IN THE SUPREME COURT OF WISCONSIN

No. _____

REBECCA CLARKE, RUBEN ANTHONY, TERRY DAWSON, DANA GLASSTEIN, ANN GROVES-LLOYD, CARL HUJET, JERRY IVERSON, TIA JOHNSON, ANGIE KIRST, SELIKA LAWTON, FABIAN MALDONADO, ANNEMARIE MCCLELLAN, JAMES MCNETT, BRITTANY MURIELLO, ELA JOOSTEN (PARI) SCHILS, NATHANIEL SLACK, MARY SMITH-JOHNSON, DENISE (DEE) SWEET, AND GABRIELLE YOUNG,

Petitioners,

v.

WISCONSIN ELECTIONS COMMISSION; DON MILLIS, ROBERT F. SPINDELL, JR., MARK L. THOMSEN, ANN S. JACOBS, MARGE BOSTELMANN, AND JOSEPH J. CZARNEZKI, IN THEIR OFFICIAL CAPACITIES AS MEMBERS OF THE WISCONSIN ELECTIONS COMMISSION, MEAGAN WOLFE, IN HER OFFICIAL CAPACITY AS THE ADMINISTRATOR OF THE WISCONSIN ELECTIONS COMMISSION; SENATOR ANDRÉ JACQUE, SENATOR TIM CARPENTER, SENATOR ROB HUTTON, SENATOR CHRIS LARSON, SENATOR DEVIN LEMAHIEU, SENATOR STEPHEN L. NASS, SENATOR JOHN JAGLER, SENATOR MARK SPREITZER, SENATOR HOWARD L. MARKLEIN, SENATOR RACHAEL CABRAL-GUEVARA, SENATOR VAN H. WANGGAARD, SENATOR JESSE L. JAMES, SENATOR ROMAINE ROBERT QUINN, SENATOR DIANNE H. HESSELBEIN, SENATOR CORY TOMCZYK, SENATOR JEFF SMITH, AND SENATOR CHRIS KAPENGA, IN THEIR OFFICIAL CAPACITIES OF THE WISCONSIN SENATE,

Respondents.

PETITIONERS' APPENDIX

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CERTIFICATION BY ATTORNEY

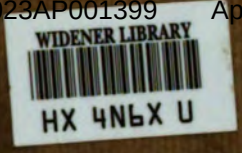
I hereby certify that filed with this brief is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) portions the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Electronically signed by Daniel S. Lenz
Daniel S. Lenz

1848 Constitutional Convention Debates Excerpts



REPORTERS' PREFACE.

In relation to the execution of this volume, the undersigned consider a few words of explanation necessary.

1st. The work not having been ordered till the business of the convention was considerably advanced, the debates which occurred during the early part of the session, are not as full and complete as they would have been, had the publication of a sketch of the debates, in connection with the journal, been anticipated.

2nd. The resolution by which the work was ordered, provided that any member, who should not wish his remarks to be reported for publication, might have them suppressed by giving notice to the reporters. Messrs. WHITON, JUDD, and BEALL gave notice that they did not wish to have their remarks reported for the volume; which will explain the brief notices taken of the part they took in debate—notice of the fact of their speaking upon particular questions being necessary to preserve the chain of debates, and to make the allusions of other speakers understood. Occasionally, members, for the sake of accuracy, prepared their remarks with their own hands. These can usually be distinguished by the style, from those furnished by the reporters employed.

3rd. Owing to the difficulty, even with experienced reporters, of making an accurate application of the different tenses, in reporting debates, and the arduous and hurrying nature of the duties of a reporter, some errors of this kind, have, in spite of our vigilance, found their way into the volume. As the *debates* are interspersed through the entire *journal*, great care and labor were necessary to preserve the letter *entire* and in the proper *form*, and to secure the accurate *arrangement* of both. Still, some slight verbal alterations of the journal at the connecting points, were indispensable. But these alterations are only verbal, and in no way affect the substance of the journal.

The proceedings in committee of the whole, when deemed of sufficient importance to warrant reporting, will be found under a distinct head, and the intelligent reader will find no difficulty in discriminating the journal from these informal proceedings. When members had taken the trouble to write out their own remarks, we have in all cases made use of them, instead of our own sketches.

4th. At the suggestion of the committee of publication, we have, in addition to a full copy, in due form, of the constitution adopted by the people, appended a copy of the rejected constitution, for preservation in a more permanent form than has yet been given to it. This the committee deemed the more necessary as constant reference was made to it in the course of the debates.

H. A. TENNEY,
J. Y. SMITH,
DAVID LAMBERT,
H. W. TENNEY,
Reporters.

JOURNAL

OF THE

CONVENTION TO FORM A CONSTITUTION

Constitutional Convention

FOR THE

STATE OF WISCONSIN,—

WITH A SKETCH OF THE DEBATES,

BEGUN AND HELD AT MADISON, ON THE FIFTEENTH DAY OF DECEMBER, EIGHTEEN HUNDRED AND FORTY-SEVEN.

BY AUTHORITY OF THE CONVENTION.

MADISON, W. T.
TENNEY, SMITH & HOLT, PRINTERS.

1848.

It was decided in the affirmative.

And the ayes and noes being required by the rules,

Those who voted in the affirmative were,

Messrs. Beall, Bishop, Brownell, A. G. Cole, O. Cole, Cotton, Davenport, Dunn, Estabrook, Fagan, Fenton, Fitzgerald, Folts, Fowler, Fox, Gifford, Jackson, Jones, Judd, Kennedy, Kilbourn, King, Kinne, Larkin, Larrabee, Latham, Lewis, Lovell, Lyman, McClellan, Mulford, O'Connor, Pentony, Prentiss, Mr. President, Reymert, Rountree, Sanders, Seagel, Schœffler, Secor, Vanderpool, Wheeler, and Warden,—44.

Those who voted in the negative were,

Messrs. Biggs, Case, Castleman, Chase, Colley, Crandall, Doran, Foote, Gale, Harrington, Harvey, Hollenbeck, Lakin, McDowell, Nichols, Ramsey, Richardson, Root, Turner, Ward, and Whiton,—21.

IN COMMITTEE OF THE WHOLE.

The convention then resolved itself into committee of the whole for the further consideration of

No. 3, Preamble and declaration of rights;

Mr. CASE in the chair.

Mr. MARTIN renewed his motion to amend the article by inserting a new section, as section 16, as follows:

"The right of the debtor to enjoy the necessary comforts of life shall be recognized by wholesome laws exempting a reasonable amount of property from seizure or sale for the payment of any debt hereafter contracted. Estates held by the courtesy or right of dower shall never be subject to execution against the tenant, nor shall the enjoyment thereof be altered or abridged by law.

Mr. BEALL was in favor of the principle of exemptions, but did not think this was the proper place to insert a provision on that subject. He was also opposed to the amendment on the ground that it did not go far enough—it was not sufficiently specific and definite. He was in favor of a provision which should make a definite exemption of a homestead; and he believed that a failure to place such an article in this constitution would secure for it the same fate which the bank article secured to the first constitution.

Mr. MARTIN said he offered the amendment at this time, because he believed this to be a suitable provision upon the subject, and a proper place to insert it. He was not in the territory at the time the vote was taken on the old constitution, but he had been informed, and from all he had heard on the subject, he believed that the most serious objection to that instrument was the article on this very subject—the article on exemptions, or the homestead exemption, as it was called.

The principle of exempting to some extent the property of the debtor from forced sale, for the payment of debts, was one which commended itself to every man. That exemption laws should exist in some form, and to some extent, might be regarded as an admitted principle. But to what extent, and under what restrictions and limitations, it should be carried into effect, required the details of legislation, and could not be provided for in the constitution. It was enough that the constitution should declare the principle, and leave it to the legislature to provide how far the principle should be carried, to what it should apply, and by what rules it should be governed.

Formerly a distinction was made between those who possessed real estate and those who did not. But it was not so in this country. We did not regard the man whose property might be invested in real estate, as of nobler blood than him whose property was invested in money or in personal effects: or that he was entitled to any special privileges on that account, as would be implied by special exemptions of real estate in preference to other property.

He was not aware that any state in the Union had provided for the exemption of real estate by constitutional provisions, except the state of Texas. They had exempted a homestead not exceeding two hundred acres, or a town or city lot not exceeding two thousand dollars in value. He thought the amount of value which might with propriety be exempted, could not be settled for all time to come. It might vary with the varying circumstances of the community. The circumstances of the community might be such as to justify the exemption of two thousand dollars in value, or they might be such as not to justify the exemption of more than two hundred and fifty dollars; and hence the necessity of leaving the legislature to determine the amount and the kind of property to be exempted, and to alter and amend those provisions to suit the varying circumstances of the community.

As to the rights of married women. The rejected constitution provided for the registering of the wife's property, and for establishing a separate property between her and her husband. This he believed to be wrong. The law properly regarded man and wife as one, and he belived there should be a unity of interests subsisting between them, so far as her personal property was concerned. He was willing to say that the income from the realty of the wife should not be taken for the husband's debts, and his amendment so provided.

Mr. CHASE was in favor of the principles contained in the amendment, so far as they went. His objection to it was, that it did not go far enough, and that was not the proper time and place to introduce such provisions on that subject as would meet his views and the views of his constituents. They declared in another section of the bill of rights, that all men are born free and independent, and endowed with certain inalienable rights, among which were life, liberty, and the pursuit of happiness. But of what use were such declarations, if a man could not enjoy those rights unless he was heir to a sufficient number of dollars to purchase them?

Of what use was it to declare a man's right to life, unless they declared also that he had a right to a place to live? It would be worse than folly to declare that a man had a right to those elements which were essential to life, and yet place one of those elements beyond his reach, unless he had the money in his pocket, or the products of labor wherewith to buy it?

Mr. CASTLEMAN was opposed to the amendment. He had heard last week, and sixty miles from this place, that just such a proposition as this would be offered in this convention. But notwithstanding this, it surprised him to find this subject the very first under discussion on his return to his seat. His constituents had instructed him to vote against it, and those instructions were in accordance with his own opinions. The article on exemption in the old constitution was to his constituents the most exceptionable of any contained in it, and it seemed to him, this would be more objectionable even than the provision of the old constitution, for the reason that it went farther. If he understood the term

"by the courtesy," it means the real estate held by the wife at the time of her marriage, and left to her husband at the time of her death, under certain circumstances. Now the wife at the time of her marriage may have held a million of acres. On the strength of that, the husband obtains credit; the wife enjoys equally with him the benefits of such credit. Shall her property to an unlimited amount be exempted from paying for the benefits which she enjoyed during her life, and revert on her death to her relations? Would it be right?

But he had another objection. He should oppose now, and always, engrafting on the constitution legislative detail, on this, as on all subjects. He was in favor of the principle of exemption—but declare the *principle* in the constitution, and leave detail to the legislature. He had confidence in the people, and of their power to properly instruct their representatives. He would then leave the subject to the legislature thus instructed, to enact, and to alter the amount exempted, as circumstances might require. If the gentleman would withdraw the last clause of his amendment, he might vote for it; he certainly could not until then.

Mr. WHITON called for the reading of the amendment, and called the attention of the mover to some legal question involved in the latter clause, to which Mr. MARTIN briefly replied.

Mr. JUDD insisted that the latter clause did not protect the wife in the enjoyment of any of her property; but protected the husband in the enjoyment of the income arising from it. He felt in something of a fix in regard to the whole amendment. As had been remarked by the gentleman from Fond du Lac, he was in favor of the general principle, and wished to vote for it at a proper time and in a proper shape; but he did not like the form or the place in which it had been introduced. He wished for a separate article on that subject, fixing a definite homestead exemption.

Mr. DORAN was opposed to the amendment proposed, for the reason that the committee to which the subject was referred, had not had time to report; and on other occasions, the opinion of the convention was decided that the action of the several committees should not be anticipated by instructions or otherwise. He was also opposed to the insertion of the principle contained in this amendment, in the article under consideration, when in his opinion it most properly belonged to the legislative article. He was further opposed to the proposed amendment, because it manifestly could not secure the end desired by the honorable president who moved it, and if adopted into the constitution, would bear a judicial construction, in all probability, very different from that apparently attached to it. A proposition granting to debtors the enjoyment of the "*necessary comforts*" of life, would undoubtedly be open to a variety of constructions, legislative and judicial; and would be recognizing a principle of far greater latitude, than was proposed on this point in the late constitution. What would be considered only comforts, or "necessary comforts," by one class, such as the honorable gentleman from Brown belongs to, would be a world of luxury to the great mass of the population, whose direct rights would be clearly encroached on by the "*privileges*" about to be secured to debtors luxuriating in the "necessary comforts" provided therein, or intended to be secured to them by this constitution. He wished, for one, to see the working classes leveled upwards instead of forever depressing them by the contemplated legislation, which would, in his opinion, have that inevitable effect.

As to the last clause of the proposed amendment, which goes to secure "estates held by the courtesy, or in dower from execution against the tenant," he, (Mr. DORAN,) could see but little analogy between the rights it intends to protect and the somewhat similar rights so stringently and so jealously intended to be protected by the married woman clause in the late constitution. There seemed to be a difference of opinion as to the nature of the estate held by the courtesy, and if according to a strict legal construction, marriage, issue under the marriage, and the death of the wife must occur before an estate can be considered and holden by "the courtesy," surely the hon. president did not intend to give the terms this limited construction, and thus whittle down the entire and inalienable rights of married women to this simple, and to them useless point; for he took it for granted that if once dead, a married woman would care very little what might come of the estate by "the courtesy." The definition given of the estate by "the courtesy," by the gentleman from Rock, (Mr. WHITON,) was undoubtedly correct, and the three things above mentioned, viz: marriage, issue, and the death of the mother of such issue, must occur before the estate by "the courtesy" could vest. But for his part, he, (Mr. D.) knowing the liberality of the honorable mover of the amendment, the great sympathy he felt that the late constitution was rejected, and the rights of the married women intended to be secured thereby, wholly unguarded; he, knowing all this, was rather impressed by the belief that the honorable mover intended the estate by "the courtesy," to mean such estate as a debtor might hold by the courtesy of the creditor, thus exempting all the estate of the debtor from execution and forced sale.

By this literal construction to the wording of the amendment, the honorable gentleman's general disposition can be reconciled with his proposed amendment. If this latter be the right construction, the construction intended, or the construction of which the clause is susceptible, it went a little too far for him; and if it did not mean this, it was worth nothing. Under this view of the case, he should feel constrained to vote against the amendment.

Mr. MARTIN modified his amendment by withdrawing the clause relating to the property of the wife. His object in so doing, was to get an expression directly upon the question of exemptions. The gentlemen from Fond du Lac, (Messrs. BEALL and CHASE,) and the gentleman from Dodge, (Mr. JUDD,) seemed to regard this question as being in their keeping, exclusively,—as their thunder—as if it was for them to introduce resolutions and instructed committees on the subject, and to determine when and in what form it should come up, and that other members had no right to meddle with the subject.

[The gentlemen from Fond du Lac and Dodge, disclaimed entertaining any such sentiments.]

Mr. M. said he presumed the objections as to the form, time, and place, in which it had been introduced, were made more for the purpose of defeating the amendment, than to find fault with him. He supposed he had a right to bring up the question in that form, at that time, and in that place, and to express his opinions upon it; and while he was up, he would give it as his opinion, that if those gentlemen were in favor of the principle, as they professed to be, they had better come out and sustain it then.

Mr. ESTABROOK said, as it seemed that whether this amendment passed or not, the question was to be again brought up in another shape,

and that they were to have pretty considerable of a fight upon it, he would here say that he should oppose the principle as a constitutional provision in all its moods, tenses, persons, forms, and shapes; for if there was any one thing in the old constitution which called forth the deep loathing and disgust of his constituents, it was the article on this very subject. He cared not whose thunder it was, nor who made use of it; he wanted none of it himself. It was a subject which should have no place in the constitution, and would not if his vote could keep it out.

Mr. BEALL expressed his determination to vote for the amendment, but with the determination to get something more definite hereafter, if possible.

Mr. LOVELL was in favor of the amendment. He had a seat in the first convention, which adopted the article on this subject. When it was first brought up, the measure struck him favorably, and for a time he supported it, not thinking of the difference between constitution, making and ordinary legislation. As the question progressed, he soon discovered the difficulty of framing an article to his own satisfaction, and finally voted against it. An article was reported. It was evidently defective. It did not suit the friends of the measure. It was amended and passed. Still it did not suit the majority that passed it, and they finally got into pretty much of a snarl about it. In the course of the proceedings on that article, he discovered the difficulty—that it was impossible to pass a specific exemption with proper guards against its abuse, and so as to secure equal justice to all, without marring the constitution with all the details of ordinary legislation. The amendment simply declared the principle, and that was all that could, with any safety or propriety be placed in the constitution.

Mr. McCLELLAN hoped the amendment would be adopted. He believed it was all that the convention could, with propriety, do upon the subject. The legislature would then have ample powers to legislate upon the subject, and the details of an exemption law belonged in the statute book, and not in the constitution.

Mr. SANDERS spoke briefly against the amendment, and was understood to oppose it on the ground that he was opposed to placing any provision in the constitution upon this subject.

Mr. WHITON inquired of the mover of the amendment what would be gained by placing the proposed section in the constitution, or lost by leaving it out?

Mr. MARTIN replied that if placed in the constitution, the legislature could not pass laws to deprive the debtor of all he had without a violation of that instrument.

Mr. WHITON would ask the gentleman further if he thought there was any danger that the legislature would pass such laws, if no such provision was in the constitution? The present laws of the territory exempted a liberal amount of property from execution. Every state in the Union recognized the principle of exemption. They all had their exemption laws. It seemed to be a fixed principle in all the state governments to exempt more or less property from execution. Where then was the danger? What was the necessity for this provision in our constitution.

