

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
NORTHERN DIVISION**

C. JAMES OLSON, *et al.*,

*Plaintiffs,*

v.

Civil Action No: \_\_\_\_\_

MARTIN O'MALLEY,

*Defendant.*

\* \* \* \* \*

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C. §§ 1441 and 1446, the defendant, Martin O'Malley, Governor of the State of Maryland (the "State"), by undersigned counsel, gives notice of the removal of this action from the Circuit Court for Anne Arundel County, Maryland, to the United States District Court for the District of Maryland, Northern Division.

The grounds for removal are as follows:

1. The plaintiffs have commenced an action against the State alleging that the State's 2011 redistricting of Maryland's eight congressional districts "violate[s] the Maryland Constitution and Election Laws and the United States Constitution." Exhibit 4 at 7, ¶A (Complaint for Declaratory Judgment and Other Relief With Respect to the Redistricting of the Maryland Congressional Districts).<sup>1</sup>

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<sup>1</sup> The exhibits cited in this Notice correspond to the exhibits that accompany the Memorandum of Law in Support of Motion to Dismiss or, in the Alternative, Cross-

2. The plaintiffs commenced this action against the State on November 22, 2011, by filing a complaint in the Circuit Court for Anne Arundel County, which was docketed as Case No. 02-C-11-165635. *See* Exhibit 4.

3. On the same date, plaintiffs filed a motion for summary judgment with accompanying memorandum and affidavits, arguing that the newly drawn congressional districts “violate (a) the mandates and requirements of Article IV, Section 4 of the U.S. Constitution . . . (b) the mandates and requirements of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the U.S. Constitution, which also guarantee a fair representative government to the citizens of every state. . . .” Exhibit 6 at 2 (Plaintiffs’ Motion for Summary Judgment).

4. Although plaintiffs filed their complaint in the Circuit Court for Anne Arundel County (and a nearly identical one in the Maryland Court of Appeals) on November 22, 2011, *see* Exhibits 4, 14, they delayed service of the complaints and instead sought to intervene in *Fletcher v. Lamone*, a similar challenge to Maryland’s redistricting brought in this Court’s Southern Division. Case No. 11-3220 (D. Md.). In their motion to intervene, plaintiffs represented to this Court that “[t]he subject matter of [their] claims is the same as that of [*Fletcher*]” and that “[s]ome of the legal issues pertaining to [the Olson intervenors’] claims are the same as those of the original [*Fletcher*] Plaintiffs . . . i.e., voting rights under Article One, Section Two and under the Fourteenth Amendment of the United States Constitution.” Exhibit 18 at 2 (Motion to

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Motion for Summary Judgment, and Response to Amended Motion for Summary Judgment that defendant filed simultaneously with this Notice.

Intervene, *Fletcher v. Lamone*, Case No. 11-3220 (ECF Doc. 22)). Although plaintiffs here indicated that they were also raising issues that the *Fletcher* plaintiffs did not raise—including State-law claims arising under the Maryland Constitution, *id.*—they represented to the Court that it had federal question jurisdiction over their claims under 28 U.S.C. § 1331, as well as jurisdiction under 28 U.S.C. §§ 1343a(3) and (4), 2201, 2202, and 2284. *See* Exhibit 19 at ¶3 (Complaint, Attachment A to Motion to Intervene, *Fletcher v. Lamone*, Case No. 11-3220 (ECF Doc. 22-1)).<sup>2</sup>

5. On December 5, 2011, this Court denied plaintiffs’ motion to intervene, observing that their federal claims are the “same” as those raised by the *Fletcher* plaintiffs, Exhibit 2 at \*6 (Memorandum Opinion, *Fletcher v. Lamone*, No. 11-3220, 2011 U.S. Dist. LEXIS 139306 (ECF Doc. 36)), and “are already adequately represented by [the *Fletcher*] Plaintiffs. . . .” *Id.*

6. Although this Court denied plaintiffs intervention in *Fletcher*, it granted them leave to file an *amicus* brief, which they did on December 7, 2011. In their brief, plaintiffs argued that the 2011 Maryland redistricting plan violated four federal requirements (*e.g.*, Equal Protection; Article IV, Section 4; Article I, Section 2; and Due Process), and two Maryland State-law requirements (*e.g.*, Section 1-201 of the Election Article and Article III, Section 4 of the Maryland Constitution). *See* Exhibit 22 at 3

