

IN THE COURT OF APPEALS OF
OF MARYLAND

(Sept. Term 2021)

IN THE MATTER OF

2022 LEGISLATIVE

DISTRICTING OF THE STATE

PETITIONERS:

MISC. NO. 26
September Term, 2021

BRENDA THIAM

258 Brynwood St.

Hagerstown, MD 21740

WAYNE HARTMAN

1103 Edgewater Ave., Unit 3

Ocean City, MD 21842

PATRICIA SHOEMAKER

4046 Gill Ave.

Hampstead, MD 21074

PETITION REGARDING 2022 LEGISLATIVE REDISTRICTING

Petitioners hereby submit this Petition, pursuant to Article III, Section 5 of the Maryland Constitution, and this Court's Order of January 28, 2022 challenging the legality of the General Assembly's 2022 legislative districting plan (the "Plan").

I. Introduction

1. Petitioners challenge the legality of the Plan under Maryland's Constitution and Declaration of Rights, and under the Equal Protection/Due Process clauses of the United States Constitution. The Plan violates: (a) Article III, § 4 of the Maryland Constitution; (b) Articles 7, 24, and 40 of the Maryland Declaration of Rights; (c) Article I, § 7 of the Maryland Constitution; and (d) the Equal Protection and Due Process clauses of the United States Constitution.

2. The Court should: (a) declare that the Plan violates the Maryland Constitution, the Maryland Declaration of Rights, and the "one person, one vote" principles of the United States Constitution; (b) direct the General Assembly to enact a new legislative districting plan that complies with the Maryland Constitution, Declaration of Rights, controlling federal law and this Court's directives, and specifically incorporating uniform single member House of Delegates districts; (c) if the General Assembly fails to enact a constitutional legislative districting plan in a timely fashion, the Court shall develop a constitutional final map, utilizing a special magistrate, Court-appointed expert, or any other manner or method deemed appropriate by the Court.

II. Petitioners

3. Petitioners are:

a. Brenda Thiam is a registered voter in Maryland. Mrs. Thiam currently serves as a member of Maryland's House of Delegates. She is a Republican elected official who represents Maryland citizens in Washington County. Currently, and under the Plan which is the subject of the instant case, she resides in Hagerstown, Maryland in District 2B, a single member district juxtaposed with District 2A, a two member district.

b. Wayne Hartman is a registered voter in Maryland. Mr. Hartman currently serves as a member of Maryland's House of Delegates. He is a Republican elected official who

represents Maryland citizens in Worcester and Wicomico Counties. Currently, and under the Plan which is the subject of the instant case, he resides in Berlin, Maryland in District 38C, a single member district configured as part of three single member districts comprising District 38.

c. Patricia Shoemaker is a registered voter in Maryland. She is a registered Republican who resides in Hampstead, Maryland in what is currently a three Delegate legislative district (District 5), but will be within a single member Delegate district (District 42C) in Carroll County, under the Plan, adjacent to a “new” three member district configured as District 5.

III. Jurisdiction

4. This Court has jurisdiction over this Petition pursuant to Article III, § 5 of the Maryland Constitution.

IV. Petitioner’s Objections to the Plan

5. Petitioners hereby expressly incorporate as if set forth fully herein the averments and objections to the Plan articulated in the petition filed contemporaneously herewith by Petitioners Mark Fisher, Nicholas Kipke, and Kathy Szeliga ¹(hereinafter the “Fisher Petition”), specifically including the claims therein as to violations of Article III, Section 4 and Article I, Section 7 of Maryland’s Constitution, and Articles 7, 24 and 40 of Maryland’s Declaration of Rights.

6. Further, Petitioners herein allege that the Plan violates Articles 7, 24 and 40 of the Declaration of Rights, Article I, Section 7 of Maryland’s Constitution, and the Equal Protection

¹ Court of Appeals of Maryland, Miscellaneous No. 25, September Term 2021.

and Due Process clauses of the U.S. Constitution specifically because it contains non-uniform, multimember districts for the House of Delegates, rather than a uniform scheme of single member districts for that body of the General Assembly.