Mr. DORAN again addressed the convention in opposition to the amendment, dwelling upon the uncertainty as to what might be considered the comforts of life, and the fact that they must be furnished at the

expense of the creditor, and concluded by declaring his opposition to any provision of the kind in the constitution, as being entirely out of place.

Mr. CHASE said, as he seemed called upon by his friends to sustain the principles of the amendment, he would first move a substitute, and see how far they would go in sustaining it. The gist of the substitute was a declaration that every man had a right to a place to live, and that it should be the duty of the legislature to pass such laws as were necessary to secure that right.

Mr. C. remarked that the existing laws, while they recognized a woman's right to live, denied his right to a spot to live upon. They did not recognize the right of a man to ground enough to stand upon. If he entered upon his father's land, he was a trespasser. If he entered upon the land of the state, he was a trespasser. If he set his foot any where but in the road, he was a trespasser, and if in the road, unless he was traveling, he was regarded as a vagrant. The laws regarded him as a vagrant if in the road, and as a trespasser if out of it. He thought nothing could be more clear, that if a man had a right to live, he had a right to a place where to live.

Mr. ESTABROOK would not have believed that there was a man in that convention who had the hardihood to make such a proposition. His constituents would regard it as intended for the special benefit of bankrupts and defaulters, and he had not supposed there were any such in that body.

The substitute was rejected.

Mr. KILBOURN said that some gentlemen seemed to think that this was not the most proper place for a provision of this kind. Others were in favor of something more definite and explicit, to be introduced separately and at some other time; and others still were opposed to placing any provision of the kind in the constitution. For his own part, he had no fault to find with the principles of the amendment, but he did not think the bill of rights the best place for it. He thought it more properly belonged in the article on the powers and duties of the legislature.

Mr. GALE next obtained the floor, but gave way for a motion that the committee rise and report progress.

The committee then rose, and by their chairman reported progress thereon, and asked leave to sit again.

Leave was granted.

Mr. VANDERPOOL moved that the convention adjourn;

Which was disagreed to.

And a division having been called for,

There were 23 in the affirmative, and 30 in the negative.

On motion of Mr. ESTABROOK, the convention adjourned until half-past 2 o'clock, P. M.

HALF-PAST TWO O'CLOCK, P. M.

IN COMMITTEE OF THE WHOLE.

The convention resolved itself into committee of the whole, for the further consideration of

Mulford, Nichols, Ramsey, Reymert, Reed, Richardson, Sanders, Scagel, Secor, Turner, and Wheeler,—24.

The question was then put on concurring in the amendment of the committee of the whole as amended;

And was decided in the affirmative.

And the ayes and noes having been called for and ordered,

Those who voted in the affirmative, were

Messrs. Beall, Bishop, Brownell, Chase, A. G. Cole, Davenport, Dunn, Estabrook, Fenton, Folts, Gale, Harvey, Jones, Judd, Lakin, Larrabee, Lewis, Lovell, Lyman, McClellan, O'Connor, Pentony, Prentiss, Mr. President, Ramsey, Richardson, Root, Rountree, Vanderpool, Ward, Wheeler, Whiton, and Warden,—34.

Those who voted in the negative, were

Messrs. Biggs, Case, Castleman, Colley, Cotton, Crandall, Doran, Fagan, Fitzgerald, Foote, Fowler, Fox, Gifford, Harrington, Hollenbeck, Jackson, Kennedy, Kilbourn, King, Kinne, Larkin, Latham, McDowell, Mulford, Nichols, Reymert, Reed, Sanders, Scagel, Schœffler, Secor, and Turner,—32.

The question then recurred on the 5th amendment of the committee of the whole, when

Mr. FOOTE moved to amend the same by adding the words "not exceeding in value the sum of five hundred dollars, said property to be either real or personal, or both, at the option of the owner, and its value to be ascertained in such manner as the legislature may prescribe."

Mr. RICHARDSON said, inasmuch as he was bound to vote against the amendment, he wished to make a statement of the reason for so voting, lest a wrong impression might get abroad. That is, that he was opposed to the principle of exemption; which principle he recognized as being right. It is stated in the first section of this article that all men are born equally free and independent, and have certain inalienable rights, among which are life, &c. This he held to be correct, and farther, that as a necessary consequence, man has a natural right to the means to sustain or perpetuate that life. But, at the same time he held that this was a proper subject for legislation, and should not enter into the constitution. Upon this subject he was satisfied that he had a very full expression from his immediate constituents, and he firmly believed, that the incorporation in the old constitution of the article on exemption, was one of the great causes of so large a majority of votes being cast against it in the county which he had the honor to represent in part. His constituents took the same view of the matter as himself. Consequently, he, as their representative, would vote against every proposition of the kind.

The question having been put upon the adoption of the same,

It was decided in the negative.

Mr. DORAN moved to amend the amendment by inserting after the word "necessary," the following words, viz: "means to procure the" so that the amendment would read "the privilege of the debtor to enjoy the necessary *means to procure the* comforts of life shall be recognized by wholesome laws, &c."

Mr. DORAN said, as the amendment stood, the legislature might feel constrained to go into a calculation as to what might, or might not be considered the "necessary comforts" of a debtor. Besides it was one thing to secure and exempt what might be considered "necessary comforts," and quite another thing to exempt the "necessary *means to pro-*

Mr. CHASE said that the gentleman from Grant, (Mr. RICHARDSON) was perfectly right in supposing that the legislature would probably run up to the maximum number. For that very reason he had voted for a high maximum, believing as he did that a large legislature was a safeguard to the liberties of the people.

Mr. REED thought that if the minimum should be fixed at a low number, it would be generally supposed that the convention intended to limit the first legislature to that number. If it was true that the legislature would probably soon run up to the maximum, that was no argument in favor of a low minimum.

Mr. LOVELL said that it was a mistake to suppose that it was the uniform practice of state legislatures to increase their numbers. The New England states had decreased, instead of increasing, the number of the members of their legislatures. That was especially the case with Massachusetts. If members referred to their western experience, they would find that the legislature of the state of Illinois consisted originally of 130 members, but the recent convention held in that state had fixed the number much lower. The people found large legislatures too expensive, and after having tried them, were not generally in favor of them. In answer to the argument of the gentleman from Winnebago, (Mr. REED) that the interests of the northern counties required a large legislature and a low ratio of representation, he said that gentlemen must recollect the rapidity with which these counties were being settled. Two years hence, every county at the north will, at the present rate of increase, be entitled by its population to representation in the legislature.

The question was then upon the adoption of the same,

And was decided in the negative.

And a division having been called for;

There were 30 in the affirmative and 32 in the negative.

The question was then put upon concurring in the amendment of the committee;

And was decided in the affirmative.

And the ayes and noes having been called for and ordered.

Those who voted in the affirmative, were

Messrs. Beall, Bishop, Brownell, Carter, Chase, A. G. Cole, Davenport, Fagan, Featherstonhaugh, Fenton, Fitzgerald, Folts, Gifford, Jackson, Jones, Judd, Kennedy, Larkin, Larrabe, Lewis, Lyman, McClellan, O'Connor, Pentony, Prentiss, Mr. President, Reymert, Reed, Sanders, Scagel, Schœffler, Secor, Steadman, Turner, Vanderpool, Ward, and Warden—37.

Those who voted in the negative, were

Messrs. Biggs, Case, Castleman, O. Cole, Colley, Cotton, Crandall, Doran, Estabrook, Foote, Fowler, Fox, Gale, Harrington, Harvey, Hollenbeck, Kilbourn, King, Kinne, Lakin, Latham, Lovell, McDowell, Mulford, Ramsey, Richardson, Root, Rountree, Wheeler and Whiton.—30.

The question was then put upon concurring in the third amendment of the committee, which was

Add to sec. 4, "said district to be bounded by county, town, or ward lines," to consist of contiguous territory, and be in as compact a form as can be, to include the requisite population."

Mr. WHEELER moved to amend the amendment as follows:

"Strike out the word 'single' in the first line of section 4, and add the

following proviso at the end of the section; *Providing however*, That the districts shall be bounded by county lines until otherwise provided by law.

Mr. CHASE took this occasion to declare that he was in favor of the single district system to the utmost extent, but that he was disposed to go for this amendment because he thought it impossible, before the first legislature, to district the state otherwise than by county lines. There was no authority vested in the convention to direct territorial officers to do it.

Mr. KING thought there would be no difficulty in doing this. The convention had the census returns by towns and precincts, from every county, with the exception of one small one. With these data they they could district the state themselves.

Mr. O. COLE said that he hoped the convention would not lend their sanction to this amendment. If any principle was purely democratic, the single district system was so. It brought the representative immediately home to his constituents.

Mr. RICHARDSON was unable to say what the wishes of his constituents were on this subject. His own views of expediency would rather lead him to go for the county system. But if he believed that his constituents required it, he was willing for his own part to undertake the arduous task of districting by the convention.

Mr. BEALL made some remarks in opposition to the amendment.

Mr. CHASE thought that the convention would find much more difficulty in districting than they supposed. He did not think it the province of the convention, but rather of the supervisors of the counties. He desired that the gentleman would modify his amendment so as to make it the duty of the first legislature to take steps for this purpose.

Mr. DORAN said that he had written to his constituents in reference to the subject of single districts, and as far as he had received answers, they were unanimously in favor of that system. It would be much more difficult for the legislature or for the county boards to district the state, than it would be for the convention. This was the proper time and place. He was in favor of the single district system in its strictest sense, now and hereafter.

Mr. JUDD made a few remarks in favor of districting by the convention.

Mr. SCAGEL said that his constituents were in favor of single districts, and of districting immediately. As regarded the eastern part of the territory, no difficulty would arise from doing so. With respect to the northern, he was without information. But there were gentlemen here from all parts of the territory who could speak in reference to those portions with which they were acquainted.

Mr. FOX said that the gentleman from Waukasha, seemed to think that all the members were prepared to act on this matter. He for one was not; and he did not wish to be left here until corn planting time, agitating the subject.

Mr. HARVEY was in favor of taking the matter up in convention. He thought the first legislature would have quite as much difficulty in districting as the convention would have, and did not like the principle of leaving another body to do what they would shirk out of. He related an anecdote illustrating the feelings of citizens in regard to sending measures back from the convention to the people.

The question was then put upon the adoption of the same,

And was decided in the negative.

And the ayes and noes having been called for and ordered,

Those who voted in the affirmative, were

Messrs. Bishop, Brownell, Fitzgerald, Fox, O'Connor, Ramsey, Richardson, and Wheeler—8.

Those who voted in the negative were,

Messrs. Beall, Biggs, Carter, Case, Castleman, Chase, A. G. Cole, O. Cole, Colley, Cotton, Davenport, Doran, Estabrook, Fagan, Featherstonhaugh, Fenton, Folts, Foote, Fowler, Gale, Harrington, Harvey, Hollenbeck, Jackson, Jones, Judd, Kennedy, Kilbourn, King, Kinne, Lakin, Larkin, Larrabee, Latham, Lewis, Lovell, Lyman, McClellan, McDowell, Mulford, Pentony, Prentiss, Mr. President, Reymert, Reed, Root, Rountree, Sanders, Seager, Schœffler, Secor, Steadman, Turner, Vanderpool, Ward, Warden and Whiton—57.

The 3d amendment of the committee was then concurred in.

Mr. PRENTISS moved to amend the article by striking out sec. 5, and inserting the following:

"The senators shall be chosen for two years, on the day of the general election, and in the same manner as members of the assembly are required to be chosen. They shall be chosen by single districts, and at the first session of the legislature they shall be divided by lot into two equal classes, the seats of the senators of the first class shall be vacated at the expiration of the first year, and the second class at the expiration of the second year; so that one-half thereof shall be chosen annually thereafter."

In support of this amendment Mr. PRENTISS said, section 5 provided that senators should be chosen by double districts. He was in favor of the single district system and believed it to be the most correct. By that system representatives knew their constituents and constituents their representatives. His amendment only modified the article by making the senatorial districts single. One half of the senate would be elected annually, so that one half would consist of old, and one half of new members.

Mr. WHITON moved to amend the amendment by substituting the following:

Amend by striking out sec. 5, and inserting sec. 5. "The senators shall be chosen annually by single districts of convenient contiguous territory at the same time, and the same manner as members of the assembly are required to be chosen, and no assembly district shall be divided in the formation of a senate district."

Mr. LOVELL said, that the object of constructing the section as it was in the article, was for the purpose of leaving at least one-half of one branch of the legislature acquainted with the forms of business, so as to give information, such as could only be handed down by tradition, to the new members. This was well known to be extremly desirable.

He was opposed to the amendment of the gentleman from Jefferson, inasmuch as its necessary results would be that one half of the people would be called upon to vote for senators one year, and the other half the next.

He thought that if the senatorial apportionment were made by single districts it could not be made by any means so accurately, as by double. Great injustice would then be done to many counties.

Pending the question thereon;

it would then rest upon some other. Remove it from that and it would rest upon some other, and so they might follow up the inequality with amendments interminably without the possibility of destroying it.

Mr. GIFFORD had conversed with the committee on the subject before the article was reported, and endeavored to secure the apportionment of two senators and four representatives to Waukesha, but finding the majority of the committee inflexible upon that point, he favored the present arrangement. Still he preferred two senators and four representatives, and as the proposition had been offered by his colleague he should vote for it.

Mr. WHITON here addressed the committee.

Mr. KILBOURN replied,—chiefly by arithmetical calculations.

Mr. LOVELL defended the report of the committee by a series of calculations.

The question was then taken on the amendment,

And was decided in the negative.

There were 20 in the affirmative, and 26 in the negative.

Mr. FEATHERSTONHAUGH moved so to amend as to give to Calumet and Manitouwoc, one representative each. Mr. F. remarked that the report of the committee put those two counties together and gave them one representative, and he asked that they might be seperated and each have a representative, because the two counties were entirely disconnected, so far as their settlements were concerned, and could not possibly act in concert. The peculiar circumstances of these counties had been appreciated by the legislature which fixed the representation in the last convention, and also by the last legislature in apportioning the delegates to the present convention, and they had been kept seperate, and a sense of duty to his constituents induced him to urge upon the convention the necessity of adhereing to these precedents in apportioning the legislature of the state.

Mr. CHASE said he should vote for the amendment for the reasons stated by the honorable mover. To his personal knowledge the two counties, so far as facilities for acting together were concerned, were as entirely disconnected as Calumet and Racine. They were contiguous it was true, but the settled portions of the two counties were separated by a wide strip of timbered country which cut off their intercourse and seperated their interests.

Mr. JUDD made some remarks.

Mr. REED hoped the amendment would prevail. He could assure the committee from his personal knowledge that there was the most urgent necessity for it. The reasons urged in its favor by the gentleman from Calumet and Fond du Lac, were good and sufficient reasons, and he was in favor of the amendment, not only for these, put for other reasons. He believed that every organized county should have one representative in the house. If two counties were put together in one representative district, the representatives must be taken from one of those counties, and the other be left entirely unrepresented, for it would be impossible for a man in one county to be sufficiently familiar with the local wants and interest of another county to represent it properly. In the last legislature the county of Winnebago was represented by members from other portions of the district and during the session, the county seat of Winnebago was located, and he presumed not six men in the county knew anything about it till it was done. He did not say that it was improperly located, but he alluded to the circumstance to show that

counties might suffer great injustice if represented by those who knew nothing of their particular wants or interests. The circumstances of the two counties in question were such that the same man could not represent them both. One was located on lake Winnebago, and the other on lake Michigan, and seperate and probably conflicting interests might arise. He was gratified to notice the liberal spirit which had been manifested by gentlemen who had expressed their views upon the amendment, and he could not but hope it would prevail.

Mr. COLE of Grant was willing to persue a liberal policy to the northern counties, so far as was consistent with justice to other portions of the territory. He could not see why one man could not represent the two counties in question. They were contiguous to each other and he perceived by the map that the extremes were only thirty-five or forty miles apart. The gentleman from Winnebago thought they should give to each organized county one representative. He thought if the rule should be applied to all the north-western counties, the gentleman would hardly be willing to adhere to his own principle. Suppose they should give to Crawford, Chippewa, St. Croix, and La Pointe, four representatives, it must work great injustice to other portions of the territory, or the legislature must be increased to an unreasonable size.

The committee rose and reported progress and asked leave to sit again thereon.

Leave was granted.

On motion of Mr. VANDERPOOL,

The convention took a recess until half-past two o'clock, P. M.

HALF-PAST TWO O'CLOCK, P. M.

IN COMMITTEE OF THE WHOLE.

The convention then resolved itself into committee of the whole, for the further consideration of

No. 18, Article on apportionment of representatives.

Mr. WHEELER in the chair.

Mr. KILBOURN withdrew the amendment offered by him in the forenoon.

Mr. FEATHERSONHAUGH said he wished to get a vote as soon as possible on the amendment he had offered, to ascertain whether the convention were disposed to adhere rigidly to the apportionment as recommended by the committee, or whether they would allow of amendment. He thought the counties of Calumet and Manitowoc at any rate should be allowed each a representative. He could not accede to the doctrine in general, that population, only, should be represented. It was too unstable a basis in a new country, where the people were constantly changing—in a large tract which was fast filling up. But if population was to be strictly regarded, how did it happen that Portage was assigned one member of the assembly, and Calumet and Manitouwoc together, but one? Those two counties together, had a far larger population than Portage, and if they were not strictly entitled to two representatives, they were reduced to the alternative of asking a little more

than what they were entitled to, or receiving far less. But the great reason for not joining the two counties together, and giving them but one member, was that they were separated by nature, and had no interest in common. Gentlemen had spoken of the barrier between them, as a dense forest. It was more than that. It was a swamp through which there was no road, and which was wholly impassible to any but Indians. No white man had ever gone through. Under such circumstances it was unjust to join the counties together for election purposes on any pretence. He repeated that the system was wrong, which made it necessary to do this. It was impossible, on the basis of population, to do justice to the small counties, by giving them one half or one-fourth of a member. The true way was to give to a certain amount of territory defined by boundary lines, or separated by nature and having a distinct interest—a representative at any rate. This reason applied with peculiar force in the case of Calumet and Manitowoc, and he hoped the liberality of the convention would accord a representative to each.

