

Bennet J. Moskowitz

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March 30, 2022

VIA NYSCEF

Honorable Patrick F. McAllister
Supreme Court, Steuben County
3 East Pulteney Square
Bath, New York 14810

Re: *Harkenrider, et al. v. Hochul, et al.*, Index No. E2022-0116CV (Sup. Ct. Steuben Cnty.)

Dear Justice McAllister:

As a follow-up to our March 28, 2022 letter, we write pursuant to 22 NYCRR 202.8-c to provide the Court notice that earlier today, March 30, 2022, the Maryland General Assembly enacted a law (Senate Bill 1012) establishing a new congressional districting plan in response to the March 25, 2022 order by Senior Judge Lynne A. Battaglia of the Maryland Circuit Court for Anne Arundel County in *Szeliga, et al. v. Lamone, et al.*, Nos. C-02-CV-21-001816, C-02-CV-21-001773 (Md. Cir. Ct. Anne Arundel Cnty. Mar. 30, 2022). Attached to this letter as **Exhibit A** is a copy of the defendants' response to the March 25, 2022 order in *Szeliga*.

Sincerely,



Bennet J. Moskowitz



Misha Tseytlin

cc: All Counsel of Record (via NYSCEF)

Exhibit A

KATHRYN SZELIGA, et al.,
Plaintiffs,

v.

LINDA H. LAMONE, et al.,
Defendants.

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IN THE
CIRCUIT COURT

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FOR

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ANNE ARUNDEL COUNTY

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No. C-02-CV-21-001816

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NEIL PARROTT, et al.,
Plaintiffs,

v.

LINDA LAMONE, et al.,
Defendants.

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IN THE

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CIRCUIT COURT

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FOR

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ANNE ARUNDEL COUNTY

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No. C-02-CV-21-001773

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**DEFENDANTS’ RESPONSE TO DECLARATORY JUDGMENT, PERMANENT
INJUNCTION AND ORDER OF REMAND DATED MARCH 25, 2022**

Pursuant to the Court’s Declaratory Judgment, Permanent Injunction and Order of Remand dated March 25, 2022 (the “Order”), in which the Court remanded the enacted 2021 Plan¹ and directed the General Assembly to “develop a new Congressional Plan that comports with Article III, § 4 of the Maryland Constitution and the Voting Rights Act by March 30, 2022,” Order at 3, Defendants respectfully submit for the Court’s review Senate

¹ The “2021 Plan” has the meaning set forth in the Court’s March 25, 2022 Order.

Bill 1012 of the current 2022 Session of the Maryland General Assembly establishing a new congressional districting plan in response to the Court’s Order (attached as Exhibit A hereto), as well as an accompanying map illustrating the boundaries of the new congressional districting plan (attached as Exhibit B hereto, and, together with SB 1012, the “2022 Plan”).²

The 2022 Plan comports with the Court’s Order that any new congressional districting plan adopted by the General Assembly conform to the requirements of Article III, § 4. Its proposed congressional districts are compact. Not only is this apparent from a visual comparison between the 2022 Plan and the 2021 Plan (attached hereto as Exhibit F), it is confirmed by the 2022 Plan’s compactness scores and how they compare with the scores for prior Maryland congressional plans. Exhibit C sets out the scores for each of the districts in the 2022 Plan under the Reock, Polsby-Popper, Inverse Schwartzberg, and Convex Hull metrics, as well as plan averages for each of those metrics.³ The 2022 Plan’s

² This submission shall not be construed to constitute a waiver or withdrawal of any arguments made or defenses asserted by Defendants in this matter, and Defendants expressly reserve the right to appeal this Court’s rulings. Section 4 of Senate Bill 1012 makes its effectiveness contingent upon the outcome of any appeal, by providing that the legislation “shall be void and of no further effect” if “the Circuit Court’s judgment that Chapter 32 (House Bill 1) of the Acts of the General Assembly of the 2021 Special Session is unconstitutional is not upheld on appeal, or if the appeal is not otherwise dismissed.” *See* Ex. A.

