
**In the
Court Of Appeals Of Maryland**

No.____
September Term, 2021

VANESSA ALBAN, BILL HOPWOOD, ROBERT C. LEIB, STEVE MATTINGLY,
RUTH MELSON, JOVANI PATTERSON, MAUREEN ROY, *and* LAURA WALSH,
Petitioners,

v.

LINDA H. LAMONE, *in her official capacity as the Maryland State
Administrator of Elections*; WILLIAM G. VOELP, *in his official capacity as
Chairman of the Maryland State Board of Elections*; *and*
THE MARYLAND STATE BOARD OF ELECTIONS,
Respondents.

On Petition For Original Jurisdiction

**PETITION TO TAKE ORIGINAL JURISDICTION OVER
REVIEW OF CONGRESSIONAL DISTRICTING OF THE STATE**

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STATEMENT OF THE ISSUE

Whether the Legislature's congressional map is an unconstitutional partisan and incumbent-protecting gerrymander that violates Articles 6, 7, 24, and 40 of the Maryland Constitution's Declaration Of Rights, as well as Article I, Section 7 of the Maryland Constitution.

INTRODUCTION

The Legislature has enacted an unconstitutional partisan and incumbent-protecting gerrymander of the State's congressional districts. This gerrymander is even more egregious than the Legislature's 2011 gerrymander, which a panel of three federal district court judges condemned. *Benisek v. Lamone*, 348 F. Supp. 3d 493, 520, 524 (D. Md. 2018) (Bredar, C.J., Niemeyer, Russell, JJ.), *vac'd on other grounds by Rucho v. Common Cause*, 139 S. Ct. 2484 (2019). That 2011 gerrymander seized Maryland's Sixth Congressional District—a longstanding Republican district—giving the Democrats a 7-to-1 seat advantage. Now, the Legislature has retained that gerrymander and gone one step further by targeting the First Congressional District for partisan gain. This brazen action threatens the freedom, fairness, and integrity of elections

in the State and so violates the Maryland Constitution. Md. Const. Decl. of Rts. art. 7; Md. Const. art. I, § 7; Md. Const. Decl. of Rts. arts. 6, 24, 40.

This Court should grant this Petition in order to conduct orderly review of all the recently adopted redistricting maps, given the upcoming 2022 election deadlines. In light of these fast-approaching deadlines, that may well be the only practical way for this Court to review the congressional map for this election cycle. Further, this Court may wish to consider consolidating this Petition with the two challenges to the congressional map now pending in the Circuit Court, allowing this Court to decide all three congressional cases together, and on the same schedule that this Court plans to decide the pending state-legislative district cases. This would ensure a “prompt and final settlement” of all the State’s redistricting litigation by this Court, for the benefit of all Marylanders. *State Admin. Bd. of Election L. v. Calvert*, 272 Md. 659, 681 (1974).

STATEMENT OF THE CASE

A. The Maryland Legislature Adopted An Obvious, Egregious Partisan Gerrymander In Its 2011 Congressional Map

After the 2010 federal decennial census, Maryland redrew its congressional districts, as it must do after every census to comply with

the constitutional one-person/one-vote principle. See *In re Legislative Districting of State*, 370 Md. 312, 325 (2002); *NAACP v. Bureau of the Census*, 945 F.3d 183, 186 (4th Cir. 2019); *Shapiro v. McManus*, 203 F. Supp. 3d 579, 586 (D. Md. 2016). Because Democrats “dominated” the Legislature and the Governor’s Office in 2011, *Rucho v. Common Cause*, 139 S. Ct. 2484, 2493 (2019), they controlled the redistricting process fully and adopted an extreme partisan gerrymander to benefit their party, *Benisek*, 348 F. Supp. 3d at 524.

The process that the Legislature and Governor Martin O’Malley used to create the 2011 congressional plan was brazenly partisan. Governor O’Malley “took responsibility for creating the 2011 congressional redistricting plan” for the State, *id.* at 502, and his drafting of the map was a “grisly tale” of “partisan gerrymandering . . . [a]t its most extreme,” *Rucho*, 139 S. Ct. at 2510, 2512 (Kagan, J., dissenting). Governor O’Malley appointed a redistricting committee consisting of four Democrats and only one Republican, see *Benisek*, 348 F. Supp. 3d at 504–05, asking Congressman Steny Hoyer—“who has described himself as a ‘serial gerrymanderer’”—“to advise the committee,” *Rucho*, 139 S. Ct. at 2493 (citation omitted). Governor O’Malley and his committee, by

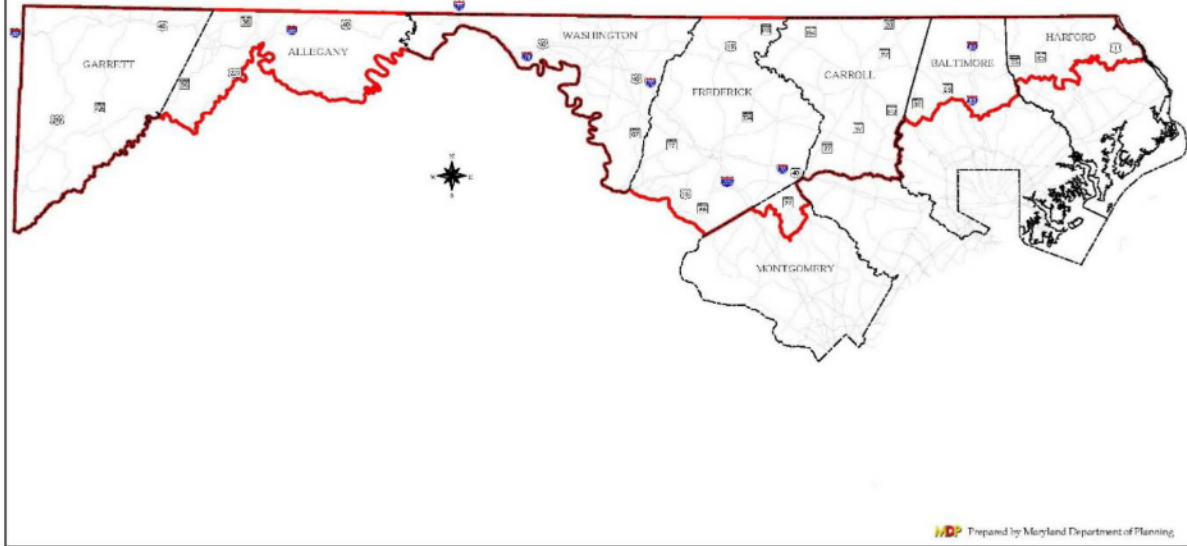
their own admission, explicitly sought “to change the overall composition of Maryland’s congressional delegation” for the benefit of Democrats. *Id.* (citation omitted). Specifically, the Governor and his committee intended to alter Maryland’s pattern of electing 6 Democrats and 2 Republicans “by flipping one district,” thus sending “7 Democrats and 1 Republican” from Maryland to the House for the next 10 years. *Id.* (citation omitted).

The Governor decided which of Maryland’s two Republican districts to target—the First District, which encompasses the Eastern Shore, or the Sixth District, representing western Maryland. *See id.* After some consideration, the Governor concluded that “flipping the First District” in the Democrats’ favor “was geographically next-to-impossible,” *id.* at 2511 (Kagan, J., dissenting), since gerrymandering the district would have required the resulting district “to jump across the Chesapeake Bay,” *Benisek*, 348 F. Supp. 3d at 502. Therefore, “a decision was made to go for the Sixth,’ which had been held by a Republican for nearly two decades.” *Rucho*, 139 S. Ct. at 2493 (citation omitted; alteration omitted).

To gerrymander the Sixth District, Governor O’Malley and his committee added “several hundred thousand residents of [the] far more densely populated Montgomery County” to the then-existing Sixth

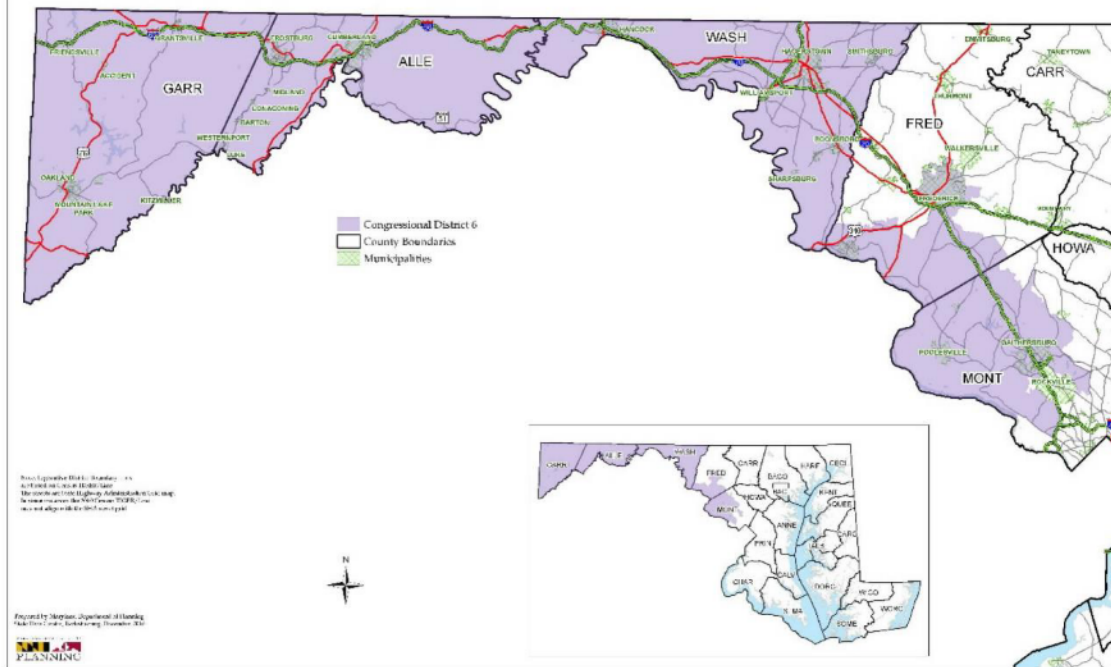
District, which at that point had “consisted of predominately mountain, rural, farming or low density suburban communities that had a broad commonality of interests.” *Fletcher v. Lamone*, 831 F. Supp. 2d 887, 906 (Titus, J., concurring). These Montgomery County residents typically voted for Democrats and outnumbered the then-existing rural core of the Sixth District, who had typically voted for Republicans. *Id.* at 905–06. This “exchange” of “over 700,000 residents” “resulted in a net reduction of roughly 66,000 registered Republicans [in the district] and a net increase of some 24,000 registered Democrats [in the district], for a swing of about 90,000 voters.” *Benisek*, 348 F. Supp. 3d at 499, 501. The then-existing and redrawn Sixth District maps are as follows:

2002 CONGRESSIONAL DISTRICT 6
(Senate Bill 805 May 6, 2002)



MDP Prepared by Maryland Department of Planning

Maryland 2011 Congressional District 6
Senate Bill 1, October 20, 2011

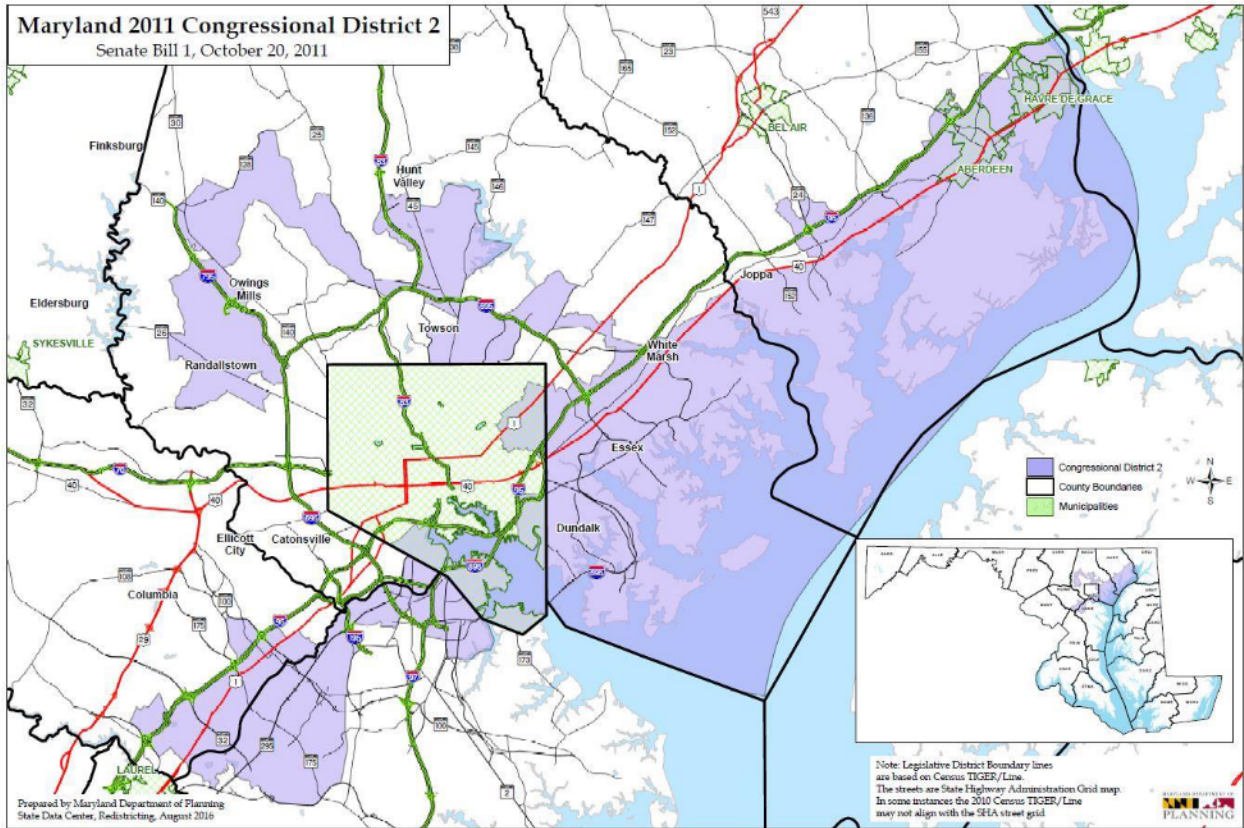


Id. at 499–500.

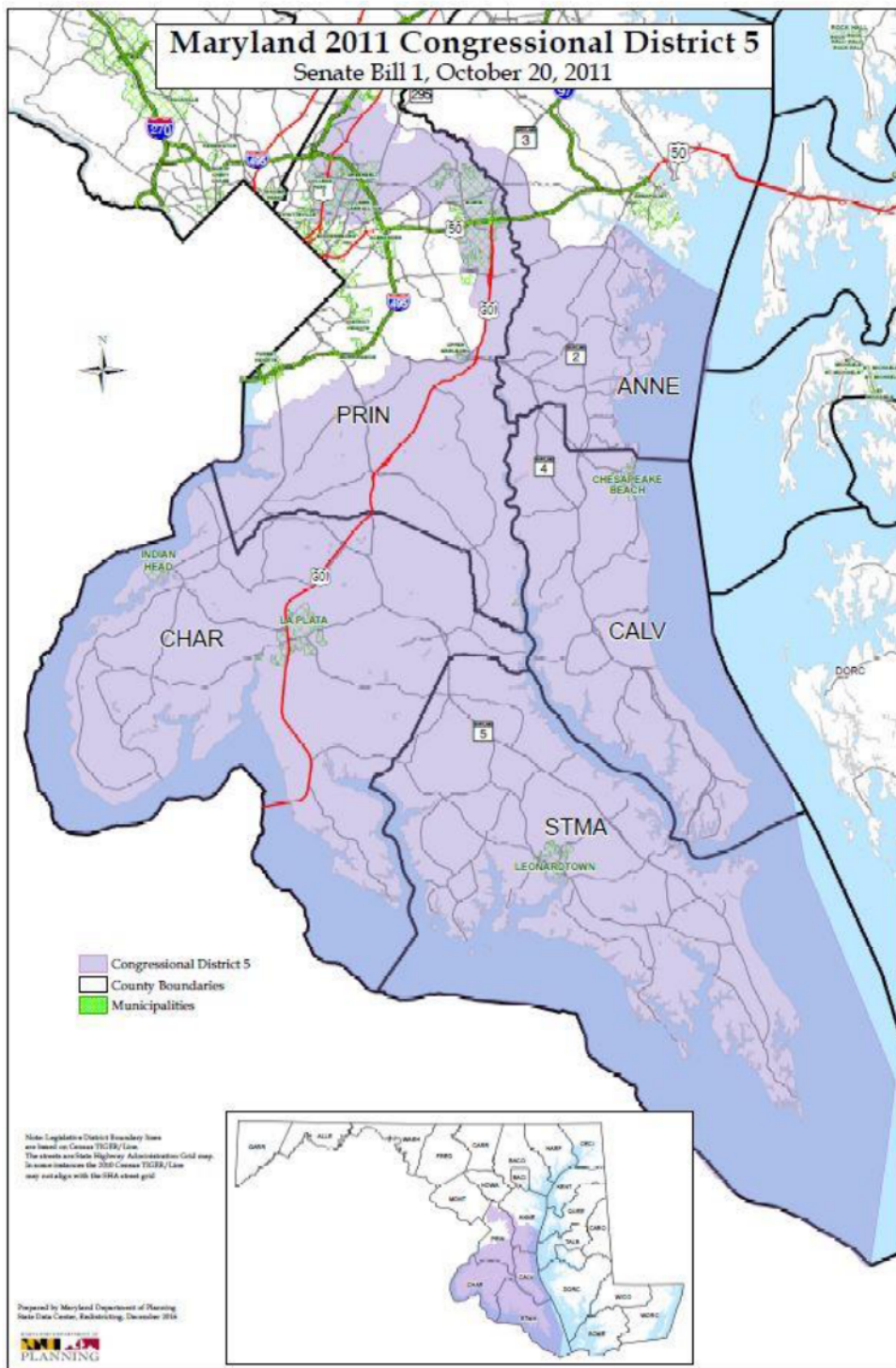
The Governor and his committee also gerrymandered two other districts “with significant and growing minority populations,” *Fletcher*, 831 F. Supp. 2d at 902, to protect Democrat incumbents from primary challenges. They drew the Second District to protect Representative C.A. Dutch Ruppertsberger (an incumbent since 2003¹) and the Fifth District to protect Representative Hoyer—the “serial gerrymanderer,” mentioned above, and an incumbent since 1981—from primary challengers, as the below maps plainly show:²

¹ U.S. House of Reps. Hist., Art & Archives, *Ruppertsberger, C.A. Dutch*, available at [https://history.house.gov/People/Listing/R/RUPPERSBERGER,-C--A--Dutch-\(R000576\)/](https://history.house.gov/People/Listing/R/RUPPERSBERGER,-C--A--Dutch-(R000576)/) (all websites last visited Feb. 24, 2022).

² Images available at: Map of Maryland 2011 Congressional District 2, Md. Dep’t of Planning, https://planning.maryland.gov/Redistricting/Documents/2010Maps/Cong/Dist_2.pdf; Map of Maryland 2011 Congressional District 5, Md. Dep’t of Planning, https://planning.maryland.gov/Redistricting/Documents/2010Maps/Cong/Dist_5.pdf.

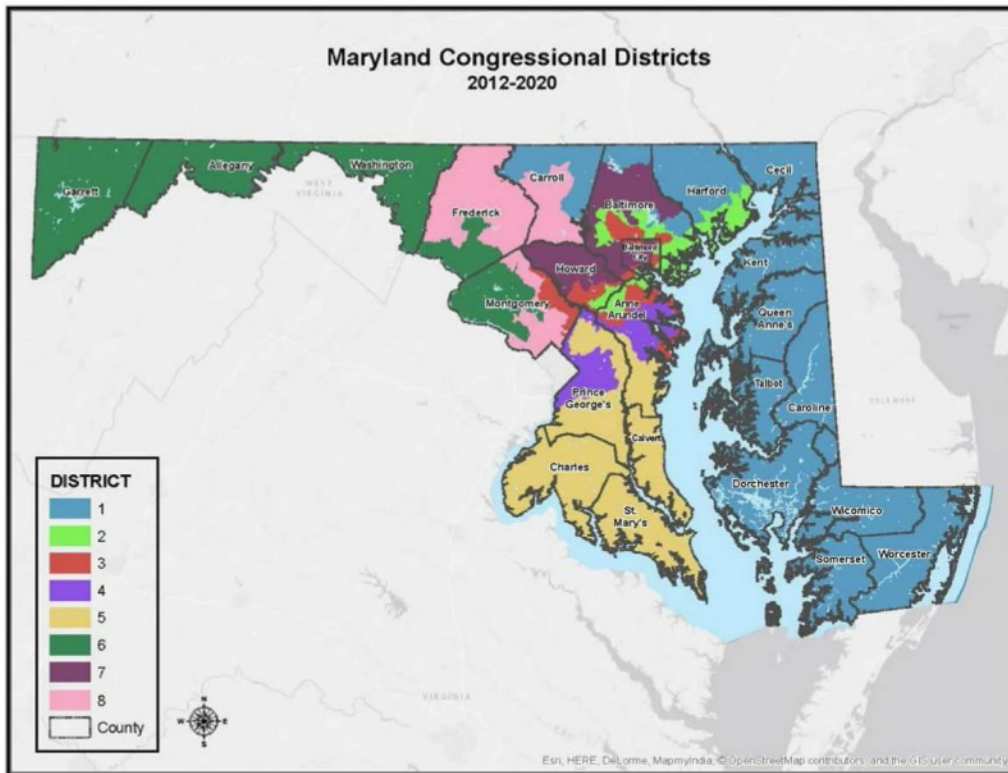


(Image on next page.)



The Governor and his committee drew Maryland's five remaining districts in the service of their partisan gerrymander of the Sixth District

and their incumbent-protection gerrymanders of the Second and Fifth Districts. So, the First District continued to constitute the Eastern Shore, “clump[ing]” Republicans into this District. *Rucho*, 139 S. Ct. at 2521 (Kagan, J., dissenting). The Third District—notoriously described as a “broken-winged pterodactyl”—stretched from Pikesville to Montgomery County to Annapolis in a “serpentine manner,” *Fletcher*, 831 F. Supp. 2d at 903 n.5, furthering the incumbent gerrymander of the Second District. The Fourth District was “centered in Prince George’s County,” *id.* at 891, and extended to the Chesapeake Bay, tracing a pattern that aids the incumbent-protection gerrymanders of the Second and Fifth Districts. The Seventh District “include[d] large portions of Baltimore City and its surrounding suburbs,” *id.*, with boundaries that again accommodate the incumbent-protection gerrymander of the Second District. And the Eighth District stretched northward from Montgomery County through Frederick County to the Pennsylvania border, enabling the partisan-gerrymander of the Sixth District.



Benisek, 348 F. Supp. 3d at 501.

Governor O’Malley’s “advisory committee adopted the [proposed] map on a party-line vote,” and then the Democrat-dominated Legislature adopted the plan with a party-line vote of its own. *Rucho*, 139 S. Ct. at 2511 (Kagan, J., dissenting). Governor O’Malley signed the plan into law on October 20, 2011, *see* S.B. 1, 2011 Md. Gen. Assemb., Special Sess. (Oct. 20, 2011)³ (hereinafter, “the 2011 Congressional Map”), thus

³ Available at <https://legiscan.com/MD/bill/SB1/2011/X1>.

imposing it on the State without any Republicans supporting it at any stage, *Benisek*, 348 F. Supp. 3d at 506.

The 2011 Congressional Map's gerrymanders were remarkably successful, as the three-judge panel of the U.S. District Court for the District of Maryland expressly found. *Id.* at 520, 524. Over the ensuing decade, the Sixth District *always* elected a Democrat Congressman. *See* Md. State Archives, *U.S. Representatives*, Md. Manual On-Line (2020).⁴ Thus, “[a] Democrat has held the [Sixth District] seat ever since” the map’s enactment, which was the Governor and the Legislature’s express design. *Rucho*, 139 S. Ct. at 2493. And, consistent with the Governor’s and the Legislature’s incumbent-protection purposes, Representatives Ruppertsberger and Hoyer won reelection for the whole decade. *See* Md. State Archives, *U.S. Representatives*, *supra*.