The amendment was adopted, 29 to 9.

Mr. FENTON offered an amendment, giving the counties of Crawford and Chippewa one member of the assembly, and St. Croix and LaPointe one.

He remarked, that the argument of the gentleman from Calumet would apply with equal, if not greater force, to this case, and he hoped the convention would be as liberal to him as to that gentleman.

Mr. DUNN said he had voted for the amendment of the gentleman from Calumet, from a conviction that each organized county should have at least one member of the legislature. If it had been judged wise and proper by the legislature, that a county should be organized for the purposes of government, the inference was equally strong that it had such a separate and peculiar interest as entitled it to a representative. There were many questions which related to each county, in its corporate capacity, which could only be properly attended to by a representative of that county, and who had no divided interest. He agreed with the gentleman from Calumet, that population should not be wholly the basis of representation. There were various reasons besides numbers, which should influence in apportioning members. Putting together two or more counties to be represented by one member, was itself an evil, and should be avoided. Local jealousies might prevail, or local interests might be in conflict, and as the representative must come from one or the other, he very naturally would be attached to the interests of his own county, and the other would feel that it was not represented. Counties should be represented, and they cannot be, unless each has a representative of its own. As to the amendment of the gentleman from Crawford, he remarked that the county of St. Croix was duly organized, and should have a representative. The county of Lapointe had no separate organization, but was attached to St. Croix, which was an additional reason for giving St. Croix a member. The same remark would apply to Chippewa and Crawford. Crawford was an old county, and had been burdened with an attached county for years. He thought there was not a county in the territory better entitled to a representative of its own. The principle decided in the amendment of the gentleman from Calumet, applied with double force to this case. It was only proposed to add one to the gross number of representatives, and he thought this amendment, while it did justice to the north western counties, would do no injustice to the others.

Mr. BROWNELL said that if the principle of apportionment adopted by the committee, were departed from in any case, it certainly should in this. Crawford and St. Croix were distant from each other, and had no interest in common, and a member from one of them, would not be likely to be a true exponent of the wishes and feelings of the other. Moreover, frontier counties needed a larger representation to secure their rights. They are in process of formation, and need more special legislation than older counties, and besides being further away, they are more apt to be neglected. The fact that St. Croix and La-Pointe were unrepresented in any civil office, and that no census had ever been taken there, was good evidence of this. The population of St. Croix, he said, was not known. It was much larger than it was reported, and was increasing very fast. This was a reason for giving them a larger representation than the committee had assigned them. He hoped the convention would exercise the same liberality towards these counties as they had towards Calumet and Manitowoc.

The amendment was adopted.

The committee then rose and by their chairman reported the same back to the convention with amendments.

The question being on concurring in the amendments of the committee,

Mr. WHITON called for a division of the question.

The question having been put upon concurring in the first amendment of the committee, which was to strike out the 26th and 27th lines, and insert the following:

"The county of Calumet shall be entitled to elect one member of assembly.

The county of Manitouwoc shall be entitled to elect one member of assembly;"

It was decided in the affirmative.

And the ayes and noes having been called for and ordered,

Those who voted in the affirmative, were

Messrs. Beall, Bishop, Biggs, Brownell, Carter, Case, Castleman, Chase, A. G. Cole, O. Cole, Cotton, Crandall, Davenport, Doran, Dunn, Estabrook, Fagan, Featherstonhaugh, Fenton, Fitzgerald, Folts, Fowler, Gifford, Hollenbeck, Jones, Judd, Kennedy, Kilbourn, King, Kinne, Larkin, Larrabee, Lewis, Lyman, McClellan, McDowell, Nichols, O'Connor, Pentony, Prentiss, Mr. President, Ramsey, Reed, Richardson, Root, Sanders, Seagel, Steadman, Turner, Vanderpool, Warden, and Wheeler,—52.

Those who voted in the negative, were

Messrs. Gale, Harvey, Jackson, Lakin, Latham, Lovell, Rountree, and Whiton,—8.

The question was then put upon concurring in the second amendment of the committee, which was to strike out the 29th and 30th lines, and insert the following:

"The counties of Crawford and Chippewa shall be entitled to elect one member of assembly;

The counties of St. Croix and LaPointe shall be entitled to elect one member of assembly;"

And was decided in the affirmative.

And the ayes and noes having been called for and ordered,

Those who voted in the affirmative, were

Messrs. Beall, Bishop, Biggs, Brownell, Carter, Case, Castleman,

ment only as a last resort. If it was adopted his plan would be to make one large assembly district and elect a senator from the same, leaving the other senator and two representatives to be elected by two smaller districts. Waukesha was entitled to nine units of representation, and what he wanted mainly was to get them. He would have preferred one senator and six representatives.

Mr. GIFFORD said his honorable friend had made an explanation in his way, and it might be thought, unless he replied, that he was satisfied, and saw the matter in a new light. But it was not so. He could not yet see any reason for such a division of Waukesha.

Mr. JUDD spoke.

The question was then put,

And was decided in the negative.

And the ayes and noes having been called for and ordered,

Those who voted in the affirmative, were

Messrs. Biggs, Carter, Case, Castleman, Cotton, Crandall, Dunn, Fagan, Featherstonhaugh, Fenton, Fitzgerald, Foote, Fowler, Gale, Harvey, Kennedy, King, Kinne, McDowell, O'Connor, Root, Steadman, and Ward,—23.

Those who voted in the negative, were

Messrs. Beall, Bishop, Brownell, Chase, A. G. Cole, O. Cole, Davenport, Doran, Estabrook, Folts, Fox, Gifford, Harrington, Hollenbeck, Jackson, Jones, Judd, Kilbourn, Lakin, Larkin, Larrabee, Latham, Lewis, Lovell, Lyman, McClellan, Nichols, Pentony, Prentiss, Mr. President, Ramsey, Reymert, Richardson, Rountree, Sanders, Scagel, Schœffler, Secor, Turner, Vanderpool, Warden, Wheeler, and Whiton,—43.

Mr. CASE moved to amend the report on number 18, article on apportionment of representatives by striking out the 22d and 24th lines and inserting

"The counties of Waukesha and Walworth shall be entitled to elect three senators;"

Which was disagreed to.

The question then recurred upon concurring in the report of the committee.

Mr. HARVEY said he hoped the convention would not concur.—The amendments so changed the ratio that Waukesha was really entitled to the increase she had asked and which we had refused to accord to her. After all the smoke which had been raised over the apportionment, to so little purpose, he thought it was best to return and adopt the report of the committee as it first came from their hands. As the gentleman from Rock, (Mr. WHITON) had said, when in adopting the single district system we had resolved by an overwhelming majority to disregard county lines altogether, it was absurd to talk of giving any county more than its population entitled it to on the score of its county organization. The populous counties would not consent thus to throw away their rights.

Mr. BROWNELL hoped the amendment would prevail. The strict rule of population would operate with great severity, and he thought with injustice towards the north-western counties. The counties of Crawford, St. Croix, Chippewa, and La Pointe, extended a distance of over 400 miles, and to give them but one representative and one senator would be equivalent to no representation at all. With the representation they had had heretofore they had been unable to secure their interests

and make their influence felt. He thought it was highly proper, and no departure from right, to give them an additional member. Their population was not known definitely, but it was probably much greater than the estimate of the committee.

Mr. HARVEY inquired what was the probable population.

Mr. BROWNELL said he thought it would exceed six thousand.

Mr. HARVEY then called for a division of the question, remarking that he would be willing to give them an additional member, but not the counties of Calumet and Manitowoc.

Mr. LOVELL hoped the amendment would not be concurred in. It had been obvious to him from the beginning that it would do injustice to the other counties. He had every disposition and motive to give the smaller counties all they were entitled to, but this was giving them too much, and was unjust to the other counties. The reason applied fully to the case of Crawford and the other north-western counties. As the apportionment stood at first they were over-represented more than any other district in the territory. If we abandoned population as the basis of representation in some counties it should also be done in the rest.—They should all be served alike. It was necessary at any rate to have a fixed plan or principle. The amendment cut loose from all principle. That the committee had been liberally disposed towards the smaller counties was evident by the fact that they had allowed the north-west counties an over-representation of 3000 or 4000, and Calumet and Manitowoc of over 1000. It was preposterous to ask any more.

Mr. RICHARDSON said it was known that he was one of those who contended that each county should have a representative at any rate. He acknowledged that population should be the basis as a general rule, but there are exceptions to all rules, and there should be to this. The case of small counties was an exception to the general rule. Each organized county had separate interests of its own —it was a small republic—and could not be properly represented by any but a citizen who resided within it. Who else would feel the same interest in it, and be as well disposed to secure its interests? The effect would be then, if nothing but population were regarded that counties which had not quite enough to entitle them to a representation would be uncared for. This would be unjust. He had been willing he said, in the first place, to give to each county a representative, and to go upon the basis of population. He thought this would give just about a fair proportion to both large and small counties.

Mr. FEATHERSTONHAUGH hoped the amendment, at least as far as it related to Manitowoc and Calumet, would be adopted. It had been said that population should be the only basis of representation.—We of the more sparsely settled counties have claimed that territory should be in part the basis. It would be preposterous to go into any further argument to establish this position. Heaven had given us land, but the people had not yet come to occupy it. They would do so soon, however. The interests of those counties are to be permanently effected now when the state is young. Those interests should not be weighed merely by the number of people at present in the county. But as to Calumet and Manitowoc he would repeat what he had often said that those counties were separated by an impassible barrier and had no interest or feeling in common. One was agricultural, the other commercial. They had no intercourse, and they would be ill mated. Unless each were allowed a representative, Calumet would be in effect swallow-

ed up in Manitowoc. He appealed to the liberality of the convention to anticipate their population by a little and give them even a little more than they were entitled to, rather than allow them to be wholly unrepresented. The former convention had been liberal with them, and so had former legislatures.

Mr. HARVEY said that if the argument of the gentleman from Calumet amounted to any thing it amounted to this, that it was necessary to represent the harbors and woods of Manitowoc and the musquitoes, swamps and tadpoles of Calumet. He goes against population as a basis, and he claims no other, except the difference in the character and productions of the two counties. To meet his views and yet secure justice to the other counties it would be necessary to form a new apportionment throughout.

Mr. BEALL spoke.

Mr. FEATHERSTONHAUGH in answer to the gentleman from Rock said he had not taken the position that population should not be the basis of representation, but the contrary. He had said that territory should be the basis in part, but population in the main. And in asking a member for each of the counties of Calumet and Manitowoc he did not feel that he was begging any thing to which they were not entitled Those counties were entitled to it as much as the county of Rock itself, There was a feeling of self reliance, of patriotism, and of county pride which existed in a small county as much as in a large one. As to the swamps, &c., which so much disturbed the gentleman, he would say that he should make use of the arguments in advocating the rights of the small counties which experience had led him to think were most effectual, and he should never desist so long as he could find one Archimedean spot on which to rest his lever.

The question was then taken on concurring in the report,

And was decided in the affirmative.

And the ayes and noes having been called for and ordered,

Those who voted in the affirmative were,

Messrs. Beall, Bishop, Brownell, Case, Castleman, Chase, A. G. Cole, Cotton, Davenport, Doran, Dunn, Estabrook, Fagan, Featherstonhaugh, Fenton, Fitzgerald, Folts, Fowler, Fox, Gale, Gifford, Jones, Judd, Kennedy, Kilbourn, King, Larkin, Larrabee, Lewis, Lyman, McClellan, McDowell, Nichols, O'Connor, Pentony, Prentiss, Mr. President, Ramsey, Reymert, Richardson, Root, Sanders, Scagel, Schœffler, Secor, Steadman, Turner, Vanderpool, Ward, Warden, and Wheeler,—51.

Those who voted in the negative were

Messrs. Biggs, Carter, O. Cole, Crandall, Foote, Harrington, Harvey, Hollenbeck, Jackson, Kinne, Lakin, Latham, Lovell, Rountree, and Whiton,—15.

The question was then put upon ordering the article to be engrossed and read a third time;

And was agreed to.

IN COMMITTEE OF THE WHOLE.

The convention then resolved itself into committee of the whole for the further consideration of

No. 7, article on the Judiciary.

Mr. KING in the chair.

tree, Secor, Steadman, Turner, Vanderpool, Ward, Wheeler, and Whiton,—52.

Mr. LATHAM moved that the article be laid upon the table; which was agreed to.

And a division having been called for, there were 25 in the affirmative, and 19 in the negative.

Mr. FITZGERALD moved that the convention adjourn; which was disagreed to.

And and a division having been called for, there were 21 inthe affirmative, and 28 in the negative.

Mr. LARRABEE by leave introduced the following resolution to wit:

"*Resolved*, That the following sections be a part of the constitution:

Sec. All county officers whose election or appointment is not provided for by this constitution, shall be elected by the electors of the respective counties, or appointed by the boards of supervisors or other county authorities, as the legislature shall direct. All city, town, and village officers, whose election or appointment is not provided for by this constitution, shall be elected by the electors of such cities, towns, and villages, or of some division thereof, or appointed by such authorities thereof, as the legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed as the legislature may direct.

Sec. The legislature may declare the cases in which any office shall be deemed vacant, where no provision is made for that purpose in this constitution."

Mr. LARRABEE moved that the rules be suspended for the consideration of said resolution now.

Which was agreed to.

The resolution was read the first and second times.

The question was then put upon ordering the resolution to be engrossed and read the third time.

And was decided in the affirmative.

No. 22, article on schedule,

Was then taken up.

Mr. ROUNTREE moved to amend the same by striking out in sec. 11, in third line, "Jefferson, Rock, and Green," and inserting "Washington, Sheboygan, Manitowoc, Calumet, Brown, and Fond du Lac."

Strike out in fourth and fifth lines, "Washington, Sheboygan, Manitowoc, Calumet, Brown, and Fond du Lac," and insert "Jefferson, Rock, and Green."

Mr. ROUNTREE said:

Mr. PRESIDENT: I propose this amendment to the article now under consideration, believing as I do, that the public good requires the division of the state into congressional districts by a north and south line, as near as may be. I propose by this amendment to comprise the counties of Racine, Walworth, Milwaukee, Waukesha, Washington, Sheboygan, Manitowoc, Brown, Calumet, and Fond du Lac, in one congressional district, and that the balance of the state shall comprise the other district. By this division, the number of inhabitants are about equally divided, though the western district, by this division, will

comprise much the largest portion of territory, which evil I think we shall have to submit to. I suppose it to be our duty in this case, as in all others which may arise, and upon which we are required to act, to faithfully discharge our duty to the people who sent us here; and entertaining this opinion, I do not see that gentlemen can differ with me in the plan I propose in this amendment.

I object to the division and districts as proposed in the article presented by the select committee upon that subject, because it is unequal, partial, and unjust. And whether it is the product of accident or design, it is equally inexcusable and improper. Sir, I invite you, and all the members of this convention, to cast your eyes to the map of this state, which hangs near you upon the wall of this hall. There, sir, you will see that this article, as reported, proposes to form one congressional district out of seven small counties in the south east corner of this state. Small, I mean, in territory but large in population. Those counties are Milwaukee, Waukesha, Jefferson, Racine, Walworth, Rock, and Green. Those counties do not lie in a square, nor are they united by common interests. These seven counties contain, as shown by the late census, a little less than one half the population of the state; and by the map there, sir, it appears also, that they comprise less than one-tenth part of the territory of this state, and the facts also appear, that this said favored district contains but about one third part of the established counties in the territory. This little favored district, in the south-east corner of the state, comprises some sixty miles of lake coast, with harbors partly improved, a well settled and dense population, though as I before stated, in no wise united by common or peculiar interests. Yet these particular counties must form one congressional district, while this liberal and public spirited committee assigns to the other district some nineteen or twenty counties, extending over nine tenths of the territory, containing a little the larger population, covering more than six hundred miles of lake coast, unimproved by harbors, covering the whole length of the Mississippi, from the falls of St. Anthony down to the state line—a distance of some four or five hundred miles—and extending from the extreme north-eastern corner of the state to the extreme south-western, a distance of more than five hundred miles, and almost surrounding the little compact, seven county district.

Now, sir, I would ask if this division is a fair and equitable one? Will the people of this territory approve such a division? I think not. I know, sir, that the people of the western portion of the territory do not wish or expect such a division of the state. And I here call upon western democrats, in this convention, to come out and support my amendment, thereby supporting such a division as will be just and proper. I call upon all western, and untrammeled, and unprejudiced members, to come up to their duty, and prevent this gross injustice being perpetrated. I strongly suspect, sir, that this matter has been all arranged and settled, and we are doomed and compelled to suffer this gross injustice. I suspect it, sir, for the reason that during all the stages through which this article has passed in this convention, and this being the very last moment when an amendment to it would be in order, no member of the democratic party, in the majority upon this floor, has so much as offered an amendment to this section of the article; whilst I know, too, that the provisions of the amendment I now propose are dear to a large portion of that party at home, in the western portion of the territory, as well as to the people generally. I ask, sir, how west-

ern democrats can reconcile the passage of this article, without my amendment, to their constituents without having it, at least, to say in their excuse, that they proposed to amend it, and supported proper amendments? But, sir, if this question has been arranged and settled, and the strong party screws have been applied so effectually as to prevent any inroads upon this most unjustifiable act, I must, and those who think with me, must submit. But while I do submit to this act of the party in the majority of this convention, I will herald my protest long and loud, and hope it may reach every portion of the territory.