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<sup>2</sup> As proposed intervenors, plaintiffs represented to the *Fletcher* Court that they had “filed similar suits on November 22, 2011, in the Maryland Court of Appeals and in the Circuit Court for Anne Arundel County, Maryland,” and that, “[i]f this Court grants Plaintiffs’/Petitioners’ Motion to Intervene in this case, it is the intent of plaintiffs to not pursue the Maryland cases.” Exhibit 19 at 2 n.1. The Maryland Court of Appeals has since dismissed plaintiffs’ complaint. *See* Exhibit 17 (Order, *Olson v. O’Malley*, Misc. 13, Sept. Term 2011 (Jan. 10, 2012)).

(Brief of C. James Olson, C. Paul Smith, Ronald George, Carl F. Middledorf, Antonio Wade Campbell and Philip J. Smith as *Amici Curiae*, *Fletcher v. Lamone*, Case No. 11-3220 (ECF Doc. 42)). With respect to their State-law claims, plaintiffs argued that “[a] fair interpretation of [Article III,] Section 4 [of the Maryland Constitution] is that the principles required to make a proper state election district”—*i.e.*, compactness and “due regard” to the boundaries of political subdivisions—“should also apply to congressional election districts.” *Id.* at 26.

7. This Court upheld the 2011 Maryland congressional redistricting plan against the combined challenges on December 23, 2011. Exhibit 1 (*Fletcher v. Lamone*, Opinion of the Three-Judge Court, Case No. 11-3220, 2011 U.S. Dist. LEXIS 148004 (ECF Doc. 54)). In his concurring opinion, Judge Titus implicitly rejected the argument—made by the Olson *amici* in *Fletcher*, and made by the Olson plaintiffs here—that the redistricting criteria contained in Article III, Section 4, of the Maryland Constitution apply to congressional redistricting, noting instead that they “pertain[] to reapportionment of the state legislature” and “were not applied in this case.” *Id.* at 45, 2011 U.S. Dist. LEXIS 148004 \*50.

8. Five days after this Court rendered its decision in *Fletcher*, plaintiffs, on December 28, 2011, proceeded to serve the complaints they had earlier filed in the Circuit Court for Anne Arundel County and the Maryland Court of Appeals, along with an amended motion for summary judgment and accompanying memorandum, affidavits, and exhibits. *See* Exhibit 13 (Affidavit of Service).

9. In accordance with 28 U.S.C. § 1446(b), this notice of removal is being timely filed on January 24, 2012, within 30 days after defendants were first served with the summons and complaint in the State court action.

10. No further proceedings have occurred in the State court action that is the subject of this notice. In accordance with 28 U.S.C. § 1446(a) and Local Rule 103.5(a), Exhibits 4 through 13 to defendant's memorandum of law are true and legible copies of all process, pleadings, documents, and orders which have been served upon defendants in the case being removed.

11. The United States District Court has jurisdiction under 28 U.S.C. §§ 1331 and 1441 because this case involves claims or rights arising under the Constitution and laws of the United States.

12. The federal District Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367(a) over State law claims asserted in the complaint, which are part of the same case or controversy. *See* Exhibit 4 at 7 (seeking a declaratory judgment that the 2011 Maryland congressional redistricting "violate[s] the Maryland Constitution); *see also id.* at ¶¶ 13-16 (describing Maryland requirements).

13. Although this Court has primary jurisdiction over plaintiff's federal claims and supplemental jurisdiction over their State-law claims, Defendant, by separate motion filed simultaneously with this Notice of Removal, moves to dismiss this removed action because it is insubstantial, without merit, and fails to state a claim under federal rule 12(b)(6), or, in the alternative, that summary judgment should be granted to defendant.

14. Defendant will promptly file a copy of this notice of removal with the Clerk of the Circuit Court for Anne Arundel County as required by 28 U.S.C. § 1446(d).

Respectfully submitted,

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/s/

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Dated: January 24, 2012