B. The Maryland Legislature Perpetuates And Strengthens This Partisan Gerrymander With Its 2021 Congressional Map

After the 2020 Census, Maryland once again had to redraw its congressional district map to comply with the Constitution’s one-

⁴ Available at <https://msa.maryland.gov/msa/mdmanual/39fed/06ushse/former/html/00rep.html>.

person/one-voter requirement, *see supra* pp. 2–3. As in decades past, Maryland is entitled to send eight Representatives to the House, requiring it to draw eight congressional districts of equal population. U.S. Census Bureau, *Apportionment Population and Number of Representatives by State: 2020 Census* (2020).⁵ And, like in 2011, Democrats controlled the redistricting process—this time by enjoying a veto-proof majority of the Legislature. *See* Dep’t of Legis. Servs., Md. Gen. Assemb., *Roster by County* (2022);⁶ Md. Const. art. II, § 17.

The Democratic-controlled Legislature formed the General Assembly’s Legislative Redistricting Advisory Commission (“LRAC”) to complete the congressional-redistricting process, along with the state-legislative redistricting process. Md. State Archives, *Legislative Redistricting Advisory Commission*, Md. Manual On-Line (2021).⁷ Democrats dominated LRAC, with Democratic commission members outnumbering Republican commission members 4-to-2. *See id.*

⁵ Available at <https://www2.census.gov/programs-surveys/decennial/2020/data/apportionment/apportionment-2020-table01.pdf>.

⁶ Available at <https://mgaleg.maryland.gov/pubs-current/current-roster-by-county.pdf>.

⁷ Available at <https://msa.maryland.gov/msa/mdmanual/07leg/html/com/sredist2021.html>.

Specifically, the committee comprised: the Chair, Karl S. Aro, who was appointed by Democrats; Democrats Senator Bill Ferguson, Senator Melony Griffith, Delegate Adrienne Jones, and Delegate Eric Luedtke; and Republicans Senator Bryan Simonaire and Delegate Jason Buckel. See Md. Gen. Assemb., *Legislative Redistricting Advisory Commission* (2022).⁸ The LRAC submitted four draft redistricting maps through public-hearings and comment, Md. Gen. Assemb., *Legislative Redistricting Advisory Commission Draft Congressional Concept Maps* (Nov. 9, 2021),⁹ ultimately submitting a single map on November 23, 2021, to the Legislature, which the LRAC had passed along a strict party-line vote, Bennett Leckrone, *Legislative Redistricting Advisory Commission Adopts Congressional Map to Present to General Assembly*, Md. Matters (Nov. 23, 2021).¹⁰

As during 2011 decennial redistricting, the map submitted by the Democrat-controlled LRAC pursues partisan and incumbent-protection

⁸ Available at <https://mgaleg.maryland.gov/mgaweb/Committees/Details?cmte=rac>.

⁹ Available at <https://redistricting.lls.edu/wp-content/uploads/MD-20211109-Legislature-proposed-congressional-districts.pdf>.

¹⁰ Available at <https://www.marylandmatters.org/2021/11/23/legislative-redistricting-advisory-commission-adopts-congressional-map-to-present-to-general-assembly/>.

aims. H.B. 1, 2021 Md. Gen. Assemb., Special Sess. (2021).¹¹ In particular, the 2021 map both perpetuates and strengthens the partisan and incumbent-protecting gerrymander that the Legislature designed in its 2011 Congressional Map—as Petitioners will briefly explain here and then more fully in their Argument Section. *Infra* Part III.B. As for continuing the prior gerrymander, the map “keep[s] Marylanders in their existing districts” “to the extent practicable”—that is, in the *already* gerrymandered districts in the 2011 Congressional Map. Md. Gen. Assemb., *Legislative Redistricting Advisory Commission Draft Congressional Concept Maps, supra*; Speaker Adrienne A. Jones (@SpeakerAJones), Twitter (Dec. 8, 2021, 8:18 p.m.).¹² The map also continues the incumbent-protection efforts in the Second District and the Fifth District, protecting Democrat-incumbent Representatives Ruppertsberger and Hoyer, respectively, from primary challengers. As for strengthening the prior partisan gerrymander, the 2021 Congressional

¹¹ Available at <https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/HB0001?ys=2021s1>.

¹² Available at [https://twitter.com/SpeakerAJones/status/1468751987944660993?cxt=HHwWgoC5ideJh-IoAAAA_!!PoWaf1F1wM8F24I!I5nHZKPbHy_7fFFylljfFJPxBE2Eo__NB-cUaBR5gVJpSp_Iqw_yD-PgGnQzX3QYJwHWB8oePw\\$](https://twitter.com/SpeakerAJones/status/1468751987944660993?cxt=HHwWgoC5ideJh-IoAAAA_!!PoWaf1F1wM8F24I!I5nHZKPbHy_7fFFylljfFJPxBE2Eo__NB-cUaBR5gVJpSp_Iqw_yD-PgGnQzX3QYJwHWB8oePw$).

Map makes the First District far more favorable for Democrats. *See infra* pp. 51, 55–56. That gerrymandering of the First District would give the Democrats a strong chance of sweeping Maryland’s congressional seats.

The Legislature passed the LRAC Democrats’ map (with non-substantive, technical corrections) on December 7 and 8, 2021, on a strict party-line vote, presenting it to Governor Larry Hogan for his approval. *See* H.B. 1, 2021 Md. Gen. Assemb., Special Sess. (2021); *see also* Bennett Leckrone, *Senate Democratic Majority Sends Redistricting Plan to Hogan’s Desk*, Md. Matters (Dec. 8, 2021).¹³ The very next day, December 9, 2021, Governor Hogan vetoed the 2021 Congressional Map, explaining that “the Maryland General Assembly has once again failed Marylanders and neglected the will of the people by continuing their long legacy of gerrymandering.” Letter from Governor Hogan to Adrienne Jones and Bill Ferguson (Dec. 9, 2021);¹⁴ *see infra* pp. 54–55 (cataloging similar views expressed by public-interest groups and others). The Governor had

¹³ Available at <https://www.marylandmatters.org/2021/12/08/senate-gop-unsuccessfully-attempts-to-amend-proposed-congressional-map/>.

¹⁴ Available at <https://governor.maryland.gov/wp-content/uploads/2021/12/Congressional-Districting-HB1-Veto-Letter-Special-Session-2021.pdf>.

also proposed his own congressional-district map along with his veto, which map was drawn by a bipartisan commission acting without partisan or incumbent-protection purposes. See Bennett Leckrone, *General Assembly Overrides Hogan's Veto of Congressional Redistricting Plan*, Md. Matters (Dec. 9, 2021).¹⁵ The Legislature overrode the Governor's veto—again on a strict party-line vote—the same day that he issued it, thus adopting the 2021 Congressional Map into law. H.B. 1, 2021 Md. Gen. Assemb., Special Sess. (2021).

C. This Petition

Petitioners are Maryland voters from each of Maryland's eight congressional districts, who frequently vote and/or organize for Republican congressional candidates. Petitioner Vanessa Alban lives at 34 Admiral Avenue, Ocean Pines, MD 21811, in District 1. Petitioner Maureen Roy lives at 212 Seneca Terrace, Pasadena, MD 21122, in District 2. Petitioner Laura Walsh lives at 16135 Ed Warfield Road, Woodbine, MD 21797, in District 3. Petitioner Robert C. Leib lives at 3594 Owens Meadow Way, Harwood, MD 20776, in District 4. Petitioner

¹⁵ Available at <https://www.marylandmatters.org/2021/12/09/general-assembly-overrides-hogans-veto-of-congressional-redistricting-plan/>.

Steve Mattingly lives at 7545 Cameron Ridge Road, Hughesville, MD 20637, in District 5. Petitioner Bill Hopwood lives in 3940 Southview Court, Jefferson, MD 21755, in District 6. Petitioner Jovani Patterson lives at 2205 Elsinore Avenue, Baltimore, MD 21216, in District 7. And Petitioner Ruth Melson lives at 4820 Flanders Avenue, Kensington, MD 20895, in District 8. The Legislature’s unconstitutional, partisan and incumbent-protection gerrymandered 2021 Congressional Map harms Petitioners—along with voters all over the State—by diluting the power of their votes on the basis of politics and/or the candidates they support, while also diminishing the effects of their political-action efforts.

Petitioners named as Respondents Linda H. Lamone, in her official capacity as the Maryland State Administrator of Elections; William G. Voelp, in his official capacity as Chairman of the Maryland State Board of Elections; and the Maryland State Board of Elections. Respondents are all located at 151 West Street, Suite 200, Annapolis, MD 21401.

STANDARD OF REVIEW

This Court has jurisdiction under the Maryland Constitution to review constitutional challenges to the Legislature’s congressional redistricting maps, as Petitioners explain more fully below. *Infra* Part II.

When considering such challenges, this Court will “first look at the plan on its face, in light of the challenges, to see whether, and to what extent, the federal and state legal requirements have been met.” *In re Legislative Districting of State*, 370 Md. at 322. If it appears that the redistricting map does not comply with all constitutional requirements, this Court may “appoint[] a special master, thus affording the State and the petitioners the opportunity to present evidence and [additional] argument.” *Id.* Then, after these and any further proceedings, this Court will finally determine whether the plan is constitutionally permissible and “approve[] the plan,” or whether it is “constitutionally impermissible” and “declare the plan unconstitutional and void.” *Id.*

If this Court declares a map unconstitutional, the remedy depends upon the imminency of election deadlines. “When there is time to return the matter to the other political branches, giving them the opportunity to produce an amended, or even a new, plan,” this Court will do so. *Getty v. Carroll Cty. Bd. of Elections*, 399 Md. 710, 737 (2007). “When, however, there is the urgency of an upcoming election, [this Court] ha[s] chosen to fashion and adopt the redistricting plan [itself].” *Id.*

ARGUMENT

I. This Court Should Grant This Petition And Hear It In Tandem With The Pending Challenges To The State-Legislative Districts

This Petition raises a powerful challenge to the constitutional validity of the 2021 Congressional Redistricting Map on partisan- and incumbent-protection gerrymandering grounds, *infra* Part III, which map purports to govern the upcoming congressional elections in Maryland. “[T]he urgency of [this] upcoming election” justifies this Court’s expedient resolution of this challenge by granting this Petition. *Getty*, 399 Md. at 737; *see also Liddy v. Lamone*, 398 Md. 233, 255 (2007). This Court has very recently recognized the need for its expeditious resolution of redistricting disputes in this very redistricting cycle. In the pending cases challenging the Legislature’s legislative-redistricting maps, this Court explained that, “[g]iven the nature of this matter, and limitations and constraints attendant thereto, time is of the essence in determining the validity” of these maps. Amended Order, *In the Matter of 2022 Legislative Redistricting of State*, Misc. No. 21 (Feb. 3, 2022).¹⁶

¹⁶ Available at <https://www.courts.state.md.us/sites/default/files/import/coappeals/highlightedcases/2022districting/02032022amendedlegislative-districtingschedulingorder.pdf>.

The same considerations apply here, and in the exact same manner, likewise justifying this Court’s immediate grant of this Petition.

Looming electoral deadlines severely limit—and, perhaps, foreclose—this Court’s opportunities to timely review challenges to the 2021 Congressional Map through the ordinary appellate process. The deadline to file candidacy papers for the State’s upcoming congressional elections is March 22, 2022, per this Court’s recent extension order—which is less than one month away. Order, *In the Matter of 2022 Legislative Redistricting of State*, Misc. Nos. 21, 24, 25, 26, 27 (Feb. 11, 2022) (extending Md. Election Law § 5-303).¹⁷ And the primary election is scheduled for June 28, 2022, Md. Election Law § 8-201(a)(2)(i), with the General Election on November 8, 2022, Md. Const. art. XV, § 7; Md. Election Law § 10-301. Given these “limitations and constraints,” Amended Order, *In the Matter of 2022 Legislative Redistricting of the State*, Misc. No. 21 (Feb. 3, 2022), it appears that the only feasible avenue for this Court to conduct its “wholly unavoidable” review of the 2021

¹⁷ Available at <https://www.courts.state.md.us/sites/default/files/import/coappeals/highlightedcases/2022districting/20220211consolidationorder.pdf>.