If the grand design to be accomplished by passing this article without my amendment, is to ensure both the congressional districts to be democratic, I think, sir, that this great injustice need not have been perpetrated to accomplish that object. For proof of my statement, I will refer you to the delegation from a majority of the counties in either district, upon this floor, and to the recent elections held in the territory. And I will further say, that you may take any four counties lying adjoining to each other, of the large class of counties in this territory, and unite them, and take the aggregate vote at any recent election held, and you will find it to be democratic. This being the case, and each of the districts properly formed, presenting a democratic majority in the recent elections, what have you to fear on that score? I will suggest a probable fear, which might be entertained, and that is, that the western district would not present so heavy and decided a party majority as it would if the counties of Washington, and the other north-eastern counties were embraced in the district; but, sir, I will ask honorable members, placed upon this floor to make a constitution for the good people of Wisconsin, and not placed here to form democratic districts, if such considerations are to find a lodgment in their thoughts, and govern their acts upon this question? I think there was much force in the remarks made by the honorable gentleman from LaFayette a few days ago, upon the subject of districting the state into representative districts. That gentleman then said, that sparsely settled counties, with few inhabitants, and large territory, should be properly regarded by the convention; that population should not, in such cases, be alone regarded; that territory should also be regarded in making the apportionment; and I was glad to see that rule adopted by the convention. I now ask gentlemen to permit the same rule to govern in the vote they are about to cast upon my amendment.

I have before stated that the division as made by the committee, assigned about nine tenths of the territory, and a little more than half the population, to one district and that would certainly make it a very democratic district; and the balance, seven small counties, for the other district. If the argument of the honorable member from LaFayette was good, and I believe the convention thought it was, in the case of representation in counties, it is equally good in forming districts and representation in congress, and I call upon that gentleman, with all others who entertain the same views, to support this amendment. I wish gentlemen to come out upon this question. I shall call, before I take my seat, for the ayes and noes. I want this vote recorded, so that gentlemen may show their hands, and refer their constituents to the journal of this convention, to show how they voted upon the question of districting the state, when complaints may be made by the people that their representative in congress has too large a district to represent, and that he cannot, from the circumstances of the case, understand their

wants and wishes. I think, Mr. President, that I shall not prove to be mistaken in the result of the vote that is about to be taken upon my amendment. I think, sir, that the profound silence that gentlemen belonging to the party in the majority in this convention have observed upon this subject, cannot be misunderstood.

They shall, however, take the responsibility of rejecting it by a direct vote; they have the numbers and the power to do so, and upon them I throw the responsibility of doing it, and let it not be said hereafter, when the people shall rise in their majesty and condemn this provision in the constitution, that the subject escaped the notice of members, and was engrafted unawares into the constitution. I do not mean to be understood as saying that I think this will be a sufficient cause for the people to reject the constitution, or even to vote against it. No, sir, such is not my opinion. This instrument contains too many good provisions, in my judgment, and I hope it may be adopted. But, sir, I do say, that in my opinion, the very first opportunity that the people may have, they will correct this evil, and we shall look forward to the apportionment which is to be made under the United States census, to be taken in 1850, with deep interest, for the correction of this great wrong.

Mr. CHASE said he had not known, till the gentleman from Grant informed him, that members of congress were intended to represent territory and not people. In the city of New York, and other large cities, they represented no territory at all. In the sparsely settled parts of the west, the districts were of almost unlimited size. The gentleman ought to know that they are apportioned according to population wholly. Now though the two districts as proposed, were very unequal in extent of territory, he did not doubt that the northern and western one, large as it was, contained great men enough to represent it adequately. He was well satisfied with the provision reported by the committee. He thought it was the true policy to district the state by a line running east and west, and that both representatives should have districts bordering on the lake, and thus be interested in commerce. This was the great interest of the state, which depended on the action of the general government, and this needed the special interest of our representatives. It had been found impracticable, however, so to divide the districts as to have both border on the lakes, and extend back to the Misssissippi. This was done as nearly as possible, and he thought it could not be improved.

Mr. PRENTISS said that if the proposition of the gentleman from Grant were adopted, one of the districts would contain over 4000 more people than the other. The difference between the districts as recommended by the committee, was only 189.

Mr. O. COLE said he believed this proposed arrangement of the committee gave universal dissatisfaction in the west. The people there had always desired a division by a north and south line; and the democratic party at the last election had instructed their candidates to go for such a division. They deemed this to be just and proper. Their interests and feelings were different from those of the eastern portion of the territory, and a representation from one could not represent the other.

Mr. ROUNTREE said that the difference in population in the districts according to his proposition, was explained by the fact that the first census of Grant county had given her over 3000 less population

than she had been subsequently found to contain. Taking her corrected census, the difference would be but little over 400. But the west asked nothing on the score of sparse population. They only asked that an equitable division of the state might be made—one which should more nearly equalize the territory, as well as the population. There was no propriety in putting all the thickly settled part into one district, and all the sparsely settled part into the other. The gentleman from Fond du Lac had said that both the districts should border on the lake, so that both representatives might feel a special interest in commerce. He would like to know if the Mississippi country had no rights—if the interests of the lake shore only were to be consulted. But it was apparent to him that political considerations were the ones principally regarded in this proposed division. Gentlemen wanted to divide so as to secure two democratic districts at all hazards. He would not argue the question further. They had the power, and could sacrifice the rights of the west if they chose, but they would be held accountable.

Mr. JUDD spoke.

The question was then put upon the adoption of the same,

And was decided in the negative.

And the ayes and noes having been called for and ordered,

Those who voted in the affirmative, were

Messrs. Carter, Case, Castleman, O. Cole, Crandall, Doran, Foote, Gale, Harvey, Hollenbeck, Kennedy, King, Lakin, Lyman, Ramsey, Reed, Richardson, Root, Rountree, Steadman, Turner, Ward, and Whiton,—23.

Those who voted in the negative, were

Messrs. Beall, Bishop, Chase, A. G. Cole, Davenport, Dunn, Estabrook, Fagan, Featherstonhaugh, Fenton, Fitzgerald, Folts, Fowler, Fox, Gifford, Harrington, Jackson, Jones, Judd, Kinne, Larrabee, Latham, Lewis, Lovell, McClellan, Mulford, Nichols, O'Connor, Pentony, Prentiss, Mr. President, Reymert, Sanders, Scagel, Secor, Vanderpool, and Wheeler,—37.

On motion of Mr. REYMERT, the convention adjourned.

SATURDAY, January 29, 1848.

Prayer by the Rev Mr. PENMAN,

The reading of the journal of yesterday was dispensed with.

The PRESIDENT presented a petition from citizens of Dodge county, praying for the submission of the "old constitution," again to the votes of the people.

Mr. VANDERPOOL moved that the same be laid upon the table;

Which was agreed to.

Mr. LARRABEE presented a petition from citizens of Dodge county, on the same subject;

Which was on his motion,

Szeliga v. Lamone

2022 WL 2132194 (Md.Cir.Ct.) (Trial Order)
Circuit Court of Maryland.
Anne Arundel County

Kathryn SZELIGA, et al,

v.

Linda LAMONE, et al, Defendants;

Neil Parrott, et al, Plaintiffs,

v.

Linda Lamone., et al., Defendants.

No. C-02-CV-21-001816.
March 25, 2022.

Menorandum Opinion and Order

Lynne A. Battaglia, Judge.

Introduction

***1** Partisan gerrymandering refers to the drawing of districting lines to favor the political party in power, and "[p]artisan gerrymandering claims rest on an instinct that groups with a certain level of political support should enjoy a commensurate level of political power and influence." *Rucho v. Common Cause,* _____ U.S. _____, _____, 139 S. Ct. 2484, 2499 (2019).[1] *Rucho* is pivotal for the discussion of why this trial court and, potentially, the Court of Appeals[2] are grappling with the issue of the constitutionality of the 2021 Congressional map, because the Supreme Court demurred in the case from addressing, on the basis of the "political question" doctrine, the lawfulness of partisan gerrymandering. *Id.* at _____, 2506-07. Chief Justice Roberts, the author of *Rucho,* suggested, however, that, "[provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply." *Id.* at _____, 2507.

1 Gerrymandering based on race is not an issue in this case, so that statutes such as the Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 445 (codified, as amended, at 52 U.S.C. § 10101, *et seq.*), and cases solely addressing this conundrum are not implicated directly.

2 A direct appeal to She Court of Appeals is available pursuant to Section 12-203 of the Election Law Article, Maryland Code (2002, 2017 Repl. Vol), which provides:
(a) *In general.* -- A proceeding under this subtitle shall be conducted in accordance with the Maryland Rules, except that:
(1) the proceeding shall be heard and decided without a jury and as expeditiously as the circumstances require;
(2) on the request of a party or sua sponte, the chief administrative judge of the circuit court may assign the case to a three-judge panel of circuit court judges; and
(3) an appeal shall be taken directly to the Court of Appeals within 5 days of the date of the decision of the circuit court.
(b) *Expedited appeal.* -- The Court of Appeals shall give priority to hear and decide an appeal brought under subsection (a)(3) of this section as expeditiously as the circumstances require,

Background

Two consolidated cases in issue in the instant ease are constitutional challenges to the Maryland Congressional Districting Plan enacted in 2021, hereinafter referred to as "the 2021 Plan." In their Complaint, the 1773 Plaintiffs[3] allege violations of Section 4 of Article III of the Maryland Constitution, which provides:

3 The named Plaintiffs in the consolidated action. Case No, C-02-CV-2 3-001773, are Neil Parrott, Ray Serrano, Carol Swigar, Douglas Raaum, Ronald Shapiro, Deanna Mobley, Glen Glass, Allen Furth, Jeff Warner, Jim Nealis, Dr. Antonio Campbell, and Sallie Taylor; hereinafter "the 3.773 Plaintiffs." Standing of all of the Plaintiffs has been conceded by the State.

Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions[,]

MD. CONST. art. Ill, § 4, as well as Article 7 of the Maryland Declaration of Rights, which declares:

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

MD. CONST. DECL. OF RTS. art. 7. The 1816 Plaintiffs[4] also allege violations of Article 7, but also add Article 24 of the Declaration of Rights, which provides:

4 The named Plaintiffs in Case No, C-G2-CV-21-001816 are Katbryn Szeliga, Christopher T. Adams, James Warner, Martin Lewis, Janet Moye Cornick, Rickey Agyekurn, Maria Isabel Icaza, Luanne Ruddell, and Michelle Kordell; hereinafter "the 1816 Plaintiffs." Standing of all of the Plaintiffs has been conceded by the State.

That no man ought to he taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land[,]

MD CONST. DECL. OF RTS. art. 24, as well as Article 40, which declares:

That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought to he allowed to speak, write and publish his sentiments on all subjects, being responsible for the abuse of that privilege[,]

MD. CONST. DECL. OF RTS. art. 40, and Section 7 of Article I of the Maryland Constitution, which provides:

The General Assembly shall pass Laws necessary for the preservation of the purity of Elections.

MD. CONST. art. I, § 7.

Defendants In both actions are Linda H, Lamone, the Maryland State Administrator of Elections; William G. Voelp, the Chairman of the Maryland State Board of Elections; and the Maryland State Board of Elections, which is identified as the administrative agency charged with "ensuring] compliance with the requirements of Maryland and federal election laws by all persons involved in the election process."[5]

5 *About SBE,* THE STATE BD. OF ELECTIONS, https://perma.cc/9GUT-X5KM (last visited March 23, 2022).

Case No. C-02-CV-21-001816

On December 23, 2021, the 1816 Plaintiffs filed their Complaint for Declaratory and Injunctive Relief. On January 20, 2022, the Democratic Congressional Campaign Committee ("DCCC") filed a Motion to Intervene in the matter, along with its proposed Answer to the Plaintiffs' Complaint. On February 2, 2022, the Defendants filed their Motion to Dismiss or, in the Alternative,

for Summary Judgment.[6] The Plaintiffs filed their Opposition to the DCCC's Motion to Intervene on February 3, 2022 and subsequently filed their Opposition to the Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment, on February 11, 2022, In the meantime, the Defendants also filed their response to the DCCC's Motion to Intervene, The Court heard argument on the Defendants' Motion to Dismiss on February 16, 2022 and held the matter *sub curia.* Simultaneously, the Court issued its Memorandum Opinion and Order denying the DCCC's Motion to Intervene.

6 It should be noted that the Defendants have asserted that both Case No. C-Q2-CV-21-0018I6 and Case No. C-02-CV-21-001773 are non-justifiable "political questions." The Defendants, however, conceded that should the standards in Article III, Section 4 apply to Congressional redistricting, the matter is justiciable.

***3** Several days later, on February 22, 2022, the Court issued a Consolidation Order, which consolidated Case No. C-02-CV-2I-001816 with another similar case, Case No. C-G2-CV-21001773, and identified Case No. C-02-CV-21-001816 as the "lead" case. On the same day, the Court denied three requests for special admission of out-of-state attorneys on behalf of the DCCC. On February 23, 2022, the Court ultimately issued its Order disposing of the Defendants' Motion to Dismiss, or in the Alternative, for Summary Judgment, and dismissed Count II: Violation of Purity of Elections, with prejudice. The counts that remained included Counts I, III, and IV of the 1816 Complaint, which involved violations of Articles 7 (Free Elections), 24 (Equal Protection), and 40 (Freedom of Speech) of the Maryland Declaration of Rights, respectively. The 1816 Plaintiffs ask for a declaration that the 2023 Plan is unconstitutional under Articles 7, 24, and 40 of Maryland's Declaration of Rights and Section 7 of Article I of the Maryland Constitution. Additionally, Plaintiffs seek to permanently enjoin the use of the 2021 Plan and ask for an order to postpone the filing deadline for candidates to declare their intention to compete in 2022 Congressional primary elections until a new district map is prepared.

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

On December 21, 2021, the 1773 Plaintiffs filed their Complaint for Declaratory and Other Relief Regarding the Redistricting of Maryland's Congressional Districts. On January 20, 2022, the DCCC filed a Motion to Intervene in the matter, along with its proposed Motion to Dismiss the Plaintiffs' Complaint. The Plaintiffs filed their Opposition to the DCCC's Motion to Intervene on February 4, 2022. Subsequently, on February 11, 2022, the Plaintiffs filed their Opposition to the Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment, in related Case No. C-02-CV-21-001816. On February 15, 2022, the DCCC filed its Reply in Support of its Motion to Intervene. Several days later, on February 19, 2022, the Defendants filed a Motion to Dismiss the Complaint. The Plaintiffs filed their Opposition to the Motion to Dismiss on February 20, 2022. On February 22, 2022, the Court issued a Consolidation Order (referenced above) and denied the DCCC's Motion to Intervene and the three requests for special admission of out-of-state attorneys on behalf of the DCCC. A hearing on the Defendants' Motion to Dismiss took place on February 23, 2022. Under this Court's February 23rd Order, which dismissed Count II of the 1816 Complaint, both counts in the 1773 Complaint remained.

The 1773 Plaintiffs ask for a declaration that the 2021 Plan is unlawful, as well as a permanent injunction against its use in Congressional elections. Additionally, the 1773 Plaintiffs ask the Court to order a new map be prepared before the 2022 Congressional primaries or, in the alternative, order that an alternative Congressional district map, which was prepared by the Governor's Maryland Citizens Redistricting Commission,[7] be used for the 2022 Congressional elections.

7 The Maryland Citizens Redistricting Commission was established by Governor Lawrence J. Hogan, Jr., in January of 2021. Exec. Order No. 01.01.2021.02 (Jan. 12, 2021). The Commission, pursuant to the Order, was tasked with preparing plans for the state's Congressional districts and its state legislative districts, which would he submitted by the Governor to the General Assembly. *Id.* The Commission submitted its Final Report to the Governor in January 2022. *Final Report of the Maryland Citizens Redistricting Commission,* MD. CITIZENS REDISTRICTING COMM'N (Jan. 2022), https://perma.cc/UUX55.-6J72.

The parties submitted proposed findings of fact prior to trial on March 11, 2022. Simultaneously, the 1816 and 1773 Plaintiffs submitted a Joint Motion in Limine as to exclude portions of testimony from Defendants' experts, Dr. Allan J. Lichtman and Mr. John T. Willis. During the first day of trial on March 15, 2022, the parties submitted Stipulations of Fact and the Court admitted the stipulations as Exhibit 1. The Court then placed, on the record, an agreement between the parties about relevant judicial admissions by the Defendants relative to the Defendants' Answer, On the last day of trial on March 18, 2022, the State submitted a stipulation that the 2021 Plan did, in fact, pair Congressmen Andy Harris and Congressmen Kweisi Mfume in the same district - the Seventh Congressional District.[8]

8 *See* Stipulation No. 60, *infra* p. 57,

***4** With respect to the Plaintiffs' Motion in Limine, which raised the issue of a *Daubert* challenge as well as alleged late disclosure by the Defendants' experts as to various opinions, the trial judge heard argument during trial and ruled that the allegations regarding late disclosure were denied. With respect to the *Daubert* motion regarding the States' expert witnesses, it was eventually withdrawn by the Plaintiffs on March 18, 2022.

In addition, the Defendants moved to strike three questions asked by the trial judge of Dr. Thomas L. Brunell, after cross examination and before re-direct and re-cross examination, and the responses thereto. After a hearing in open court on March 18, 2022, the judge denied the motion to strike the three questions of Dr. Brunell and his responses thereto.