³ These scores were calculated by Kim Brace, of Election Data Services, Inc., and its employees working under his direction. If necessary, Mr. Brace is available to testify via Zoom at the hearing scheduled for April 1, 2022, as to his method for producing these calculations.

mean Reock score (.32) is roughly equal to that of the congressional map in effect between 1992 and 2000, and is higher than any subsequent map's score. *See* Pls.' Ex. 6A (attached hereto as Exhibit D-1). Meanwhile the 2022 Plan's mean Polsby-Popper (.26), Inverse Schwartzberg (.50), and Convex Hull (.70) scores *exceed* those for *any* Maryland congressional map since (and including) 1970, *see* Pls.' Exs. 6B-6D (attached hereto as Exhibits D-2 to D-4), and potentially going all the way back to 1792, *see* Pls.' Ex. 5 (attached hereto as Exhibit E). Moreover, these mean scores compare favorably to the distribution of mean scores of other plans across the country, as calculated by Plaintiffs' own expert, Sean Trende. *See* Pls.' Exs. 6A-6D (Exs. D-1 to D-4). As to the Polsby-Popper, Inverse Schwartzberg and Convex Hull metrics, the 2022 Plan's scores are equal to or better than those in the middle of Mr. Trende's distribution of average plan scores across the country.

The 2022 Plan also gives due regard to natural boundaries and political subdivisions. The plan's First Congressional District does not cross the Chesapeake Bay. Instead, it extends into and occupies all of Harford County from Cecil County, and makes up its remaining population deficit by extending farther west into a portion of Baltimore County. *See* Ex. B; *compare* Pls.' Ex. 1-A (map of the 2021 Plan) (attached hereto as Exhibit F). It also minimizes the number of county crossings.⁴ Under the 2021 Plan enacted last

⁴ *See In re Legislative Districting of State*, 370 Md. 312, 375 (2002) (explaining that the Court's 2002 remedial plan showed due regard for political subdivision boundaries by reducing the number of "shared senatorial districts" that had been in the enacted plan); *In*

December, nine counties had multiple congressional districts within their boundaries, including five counties with two districts (Carroll, Frederick, Harford, Howard, Prince George's), three counties with three districts (Baltimore City, Baltimore, and Anne Arundel), and one county with four districts (Montgomery). *See* Ex. F. Under the 2022 Plan, by contrast, only six counties have multiple congressional districts within their boundaries, including three counties with two districts (Anne Arundel, Baltimore City, and Carroll), and three counties with three districts (Baltimore, Montgomery, and Prince George's).⁵ *See* Ex. B. This is comparable to the only alternative plan referenced by any of the plaintiffs in this case, under which three counties would have had two districts within their boundaries (Anne Arundel, Calvert and Prince George's), and two counties would have had three districts within their boundaries (Baltimore County and Montgomery).⁶ All told, there are 9 county splits in the 2022 Plan, down from 17 in the 2021 Plan, 21 in both the 2012 and 2002 plans, and 13 in the 1992 plan, and comparable to the 10 and 8 splits found in the 1982 and 1972 plans, respectively. *See* Mem. Op. & Order at 60. The

re 2012 Legislative Districting, 436 Md. 121, 136 (2013) (describing the 2002 Court remedial plan's reduction of shared senatorial districts as a reduction of "the number of political subdivision crossings").

⁵ One of the three districts in Prince George's County is District 8, but only to the *de minimis* extent of 18 voters.

⁶ *See* Pls.' Ex. 27 (comparing the 2021 Plan to the Maryland Citizens Redistricting Commission Plan) (attached hereto as Exhibit G).

2022 Plan has a historically *low* number of splits as compared to prior enacted congressional plans.

Finally, and consistent with the Court's Order, the 2022 Plan preserves the majority-minority character of Maryland's Voting Rights Act districts, District 4 and District 7. As evidenced by the demographic data included on Exhibit B, African-Americans comprise approximately 55% and 53% of the residents of these districts, respectively.

CONCLUSION

For all of the foregoing reasons, Defendants respectfully request that the Court declare that the 2022 Plan complies with the Maryland Constitution and Declaration of Rights and grant such other and further relief as appropriate.

Respectfully submitted,

BRIAN E. FROSH
Attorney General of Maryland

/s/ Andrea W. Trento

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March 30, 2022

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CERTIFICATE OF SERVICE

I certify that, on this 30th day of March, 2022, the foregoing was filed and served electronically by the MDEC system on all persons entitled to service.

/s/ Andrea W. Trento

Andrea W. Trento