Congressional District Map, *In re Legislative Districting of State*, 370 Md. at 353, is by granting this Petition now.

That two consolidated challenges to the 2021 Congressional Map are currently pending in the Circuit Court only further supports that conclusion. Complaint, *Szeliga v. Lamone*, No.C02CV21001816 (Anne Arundel Cty. Cir. Ct. Dec. 23, 2021); Complaint, *Parrott v. Lamone*, No.C02CV21001773 (Anne Arundel Cty. Cir. Ct. Dec. 21, 2021). Those challenges are still in their very early stages, with the Circuit Court having just ruled on an initial motion to dismiss in one of those challenges on February 23, 2022. *See* Order, No. C02CV21001816 (Anne Arundel Cty. Cir. Ct. Feb. 23, 2022). Further, the Circuit Court's motion-to-dismiss order incorrectly disposed of a claim under Article 7 of the Declaration of Rights, *compare id.*, *with infra* Part III.A (explaining that such a claim is meritorious), thus it is possible that this Court may not have the opportunity to review a robust partisan-gerrymandering record on appeal, even in the unlikely circumstance that the cases did reach this Court prior to the deadlines for the forthcoming elections.

If this Court grants this Petition, it may wish to consider ordering the transfer of the-above mentioned, Circuit Court challenges to the

congressional districts, consolidating them with this Petition, and deciding all three cases on the same schedule that it plans to decide the pending state-legislative district challenges. *See In the Matter of 2022 Legislative Redistricting of State*, Misc. Nos. 21, 24, 25, 26, 27 (Feb. 11, 2022). This Court has the authority to transfer and consolidate cases pending in the lower courts in aid of its jurisdiction. *City of Annapolis v. Bowen*, 173 Md. App. 522, 533 (2007), *aff'd in part, rev'd in part*, 402 Md. 587 (2007) (citing *State v. Manck*, 385 Md. 581, 587–88 (2005)); *see infra* Part II (explaining this Court's original jurisdiction). The consolidation of these cases in one action will aid in this Court's original jurisdiction, as it would enable this Court to issue one decision as to the 2021 Congressional Map's validity in advance of upcoming election deadlines, promoting judicial and administrative efficiency. Other States' highest courts have taken this approach during this redistricting cycle. *See, e.g., League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, ___ N.E.3d ___, 2022 WL 110261, *5–6 (Jan. 12, 2022).

Finally, Petitioners respectfully suggest that this Court make clear that it, not the Legislature, will adopt any remedial maps for the State, should this Court invalidate any of the Legislature's recently enacted

maps. While this Court has the discretion to remand to the Legislature to draw new maps in the event it declares a map invalid, “the urgency of [the] upcoming election” strongly counsels in favor of this Court drawing any necessary remedial maps itself. *Getty*, 399 Md. at 737. Further, this Court could not simply reinstate the prior 2011 Congressional Map if it declares the 2021 Congressional Map invalid because—in addition to itself being an unlawful partisan and incumbent-protection gerrymander, *see infra* Part III—intervening population shifts across Maryland have rendered it unconstitutionally malapportioned, *see generally* U.S. Census Bureau, *Maryland: 2020 Census* (Aug. 25, 2021).¹⁸

II. This Court Has The Authority To Hear Challenges To Congressional Maps Directly

This Court has jurisdiction to hear this Petition under three separate sources of authority: *first*, this Court has original jurisdiction under Section 14 of Article IV, *infra* Part II.A; *second*, this Court also has jurisdiction under Article 6 of the Declaration of Rights; *infra* Part II.B; and *third*, this Court may construe this Petition as a petition for a writ of mandamus, *infra* Part II.C.

¹⁸ Available at <https://www.census.gov/library/stories/state-by-state/maryland-population-change-between-census-decade.html>.

A. The Maryland Constitution Grants This Court Original Jurisdiction To Hear This Challenge

a. The Maryland Constitution defines this Court’s jurisdiction, most prominently in Section 14 of Article IV. That Section provides that the *“jurisdiction” of this “Court of Appeals shall be co-extensive with the limits of the State and such as now is or may hereafter be prescribed by law.”* Md. Const. art. IV, § 14; *see generally id.*, art. II, § 6; *id.*, art. III, § 5; art. IV, § 4B(b)(1) (other, narrow grants of jurisdiction). Under the “common and ordinary” meaning of Section 14’s terms, *Norris v. Mayor & City Council of Balt.*, 172 Md. 667, 192 A. 531, 535 (1937), this Court enjoys plenary original and appellate jurisdiction unless otherwise “prescribed by law.” Md. Const. art. IV, § 14. This is because, by defining this Court’s jurisdiction as “*co-extensive* with the limits of the State,” *id.* (emphasis added), the Constitution grants this Court jurisdiction “equal” to, or of the “same . . . scope” as, the State’s judicial power—which includes both original and appellate jurisdiction, *see “Coextensive,”* American Dictionary of the English Language (Noah Webster ed., 1828); *“Coextensive,”* Merriam-Webster (2022). Notably, Section 14’s broad jurisdictional grant to this Court is similar to the broad jurisdictional grants that other state constitutions give to their

States' highest courts. *See, e.g.*, Wis. Const. art. VII, § 3; Haw. Const. art. VI, § 1; Me. Const. art. VI, § 1; Ala. Const. art. VI, § 140; Conn. Const. art. V, § 1; Va. Const. art. VI, § 1; Del. Const. art. IV, § 11; Fla. Const. art. V, § 3; Neb. Const. art. V, § 2; Wyo. Const. art. 5, § 3; N.D. Const. art. 6, § 2; Ohio Const. art. IV, § 2; R.I. Const. art. X, § 2; Ariz. Const. art. VI, § 5.

b. Under this straightforward, text-based interpretation of Article IV, Section 14, this Court has original jurisdiction to hear this Petition and should exercise that jurisdiction here. As Petitioners explain more fully below, they have raised a substantial challenge to the 2021 Congressional Map, *infra* Part III, and the adjudication of redistricting challenges falls squarely within this State's judicial power, *see, e.g., In re Legislative Districting of State*, 370 Md. at 329; *Legislative Redistricting Cases*, 331 Md. 574, 583 (1993); *Matter of Legislative Districting of State*, 299 Md. 658, 668 (1984). Further, this Court should exercise its original jurisdiction by granting this Petition, given the grave importance of the validity of the 2021 Congressional Map to the entire State, as well as the exigent need for this Court to resolve such challenges prior to the fast-approaching elections. *Supra* Part I.

c. In previous cases—most prominently *Shell Oil Co. v. Supervisor of Assessments of Prince George’s County*, 276 Md. 36 (1975)—this Court has, with all respect, used certain incorrect language to describe its jurisdiction as including “appellate jurisdiction only,” *see id.* at 40. According to this reasoning, the Constitution’s “styl[ing]” of this Court as “an appellate court” imposed an implied “jurisdictional limitation” on this Court to appellate jurisdiction only—to the exclusion of original jurisdiction. *Id.* at 40–41.

While cases like *Shell Oil* have used this “appellate jurisdiction only” language, this Court has repeatedly heard cases under Article IV, Section 14 in an original-jurisdiction posture. To take just the most common example, this Court routinely hears “attorney discipline proceedings” as a matter of its “original and complete jurisdiction,” *Attorney Grievance Comm’n v. Bleecker*, 414 Md. 147, 167 (2010). The Constitution contains no provision granting this Court original jurisdiction over attorney-discipline proceedings, in particular—unlike the specific provisions for original jurisdiction over legislative-redistricting challenges, disputes over executive offices, and the removal of judges, Md. Const. art. II, § 6; *id.* art III, § 5; *id.* art. IV, § 4B(b)(1).

Therefore, the source of this Court’s original jurisdiction over attorney-discipline proceedings must be Article IV, Section 14, meaning that this Section must include a grant of original jurisdiction, contrary to *Shell Oil’s* “appellate jurisdiction only” language. *See generally Dal Maso v. Bd. of Cty. Comm’rs of Prince George’s Cty.*, 182 Md. 200, 205 (1943) (explaining that “the Maryland Constitution” is the source of “all judicial authority” for this State, which the Legislature may not expand).

This Court’s approach in these attorney discipline cases—taking “original and complete jurisdiction” over them, *Bleecker*, 414 Md. at 167—is constitutionally correct, and thus *Shell Oil’s* assertion that this Court has “appellate jurisdiction only” is wrong. Accordingly, *Shell Oil’s* “appellate jurisdiction only” language is “clearly wrong and contrary to established principles.” *State v. Waine*, 444 Md. 692, 700–01 (2015); *Unger v. State*, 427 Md. 383, 417 (2012) (collecting cases overruled by this Court because they were clearly wrong).

Most obviously, the Constitution’s text definitively refutes *Shell Oil’s* “appellate jurisdiction only” language. This Court has jurisdiction that is “*co-extensive* with the limits of the State,” Md. Const. art. IV, § 14 (emphasis added), meaning that its jurisdiction is “equal” to and of the

“same . . . scope” as the State’s judicial power, which power includes original and appellate jurisdiction, see “*Coextensive*,” *American Dictionary of the English Language* (Noah Webster ed., 1828); “*Coextensive*,” Merriam-Webster (2022). Further, *multiple* provisions of the Constitution at the time that *Shell Oil* was decided granted this Court original jurisdiction. Md. Const. art. IV, § 4B(b)(1) (original jurisdiction over the removal of judges); Md. Const. art. III, § 5 (original jurisdiction over legislative redistricting challenges); *id.* art. II, § 6 (original jurisdiction over disputes over executive offices). Thus the “common and ordinary” meaning of the name “Court of Appeals” in the Constitution could not possibly impliedly limit this Court to appellate jurisdiction only. See *Norris*, 192 A. at 535; *Roskelly v. Lamone*, 396 Md. 27, 49 (2006) (“[t]he whole [Constitution] must be considered” when interpreting a constitutional provision (citation omitted)).

Further, the history of the constitutional provisions establishing this Court’s jurisdiction definitively refutes any “appellate jurisdiction only” interpretation of Article IV, Section 14. The 1851 Constitution of Maryland provided that “the Court of Appeals shall have *appellate jurisdiction only*, which shall be co-extensive with the limits of the State.”

Md. Const. art. IV, § 2 (1851) (emphasis added).¹⁹ This Court properly understood this constitutional language as “withhold[ing]” the power of this Court to hear original actions. *Ex parte O’Neill*, 8 Md. 227, 229 (1855). Crucially, however, ***the 1867 Constitution removed this “appellate jurisdiction only” limitation from the 1851 Constitution***, redefining this Court’s jurisdiction with language substantively identical to Article II, Section 14 of the current Constitution. Md. Const. art. IV, § 14 (1867) (“The jurisdiction of said Court of Appeals shall be co-extensive with the limits of the State, and such as now is, or may hereafter be pre-scribed by law.”).²⁰ The only plausible, text-based interpretation of the 1867 Constitution’s *removal* of the 1851 Constitution’s “appellate jurisdiction only” limitation is that it conferred original jurisdiction upon this Court, as is common for Supreme Courts around the country. *See supra* pp. 25–28; Fla. Const. art. V, § 2 (1865) (provision governing supreme-court jurisdiction in effect in 1867);

¹⁹ Available at Md. State Archives, <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000101/html/am101d--12.html>.

²⁰ Available at Md. State Archives, <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000074/html/am74d--567.html>.

Del. Const. art. VI, § 7 (1831) (same); Ky. Const. art. IV, § 2 (1850) (same). And while *Shell Oil* expressly acknowledged this historical evolution of constitutional language from 1851 to 1867, it failed to give any meaning to the 1867 Constitution’s targeted removal of the “appellate jurisdiction only” language, instead reading that same limitation back into the Constitution. 276 Md. at 40–41.