The Motion to Dismiss

In evaluating the Constitutional claims posited in Case Nos. C-02-CV-21-001816 and C02-CV-21-001773, the trial court has been guided in its efforts by the words of Chief Judge Robert M. Bell, when he wrote in 2002, that courts "do not tread unreservedly into this 'political thicket'; rather, we proceed in the knowledge that judicial intervention ... is wholly unavoidable." *In re Legislative Districting of State,* 370 Md. 332, 353 (2002). Chief Judge Bell recognized that when the political branches of government are exercising their duty to prepare a lawful redisricting plan, politics and political decisions will impact the process. *Id.* at 354; *id.* at 321 ("[I]n preparing the redistricting lines ... the process is in part a political one, they may consider countless other factors, including broad political and narrow partisan ones, and they may pursue a wide range of objectives[.]"). Yet, the consideration of political objectives "does not necessarily render the process, or the result of the process, unconstitutional; rather, that will be the result only when the product of the politics or the political considerations runs afoul of constitutional mandates." *Id.* (internal citations omitted).

In considering whether the various counts of the Complaints survived the Motion to Dismiss, the trial court applied the following standard of review[9]:

9 The trial court did not apply the "plausibility" standard articulated in *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544 (2007), and *Ashcraft v. Iqbal,* 556 U.S. 662 (2009), commonly referred to as "the *Twombly-Iqbal* standard," which may be considered a more intense standard of review. The State disavowed that it was positing its application.

"Dismissal is proper only if the facts alleged fail to state a cause of action." *A.J. Decoster Co. v. Westinghouse Elec. Corp.,* 333 Md. 245, 249 (1994). Under Maryland Rule 2-303(b), a complaint must state those facts "necessary to show the pleader's entitlement to relief." In considering a motion to dismiss for failure to state a cause of action pursuant to Maryland Rule 2-322(b)(2), a trial court must assume the truth of all well-pleaded relevant and material facts in the complaint, as well as all inferences that reasonably can be drawn therefrom. *Stone v. Chicago Title Ins. Co.,* 330 Md. 329, 333 (1993); *Odyniec v. Schneider,* 322 Md. 520, 525 (1991). Whether to grant a motion to dismiss "depends solely on the adequacy of the plaintiff's complaint." *Green v. H&R Block, Inc.,* 355 Md. 488, 501 (1999).

> "[I]n considering the legal sufficiency of [a] complaint to allege a cause of action ... we must assume the truth of ail relevant and material facts that are well pleaded and all inferences which can be reasonably drawn from those pleadings." Mere

conciusory charges that are not factual allegations may not be considered. Moreover, in determining whether a petitioner has alleged claims upon which relief can be granted, "[t]here is ... a big difference between that which is necessary to prove the [commission] and that which is necessary merely to allege [its commission][.]"

***5** *Lloyd v. Gen. Motors Corp.,* 397 Md. 108, 121-22 (2007) (quoting *Sharrow v. State Farm Mutual Ins. Co.,* 306 Md. 754, 768, 770 (1986)) (alterations in original).

There are no provisions in the Maryland Constitution explicitly addressing Congressional districting. The only statutes in Maryland that bear on Congressional redistricting include Section 8-701 through 8-709 of the Election Law Article of the Maryland Code. Section 8-701 states that Maryland's population count is to be used to create Congressional districts, that the State of Maryland shall be divided into eight Congressional districts, and that the description of Congressional districts include certain boundaries and geographic references.[10] Sections 8-702 through 8-709 identify the respective counties included within each of the eight Congressional districts according to the current. Congressional map in effect.[11] None of the statutory provisions includes standards or criteria by which Congressional districting maps must be drawn.[12]

10 Section 8-701 of the Election Law Article, Maryland Code (2002, 2017 Repl. Vol.) provides:
(c) *Boundaries and geographic references.* -- (1) The descriptions of congressional districts in this subtitle include the references indicated.
(2) (i) The references to:
1. election districts and wards are to the geographical boundaries of the election districts and wards as they existed on April 1, 2020; and
2. precincts are to the geographical boundaries of the precincts as reviewed and certified by the local boards or their designees, before they were reported to the U.S. Bureau of the Census as part of the 2020 census redistricting data program and as those precinct lines are specifically indicated in the P.L, 94-1.71 data or shown on the P.L. 94171 census block maps provided by the U.S. Bureau of the Census and as reviewed and corrected by the Maryland Department of Planning.
(ii) Where precincts are split between congressional districts, census tract and block numbers, as indicated in P.L. 94-171 data or shown on the P.L. 94-171 census block maps provided by the U.S. Bureau of the Census and referred to in this subtitle, are used to define the boundaries of congressional districts.

11 MD. CODE ANN., ELEC. LAW §§ 8-703 through 8-709.

12 During the hearing on the State's Motion to Dismiss, the Court asked the parties to provide supplemental briefings regarding the significance, or not, of two historical laws, which prescribed the application of the "constitution and laws of this state for the election of delegates to the house of delegates," to Congressional elections, The first law, enacted in 1788, in relevant part, provided:
And be it enacted, That the election of representatives for this state, to serve in the congress of the United States, shall be made by the citizens of this state qualified to vote for members of the house of delegates, on the first Wednesday of January nest, at the places in the city of Annapolis and Baltimore-town, and in the several counties of this state, prescribed by the constitution and laws of this state for the election of delegates to the house of delegates[.]
1788 Laws of Maryland, Chapter X, Section III (Vol. 204, p. 318), The second law, enacted in 1843, provided:
Sec. 5. And be it enacted, That the regular election of representatives to Congress from this State, shall be made by the citizens of this State, qualified to vote for members to the House of delegates, and each citizen entitled as aforesaid, shall vote by ballot on the first Wednesday in October, in the year eighteen hundred and forty-five, and on the same day in every second year thereafter, at the places in the city of Baltimore, and in the city of Annapolis, and in the several counties, and Howard District of this State, as prescribed by the constitution and laws of this State, for the election of members to the house of delegates,
1843 Laws of Maryland, Chapter XVI, Section 5 (Vol. 595, p. 13),
The parties' responses, collectively, indicated that they ascribed little or no significance to the language, which suggested that the first. Congressional elections in Maryland were conducted via the application of election rules prescribed, in part, in the State Constitution.

***6** In ruling on the Defendants' Motion to Dismiss the Complaints, this Court assumed the truth of all well pleaded relevant and material facts and all inferences that reasonably can be drawn therefrom and determined that the 1773 Complaint stated a claim upon which relief can be granted, Article III, Section 4. of the Maryland Constitution does embody standards by which the

2021 Congressional Plan can be evaluated to determine whether unlawful partisan gerrymandering has occurred. The standards of Article III, Section 4 are applicable to the evaluation of the 2021 Plan based upon the interpretation of the Section's language, purpose, and legislative intent.

With respect to the 1773 Complaint and the 1816 Complaint, this Court assumed the truth of all well pleaded relevant and material facts and all inferences that can reasonably be drawn therefrom and determined that the strictures of Article III, Section 4 are, alternatively, applicable to the 2021 Plan because of the free elections clause, MD. CONST. DECL. OF RTS. art. 7, as well as with respect to the 1816 Complaint, the equal protection clause, MD. CONST. DECL. OF RTS. art. 24; each, individually, provide a nexus to Article III, Section 4 to determine the lawfulness of the 2021 Plan.[13]

13 The trial court ultimately dismissed with prejudice Section 7 of Article I of the Maryland Constitution. Article 1, Section 7 provides that, "[t]he General Assembly shah pass Laws necessary for the preservation of the purity of Elections;." The 1816 Plaintiffs argued that this provision was violated because the General Assembly failed to pass laws concerning elections that are fair and even-handed, and that are designed to eliminate corruption, *1816 Compl.* ¶ 66. The State took the position that Section 7 of Article 1. was not intended to restrain acts of the General Assembly, but rather, that the provision acted as "an exclusive mandate directed to the General Assembly to establish the mechanics of administering elections in a. manner that ensures that those who are entitled to vote are able to do so, free of corruption or fraud," *1816 Mot. Dismiss* at 31.
The term "purity" in the Section is undefined and therefore, ambiguous. No case referring to the Section has defined what purity means, *Cnty. Council for Montgomery Cnty. v. Montgomery Ass'n, Inc.,* 274 Md. 52 (1975); *Anderson v. Baker,* 23 Md, 531 (1865) (concurring opinion); *see also Hanrahan v. Alierman,* 41 Md. App. 71 (1979); *Hennegan v. Geariner,* 186 Md. 551 (1946); *Smith v. Higinbothom,* 187 Md. 115 (1946); *Kenneweg v. Allegany Cnty. Comm'rs,* 102 Md. 119 (1905). When asked at oral argument to give the term a meaning applicable to elections, Counsel for the 1773 Plaintiffs could only say "purity means purity,"
The phrase "purity" of elections was added to the Maryland Constitution of 1864, where the explicit language directed the General Assembly to preserve the "purity of elections." MD, CONST. of 1864, art. III, § 41 (directing the General Assembly to "pass laws for the preservation of the purity of elections by the registration of voters"). The provision focused on voter registration, with the purpose of excluding ineligible voters from the election process.
The language of what is now Article 1. Section 7, has changed since its enactment in the Maryland Constitution of 1864. Article III, § 41 of the Constitution of 1864, in whole, directed the General Assembly to "pass laws for the preservation of the purity of elections by the registration of voters, and by such other means as may he deemed expedient, and to make effective the provisions of the Constitution disfranchising certain persons, or disqualifying them from holding office." Article III, § 41, was renumbered in the 1867 amendment, to Article III, Section 42, which provided, [t]he General Assembly shall pass Laws necessary for the preservation of the purity of Elections." MD CONST, of 1867, art. III, § 42. Article III, § 42, was, again, renumbered and amended by Chapter 681, Acts of 1977, ratified Nov. 7, 1978, to Article I, § 7, which now provides, "[t]he General Assembly shall pass Laws necessary for the preservation of the purity of Elections." MD. CONST. art. 1, § 7.
Cases interpreting Article I, Section 7, have applied the Section to the registration of voters, *Anderson,* 23 Md. at 586 (concurring opinion), improper financial campaigns contributions, *Cnty. Council for Montgomery Cnty.,* 274 Md. at 60-65; *see also Higinbothom,* 187 Md. at 130 ("The Corrupt Practices Act is a remedial measure and should be liberally construed in the public interest to carry out its purpose of preserving the purity of elections,").
From its legislative history, the language of "purity of elections" referred to questions involving the *individual* candidate and the *individual* voter. The only assumption tendered by the 1816 Plaintiffs to support that partisan gerrymandering affected the "purity" of elections was that such gerrymandering was *ipso facto* corrupt. That assumption has not been borne out by review of over 200 cases addressing partisan gerrymandering, none of which characterized the practice as "corrupt."

***7** With respect to the 1816 Complaint, alternatively, this Court assumed the truth of all well pleaded relevant and material facts and all inferences that reasonably can be drawn therefrom and determined that the Complaint stated a cause of action under each of the equal protection clause, MD, CONST. DECL. OF RTS. art. 24, and the free speech clause, MD. CONST. DECL. OF RTS. art. 40, which subjects the 2021 Plan to strict scrutiny by this Court.

Alternatively, with respect to the 1773 and 1816 Complaints, this Court assumed the truth of ail the well pleaded relevant and material facts and all inferences that reasonably can be drawn therefrom and determined that both Complaints stated a cause of action under the entirety of the Maryland Constitution and Declaration of Rights to determine the lawfulness of the 2021 Plan,

The Provisions in the Maryland Constitution and Declaration of Rights

In reviewing whether political considerations have run afoul of constitutional mandates in the instant case, we must undertake the task of constitutional interpretation. "Our task in matters requiring constitutional interpretation is to discern and then give effect to the intent of the instrument's drafters and the public that adopted it." *State Bd. of Elections v. Snyder ex rel. Snyder,* 435 Md. 30, 53 (2013) (citing *Fish Mkt. Nominee Corp. V. G.A.A., Inc.,* 337 Md. 1, 8-9 (1994)). We first look to the natural and ordinary meaning of the provision's language. *Id.* If the provision is clear and unambiguous, the Court will not infer the meaning from sources outside the Constitution itself. *Id.* "[O]ccasionally we see fit to examine extrinsic sources of legislative intent merely as a check of our reading of a statute's plain language," including "archival legislative history." *Phillips v. State,* 451 Md. 180, 196-97 (2017), Archival legislative history Includes legislative journals, committee reports, fiscal notes, amendments accepted or rejected, the text and fate of similar measures presented in earlier sessions, testimony and comments offered to the committees that considered the bill, and debate on the floor of the two Houses (or the Convention). *State v. Phillips,* 457 Md. 481, 488 (2018).

The rules of statutory construction are well known, Yet, when applying the rules of statutory construction to the interpretation of constitutional provisions, the approach is more nuanced. That approach was described in *Johns Hopkins Univ. v. Williams,* 199 Md. 382 (1952):

> [C]ourts may consider the mischief at which the provision was aimed, the remedy, the temper and spirit of the people at the time it was framed, the common usage well known to the people, and the history of the growth or evolution of the particular provision under consideration. In aid of an inquiry into the true meaning of the language used, weight may also be given to long continued contemporaneous construction by officials charged with the administration of the government, and especially by the Legislature.

Id. at 386-87.

To construe a constitution, "a constitution is to be interpreted by the spirit which vivifies, and not by the letter which killeth." *Snyder ex rel. Snyder,* 435 Md. at 55 (quoting *Bernstein v. State,* 422 Md. 36, 56 (2011)). Similarly, we do not read the constitution as a series of independent parts; rather, constitutional provisions are construed as part of the constitution as a whole. *Id.* Further, if a constitutional provision has been amended, the amendments "bear on the proper construction of the provision as it currently exists," and in such a situation, 'the intent of the amenders ... may become paramount." *Norino Properties, LLC v. Balsamo,* 253 Md. App. 226, (2021) (quoting *Phillips,* 457 Md. at 489). We keep in mind that the courts shall construe a constitutional provision in such a manner that accomplishes in our modern society the purpose for which the provisions were adopted by the drafter, and in doing so, the provisions "will be given a meaning which will permit the application of those principles to changes in the economic, social, and political life of the people, which the framers did not and could not foresee." *Bernstein v. State,* 422 Md. 36, 57 (2011) (quoting *Johns Hopkins Univ.,* 199 Md, at 386).

***8** We recognize that "a legislative districting plan is entitled to a presumption of validity" but "that the presumption "may be overcome when compelling evidence demonstrates that the plan has subordinated mandatory constitutional requirements to substantial improper alternative considerations."" *In re Legislative Districting of State,* 370 Md. at 373 (quoting *Legislative Redisricting Cases,* 331 Md. 574, 614 (1993)).

Article III, Section 4 of the Maryland Constitution

Article III, Section 4 of the Maryland Constitution provides:

> Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions.

MD. CONST. art, III, § 4. The 1773 Plaintiffs assert a direct claim under Article III, Section 4, of the Maryland Constitution and urge that the plain meaning of the term "legislative district" corresponds to any legislative district in the State, which must, be subject to the standards of adjoining territory, compactness, and equal population with due regard given to natural boundaries of political subdivisions. The 1773 Plaintiffs allege the new Congressional districts under the 2021 Plan violate the requirements of Article III, Section 4. *1773 Compl.* ¶¶ 93- 97.[14]

14 The 1816 Plaintiffs do not assert a claim under Article III, Section 4, of the Maryland Constitution. *1816 Opp'n Mot. Dismiss* at 10 n.3.

Defendants claim that the text of Article III, Section 4, is limited to State legislative districting because the term "legislative districts" refers "unambiguously to State legislative districts" whenever it appears in other provisions of the Constitution, and that when Congress is referred to the "c" is capitalized. *1773 Defs.' Mot. Dismiss* at 2. The Defendants argue that although a 1967 constitutional convention proposed a draft that included Constitutional standards for both state districts and Congressional districting, the voters rejected the draft and that the General Assembly drew the current Article III, Section 4 without reference to Congressional redistricting to enable the 1969 amendments to the Constitution to be adopted. *1816 Defs.' Mot. Dismiss* at 19-22.

The term "legislative district" is the gravamen of analysis. There is no definition of the terra "legislative district" in the Maryland Constitution or Declaration of Rights. Absent a definition, in light of the differing ways the term could be applied, *i.e.,* as State legislative districts and/or Congressional districts, the language is ambiguous.[15]

15 The State has posited the importance of the exclusion of the word "Congress" in Article III, Section 4 to specifically include reference to Congressional districts. Neither the word Congress nor State, Genera! Assembly, Senate, or House of Delegates appears in Article III, Section 4, unlike other Constitutional provisions or importantly, in Section 4 itself. *See. e.g.,* MD. CONST, art. I, § 6 (using the term "Congress"); art. III, § 10 (using the term "Congress"); art. IV, § 5 (using the term "Congress"); art. XI-A, § 1 (using the term "congressional election"); art, XVII, § 1 (using the term "congressional elections"); art. IIII, § 3 (using the terms "State," "Senate" and "House of Delegates"); art. III, § 5 (using the terms "State," "General Assembly," "Senate," and "House of Delegates"); art. III, § 6 (using the terms "General Assembly" and "delegate"); art. III, § 13(b) (using the terms "Legislative" and "Delegate district"); and art. XIV, § 2 (using the terms "General Assembly," and "Legislative District of the City of Baltimore").

