granted. The Court must dismiss the complaint if “the allegations and permissible inferences, if true, would not afford relief to the plaintiff, i.e., the allegations do not state a cause of action for which relief may be granted.” *RRC N., LLC v. BAA M., Inc.*, 413 Md. 638, 644 (2010).

ARGUMENT

I. Article III, Section 4 of the Maryland Constitution applies only to state legislative, not congressional, districts.

Plaintiffs' first claim for relief as to the congressional map is based on a provision of the Maryland Constitution that applies exclusively to state legislative districts. The provision on which Plaintiffs rely appears in Article III of Maryland's Constitution, entitled “Legislative Department.” Section 4 of Article III provides: “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. Plaintiffs contend, without any support, that these requirements also apply to

congressional maps in Maryland. But the plain text, context, and cases interpreting this provision all make clear that this section only applies to *state legislative districts*, not federal congressional districts.

Contrary to Plaintiffs' assertion that the Maryland Court of Appeals has never weighed in on the issue, *see* Compl. ¶ 94, the Court of Appeals has in fact repeatedly made clear that this provision is a requirement "for State legislative districts." *Ajamian v. Montgomery Cnty.*, 99 Md. App. 665, 690 (1994); *see also In re Legis. Districting of State*, 299 Md. 658, 676 (1984) (applying § 4 in "a state legislative redistricting context"); *Matter of Legis. Districting of the State*, 370 Md. 312, 320 (2002) (same).

Moreover, federal courts applying Maryland law have held that § 4 only applies to state legislative districts and have rejected claims that it governs congressional districts. *Duckworth v. State Bd. of Elections*, 213 F. Supp. 2d 543, 552 n.1 (D. Md. 2002), *aff'd sub nom. Duckworth v. State Admin. Bd. of Election L.*, 332 F.3d 769 (4th Cir. 2003) ("[W]hile [Art. III, § 4]'s requirements apply to reapportionment of districts for the Maryland General Assembly, Maryland law does not require that those criteria be used in Congressional redistricting."); *Olson v. O'Malley*, No. CIV. WDQ-12-0240, 2012 WL 764421, at *3 (D. Md. Mar. 6, 2012) ("The plaintiffs have cited—and the Court has found—no authority for

applying § 4 to congressional redistricting.”)¹ In *Olson*, the Court considered the “historical, contextual, and judicial authorities interpreting ‘legislative districts’” in § 4 to mean “state legislative districts.” *Id.* (“Section four’s context supports the understanding that it applies only to state legislative districts. Section four is most often read together with §§ 2, 3, and 5 of Article III. This strongly suggests that § 4—like §§ 2, 3, and 5—does not govern congressional districting.”). That court held that plaintiffs failed to show that Article III, § 4 entitled them to relief with respect to congressional districts and dismissed for failure to state a claim. This Court should do the same.

II. Article 7 of the Maryland Declaration of Rights only applies to state legislative, not congressional, districts.

Plaintiffs’ claim under Article 7 of the Maryland Declaration of Rights is similarly flawed. Plaintiffs selectively quote Article 7 to imply that it applies to congressional elections. Not so. Plaintiffs’ claim is directly undercut by portions of the provision’s plain text that Plaintiffs artfully avoid quoting, which makes clear that Maryland’s “free and frequent” elections clause governs state legislative elections, not congressional elections. Article 7 states in full:

¹ See also *Benisek v. Lamone*, 348 F. Supp. 3d 493, 510–11 (D. Md. 2018), *vacated and remanded sub nom. Rucho v. Common Cause*, 139 S. Ct. 2484, 204 L. Ed. 2d 931 (2019) (noting that Maryland’s “process [for enacting congressional maps] did not incorporate the restrictions contained in the Maryland Constitution, Article III, § 4, that provide for contiguity, compactness, regard for natural boundaries, and regard for boundaries of political subdivisions”).

That the right of the People to participate *in the Legislature* is the best security of liberty and the foundation of all free Government; *for this purpose*, elections ought to be free and frequent and every citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage.

Md. Dec. of Rts. art. 7 (emphasis added).

The term “Legislature” here refers to the General Assembly, not to Congress. *See* Md. Const. art III, § 1 (“The Legislature shall consist of two distinct branches; a Senate, and a House of Delegates, and shall be styled the General Assembly of Maryland.”). Any other interpretation is plainly inconsistent with the way the term “Legislature” is used throughout the Maryland Constitution, *see id.*, and Declaration of Rights. Most obviously, Article 11 of the Declaration of Rights provides “[t]hat Annapolis be the place of meeting of the Legislature.” Md. Dec. of Rts. art. 11; *id.* art. 10 (“That freedom of speech and debate, or proceedings in the Legislature, ought not to be impeached in any Court of Judicature.”); *id.* art. 12 (“That for redress of grievances, and for amending, strengthening and preserving the Laws, the Legislature ought to be frequently convened.”); *id.* art. 37 (“That no religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God; nor shall the Legislature prescribe any other oath of office than the oath prescribed by this Constitution.”); *id.* art. 43 (“That the Legislature ought to encourage the diffusion of knowledge and virtue, the extension of a judicious system of general education, the promotion of literature, the arts, sciences, agriculture, commerce and

manufactures, and the general melioration of the condition of the People. The Legislature may provide that land actively devoted to farm or agricultural use shall be assessed on the basis of such use and shall not be assessed as if sub-divided”). Plaintiffs do not point to a single piece of legal authority that holds otherwise.

Maryland’s “free and frequent” elections language is therefore distinguishable from other state constitutions. In addition to being “for the purpose” of legislative elections, it also includes a unique mandate for “frequent” elections.² Read in context, Maryland’s “free and frequent” elections clause protects the right of Maryland citizens to elect state legislators on a regular basis.

Article 7 of the Maryland Declaration of Rights, in referring to the Legislature, thus provides for “free and frequent” state legislative elections. This clause does not apply to congressional elections. In contrast, the timing for congressional elections—and the requirement that they be held regularly—is established and protected by federal law. *See, e.g.*, 2 U.S.C. § 7.

² *Cf.* N.C. Const. art. I, § 10 (“All elections shall be free.”); Pa. Const. art. I, § 5 (“Elections shall be free and equal”); Okla. Const. art. III, § 5 (“All elections shall be free and equal.”); Ark. Const. art. 3, § 2 (“Elections shall be free and equal.”); N.H. Const. pt. 1, art. 11 (“All elections are to be free, and every inhabitant of the state of 18 years of age and upwards shall have an equal right to vote in any election.”)).

CONCLUSION

For the foregoing reasons, Proposed Intervenor Defendant respectfully requests that this Court dismiss this case for failure to state a claim under Maryland Rule 2-322.

Date: January 20, 2022

Respectfully submitted,

/s/ Marc E. Elias

Marc E. Elias*
Kathryn E. Yukevich*
Melinda K. Johnson (CPF No.: 1812110194)
Aaron M. Mukerjee*
Elias Law Group LLP
10 G St NE, Ste 600
Washington, DC 20002
Tel.: (202) 968-4490
MElias@elias.law
KYukevich@elias.law
MJohnson@elias.law
AMukerjee@elias.law

/s/ Jessica P. Weber

Jessica P. Weber (CPF No.: 1106150284)
Brown, Goldstein & Levy, LLP
120 E. Baltimore Street, Suite 2500
Baltimore, Maryland 21202
T: (410) 962-1030
F: (410) 385-0869
jweber@browngold.com

Attorneys for Proposed Intervenor DCCC

**Pro hac vice forthcoming*