Although the constitutional text and history confirm that this Court has original jurisdiction to hear this extremely important and time-sensitive case, despite *Shell Oil*’s incorrect “appellate jurisdiction only” statement, this Court need not decide here whether to repudiate *Shell Oil*’s language in full in order to grant the Petition. Rather, as this Court has done with attorney-discipline cases, it may simply recognize an exception for any “appellate jurisdiction only” language for congressional-redistricting challenges, like the challenge here, leaving for another day the question of whether *Shell Oil*’s dicta is sound in any respect. And that modest approach is particularly justified here, given that the validity of the 2021 Congressional Map is a grave question of statewide importance that must be resolved before the fast-approaching elections,

and can be resolved by this Court in parallel with the pending challenges to the state legislative districts. *Supra* Part I.

B. This Court Also Has Jurisdiction Under Article 6 Of The Declaration Of Rights

This Court also has jurisdiction over this Petition under Article 6 of the Declaration of Rights. Article 6 provides that “all persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and, as such, *accountable for their conduct*: Wherefore, whenever the ends of Government are perverted, and public liberty manifestly endangered, *and all other means of redress are ineffectual*, the People may, and of right ought, to reform the old . . . Government.” Md. Const. Decl. of Rts. art. 6 (emphases added). This Court has interpreted Article 6 as providing judicial “recourse” when no other avenue of redress or remedy for a wrong imposed by the Government is “adequate” or available. *Bernstein v. Bd. of Educ. of Prince George’s Cty.*, 245 Md. 464, 472 (1967). Further, judicial recourse under Article 6 is especially appropriate when the “dispute . . . involv[es] [a] constitutional attack upon the validity of a general statutory enactment as a whole (as contrasted with its application to particular facts).” *Poe v. City of Balt.*, 241 Md. 303, 309 (1966).

Here, Article 6 provides this Court with jurisdiction over this Petition. This Petition raises a constitutional challenge to the validity of the 2021 Congressional Map, and no other means of redress—including appeals to this Court through the ordinary course—could be effective. *Supra* Part I. Therefore, Petitioners’ only adequate recourse for their significant constitutional claim is to this Court directly, exercising its original jurisdiction. *Bernstein*, 245 Md. at 473; *Poe*, 241 Md. at 309.

C. This Court May Construe This Petition As A Petition For Mandamus, Which It Has Jurisdiction To Grant

This Court may exercise jurisdiction over this case by construing this Petition as a petition for mandamus. A writ of mandamus is “appropriate where the relief sought involves the traditional enforcement of . . . a legal duty[] by recalcitrant public officials,” *Balt. Cty. v. Balt. Cty. Fraternal Order of Police Lodge No. 4*, 439 Md. 547, 570 (2014) (citation omitted; brackets omitted), and will compel performance where such duty “in its nature is imperative” and “the party applying for the writ has a clear legal right,” *Bowen*, 173 Md. App. at 533 (quoting *Criminal Injuries Comp. Bd. v. Gould*, 273 Md. 486, 514 (1975)).

Here, this Court can take jurisdiction over this Petition and issue a writ of mandamus because Respondents will imminently administer

elections under an unconstitutional partisan- and incumbent-protection gerrymandered map. *See infra* Parts I.C & II. Such elections would violate the Constitution’s “plain duty” not to partisan or incumbent-protection gerrymander in congressional maps, infringing upon Petitioners’ “clear legal right” to free and fair congressional elections. *Bowen*, 173 Md. App. at 533. Accordingly, this Petition meets this Court’s criteria for a writ of mandamus. *Balt. Cty.*, 439 Md. at 570.

III. The Legislature’s 2021 Congressional Map Is An Unconstitutional Partisan And Incumbent-Protection Gerrymander

Multiple provisions of the Maryland Constitution prohibit the Legislature from drawing congressional districts to advance the interests of a political party or incumbent politicians. *Infra* Part III.A. Here, the Legislature obviously and egregiously drew its 2021 Congressional Map to advance the interests of the Democratic Party and Democratic Party politicians. *Infra* Part III.B.

A. The Maryland Constitution Prohibits The Legislature From Adopting A Congressional Map To Advance The Interests Of A Particular Political Party Or Particular Politicians

1. Multiple provisions of the Maryland Constitution preserve the freedom, fairness, and integrity of elections in Maryland.

First, Article 7 of the Declaration of Rights provides “[t]hat 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. Const. Decl. of Rts. art. 7 (emphasis added). This Court “construe[s]” this constitutional provision “in relation to [its] purpose,” which is to “provid[e] and encourag[e] the *fair and free exercise* of the elective franchise.” *State Bd. of Elections v. Snyder*, 435 Md. 30, 61 (2013) (emphasis added). Such fair and free elections are “the highest right of the citizen, and the spirit of our institutions requires that every opportunity should be afforded for [them].” *Id.* (quoting *Kemp v. Owens*, 76 Md. 235, 241 (1892)); *see also Nader for President 2004 v. Md. State Bd. of Elections*, 399 Md. 681, 686 (2007).

A “fair and free” election under Article 7 allows for the full “political participation” of all qualified voters, consistent with “the principles on which free governments are founded.” *Snyder*, 435 Md. at 61 (citation omitted) (quoting *Kemp*, 76 Md. at 241). These principles include voters having “the fullest opportunity to vote for candidates of any political

party,” so that they may freely choose who will represent them in government. *Md. Green Party v. Md. Bd. of Elections*, 377 Md. 127, 150–51 (2003) (quoting *Munsell v. Hennegan*, 182 Md. 15, 22 (1943)). Thus, Article 7 protects whatever is “integral” to “the members of a political party . . . choos[ing] their candidates” and exercising their “right of suffrage.” *Id.* at 151; accord *Snyder*, 435 Md. at 61 (rejecting any interpretation of Article 7 that is “in hostility to the principles on which free governments are founded”).

Article 7 of the Declaration of Rights is “even more protective of rights of political participation than the provisions of the federal Constitution.” *Md. Green Party*, 377 Md. at 150; see also *Snyder*, 435 Md. at 61. Accordingly, whatever protections for free and fair elections may be found within the U.S. Constitution, Article 7 of the Declaration of Rights provides “even more” such protections. *Md. Green Party*, 377 Md. at 150; see also *Snyder*, 435 Md. at 61.

This Court has applied Article 7 to numerous kinds of elections, beyond those for the Legislature, including elections for Congress. See *Maryland Green Party*, 377 Md. at 135–37, 141 (applying Article 7 to a congressional election); see also *Nader for President 2004*, 399 Md. at 705,

708 (applying Article 7 to a Presidential election); *Snyder*, 435 Md. at 52, 61 (applying Article 7 to county-school-board elections).

Second, Article I, Section 7 of the Maryland Constitution provides that “[t]he General Assembly shall pass Laws necessary for the preservation of the *purity of Elections*,” Md. Const. art. I, § 7 (emphasis added), and this Court understands this provision to impose a “duty” on the Legislature “of protecting the electoral process in Maryland,” *Cty. Council for Montgomery Cty. v. Montgomery Ass’n, Inc.*, 274 Md. 52, 60 (1975). An election that is “pur[e]” under Section 7 is one that accords with “the nature of our institutions” and “the very essence of democracy” by allowing for the “full exercise of the right of citizenship”—including “the right to vote.” *Smith v. Higinbothom*, 187 Md. 115, 128 (1946).

Third, Article 6 of the Declaration of Rights provides that “all persons invested with the Legislative or Executive powers of Government are the Trustees of the Public, and, as such, accountable for their conduct: Wherefore, *whenever the ends of Government are perverted*, and public liberty manifestly endangered, and all other means of redress are ineffectual, the People may, and of right ought, to reform the old . . . Government.” Md. Const. Decl. of Rts. art. 6 (emphasis added); *see*

generally supra Part II.B (discussing Article 6 as one source of this Court’s jurisdiction over this Petition). “[T]he ends of Government” within Article 6 include public action taken “solely for the good of the *whole*,” since “all Government of right originates from the People.” Md. Const. Decl. of Rts. art. 1 (emphasis added). In other words, Article 6 “sets forth the well-established doctrine that the duties of public officials are fiduciary in character and are to be exercised as a public trust,” *Kerpelman v. Bd. of Pub. Works of Md.*, 261 Md. 436, 444 (1971), meaning that such duties must be exercised for the benefit of all Marylanders equally, *see generally* *Fiduciary*, Black’s Law Dictionary (11th ed. 2019); *Trust*, Black’s Law Dictionary (11th ed. 2019).

Finally, Article 24 of the Declaration of Rights implicitly guarantees Marylanders the equal protection of the law, including with regard to arbitrary or irrational classifications based on politics, Md. Const. Decl. of Rts. art. 24; *see Md. Green Party*, 377 Md. at 157, while Article 40 of the Declaration of Rights expressly guarantees every Marylander the right “to speak, write and publish his sentiments on all subjects,” Md. Const. Decl. of Rts. art. 40. Both of these provisions also ensure electoral fairness and integrity in Maryland by ensuring that

political minorities are free from disparate treatment in the State's election laws, *see* Md. Const. Decl. of Rts. art. 24, and that they retain their rights to freely engage in all lawful political activity, *see id.* art. 40.

2. These provisions of the Maryland Constitution individually, and in combination, prohibit the Legislature from engaging in partisan and incumbent-protection gerrymandering. This is because gerrymandered districts inhibit “free” elections, Md. Const. Decl. of Rights art. 7; undermine “the purity of elections,” Md. Const. art. I, § 7; “pervert[]” the “ends of government” for the benefit of politically favored classes of Marylanders, Md. Const. Decl. of Rights art. 6; irrationally harm the political equality of the citizens of this State, *id.* art. 24; and unjustifiably burden lawful political activity, *id.* art. 40.

a. To begin, partisan and incumbent-protection gerrymandering prevent elections from being “*fair and free.*” *Snyder*, 435 Md. at 61 (emphasis added); Md. Const. Decl. of Rts. art. 7; *accord* Md. Const. art. I, § 7; Md. Const. Decl. of Rts. arts. 6, 24, 40. Partisan or incumbent-protection gerrymandering is “[t]he practice of dividing a geographical area into electoral districts, often of highly irregular shape, to give one political party [or one preferred candidate] an *unfair* advantage by

diluting the opposition’s voting strength.” *In re Legislative Districting of State*, 370 Md. at 332 n.14 (quoting Black’s Law Dictionary 696 (7th ed. 1999)) (emphasis added)). Thus, “partisan gerrymandering . . . subordinate[s] adherents of one political party and entrench[es] a rival party in power,” *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm’n*, 576 U.S. 787, 791 (2015), which “leads to results that reasonably seem unjust,” *Rucho*, 139 S. Ct. at 2506.

When taken to its “most extreme,” partisan and incumbent-protection gerrymandering amounts to the Legislature “rigging elections,” *Rucho*, 139 S. Ct. at 2512 (Kagan, J., dissenting) (citation omitted), which is the antithesis of the “fair and free” elections guaranteed under the Maryland Constitution, *Snyder*, 435 Md. at 61. The Maryland Constitution’s “right to vote is the right to choose the person for whom the ballot is cast,” meaning that an “election is not free if the elector may not make this choice.” *Jackson v. Norris*, 173 Md. 579, 599 (1973); *accord Munsell*, 182 Md. at 22; *Reynolds v. Sims*, 377 U.S. 533, 555 (1964) (“The right to vote freely for the candidate of one’s choice is the essence of a democratic society[.]”). But gerrymandering makes the voter’s choice “meaningless,” *Rucho*, 139 S. Ct. at 2511 (Kagan, J.,

dissenting)—and thus renders an election “not free,” *Jackson*, 173 Md. at 599—by empowering the politicians themselves to “cherry-pick voters to ensure their reelection,” *Rucho*, 139 S. Ct. at 2512 (Kagan, J., dissenting).