***9** The "compactness" requirement was added to then extant Article III, Section 4, by the General Assembly in 1969 and ratified by the voters in 1970 (the "1970 Amendment"), as part of a series of amendments to the entirety of Article III. *See* 1969 Md. Laws ch. 785, ratified Nov. 3, 1970 (proposing the repeal of MD. CONST., art. III, §§ 2, 4, 5, and 6, and replacement with new §§ 2 through 6). Its framers recognized that "compactness requirement in state constitutions is intended to prevent political gerrymandering." *Matter of Legislative Districting of State ("1984 Legislative Districting"),* 299 Md. 658, 687 (1984). Prior to this amendment, Article III, Section 4 required districts to be "as near as may be, of equal population" and "always consist of contiguous territory," and only applied to the "existing Legislative Districts of the City of Baltimore." MD. CONST, art. III, § 4 (1969).[16]

16 Prior to 1966, Baltimore City was the only jurisdiction in the State in which Delegates were elected to represent discreet legislative districts; Delegates representing other counties were elected by the voters of those counties at large. See MD. CONST. art. III, § 5 (1965) ("The members of the House of Delegates shall be elected by the qualified voters of the Counties, and the Legislative Districts of Baltimore City, respectively ...."); 1965 Md. Laws special session, chs. 2, 3 (requiring the first time that counties allocated more than eight delegates be divided into districts). The "contiguity" or "equal population" requirements of the early Article III, § 4, did not apply to any "legislative district" outside of Baltimore City.

The present complete version of Article III, Section 4 was enacted in 1972 and ratified by the voters on November 7, 1972. In enacting the present version in 1972, the General Assembly "is presumed to have full knowledge of prior and existing law on the subject of a statute it passes." *Id.; see also Bowers v. State,* 283 Md. 115, 127 (1978) ("[T]he Legislature is presumed to have had full knowledge and information as to prior and existing law on the subject of a statute it has enacted."); *Harden v.*

Mass Transit Admin., 277 Md. 399, 406-07 (1976) ("The General Assembly is presumed to have had, and acted with respect to, full knowledge and information as to prior and existing law and legislation on the subject of the statute and the policy of the prior law.").[17] With respect to this knowledge, it is clear that they were aware of *Baker v. Carr,* 369 U.S. 186 (1962), involving state legislative districts,[18] as well as *Wesberry v. Sanders,* 376 U.S. 1 (1964), a Congressional districting case.[19]

17 The State agreed during oral argument on the Motion to Dismiss that cases of the Supreme Court in the 1960s regarding redistricting informed the adoption of the present version of Article III, Section 4:
THE COURT: In doing research on Article III, Section 4, of the Maryland Constitution, it has come to the Court's attention that one of the reasons for enacting this provision was the Legislature's knowledge--which we presume---of the Supreme Court's cases. That is my understanding, is it yours?
MR. TRENTO, ON BEHALF OF THE STATE: Yes, Your Honor, the Supreme Court's cases were in the front and center of the minds of the 1967 Constitutional Convention, In that Convention, the sweep of amendments to Article III, Sections 3 through 6, were expressly undertaken to address the Supreme Court jurisprudence from the 1960s.
Mot. Dismiss Hearing, 02/23/2022. In the 1967 Constitutional Convention, the Supreme Court cases referencing legislative redistricting were prominent. The delegates in the Proceedings and the Debates of the 1967 Constitutional Convention referenced prior Supreme Court jurisprudence on numerous occasions: *Proceedings and Debates of the 1967 Constitutional Convention,* 104 MD. STAVE ARCHIVES, Vol. 1, *Debates* 412, 3255: 104 MD. STATE ARCHIVES 2267, 10853. During the 1967 Constitutional Convention, Delegate John W. White, in response to a question regarding his intent regarding a provision stated:
DELEGATE WHITE: What I am trying to do is to have all of Maryland line up with the position of the Supreme Court of the United States, which has said that one person should have one vote.
Proceedings and Debates of the 1967 Constitutional Convention, 104 MD. STATE ARCHIVES 7879, https://perma.cc/JG3T-KV3J (last visited March 23, 2022). During the Proceedings and Debates of the 1967 Constitutional Convention, the delegates proposed constitutional amendments regarding Congressional districting, however, the amendments failed subsequent enactment and were, ultimately, not included in the adopted 1970 and 1972 versions of Article III, Section 4.

18 *Proceedings and Debates of the 1967 Constitutional Convention,* 104 MD. STATE ARCHIVES, Vol. 1, *Debates* 412, 499.

19 *Proceedings and Debates of the 1967 Constitutional Convention,* 104 MD. STATE ARCHIVES 10863-64.

***10** With reference to Supreme Court jurisprudence that is the context of the 1967 to 1972 Amendments to Article III, Section 4, one early case--*Baker v. Carr*--involved the apportionment of the Tennessee legislature. The federal district court dismissed the complaint in apparent reliance on the legal process theory of political justifiability, but the Supreme Court reversed. *Baker v. Carr,* 179 F. Supp. 824, 828 (M.D. Tenn. 1959), *rev'd,* 369 U.S. 186 (1962). Importantly, the Supreme Court's decision only dealt with procedural issues: jurisdiction, standing, and justifiability. *Baker,* 369 U.S. at 198-237. It held by a 6-2 vote that the court had jurisdiction, plaintiffs had standing, and the challenge to apportionment did not present a nonjustifiable "political question." *Id.* at 204, 206, 209.

The Supreme Court, thereafter, confronted the apportionment of Congressional districts in *Wesberry v. Sanders* in 1964 and held that Congressional apportionment cases were justifiable, noting that there is nothing providing "support to a construction that would immunize state congressional apportionment laws which debase a citizen's right to vote from the power of courts to protect the constitutional rights of individuals from legislative destruction." 376 U.S. at 6-7. The Court ultimately applied the "one-person, one-vote" rule to apportionment of Congressional districts, explaining that "the [Constitutional] command that representatives be chosen, by people of the several states means that as nearly as practicable one man's vote in a Congressional election is to be worth as much as another's." *Id.* at 7-8. The Court believed that "a vote worth more in one district that in another would ran ... counter to our fundamental ideas of democratic government." *Id.* at 8. The opinion rested on the interpretation of the Elections Clause in Article I, Section 4 of the Constitution. *Id.* at 6-7.

On April 7, 1969, another Congressional districting case was decided. In *Kirkpatrick v. Preisler,* 394 U.S. 526 (1969), a decision involving Congressional districting in Missouri, the Supreme Court held that the "as nearly as practicable" standard "requires that the State make a good-faith effort to achieve precise mathematical equality. Unless population variances among

congressional districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small." *Kirkpatrick,* 394 U.S. at 530-31.

The context, therefore, of the 1967 through 1972 amending process of Article III, Section 4, was the Supreme Court cases in which state legislative districts, but also Congressional districts, were decided.

The State posits, however, that the Legislature really intended on omitting Congressional districts in the later versions of Article III, Section 4 enacted in 1969 and 1972 because an earlier version, from 1967 of Section 4 included a specific reference to Congressional districts, *see* PROPOSED CONST. OF 1967-68, §§ 3.05, 3.07, 3.08, 605 MD. STATE ARCHIVES 9-10, and another section that had a specific reference to the State, *see* PROPOSED CONST. of 1967-68, § 3,04, 605 MD. STATE ARCHIVES 9. The failed passage of the earlier draft. Constitution, which included these phrases, however, does not have any bearing on the analysis of what the Legislature intended in adopting the 1970 or 1972 versions of Article III, Section 4, because "[f]ailed efforts to amend a proposed bill, however, are not conclusive proof usually of legislative will .... This is because there can be a myriad of reasons that could explain the Legislature's decision not to incorporate a proposed amendment." *Antonio v. SSA Sec, Inc.,* 442 Md. 67 87 (2015). Most importantly, "[i]f the framers desired" to exclude Congressional redistricting from Article III, Section 4, "they knew how to do so." *Schisler v. State,* 394 Md. 519, 594-95 (2006).[20]

20 Interestingly, the early language in a bill introduced in 1972 included the words Senators and Delegates to alter Article III, Section 4: Each legislative district shall consist of adjoining territory and shall be compact in form. The ratio of the number of Senators to population shall be substantially the same in each legislative district; the ratio of the number of Delegates to population shall be substantially the same in each legislative district. Nothing herein shall be construed to require the election of only one Delegate from each legislative district.
Amendments to Maryland Constitutions, 380 MD. STATE ARCHIVES, 489. The final adopted version contained no mention of. nor reference to, "Senator" or "Delegate."

***11** The Legislature, keenly aware of its ability to restrict or expand the application of Article III, Section 4, chose not to explicitly exclude Congressional districts from the purview of Article III, Section 4, nor just reference State legislative districts, As a result, "legislative districts" includes Congressional districts. A claim, thus, has been stated under Article III, Section 4.

Nexus Between Articles 7 and 24 of the Declaration of Rights and Article III, Section 4 of the Constitution

The standards of Article III, Section 4 are also applicable on an alternate basis, to evaluate the constitutionality of the 2021 Plan because the Free Elections Clause, Article 7 of the Maryland Declaration of Rights, which has been alleged in the 1773 and 1816 Complaints, as well as the Equal Protection Clause, Article 24 of the Maryland Declaration of Rights, as averred in the 1816 Complaint, each implicate the use of the Section 4 criteria. Assuming either clause is applicable,[21] its application to the lawfulness of the 2021 Plan can only be made manifest by use of the standards in Article 111, Section 4.

21 The applicability of the Free Elections Clause and the Equal Protection Clause will be addressed separately, *infra.*

The methodology of drawing a nexus between a "standards" clause and its facilitating constitutional provision is exactly what Judge John C. Eldridge, writing on behalf of the Court, did in *Md. Green Party v. Md. Bd. of Elections,* 311 Md. 127 (2003), between the Free Elections Clause and Section 1 of Article 1 of the Constitution[22] as well as the Equal Protection Clause and Section 2 of Article I of the Constitution.[23]

22 Article I, Section 1 of the Maryland Constitution, provides:
All elections shall be by ballot. Every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which

he resides at all elections to be held in this State. A person once entitled to vote in any election district, shall be entitled to vote there until he shall have acquired a residence in another election district or ward in Shis State,

23 Article I, Section 2 of the Maryland Constitution, provides:
Except as provided in Section 2A of this Article, the General Assembly shall provide by law for a uniform Registration of the names of all the voters in this State, who possess the qualifications prescribed in this Article, which Registration shall be conclusive evidence to the Judges of Election of the right of every person, thus registered, to vote at any election thereafter held in this State; but no person shall vote, at any election, Federal or State, hereafter to be held in this State, or at any municipal election in the City of Baltimore, unless the person's name appears in the list of registered voters; the names of all persons shall be added to the list of qualified voters by the officers of Registration, who have the qualifications prescribed in the first section of this Article, and who are not disqualified under the provisions of the second and third sections thereof.

Green Party Involved the constitutional validity of various provisions of the Election Code which governed the method by which a party, other than a "principal political party," could nominate a candidate for a Congressional seat. *Id.* at 140, The Green Party, however, had been notified that the name of its candidate could not be placed on the ballot because the Board of Elections was unable to verify a number of signatures on the nominating petition and, as a result, the petition contained less than the number required to vote. *Id.* at 137. The Board posited a number of reasons for denying the adequacy of the number of signatures, but the seminal reason addressed in the opinion was that many of the petition signatures were those who appeared on an inactive voter registry, which did not qualify them to sign a petition as a "registered voter" pursuant to Section 1-101(gg) of the Election Code.

***12** In addressing whether the Free Elections Clause was violated by the provision regarding an inactive voter registry, Judge Eidridge applied the standards in Article I, Section 2 of the Constitution, which, he explained, "contemplates a *single* registry for a particular area, containing the names *of all* qualified voters[.]" *Id.* at 142. (italics in original). Remarking that the statute created a class of "second class" citizens comprised of inactive voters, Judge Eidridge determined that Article 7 had been violated. *Id.* at 150, *In* so doing, his determination was premised on a line of cases in which adherence with the strictures of the Free Elections Clause was informed by standards set forth in Constitutional Clauses. *Id.* at 144 (citing *Gisriel v. Ocean City Bd. of Supervisors of Elections,* 345 Md. 477 (1997) (rejecting provision in an Ocean City Charter that failure to vote in two previous elections rendered a person unqualified to vote in municipal elections, based on Sections 1 and 4 of Article of the Constitution and Article 7 of the Declaration of Rights); *State Admin. Bd. of Election Laws v. Bd. of Supervisors of Balt. City,* 342 Md. 586 (1996) (holding that "having voted frequently in the past is not a qualification for voting," under Article I, Section 1 of the Constitution and Article 7 of the Declaration of Rights); *Jackson v. Morris,* 173 Md. 579 (1937) (recognizing nexus between the Free Elections Clause and the mandate in Section 1. of Article I of the Constitution, that "elections shall be by ballot")). Judge Eldridge also utilized the standards in Section 1 of Article I to determine that a registry of inactive voters was "flatly inconsistent" with Article 24 of the Declaration of Rights, the Equal Protection Clause.[24] *Id.* at 150.

24 As discussed, *infra,* Judge Eidridge also utilized the Equal Protection Clause, Article 24, to evaluate whether the requirement that the Green Party, as a non-principle party, was constitutionally required to submit not-only 10,000 signatures on a petition to be recognized as a political party and then provide a second petition to nominate its candidate.

It is clear, then, that our Free Elections Clause, as well as the Equal Protection Clause implicate the use of standards contained in the Constitution in order to determine a violation of each. So is the case in their application in the instant ease, in which implementation of their provisions can be determined in reference to Article III, Section 4.[25]

25 The Supreme Court of Pennsylvania, in *League of Women Voters of Pa. v. Commonwealth,* 645 Pa. 1 (2018), utilized a framework similar to that implemented in *Md. Green Party v. Md. Bd. of Elections,* 377 Md. 127 (2003), when it looked to standards delineated in Article 2, Section 16 of its Constitution - defining criteria to be used in drawing state legislative districts -- in order to measure Congressional District Plan, which had been enacted by its Legislature, complied with the Free Elections Clause contained in Pennsylvania's Declaration of Rights.

Article 7 of the Maryland Declaration of Rights

Article 7 of the Maryland Declaration of Rights, entitled "Elections to be free and frequent; right of suffrage," provides:

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

The 1816 Plaintiffs assert that the 2021 Plan violates the Free Elections Clause in several ways, including that the 2021 Plan "unlawfully seeks to predetermine outcomes in Maryland's congressional districts." They also allege that the 2021 Plan violates Article 7, because it is not based upon "well-established traditions in Maryland for forming congressional districts[,]" including compactness, adjoining territory, and respect for natural and political boundaries. They specifically allege that the boundary of the First Congressional District, which they aver is the only district in which a Republican is the incumbent, was redrawn "to make even that district a likely Democratic seat," As a result, they allege that "the citizens of Maryland, including Plaintiffs, with a right to an equally effective power to select the congressional representative of their choice," have been deprived of their right to elections, which are "free." They contend that Article 7 "prohibits the State from rigging elections in favor of one political party[.]" and conclude that, "any election that is poisoned by political gerrymandering and the intentional dilution of votes on a partisan basis is not free,"

***13** The 1773 Plaintiffs assert that the 2021 Plan "subordinate[s]" the requirement, under Article 7 of the Declaration of Rights, that elections be "free and frequent" to "improper considerations," namely the manipulation of Congressional district boundaries so that they will be unable "to cast a meaningful and effective vote for the candidates they prefer." Additionally, these Plaintiffs allege that Congressional district boundaries that are not based on criteria, such as compactness and the minimization of crossing political boundaries, result in elections that are inherently not "free" and, therefore, violate Article 7.

The State, conversely, argued that the 2021 Congressional Plan does not violate the Free Elections Clause of Article 7, because that Section applies only to state elections. The State observes that the capitalization of "I," in "Legislature," is a direct, reference to the General Assembly. Additionally, the State asserts that the legislative history of Article 7, particularly surrounding debates regarding the frequency of elections, indicates that the Free Elections Clause could not apply to federal elections, "for which the State is powerless to control the frequency."

With respect to the use of a capital "L" in "Legislature," in the Free Elections Clause, as reflecting only a reference to the state legislature, the State's contention is belied by its own language. Article 7, as it was originally adopted in 1776, was meant to secure a right of participation:

> That the right of the People to participate in the Legislature is the best security of liberty and the foundation of ail 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.

The language of Article 7 enunciated a foundational right to vote for the only entity for which the citizens of Maryland in 1776 had a participatory ability to elect through voting, the Legislature. The reference to "Legislature," then, refers to the only entity for which there was any accountability through suffrage.

The purpose of the Free Elections Clause relative to partisanship, as alleged in the complaints, heretofore has not been the subject of judicial scrutiny. During the Constitutional Convention of 1864, however, proposals to amend Article I of the Constitution, to create a registry of voters whereby voters would be required to pledge a loyalty oath as a prerequisite to voting were hotly debated and the effect of "partisan oppression" on free elections was explored. Proponents of the amendments sought to exclude supporters of the Confederacy, who, by the terms of the oath, would be disqualified from voting. *Proceedings and Debates of the 1864 Constitutional Convention,* Volume 1 at 1332, Those opposed to the loyalty oath argued that it would be counter to the purpose of "free elections." *Id.* at 1332. One delegate noted that the loyalty oath presupposed that,

> there are now in the State of Maryland enjoying the right of suffrage under the present constitution, ten distinct classes of persons who deserve to be disfranchised from hereafter exercising that right. They are to be under a government by others, in which they are to have no voice, in which they are not to be allowed to participate in any shape or form.