B. Legal and Factual Bases for Petitioners' Objections

7. Petitioners hereby expressly incorporate as if set forth fully herein the legal and factual bases for objections articulated in the Fisher Petition.

8. In addition, Petitioners herein specifically allege that the Plan's adoption of mixed multimember and single member districts, rather than uniform single member districts, violates Article 24 and Article 40 of the Maryland Declaration of Rights.

9. Article 24 guarantees due process and equal protection of law to Maryland citizens. The Plan violates this principle by, without limitation, infringing on the rights of Republican voters by systematically configuring their House of Delegate districts to minimize their representation in the General Assembly.

10. Article 40 guarantees freedom of political speech and association. The Plan violates this principle, as specifically alleged in Paragraphs 83-87 of the Fisher Petition.

11. The Supreme Court of the United States has long pronounced that our Constitution enshrines the fundamental principle of democracy that every individual's vote should count equally. In *Baker v. Carr*, 369 U.S. 186 (1962), *Reynolds v. Sims*, 377 U.S. 533 (1964) and their progeny, the concept of "one person, one vote", has been found to be inherent in the guarantees of equal protection, due process, and freedom of political speech and association that lie at the heart of the protected freedoms of our citizenry.

12. Allowing multimember districts to exist and be apportioned for the Maryland House of Delegates violates the “one person, one vote” principle, both as a logical *prima facie* violation and as a violation as applied in the Plan.

13. The legislative redistricting maps prepared by the Legislative Redistricting Advisory Commission (“LRAC”) and approved by the General Assembly contain a veritable hodgepodge of three-member districts, two member/one member districts, and single-member districts aggregated into a state Senate district. Article III, Section 3 of Maryland’s Constitution, in direct contravention of the “one person, one vote” principle, does expressly allow for House of Delegates districts to be so divided. Allowing the varied use of multimember and single-member districts is, however, not only a constitutional violation of basic principles articulated in Maryland’s Constitution and the Declaration of Rights, but is a unique anomaly in the composition of state legislatures throughout America.

14. Almost every other state in the United States has rejected the mixed use of multimember and single member districts, recognizing that the only way to comply with the “one person, one vote” principle, and to provide both equal protection, due process, and free and fair elections to their citizenry, is to have uniform legislative districts with minimal population deviations.

15. The Plan passed by the General Assembly directly disenfranchises many citizens from across the state of Maryland by “mixing and matching” single member and multimember districts. In many communities, both urban, suburban and rural, individual voters assigned to a single member House of Delegates district have but one vote for one representative in that body of the General Assembly. In other jurisdictions which may be but mere minutes away and have no remarkable dissimilarities to justify such a discrepancy, an individual voter may in fact be

able to cast votes for two or three members for the House of Delegates, and rely upon those individual's joint representation, political association, and constituent services as a member of the General Assembly.

16. It would strain any logical interpretation to suggest any such scheme advances the fundamental requirement of "one person, one vote". Each of the named Petitioners herein, being registered voters of the State of Maryland, live in (and in some cases represent as members of the House) districts designated by the Plan as a single member district. They (and their constituents, to the extent that any named Petitioner is a current member of the General Assembly) are impermissibly disadvantaged by the fact that citizens of other multimember districts have a disproportionate voting and representational advantage.

17. The failure to use uniform, single-member districts for the House of Delegates across the state of Maryland not only violates the "one person, one vote" concept and deprives citizens of their rights to equal protection and due process under the Maryland and Federal constitutions, but further violates Maryland's unique free elections clause.

18. Maryland's Declaration of Rights, Article 7 states as follows: "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." As state appellate courts in other jurisdictions (including Pennsylvania and North Carolina) have found utilizing similar language in their state constitutions, guarantees of a "free" election imply that the legislative maps created are not the product of excessive partisan gerrymandering designed to effectively minimize the voices and political impact of either ethnic, racial, or political minorities.

19. Maryland's free election clause secures the "free and fair exercise of the electoral franchise", *State Board of Elections v. Snyder*, 435 Md. 30, 61 (2013) and has been interpreted to be "even more protective of rights of political participation than the provisions of the federal constitution", *Md. Green Party v. Md Board of Elections*, 377 Md. 127/150 (2003)

20. Petitioners contend that the Plan reflects an obvious intent to utilize mixed multimember and single-member districts to create *de facto* partisan political gerrymandering, in direct violation of their rights under Article 7.