Relatedly, gerrymandering conflicts with the “the nature of our institutions” and “the very essence of democracy,” *Smith*, 187 Md. at 128, marring the “purity” of the elections held under such gerrymandered maps, Md. Const. Decl. of Rts. art. 7; accord Md. Const. art. I, § 7; Md. Const. Decl. of Rts. art. 6, 24, 40. “The right to formal political representation is fundamental to our state and national democracies,” *In re 2012 Legislative Districting*, 436 Md. 121, 126 (2013), and therefore “[a] fairly apportioned legislature” must “lie[] at the very heart of representative democracy,” *In re Legislative Districting of State*, 370 Md. at 319. Partisan gerrymandering undermines the notion of fair apportionment by “contract[ing] the value of a citizen’s vote” through “placing the citizen in a district where the citizen’s political party makes up a smaller share of the electorate, thereby reducing the citizen’s chance to help elect a candidate of choice.” *Benisek*, 348 F. Supp. 3d at 514.

Gerrymandering benefits a favored class of voters, thus “pervert[ing]” the “ends of Government” by introducing inequalities in

the political process. Md. Const. Decl. of Rts. art. 6; *Kerpelman*, 261 Md. at 444. By drawing district lines for partisan or incumbent-protection purposes, gerrymanderers “deprive[] citizens of the most fundamental of their constitutional rights,” including “the rights to participate equally in the political process” through casting a ballot of equal strength. *Rucho*, 139 S. Ct. at 2509 (Kagan, J., dissenting). “Put simply, partisan vote dilution, when intentionally imposed, involves the State penalizing voters for expressing a viewpoint while, at the same time, rewarding voters for expressing the opposite viewpoint”—the very definition of political inequality. *Benisek*, 348 F. Supp. 3d at 514.

The political inequalities caused by gerrymandering do not stop with the dilution of the votes of the disfavored classes. “Members of the disfavored party in the State” also “face difficulties fundraising, registering voters, attracting volunteers, generating support from independents, and recruiting candidates to run for office (not to mention eventually accomplishing their policy objectives).” *Gill v. Whitford*, 138 S. Ct. 1916, 1938 (2018) (Kagan, J., concurring) (citations omitted); *see also Rucho*, 139 S. Ct. at 2514 (Kagan, J., dissenting); *accord Benisek*, 348 F. Supp. 3d at 513. This, therefore, “plac[es] a state party at an

enduring electoral disadvantage, . . . weaken[ing] its capacity to perform all its functions,” *Gill*, 138 S. Ct. at 1938 (Kagan, J., concurring), and “frustrat[ing]” its “efforts to translate [political] affiliations into political effectiveness,” *Rucho*, 139 S. Ct. at 2514 (Kagan, J., dissenting).

“And the evils of gerrymandering [also] seep into the legislative process itself,” *Gill*, 138 S. Ct. at 1940 (Kagan, J., concurring), underscoring how this practice “pervert[s]” the “ends of Government,” Md. Const. Decl. of Rts. art. 6. “[E]xcessive partisan gerrymandering” creates a “toxic” and “tribal” government, causing an “indifference to swing voters and their views; extreme political positioning designed to placate the party’s base and fend off primary challenges; the devaluing of negotiation and compromise; and the impossibility of reaching pragmatic, bipartisan solutions to the nation’s problems.” *Gill*, 138 S. Ct. at 1940 (Kagan, J., concurring) (citations omitted; brackets omitted); *accord Rucho*, 139 S. Ct. at 2525 (Kagan, J., dissenting).

Although the U.S. Supreme Court in *Rucho* held that partisan-gerrymandering claims were nonjusticiable under the U.S. Constitution, that only underscores this Court’s duty to vindicate such claims under the Maryland Constitution. *Rucho* expressly recognized that “[t]he

States” may “actively address[]” partisan gerrymandering “on a number of fronts,” including under “[p]rovisions in state statutes and state constitutions.” 139 S. Ct. at 2507. That is precisely what Maryland has done in Article 7 of the Declaration of Rights; Article I, Section 7; and Article 6, 24, and 40 of the Declaration of Rights.

Further, *Rucho* did *not* conclude that the federal Constitution condones excessive partisan gerrymandering; rather, it simply held that the federal judiciary lacks the authority to declare when a partisan gerrymander has crossed the constitutional boundary line. *See* 139 S. Ct. at 2506–07. So, for Article 7—along with Maryland’s equal-protection and free-speech guarantees—to be “even more protective” of political-participation rights than the U.S. Constitution with respect to excessive partisan gerrymandering, *Md. Green Party*, 377 Md. at 150, these state-constitutional provisions must both prohibit this practice and make such a prohibition enforceable in this Court.

Multiple state supreme courts have now held that their State’s broad election-protection provisions in their state constitutions prohibit partisan and incumbent-protection gerrymandering. For example, in *Harper v. Hall*, ___S.E.2d___, 2022 WL 496215 (N.C. Feb. 14, 2022), the

North Carolina Supreme Court held that partisan gerrymandering “violate[s] several rights guaranteed to the people by [its] state constitution,” *id.* at *5–6, including the “free elections clause,” *id.* at *2, 141 (citing N.C. Const. art. I, § 10), because it “can prevent elections from reflecting the will of the people impartially and by diminishing or diluting voting power on the basis of partisan affiliation,” *id.* at *141. Similarly, in *League of Women Voters v. Commonwealth*, 645 Pa. 1, 178 A.3d 737 (2018), the Pennsylvania Supreme Court held that partisan gerrymandering violates Pennsylvania’s Free and Equal Elections Clause, *id.* at 8 (citing Pa. Const. art. I, § 5), “dilut[ing]” the “people’s power” to “select the representative of his or her choice” on an equal basis, *id.* at 117; *see also League of Women Voters of Ohio*, 2022 WL 110261, at *15–27.

B. The 2021 Congressional Map Is An Obvious And Egregious Partisan Gerrymander

1. When considering whether a particular redistricting map violates constitutional prohibitions on partisan and incumbent protecting gerrymandering, state supreme courts interpreting their state-constitutional prohibitions and federal courts interpreting the U.S. Constitution (before the U.S. Supreme Court’s decision in *Rucho*, holding

such claims nonjusticiable in federal court) have concluded that a map was unlawfully partisan after considering several factors. *See League of Women Voters*, 2022 WL 110261, at *24; *Harper v. Hall*, 867 S.E.2d 554, 557 (2022); *League of Women Voters*, 645 Pa. at 107; *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 387 (Fla. 2015); *Ohio A. Philip Randolph Inst. v. Householder*, 373 F. Supp. 3d 978, 1094–96 (S.D. Ohio 2019), *vacated and remanded*, 140 S. Ct. 102 (2019); *Common Cause v. Rucho*, 318 F. Supp. 3d 777, 861–62 (M.D.N.C. 2018), *vacated and remanded*, 139 S. Ct. 2484 (2019); *Whitford v. Gill*, 218 F. Supp. 3d 837, 887–90 (W.D. Wis. 2016), *vacated and remanded*, 138 S. Ct. 1916 (2018).

First, these courts considered whether the “map-drawing process” itself was partisan. *See League of Women Voters*, 2022 WL 110261, at *24–25; *Detzner*, 172 So. 3d at 379–86, 388–89, 392–93; *Householder*, 373 F. Supp. 3d at 1096; *Benisek*, 348 F. Supp. 3d at 517–18. A process may be impermissibly partisan if, for example, it was “directed and controlled by one political party’s legislative leaders,” *League of Women Voters*, 2022 WL 110261, at *25; *see also Householder*, 373 F. Supp. 3d at 1093–96; *Common Cause*, 318 F. Supp. 3d at 861–64; *Whitford*, 218 F. Supp. 3d at 887–90; *League of Women Voters*, 645 Pa. at 122; *Detzner*, 172 So. 3d at

390–93. Other evidence may establish that the process was too partisan, such as “correspondence between those responsible for the map drawing, floor speeches discussing the redistricting legislation and other contemporaneous statements, and testimony explaining ‘[t]he historical background of the decision,’ including the ‘specific sequence of events leading up to the challenged decisions.’” *Householder*, 373 F. Supp. 3d at 1096 (quoting *Vill. of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266 (1977) (brackets in original)); *see also Detzner*, 172 So. 3d at 379–86, 388–89, 392–93.

Second, these state supreme courts and federal courts have considered the overall partisan impact or effect of the map—meaning whether the map “diminish[es] or dilut[es]” a “voter’s voting power on the basis of his or her [political] views,” *e.g.*, *Harper*, 867 S.E.2d at 557; *League of Women Voters*, 645 Pa. at 100–01; *League of Women Voters*, 2022 WL 110261, at *23, *26; *Benisek*, 348 F. Supp. 3d at 18.

Finally, these courts considered whether specific district lines subordinated traditional redistricting criteria for partisan reasons to conclude that map drawers drew their maps with partisan intent. *League of Women Voters*, 645 Pa. at 120–28; *see League of Women Voters*, 2022

WL 110261, at *26; *Harper*, 867 S.E.2d at 557–58; *Detzner*, 172 So. 3d at 386; *Benisek*, 348 F. Supp. 3d at 520.

2. The 2021 Congressional Map manifestly violates the Maryland Constitution’s prohibition against partisan and incumbent-protection gerrymandering, under all three of the above-described considerations.

a. The Map-Drawing Process Was Partisan. The Democrat-dominated Legislature used the map-drawing process to implement its partisan and incumbent-protection goals. *See League of Women Voters*, 2022 WL 110261, at *24–25; *Detzner*, 172 So. 3d at 379–86, 388–89, 392–93; *Householder*, 373 F. Supp. 3d at 1096; *Common Cause*, 318 F. Supp. 3d at 868–70; *Whitford*, 218 F. Supp. 3d at 890–96; *Benisek*, 348 F. Supp. 3d at 517–19.

In 2011, Democrat Governor O’Malley and the Democrat-dominated Legislature egregiously—and *admittedly*—gerrymandered Maryland’s congressional map, as a federal three-judge panel concluded. *See Benisek*, 348 F. Supp. 3d at 524–25. The Governor appointed a redistricting committee stacked 4-to-1 in the Democrats’ favor, which committee also included a self-described “serial gerrymanderer” as an advisor. *Rucho*, 139 S. Ct. at 2493 (citation omitted); *Benisek*, 348 F.

Supp. 3d at 504–05. The Governor and his committee expressly sought to “change the overall composition of Maryland’s congressional delegation” for the Democrats’ benefit by “flipping” one long-standing Republican district in the State. *Rucho*, 139 S. Ct. at 2493 (quoting *Benisek*, 348 F. Supp. 3d at 502). And after the Governor concluded that “flipping the First District” in the Democrats’ favor “was geographically next-to-impossible,” *id.* at 2511 (Kagan, J., dissenting); *Benisek*, 348 F. Supp. 3d at 502, “a decision was made to go for the Sixth,” *Rucho*, 139 S. Ct. at 2511 (Kagan, J., dissenting)—a district previously held by Republicans “for nearly two decades,” *id.* at 2493 (quoting *Benisek*, 348 F. Supp. 3d at 502) (alteration omitted). The map left the committee on a party-line vote, and then passed the Legislature on a party-line vote, meaning that no Republicans supported it at any stage of the process. *Rucho*, 139 S. Ct. at 2511 (Kagan, J., dissenting); *Benisek*, 348 F. Supp. 3d at 506.

In 2021, the Legislature intended to perpetuate the admitted partisan gerrymander in the 2011 Congressional Map with their 2021 Congressional Map. *See Benisek*, 348 F. Supp. 3d at 524–25. On November 9, 2021, in a cover letter accompanying the LRAC’s proposed

maps, Democrat-appointed Chair Aro explained that the Democrat-controlled LRAC drew districts with the intent, “to the extent practicable, [to] keep Marylanders in their existing districts,” Md. Gen. Assemb., *Legislative Redistricting Advisory Commission Draft Congressional Concept Maps* (Nov. 9, 2021)²¹—that is, the already-gerrymandered 2011 districts. Other Democrat proponents of the 2021 Congressional Map agreed. After passing that map, Democrat Senate President Bill Ferguson and Democrat House Speaker Adrienne emphasized that the map “keep[s] a significant portion of Marylanders in their current districts, ensuring continuity of representation.” Speaker Adrienne A. Jones (@SpeakerAJones), Twitter (Dec. 8, 2021, 8:18 p.m.).²² In short, the 2021 Legislature enshrined precisely the same impermissible partisan and incumbent-protection intent in the 2011 Congressional Map and the 2021 Congressional Map.