Id. In the same debate, another delegate, Mr. Fendall Marbury, decried the imposition of a loyalty oath as a means of oppression, in contravention to the right to participate in free elections:

> The right of free election lies at the very foundation of republican government, It is the very essence of the constitution, To violate that right, and much more to transfer it to any other set of men, is a step leading immediately to the dissolution of ail government. The people of Maryland have always in times past, guarded with more than vestal care this fundamental principle of self-government, By constitutional provisions and legislative enactments, they have sought to provide against, every conceivable effort that might be made to suppress the voice of the people. They have spurned the idea of excluding any one on account of his religious or political opinions. Is it not unwise and impolitic to depart from this established policy of the State, by introducing words into our constitution which are calculated to revive and foster that spirit of crimination and recrimination already existing to an alarming extent between parties in this State? The word loyal has come to be, of late, a word susceptible of such various construction, and has so often been prostituted by the minions of power, to accomplish partisan ends. That to incorporate it into the constitution would be nothing more nor less than creating an engine of oppression, to be used by whatever party might hold for a time the reins of power.

***14** *Id.* at 1334. Thus, inhibiting the creation of an "engine of oppression" "to accomplish party ends" by "whatever party might hold for a time the reins of power" to "suppress the voice of the people" was a purpose of the Free Elections Clause.

Our jurisprudence in Maryland indicates that the Free Elections Clause has been broadly interpreted to apply to legislation that infringes upon the right of political participation by citizens of the State. In *Jackson v. Norris,* 173 Md. 579 (1937). the Court of Appeals considered whether automated voting machines, which used ballots that restricted the choice of voters to candidates whose names were printed on the ballot, violated the Free Elections Clause, In resolving the applicability of the Free Elections Clause, the Court explained that legislative acts that were "a material impairment of an elector's right to vote[,]" were to be deemed unconstitutional. *Id.* at 585. The Court held that the ballots were violative of the Free Elections Clause, because they constrained the ability of voters to cast their vote for the candidate of their choice and. by extension infringed upon voters' right to participate in free elections. *Id.* at 603.

The pivotal goal of the Free Elections Clause, to protect the right of political participation in Congressional elections, was emphasized in *Green Party,* 377 Md. at 127, which concerned an attempt by the Green Party to get a candidate on the ballot for election to Congress, in the state's first congressional district, as discussed, *supra.* In that case, Article 7 was held to protect the right of all qualified voters within the state to sign nominating petitions in support of minor party candidates for office, regardless of whether they had been classified as "inactive voters." In this regard, the decision in *Green Party* recognized that, the Free Elections Clause afforded a greater protection of the citizens of Maryland in a Congressional election context, than is provided under the Federal Constitution, in the First, Fifth, Ninth, and Fourteenth Amendments, which also had been alleged in the Complaint. *Green Party,* 377 Md. at 150.[26]

26 In interpreting similar phraseology that "Elections shall be free and equal," the Supreme Court of Pennsylvania, in *League of Women Voters of Pa.,* determined that the state's Free Elections Clause required that "each and every Pennsylvania voter must have the same free and equal opportunity to select his or her representatives." 645 Pa. at 317. The Court concluded that, in order to comply with the strictures of the Free Elections Clause, Congressional district maps be drawn in order to "provide[] the people of this Commonwealth an equally effective power to select the representative of his or her choice, and bars the dilution of the people's power to do so." *Id.*

Clearly, the 1773 and 1816 Complaints, with respect to Article 7 of the Declaration of Rights, the Free Elections Clause, have stated a cause of action and survive the Motion to Dismiss, assuming the truth of all well-pleaded relevant and material facts and all inferences that reasonably can be drawn therefrom.

Article 24 of the Maryland Declaration of Rights, Equal Protection

Article 24 of the Maryland Declaration of Rights, entitled "Due process," provides:

> ***15** That no man ought to be taken or imprisoned or dieselized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

Although Article 24 does not contain language of "equal protection," the Court of Appeals has long held that "equal protection" is embodied in it: "we deem it settled that this concept of equal treatment is embodied in the due process requirement of Article 24 of the Declaration of Rights. *Att'y Gen. of Md. v. Waidron,* 289 Md. 683 (1981); *Bd. of Supervisors of Elections of Prince George's Cray. v. Goodseil,* 284 Md. 279, 293 n.7 (1979) ("[W]e have regularly proceeded upon the assumption that the principle of equal protection of the laws is included in Art. [24] of the Declaration of Rights.").

The 1816 Plaintiffs assert that, the 2021 Plan violates Article 24 by unconstitutionally discriminating against Republican voters, including Plaintiffs, and infringing on their fundamental right to vote. Specifically, these Plaintiffs assert that the 2021 Plan intentionally discriminates against Plaintiffs by diluting the weight of their votes based on party affiliation and depriving them of the opportunity for full and effective participation in the election of their Congressional representatives. These Plaintiffs add that the 2021 Plan unconstitutionally degrades Plaintiffs' influence on the political process and infringes on their fundamental right to have their votes count fully. The State, in response, asserts that the Plaintiffs have offered no basis for an interpretation broader than that by the Supreme Court of the Fourteenth Amendment in *Rucho,* The State posits, though, that the scope of equal protection in Maryland is the same as that which is embodied in the federal constitution in the Fourteenth Amendment.

The essence of equal protection is that "all persons who are in like circumstances are treated the same under the laws." *Hornbeck v. Somerset Cnty, Bd. of Educ,* 295 Md. 597, 640 (1983), The treatment of similarly situated people under the law, clearly, cannot he denied in Maryland, in derogation of the Fourteenth Amendment; it also is clear that Maryland can afford greater protection to its citizens under Article 24 of the Declaration of Rights. In this regard, we need only look at various cases of the Court of Appeals in which the Court was clear that Article 24 and the equal protection clause of the Fourteenth Amendment are "independent and capable of divergent application." *Waldron,* 289 Md. at 704; *see also Md. Aggregates Ass'n, Inc. v. State,* 337 Md. 658, 671 n.8 (1995) (explaining the relationship between applications of equal protection guarantees under the Fourteenth Amendment and Article 24 of the Declaration of Rights); *Verzi v. Balt. Cnty.,* 333 Md. 411, 417 (1994) (stating that "'a discriminatory classification may be an unconstitutional breach of the equal protection doctrine under the authority of Article 24 alone.'" (quoting *Waldron,* 289 Md. at 715)); *Hornbeck,* 295 Md. at 640 (stating that "the two provisions are independent of one another, and a violation of one is not necessarily a violation of the other,").

Notably, in *In re 2012 Legislative Districting,* 436 Md. 121 (2013), Chief Judge M. Bell, writing for the Court of Appeals, assumed that Article 24 could embody a greater right than is afforded under the Fourteenth Amendment when he said: "The potential violation of Article 24 of the Maryland Declaration of Rights is not discussed at length in this case because the petitioners do not assert any greater right under Article 24 than is accorded under both the Federal right and the population equality provision of Article III, § 4 of the Maryland Constitution." *Id.* at 159 n.25.

***16** The State, however, during argument regarding the Motion to Dismiss, attempted to distinguish what the Court of Appeals said in Footnote 25 in the 2012 redistricting case, by urging that the pivotal quote was addressing only a racial gerrymandering issue, rather than partisan gerrymandering. It is notable, however, that in deriving the notion that Article 24 could embody a greater breadth of protection than is afforded by the Fourteenth Amendment, the Court of Appeals cited to *Md. Aggregates Ass'n, supra,* (quoting *Murphy v. Edmonds,* 325 Md. 342, 354-55 (1992)), neither of which involved any racial differentiation.

Obviously, it cannot be lost to anyone that Article 24 was assumed to be applicable in a redistricting context in the 2012 redistricting case. *Id.* Article 24, moreover, has also been applied in various election and voting right contexts prior to 2012.

See Nader for President 2004 v. Md. State Bd. of Elections, 399 Md. 681, 686 (2007) (Presidential elections); *DuBois v. City of College Part* 286 Md. 677 (1980) (election for City Council); *Goodsell,* 284 Md. at 281 (election for County Executive).

Moreover, in *Green Party,* which is of particular significance to the instant case, Judge John C, Eldridge, writing for the Court, addressed whether a statutory scheme comported with equal protection under Article 24 and analyzed the issue using two distinct approaches, both of which are applicable in the instant case.

In 2000, the Maryland Green Party sought to place its candidate on the ballot for the U.S. House of Representatives seat in Maryland's first congressional district. *Green Party,* 377 Md. at 136. The Green Party needed initially to be recognized as a political party within the state, which, pursuant to Section 4-102 of the Election Code, required it to submit a petition to the State Board of Elections that included "the signatures of at least 10,000 registered voters who are eligible to vote in the State as of the 1st day of the month in which the petition is submitted," *Id.* at 135--36. In August of 2000, the Green Party's petition was accepted, and it became "a statutorily-recognized 'political party[.]"' *Id.* at 135 n.3 (quoting Section 1-101(aa) of the Election Code).

In order to nominate a candidate, however, the Green Party was then required to submit a second petition to the Board of Elections, which, pursuant to Section 5--703(e) of the Election Code, was to be accompanied by signatures of "not less 1% of the total number of registered voters who are eligible to vote for the office for which the nomination by petition is sought[.]" *Id.* at 137 n.6. "On August 7, 2000, the [Green Party] submitted a timely nominating petition containing 4,214 signatures of voters purporting to be registered in Maryland's first congressional district," *id.* at 137, but the petition was rejected by the Board of Elections. Alleging that "it could verify only 3,081 valid signatures, fewer than the 3,411 required by Maryland's 1% nomination petition requirement," the Board reasoned that "many signatures were 'inactive' voters" and ineligible to sign nominating petitions. *Id.* The basis for the Board's rationale was that, under the provisions of Section 3-504 of Election Code, if a sample ballot, which "the local boards customarily mail out ... to registered voters prior to an election[,]" were "returned by the postal service" and the voter then "fail[ed] to respond to [a] confirmation notice," the voter's name would be placed on "the 'inactive voter' registration list." *Id.* at 147. Persons on the inactive voter list, pursuant to Sections 3--504(f)(4) of the Election Code, would "not be counted as part of the registry [of voters]," and under Section 3-504(f)(5), their signatures were not to "be counted ... for official administrative purposes as petition signature verification[.]" *Id.* at 150.

***17** In addressing the constitutionality of Section 3-504 of the Election Code, which established an inactive voter registry, which essentially disenfranchised voters, Judge Eldridge applied the standards of Section 2 of Article I of the Constitution, which required:

> Except as provided in Section 2A of this Article, the General Assembly shall provide by law for a uniform Registration of the names of all the voters in this State, who possess the qualifications prescribed in this Article, which Registration shall be conclusive evidence to the Judges of Election of the right of every person, thus registered, to vote at any election thereafter held -in this State; but no person shall vote, at any election, Federal or State, hereafter to be held in this State, or at. any municipal election in the City of Baltimore, unless the person's name appears in the list of registered voters; the names of all persons shall be added to the list of qualified voters by the officers of Registration, who have the qualifications prescribed in the first section of this Article, and who are not disqualified under the provisions of the second and third sections thereof.

In applying the standards of Section 2, Judge Eidridge declared Section 3-504 of the Election Code unconstitutional, because that Section "create[d] a group of 'second-class citizens' comprised of persons who are 'inactive' voters and thus not eligible to sign petitions[,]" and was "flatly inconsistent with Article 24 of the Declaration of Rights. *Id.* at 150. In explaining how the inactive voter list failed to comport with the Constitutional standards, Judge Eidridge explained that Section 2 of Article I, which instructs the General Assembly to create a uniform registry of voters,

> contemplates a single registry for a particular area containing the names of ail qualified voters, leaving the General Assembly no discretion to decide who may or may not be listed therein, no discretion to create a second registry for inactive voters, and no authority to decree that an "inactive" voter is not a "registered voter" with the rights of a registered voter.

Id. at 143. A nexus between the Equal Protection Clause and a standards clause, therefore, was established.

Judge Eldridge, thereafter, explored another methodology to apply equal protection to evaluate Green Party's claim that the required submission of two petitions in order to nominate its candidate violated Article 24, because it treated principal political parties differently from minor political parties. *Id.* at 159. The Green Party had argued that "once a group has submitted the required 10,000 signatures to receive official recognition as a political party ,... no further showing of support, should be necessary for the name of a minor political party's candidate to be on the ballot." *Id.* at 153. The Board of Elections countered that the second petition was necessary to ensure that a minor part}' had "a significant modicum of public support," in order to prevent "frivolous" candidates from appearing on ballots. *Id.* at 153-54.

In addressing the question, Judge Eldridge approached the issue through the strict scrutiny lens and required the State to present a compelling interest. In so doing, he determined that the requirement that the Green Party submit one petition to form a political party and then a second petition to nominate a candidate, "discriminates against minor political parties in violation of the equal protection component of Article 24[.]" *Id.* at 156-57, Having identified the two-petition requirement as discriminatory, Judge Eldridge considered "the extent and nature of the impact on voters, examined in a realistic light," in order to determine the appropriate standard of review of the five-year registration requirement, *Id.* at 163 (quoting *Goodsell,* 284 Md. at 288), He then determined that, "the double petitioning requirement set forth by the Maryland Election Code denies ballot access to a significant number of minor political party candidates. On that basis, the challenged statutory provisions' impact on voters is substantial." *Id.*

***18** Clearly, the 1816 Complaint, with respect to the equal protection principles embodied within Article 24 of the Declaration of Rights, has stated a cause of action to survive the Motion to Dismiss, assuming the truth of all well-pleaded relevant and material facts and all inferences that reasonably can be drawn therefrom,

Article 40 of the Maryland Declaration of Rights

The 1816 Plaintiffs' cause of action under Article 40 of the Maryland Declaration of Rights survived the Motion to Dismiss. Article 40, which pertains to freedom of speech and freedom of the press, provides:

> That the liberty of the press ought to be inviolably preserved; that every citizen of the State ought, to be allowed to speak, write and publish his sentiments on ail subjects, being responsible for the abuse of that, privilege.

MD. CONST. DECL. OF RTS. art. 40.

In their Complaint, the 1816 Plaintiffs allege that the 2021 Plan violates Article 40 by "burdening protected speech based on political viewpoint." Specifically, they allege, the 2021 Plan benefits certain preferred speakers (Democratic voters), while targeting certain disfavored voters (e.g., Republican voters, including Plaintiffs) because of disagreement on the part of the 2021 Plan's drafters with views Republicans express when they vote, *1816 Compl.* at ¶ 79. Plaintiffs aver that the 2021 Plan subjects Republican voters, including them, to disfavored treatment by "cracking"[27] them into specific congressional districts to dilute Republican votes and ensure that they are not able to elect a candidate who shares their views. *1816 Compl.* at ¶ 80. Therefore, Plaintiffs contend that the 2021 Plan has the effect of suppressing their political views and expressions and retaliates against them based on their political speech. *Id.* at ¶ 81.

27 "A "cracked" district is one in which a party's supporters are divided among multiple districts, so that they fall short, of a majority in each; a "packed" district is one in which a party's supporters are highly concentrated, so they win that district by a large margin, "wasting" many votes that would improve their chances in others." *Rucho v. Common Came,* _____ U.S. _____, _____, 139 S. Ct. 2484, 2492 (2019).

Defendants argued in their Motion to Dismiss that, the Plaintiffs' claims under Article 40 purport to "parrot" free speech claims that are the same as those offered under the First Amendment to the United States Constitution, which the Supreme Court, has rejected in the redistricting context. *See Rucho,* 139 S. Ct. at 2506-07. Defendants further assert that the because the Maryland Court, of Appeals has generally treated the rights enshrined under Articles 40 as "coextensive" with its federal counterpart and has specifically adhered to Supreme Court guidance regarding partisan gerrymandering claims, the free speech cause of action should have been dismissed. *181.6 Mot. Dismiss* at 3; *see generally 1816 Mot. Dismiss,* Section III.C.

Article 40 of the Maryland Declaration of Rights adopted in 1776, preceded its federal counterpart, adopted in 1788, thereby contributing to the foundations of the latter. Article 40 of Maryland's Declaration of Rights has been generally regarded as coextensive with the First Amendment, but the Court of Appeals has recognized that Article 40 can have independent and divergent application and interpretation. *Dua v. Comcast Cable of Md., Inc.,* 370 Md. 604, 621 (2002) ("Many provisions of the Maryland Constitution ... do have counterparts in the United States Constitution. We have often commented that such state constitutional provisions are *in pari materia* with their federal counterparts or are the equivalent of federal constitutional provisions or generally should be interpreted in the same manner as federal provisions. Nevertheless, we have also emphasized that, simply because a Maryland constitutional provision is *in pari materia* with a federal one or has a federal counterpart, does not mean that the provision will always be interpreted or applied in the same manner as its federal counterpart."); *see also State v. Brookins,* 380 Md. 345. 350 n. 2 (2004) ("While Article 40 is often treated *in pari materia* with the First Amendment, and while the legal effect of the two provisions is substantially the same, that does not mean that the Maryland provision will always be interpreted or applied in the same manner as its federal counterpart." (citing *Dua,* 370 Md. at 621)). The Court of Appeals has not shied away from "departing from the United States Supreme Court's analysis of the parallel federal right" when necessary "[to] ensure[] that the rights provided by Maryland law are fully protected." *Doe v. Dep't of Pub, Safety & Corr. Servs.,* 430 Md. 535, 550 (2013).

***19** A violation of the free speech provision of Article 40 is implicated when there is interference with a citizen's right to vote, which is a fundamental right. *Hornbeck,* 295 Md. at 641 (explaining that the right to vote is a fundamental right). We apply strict scrutiny when a legislative enactment infringes upon or interferes with personal rights or interests deemed to be "fundamental." *Id.* at 641. When a legislative act, such as the 2021 Plan, creates Congressional districts that dilute the influence of certain voters based upon their prior political expression--their partisan affiliation and their voting history--it imposes a burden on a right or benefit, here a fundamental right. As a result, this Court, under Article 40, will apply strict scrutiny to the 2021 Plan.