21. In places like Montgomery County, Prince Georges County, and Baltimore City (jurisdictions where Democrats have significant voter registration advantages and from which a Republican has not been elected to the state legislature for decades), multimember districts are employed exclusively under the Plan so as to allow for consolidation of partisan political power and advantage to the majority party. There are no single-member districts created to represent particular communities of interest in any of those three large jurisdictions, because allowing for single-member districts of uniform but smaller size and reflecting particular communities where political associations may not be identical to the political associations of the larger county in aggregate, would enhance the chances that a member of a minority political party may in fact be able to be elected.

22. However, in other jurisdictions from across Maryland, the proposed Plan separates communities into two member/one member districts and single-member districts in a reverse effort to dissipate the political voices and rights of a minority political party. District 33 in Anne Arundel County is such an example. District 33 was formerly established as a three member district. District 31 and District 32 in Anne Arundel County, bordering District 33 and essentially of the same general suburban character, were and remain in the proposed Plan three

member districts. However, District 33 has now been carved into three single-member districts, at least two of which are clearly designed to produce a substantial likelihood that a Democrat will be elected more easily than could be projected if District 33 remains a three member district.

23. District 42, encompassing part of Baltimore County and crossing into Carroll County in the Plan, constitutes a similar example of partisan gerrymandering implemented through the unprincipled mixture of multimember and single-member districts. District 42 formerly existed as a two member/one member House district configuration. Under the proposed map, it has now been converted to all single-member districts despite the fact that its neighboring districts in Baltimore County (primarily District 8) and in Carroll County (primarily District 5) are kept under the proposed map as a three member district. In District 42, the creation of a single member district situated in the Timonium/Cockeysville area, was enacted largely to enhance the likelihood of electing a Democrat from that sub-district, who otherwise would not be likely to prevail if the entire district were configured as a three member district.

24. District 2B is another example of the blatant partisan gerrymandering and violation of equal protection and free election principles inherent in the Plan. District 2B is a single member district in Washington County configured with District 2A, a two member district in Washington and Frederick Counties. District 2B is expressly configured as such to attempt to elect a Democrat in 2B, while in other areas single member districts are denied to citizens because they may facilitate the election of Republicans.

25. Put simply, the majority party of the General Assembly chooses whether or not to implement single-member districts, two member/one member districts, or three member House of Delegate districts, merely to advance their own political prospects and to diminish the ability of citizens of opposing political viewpoints to engage in a truly “free” election.

26. The failure of the Plan to have uniformly sized single member House districts violates the aforementioned provisions of Maryland's Constitution and Declaration of Rights, as well as long established principles of "one person, one vote" protections fundamental to our democratic process and voting rights.

Request for Relief

WHEREFORE, Petitioners respectfully request that the Court enter Judgment in their favor, and:

(a) Determine and declare that the Plan is unconstitutional and invalid because it violates: (i) Article III, § 4 of the Maryland Constitution; (ii) Articles 7, 24, and 40 of Maryland's Declaration of Rights; (iii) Article I, § 7 of the Maryland Constitution; and the federal Constitutional guarantees of Equal Protection, Due Process and freedom of political speech/association;

(b) Direct the General Assembly to enact a new legislative districting plan that complies with the Maryland Constitution and Declaration of Rights; and specifically incorporates uniform single member House of Delegates districts;

(c) Should the General Assembly fail to enact a new legislative districting plan that complies with directives of this Court in a timely fashion, order a new legislative districting map to be created by a special magistrate, Court-ordered expert, or in any other method or manner deemed appropriate by this Court; and

(d) Award such other and further relief to as the Court deems just, appropriate, necessary, or proper.

SIGNATURES ON FOLLOWING PAGE:

Respectfully submitted,



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I certify that the foregoing Petition was filed using the Court's MDEC filing system and was served on the Attorney General of Maryland in accordance with Rules 2-124 and 20-205 by sending a copy of the complaint to civil_service@oag.state.md.us.



David Bowersox

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