²¹ Available at <https://redistricting.lls.edu/wp-content/uploads/MD-20211109-Legislature-proposed-congressional-districts.pdf>.

²² Available at [https://twitter.com/SpeakerAJones/status/1468751987944660993?cxt=HHwWgoC5ideJh-IoAAAA_!!PoWaf1F1wM8F24I!I5nHZKPbHy_7fFFylljfFJPxBE2Eo__NB-cUaBR5gVJpSp_Iqw_yD-PgGnQzX3QYJwHWB8oePw\\$](https://twitter.com/SpeakerAJones/status/1468751987944660993?cxt=HHwWgoC5ideJh-IoAAAA_!!PoWaf1F1wM8F24I!I5nHZKPbHy_7fFFylljfFJPxBE2Eo__NB-cUaBR5gVJpSp_Iqw_yD-PgGnQzX3QYJwHWB8oePw$).

The Legislature did not settle with the mere continuation of the prior gerrymander; instead, it also strengthened the gerrymander in a manner that would have made even Governor O'Malley and his commission blush. In 2011, Governor O'Malley and other Democratic leaders conceded that they could not “flip” the First District because the resulting lines “would have to jump across the Chesapeake Bay,” *Benisek*, 348 F. Supp. 3d at 502, which “was geographically next-to-impossible,” *Rucho*, 139 S. Ct. at 2511 (Kagan, J., dissenting). But in 2021, the Legislature showed no such restraint, gerrymandering the First District to give Democrats a strong chance of winning *all eight* congressional seats. As Representative Jamie Raskin bragged, Maryland Democrats “have not only a political right, but . . . an ethical duty, to do whatever we can to fight fire with fire” in retribution for Republicans “trying to gerrymander us into oblivion from Texas to Georgia to North Carolina to Michigan to Wisconsin.” Jim Newell, *Democrats Could Have Gerrymandered Away A GOP Seat. Why Didn't They?*, Slate (Dec. 10, 2021).²³

²³ Available at <https://slate.com/news-and-politics/2021/12/maryland-redistricting-democrats-gerrymandering-andy-harris.html>.

Governor Hogan, for his part, proposed a map that did not take partisanship into account. In January 2021, he created the Maryland Citizens Redistricting Commission (“MCRC”) by executive order. Md. Exec. Order 01.01.2021.02 (Jan. 1, 2021).²⁴ The MCRC members included three Republicans, three Democrats, and three Independents, all selected to be independent from legislative influence, to be impartial, and to be representative of the State’s diversity and geographical, racial, and gender makeup. *Id.* at 2–3. The MCRC proposed a map that would have likely given one district back to Republicans, creating a 6-2 split. Maryland Citizens Redistricting Commission, Final Maps for Submission 12–20 (Nov. 5, 2021).²⁵ That map received an “A” grade from the Princeton Gerrymandering Project. The Princeton Gerrymandering Project, *Redistricting Report Card: Maryland 2021 Citizens Commission Final Draft Congressional Map*.²⁶ As evidenced by the MCRC, a

²⁴Available at <https://governor.maryland.gov/wp-content/uploads/2021/01/execorder.pdf>.

²⁵ Available at <https://redistricting.maryland.gov/Documents/Final-Rec/2021-1105-Maryland-Redistricting-Final-Maps-for-Submission-Book.pdf>.

²⁶ Available at <https://gerrymander.princeton.edu/redistricting-report-card?planId=rec0XDaejLCSbXPBs>.

bipartisan process that generated workable maps for the State was not only possible, but readily available.

b. The Map Has An Overwhelming Partisan Effect. The 2021 Congressional Map will have an overwhelmingly partisan effect—just as the Legislature intended—and give the Democratic Party seven “safe” districts and a strong chance at the eighth. In District 1, the last Republican district in Maryland, the Legislature’s gerrymander changed the district from one that was overwhelmingly Republican to one that Democrats have a strong chance of winning. *See What Redistricting Looks Like In Every State, Maryland, Fivethirtyeight.com* (Feb. 22, 2022).²⁷ The 2021 Congressional Map will also ensure that Representatives Ruppertsburger and Hoyer survive any primary in Districts 2 and 5, respectively.

The 2011 gerrymander—which the 2021 Congressional Map perpetuated and strengthened, *see supra* pp. 3–17—had the precise partisan effect that the Legislature intended, as the federal three-judge panel found. *Benisek*, 348 F. Supp. 3d at 506. For the life of the map, the

²⁷ Available at <https://projects.fivethirtyeight.com/redistricting-2022-maps/maryland/>.

Sixth District *always* elected a Democratic Representative and *never* a Republican Representative—meaning that the First District remained the sole Republican holdout in Maryland, like the Legislature planned. *See supra* pp. 2–12. Additionally, incumbent-Representatives Ruppertsberger and Hoyer won in every election under the map’s tenure, consistent with the Legislature’s express design.

The 2021 Congressional Map’s partisan effect is even more pronounced than the 2011 Congressional Map’s already obvious partisan effect. For example, the Princeton Gerrymandering Project gave the 2021 plan an “F” grade, based on political favoritism, geographical compactness, and other factors. The Princeton Gerrymandering Project, *Redistricting Report Card: Maryland 2021 LRAC Final Recommended Congressional Map*.²⁸ And Fair Maps Maryland, a nonpartisan anti-gerrymandering group, described the map as having a “level of gerrymandering” that rises to “voter suppression.” Meagan Flynn, *Maryland General Assembly passes new congressional map solidifying*

²⁸ Available at <https://gerrymander.princeton.edu/redistricting-report-card?planId=rectT3e34TouwaqH0>.

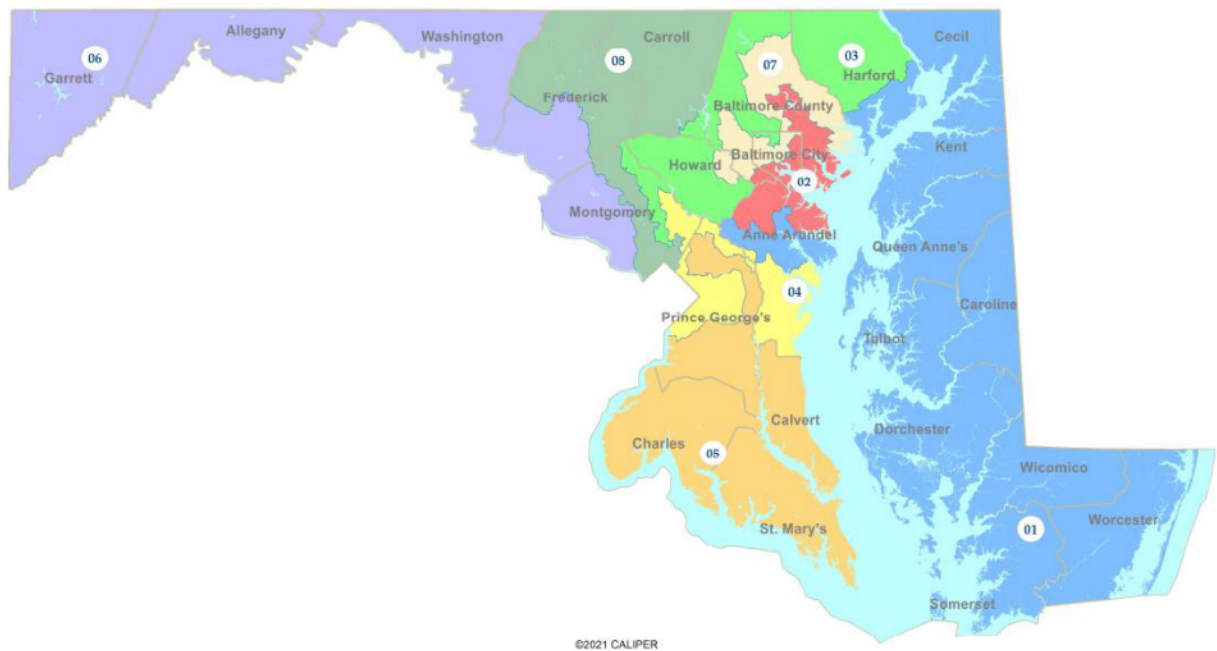
Democrats' power, Washington Post (Dec. 8, 2021).²⁹ Even other Maryland Democrats thought the 2021 map went too far, with Democratic Congressman Kweisi Mfume describing it as “overreach” that “lock[ed] out” Republican voters. *Id.*

c. Specific Lines Subordinate Traditional Redistricting Criteria For Partisan Reasons. Finally, multiple district lines subordinate traditional redistricting criteria for no discernible reason other than partisanship, providing still more evidence of impermissible partisan intent.

i. The 2021 Congressional Map’s District 1 boundaries egregiously reach across the Chesapeake Bay and far inland to grab suburban voters in Anne Arundel County, for the purpose of increasing Democrats’ chances in this district. These largely Democrat voters added to District 1 have little in common with the largely Republican, rural Eastern Shore counties of Worcester, Somerset, Wicomico, Dorchester, Talbot, Caroline, Queen Anne’s, Kent, Cecil, and part of Harford, which have traditionally been in District 1. Further, as discussed above, this jump across Chesapeake Bay for District 1 was the “geographically next-to-

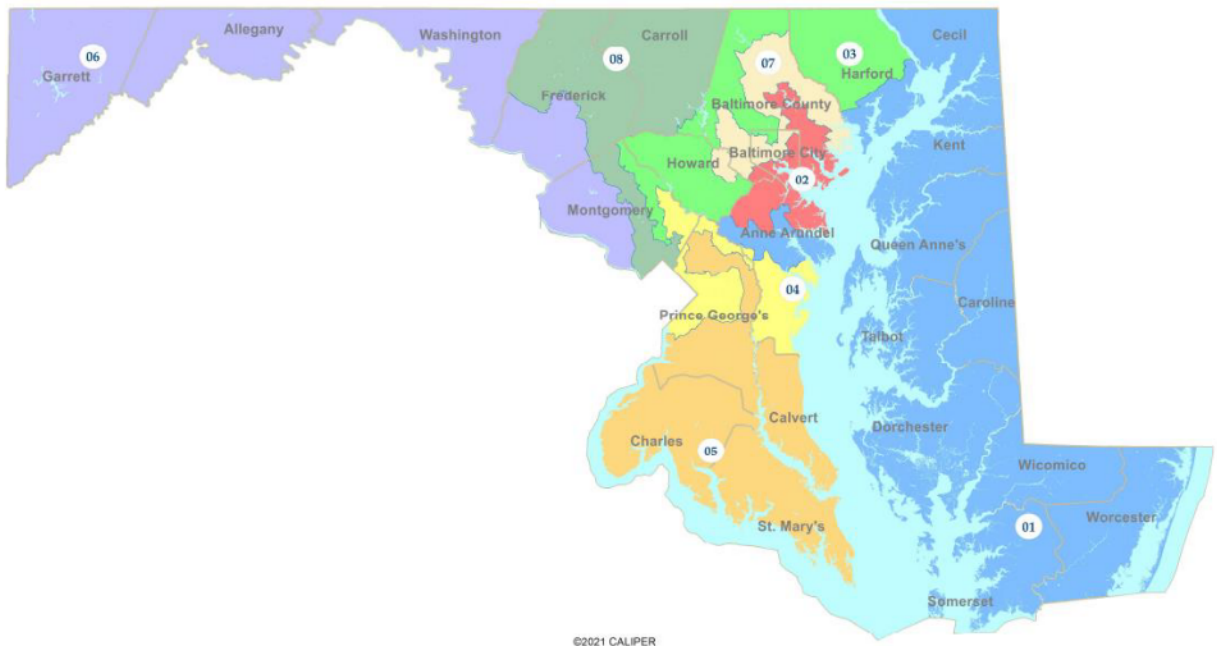
²⁹ Available at <https://www.washingtonpost.com/dc-md-va/2021/12/08/maryland-congressional-redistricting-map/>.

impossible” alteration that even Governor O’Malley and his commission was unwilling to make. *Supra* pp. 4, 51. As a result of the Legislature’s plainly partisan changes to District 1, Democrats now have a strong chance of winning this seat and sweeping all eight of Maryland’s districts.



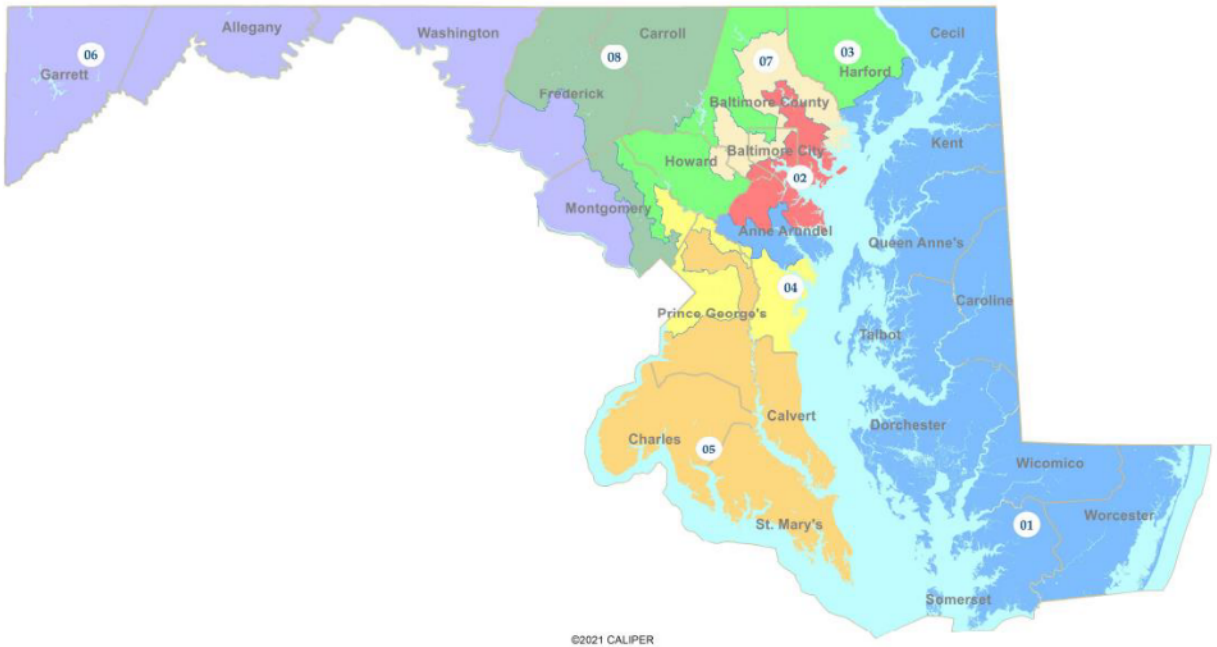
ii. The 2021 Congressional Map’s treatment of District 6 continues the Legislature’s extreme partisan gerrymander of this District from the 2011 Congressional Map. Historically, and prior to 2011, District 6 included Maryland’s five most northwestern counties: Garrett, Allegheny, Washington, Frederick, and Carroll. But in the 2011 redistricting, the Legislature redrew the district to favor Democrats. Specifically, it shifted half of Frederick County and over half of Carroll

County into District 8, while leaving the other three counties in District 6. Then, it added a portion of Montgomery County that had previously been part of District 8. This reconfiguration cracked Republican voters between the two districts, diluting their votes and flipping District 6 to a Democrat district. The 2021 Congressional Map retained this egregious partisan gerrymander.



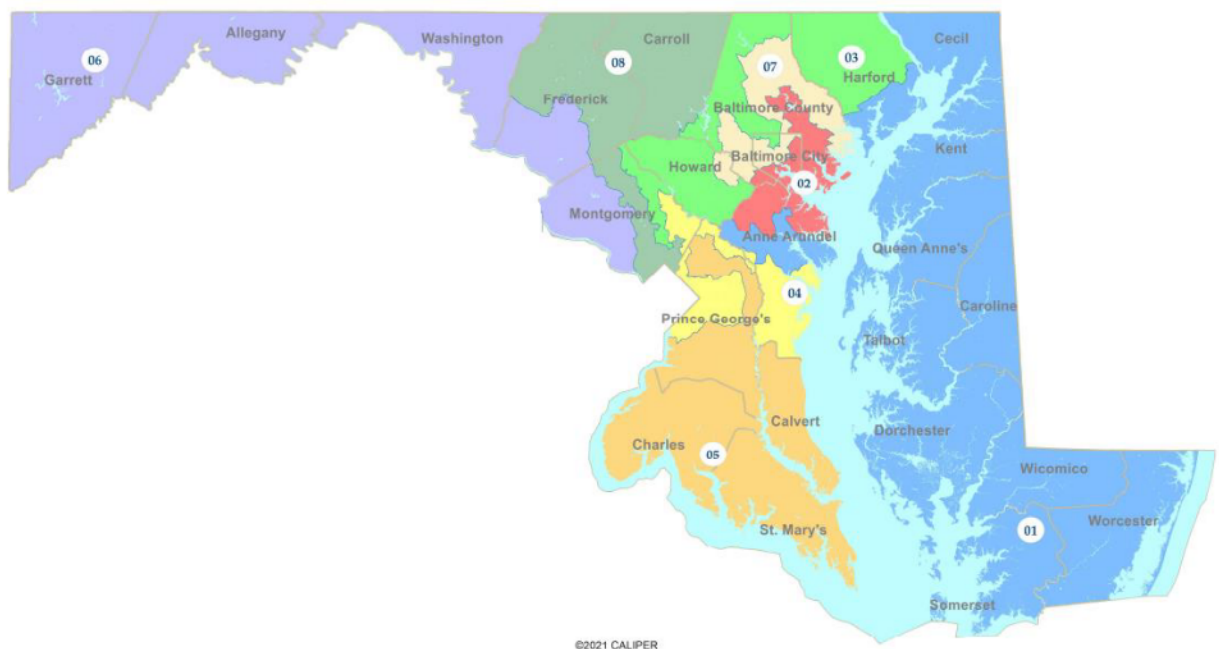
iii. Next, the 2021 Congressional Map's drawing of District 2 continues and strengthens the incumbent-protection gerrymander of this district from the 2011 Congressional Map. Specifically, as in 2011, District 2 splits Baltimore City and reaches a finger up into Baltimore County to grab white, suburban Democratic voters. Meanwhile, it

continues to divide African American communities of interest within Baltimore between Districts 1, 3, and 7. Finally, it still includes parts of Anne Arundel County, and deliberately fails to contain any whole county within its boundaries. These shifts seek to protect Representative Ruppertsberger in a primary challenge by packing the white, suburban Democratic voters who form his primary-voter base into the district, while simultaneously splitting African American communities of interest across districts, which communities are more likely to prefer a different Democratic candidate in a primary election. Put another way, this gerrymander ensures that Representative Ruppertsberger's white voter base will outnumber the African American communities of interest in his district, thus effectively guaranteeing that he will win any primary.



iv. Similarly, the 2021 Congressional District Map perpetuates the 2011 Congressional Map’s incumbent-protection gerrymander of District 5, for the benefit of incumbent Representative Steny Hoyer in any primary election. This district continues to cover the rural area of Calvert County, St. Mary’s County, and Chares County, and then reaches up in a long, hook-like appendage into more-urban Prince George’s County. By continuing to draw District 5 in this exceedingly odd way, the 2021 Congressional Map combines two dissimilar areas while splitting African American communities of interest among multiple districts. This protects Representative Hoyer in a primary election in the same way as District 2’s incumbent-protection gerrymander for

Representative Ruppertsberger—it packs white Democratic voters that form Representative Ruppertsberger’s base into the district, while splitting African American communities of interest across districts, which communities would likely prefer a different Democratic candidate in a primary election. Accordingly, these changes insulate Representative Hoyer from other Democratic challengers that may appeal to the African American voter base.

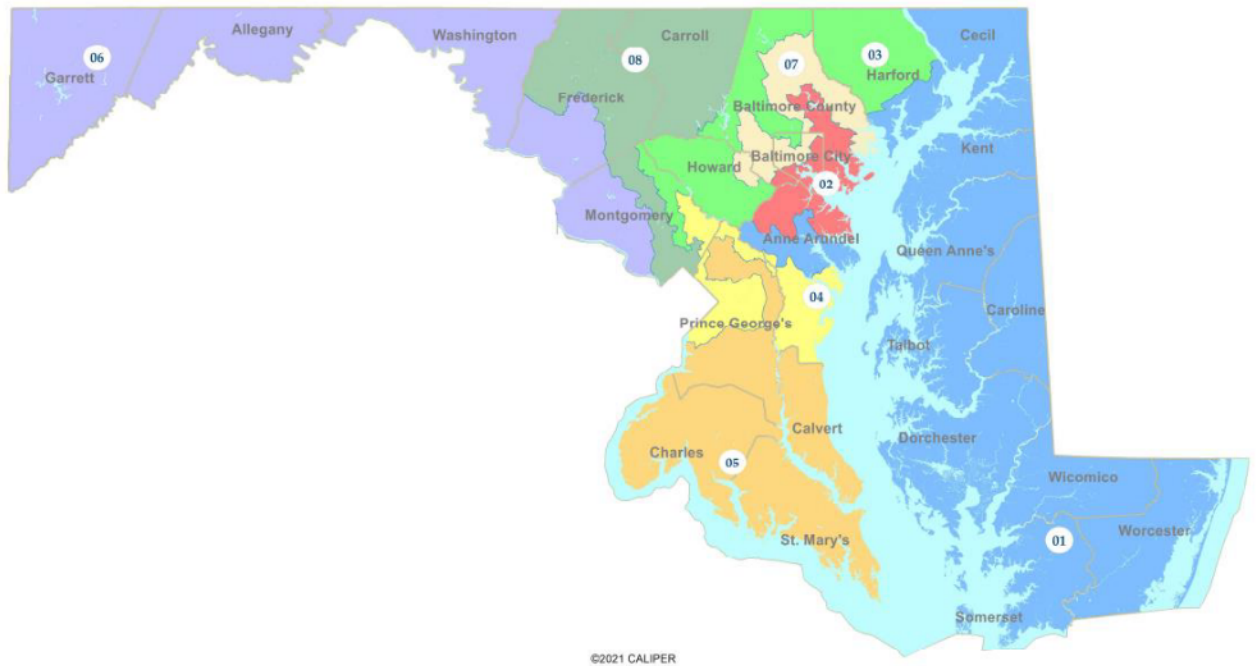


v. Finally, consistent with the above, the 2021 Congressional Map draws Districts 3, 4, 7, and 8 in the service of the partisan and incumbent-protecting gerrymanders in Districts 1, 3, 5, and 6. Districts 3 and 7 are now two awkward, nested “C” shapes to protect Steny Hoyer in District 5

and Dutch Ruppensperger in District 2, while still maintaining enough Democratic voters to keep the districts safe. District 4 is almost bisected by District 6's hook that reaches into Prince George's County. And voters in District 8 remain scrambled with voters from District 6 in defense of the 2011 gerrymander to flip District 6.

Final Recommended Congressional Map

MD General Assembly Legislative Redistricting Advisory Commission



CONCLUSION

This Court should grant the Petition To Take Original Jurisdiction
Over Review Of Congressional Districting Of The State.

Dated: February 25, 2022

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**CERTIFICATE OF COMPLIANCE
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I hereby certify that the undersigned is an attorney in good standing admitted to practice before the Court of Appeals of Maryland.

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I hereby certify that the foregoing document complies with Md. Rule 20-201.1, that the document does not contain any restricted information or, if it does contain restricted information, a redacted submission has been filed contemporaneously pursuant to Md. Rule 20-201.1(c).

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**CERTIFICATE OF WORD COUNT AND COMPLIANCE WITH
RULE 8-112**

1. This brief contains 10,188 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

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CERTIFICATE OF ELECTRONIC FILING

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