Fundamental Principles Underlying the Maryland Constitution and the Declaration of Rights

The final basis upon which the Plaintiffs have stated a cause of action on which relief can be granted is through the lens of the entirety of our Constitution and Declaration of Rights, which provides a framework to determine the lawfulness of the 2021 Plan based upon their fundamental principles.[28] *Snyder ex rel. Snyder,* 435 Md. at 55 ("In construing a constitution, we have stated 'that a constitution is to be interpreted by the spirit which vivifies[.]"' (quoting *Bernstein,* 422 Md. at 56)).

28 *Whittington v. Polk,* 1 H. & J. 236, 241 (Md. Gen. 1802), in dictum, established in Maryland the idea of judicial review - that the courts are the primary interpreters and enforcers of the constitution. The General Court of Maryland explained that if an act of the Legislature is repugnant to the constitution, the courts have the power, and it is their duty, so to declare it. *Id.* The General Court realized that the "power of determining finally on the validity of the acts of the legislature cannot reside with the legislature ... [because] they would become judges of the validity of their own acts, which would establish a despotism, and subvert that great principle' of the constitution, which declares that the powers of making, judging, and executing the law, shall be separate and distinct from each other." *Id.* at 243.

Plaintiffs argue that partisan gerrymandering is inconsistent with the principles embodied by the Free Elections Clause, the Equal Protection Clause, and the Free Speech Clause of the Declaration of Rights, because it usurps the power of the people to choose those who represent them in government and puts that power solely within the purview of the Legislature, *1816 Compl.* ¶ 2 ("Indeed, the 2021 Plan defies the fundamental democratic principle that voters should choose their representatives, not the

other way around."). They posit that usurping the power of voters to elect members of Congress violates the general principles upon which the structure of Maryland's Government and its Constitution were founded.

In response, Defendants posit that judicially manageable standards do not exist under the Maryland Constitution, and further, applicable statutes adjudicating claims regarding Congressional districts do not exist in Maryland, *1816 Mot. Dismiss* at 3. As a result. Defendants argue that Plaintiffs cannot seek relief under the Maryland Constitution or Declaration of Rights. *Id.* at 45, Instead, the State argues, either Congress or the General Assembly must decide to impose statutory restrictions or adopt constitutional amendments to regulate Congressional districting. *Id.* Until congressional or state action is taken, Defendants aver that Plaintiffs will continue to lack a remedy under the Maryland Constitution or Declaration of Rights, *Id.*

The Constitution and Declaration of Rights must be read together to determine the organic law of Maryland, The courts understood this rule of construction early on, explaining that "[t]he Declaration of Rights and the Constitution compose our form of government, and must be interpreted as one instrument." *Anderson v. Baker,* 23 Md. 531, 612-13 (1865). Specifically, the court in *Anderson* explained that, "[tjhe Declaration of Rights Is an enumeration of abstract principles, (or designed to be so,) and the Constitution the practical application of those principles, modified by the exigencies of the time or circumstances of the country." *Id.* at 627; *see also Bandel v. Isaac,* 13 Md. 202, 202-03 (1859) ("In construing a constitution, the courts must consider the circumstances attending its adoption, and what appears to have been the understanding of those who adopted it[.]"); *and Whittington v. Polk,* 1 H & J 236, 242 (1802) (stating that, "[t]he bill of rights and form of government compose the constitution of Maryland").

***20** More recently, the Court of Appeals has confirmed this rule of construction. In *State v. Smith,* 305 Md. 489 (1986), the court reiterated that it "bear[s] in mind that the Declaration of Rights is not to be construed by itself, according to its literal meaning: it and the Constitution compose our form of government, and they must be interpreted as one instrument." *Id.* at 511 (explaining that the Declaration of Rights announces principles on which the form of government, established by the Constitution, is based).

While it is established that the Declaration of Rights and Constitution, together, form the organic law of our State, *Whittington,* 1 H & J at 242, the analysis then requires a review of the text, nature, and history of both documents. The text of the Maryland Constitution recognizes that "all Government of right originates from the people .., and [is] instituted solely for the good of the whole; and [that citizens] have, at all times, the inalienable right to alter, reform, or abolish their Form of Government in such manner as they may deem expedient." MD. CONST, DECL. OF RTS. art. 1. Its purpose "is to declare general rules and principles and leave to the Legislature the duty of preserving or enforcing them, by appropriate legislation and penalties." *Bandel,* 13 Md. at 203. Moreover, it is well understood that the rights secured under the Maryland Declaration of Rights are regarded as very precious ones, to be safeguarded by the courts with all the power and authority at their command. *Bass v. State,* 182 Md. 45)6, 502 (1943), The framers ensured that the Declaration of Rights would be regarded as precious by enacting subsequent constitutional provisions to safeguard those rights. In that vein, the foundational significance of the right of suffrage is memorialized in the first Article of the Constitution, which pertains to the "Elective Franchise," MD. CONST. art. I, and Article I of the Declaration of Rights, which locates the source of all "Government" in the people. MD. CONST. DECL. OF RTS. art, 1.

Popular sovereignty dictates that the "Government" of the people which "derives from them," is properly channeled when our democratic process functions to reflect the will of the people. Although the Maryland Declaration of Rights, like the Constitution, is silent with respect to the right of its citizens to challenge the primacy of political considerations in drawing legislative districts, the Declaration of Rights does memorialize that the people are guaranteed the right to wield their power through the elective franchise, thereby safeguarding the sacred principle that the government is, at all times, for the people and by the people. MD. CONST. DECL. OF RTS. arts. 1, 7. Specifically, recognizing that the government is for the people and by the people, Article I of the Constitution describes the process of electing persons to represent there in government, which is also embodied in the principles expressed through the Free Elections Clause in Article 7,

Under the principle of popular sovereignty, we bear in mind that the Constitution as a whole "is the fundamental, extraordinary act by which the people establish the procedure, and mechanism of their government." *Bd. of Supervisors of Elections for Anne Arundel Cnty. v. Att'y Gen.,* 246 Md. 417, 429 (1967); *Whittington,* 1 H & J at 242 ("This compact [the Constitution] is founded on the principle that the people being the source of power, all government of right originates from them,").

***21** The second principle--avoiding extravagant or undue extension of power by the Legislature--was an important limitation on the Legislature, the only entity for which the Maryland citizens could vote in 1776. It is stated that "[t]ne Declaration of Rights is a guide to the several departments of government, in questions of doubt as to the meaning of the Constitution, and "a guard against any extravagant or undue extension of power[.]" *Anderson,* 23 Md. at 628. The limitation on "extravagant or undue extension of power" is coextensive with the principle of popular sovereignty. For this purpose, "courts have [the] power and duty to determine [the] constitutionality of legislation." *Curran v. Price,* 334 Md. 149, 159 (1994).

In Maryland, we have long understood that "[t]he elective franchise is the highest right of the citizen, and the spirit of our institution requires that every opportunity should be afforded to its fair and free exercise." *Kemp v. Owens,* 76 Md. 235, 241 (1892). In *Kemp,* the Court of Appeals characterized the right to vote as "one of the primal rights of citizenship," *id.,* as it did in *Nader for President 2004;* "the right of'suffrage" guaranteed by our Constitution "is one of, if not, the most important and fundamental rights granted to Maryland citizens as members of a free society." 399 Md. at 686. To safeguard the Legislature from exerting extravagant or undue extension of power, each citizen of this State is afforded the opportunity to vote and hold the Legislature accountable. MD. CONST. DECL. OF RTS. arts. 7, 24, 40, Similarly, the judicial branch of government has a responsibility to limit the Legislature from exerting extravagant or undue extension of power by enforcing the standards of legislative districting outlined in Article III, Section 4 of the Maryland Constitution and by the avoidance of extreme partisan gerrymandering.

Therefore, assuming the truth of all well pleaded relevant and material facts and all inferences that reasonably can be drawn therefrom, the Plaintiffs have stated a cause of action under the fundamental principles of the Maryland Constitution and Declaration of Rights of popular sovereignty and avoiding extravagant and undue exercise of power by the Legislature.

Findings of Fact

Stipulations and Judicial Admissions[29]

29 Where stipulations and admissions have overlapped, the trial judge has avoided duplication by adopting the more comprehensive of the two.

1. Plaintiffs are qualified, registered voters in Maryland.

2. Plaintiffs in *Szeliga v. Lamone* ("No. 1816") are:
   a. Kathryn Szeliga is a citizen of the United States and a resident of and registered voter in Maryland, She is a registered Republican and plans to vote in the future for Republican candidates for elective office, including for the United States House of Representatives. Ms. Szeliga currently serves as a member of Maryland's House of Delegates and has been a member of the House of Delegates since 2011. She is a Republican elected official who represents Maryland citizens in Baltimore and Hartford Counties. She resides in District 7 of the 2021 Plan.

   b. Christopher T. Adams is a citizen of the United States and a resident of and registered voter in Maryland. He is a registered Republican and plans to vote in the future for Republican candidates for elective office, including for the United States House of Representatives, Mr. Adams currently serves as a member of Maryland's House of Delegates and has been a member of the House of Delegates since 2015. Mr. Adams is a Republican elected official who represents Maryland citizens in Caroline, Dorchester, Talbot, and Wicomico Counties. He resides in District 1 of the 2021 Plan.

***22** c. James Warner is a citizen of the United States and a resident of and registered voter in Maryland. Mr. Warner is a decorated combat veteran and former prisoner of war. He is a registered Republican and plans to vote in the future for Republican candidates for elective office, including for the United States House of Representatives. He resides in District 2 of the 2021 Plan.

d. Martin Lewis is a citizen of the United States and a resident of and registered voter in Maryland. He is a registered Republican and plans to vote in the future for Republican candidates for elective office, including for the United States House of Representatives. He resides in District 2 of the 2021 Plan.

e. Janet Moye Cornicle is a citizen of the United States and a resident of and registered voter in Maryland. She is a registered Republican and plans to vote in the future for Republican candidates for elective office, including for the United States House of Representatives. She resides in District 3 of the 2021 Plan.

f. Ricky Agyekum is a citizen of the United States and a resident of and registered voter in Maryland. He is a registered Republican and plans to vote in the future for Republican candidates for elective office, including for the United States House of Representatives. He resides in District 4 of the 2021 Plan.

g. Maria Isabel Icaza is a citizen of the United States and a resident of and registered voter in Maryland. She is a registered Republican and plans to vote in the future for Republican candidates for elective office, including for the United States House of Representatives. She resides in District 5 of the 2021 Plan.

h. Luanne Ruddell is a citizen of the United States and a resident of and registered voter in Maryland. She, is a registered Republican and plans to. vote in the future for Republican candidates for elective office, including for the United States House of Representatives. She currently serves as Chair of the Garrett County Republican Central Committee and President of the Garrett County Republican Women's Club. Additionally, she serves on the Rules Committee for the Maryland Republican Party and is a member of the Maryland Republican Women and the National Republican Women's organizations. She resides in District 6 of the 2021 Plan.

i. Michelle Kordell is a citizen of the United States and a resident of and registered voter in Maryland. She is a registered Republican and plans to vote in the future for Republican candidates for elective office, including for the United States House of Representatives. She resides in District 8 of the 2021 Plan,

3. Plaintiffs in *Parrott v. Lamone* ("No. 1773") are:

a. Plaintiff Neil Parrott is a citizen of Maryland, is registered to vote as a Republican, and resides in the Sixth Congressional District of the new Plan. Mr. Parrott has registered to run for Congress in 2022 in that district. Mr. Parrott is currently a member of the Maryland House of Delegates.

b. Plaintiff Ray Serrano is a citizen of Maryland, is registered to vote as a Republican, and resides in the Third Congressional District of the new Plan.

c. Plaintiff Carol Swigar is a citizen of Maryland, is registered to vote as a Republican, and resides in the First Congressional District of the new Plan.

d. Plaintiff Douglas Raaum is a citizen of Maryland, is registered to vote as a Republican, and resides in the First Congressional District of the new Plan.

***23** e. Plaintiff Ronald Shapiro is a citizen of Maryland, is registered to vote as a Republican, and resides in the Second Congressional District of the new Plan.

f. Plaintiff Deanna Mobley is a citizen of Maryland, is registered to vote as a Republican, and resides in the Fourth Congressional District of the new Plan.

g. Plaintiff Glen Glass is a citizen of Maryland, is registered to vote as a Republican, and resides in the First Congressional District of the new Plan.

h. Plaintiff Allen Fourth is a citizen of Maryland, is registered to vote as a Republican, and resides in the Fourth Congressional District of the new Plan.

i. Plaintiff Jeff Warner is a citizen of Maryland, is registered to vote as a Republican, and resides in the Fourth Congressional District of the new Plan. Mr. Warner intends to run for Congress in 2022 in that district.

j. Plaintiff Jim Nealis is a citizen of Maryland, is registered to vote as a Republican, and resides in the Fifth Congressional District of the new Plan.

k. Plaintiff Dr. Antonio Campbell is a citizen of Maryland, is registered to voteas a Republican, and resides in the Seventh Congressional District of the new Plan.

l. Plaintiff Sal lie Taylor is a citizen of Maryland, is registered to vote as a Republican, and resides in the Eight Congressional District of the new Plan.

4. Linda H. Lam one is the Maryland State Administrator of Elections.

5. William G. Voelp is the chairman of the Maryland State Board of Elections.

6. The Maryland State Board of Elections is charged with ensuring compliance with the Election Law Article of the Maryland Code and any applicable federal law by all persons involved in the election process. It is the State agency responsible for administering state and federal elections in the State Maryland.

7. Every 10 years, states redraw legislative and congressional district lines following completion of the decennial United States census. Redistricting is necessary to ensure that districts are equally populated and may also be required to comply with other applicable federal and state constitutions and voting laws.

8. The United States Constitution provides that, "[t]he House of Representatives shall be composed of Members chosen ever)' second Year by the People of the several States." U.S. CONST. art. I, § 2, cl. 1. It also states that, "[t]he Times, Places and Manner of holding Elections for ... Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of eh using Senators." *Id.* § 4, cl. 1. The United States Constitution thus assigns to state legislatures primary responsibility for apportionment of their federal congressional districts, but this responsibility may he supplanted or confined by Congress at any time,

9. Maryland has eight congressional districts.

10. The General Assembly enacts maps for these districts by ordinary statute. While the General Assembly's congressional maps are subject to gubernatorial veto, the General Assembly can. as with any ordinary statute, override a veto,

11. In 2011, following the 2010 decennial census, Maryland's General Assembly undertook to redraw the lines of Maryland's eight, congressional districts.

***24** 12. To carry out the redistricting process, then-Governor Martin O'Malley appointed the Governor's Redistricting Advisory Committee ("GRAC") in July 2011 by Executive Order. The GRAC was charged with holding public hearings around the State and drafting redistricting plans for the Governor's consideration to set the boundaries of the State's 47 legislative districts and 8 congressional districts following the 2010 Census.

13. To carry out the redistricting process, Governor O'Malley appointed the GRAC to hold public hearings and recommended a redistricting plan. As part of a collaborative approach to developing a congressional map in 2011, Governor O'Malley asked Rep. Steny Hoyer to propose a consensus congressional map among Maryland's congressional delegation.

14. Democratic members of Maryland's congressional delegation, including Representative Hoyer, were involved in developing a consensus map to provide Governor O'Malley in order to assist with the process of developing a new congressional map for Maryland.

15. The GRAC held 12 public hearings around the State in the summer of 2011 and received approximately 350 comments from members of the public concerning congressional and legislative redistricting in the State. Approximately 1,000 Marylanders attended the hearings, which were held in Washington, Frederick, Prince George's, Montgomery, Charles, Harford, Baltimore, Anne Arundel. Howard, Wicomico, and Talbot Counties, and Baltimore City.

16. The GRAC solicited submissions of alternative plans for congressional redistricting prepared by third parties for its consideration. The GRAC also solicited public comment on the proposed congressional plan that it adopted.

17. The GRAC prepared a draft plan using a computer software program called Maptitude for Redistricting Version 6,0.

18. GRAC adopted a proposed congressional redistricting plan and made public its proposed plan on October 4, 2011. No Republican member of the GRAC voted for the congressional redistricting plan that was adopted.

19. The GRAC plan altered the boundaries of district 6 by removing territory in, among other counties, Frederick County, and adding territory in Montgomery County,

20. On October 15, 2011, Governor O'Malley announced that he was submitting a plan that was substantially similar to the plan approved by the GRAC to the General Assembly.

21. One perceived consequence of the Plan was that it would make it more likely that a Democrat rather than a Republican would be elected as representative from District 6,

22. On October 17, 2011, the Senate President introduced the Governor's proposal as Senate Bill 1" at a special session and it was signed into law on October 20, 2011 with only minor adjustments (the "2011 Plan"). No Republican member of the General Assembly voted in favor of the 2011 Plan.

23. The 2011 Plan was petitioned to referendum by Maryland voters at the general election of November 6, 2012, pursuant to Article XVI of the Maryland Constitution.

24. On September 6, 2012, the Circuit Court for Anne Arundel County rejected contentions that the ballot language for the referendum question was misleading or insufficiently infmmative. *See Parrott, et al. v. McDonough, et al.,* No. 02-C-12-172298 (Cir. Ct. for Anne Arundel Cnty.) (the "Referendum Litigation"). On September 7, 2012, the Court of Appeals denied a petition for certiorari by the plaintiffs in that case.

25. The 2011 Plan was approved by the voters in that referendum. The language of the question on the ballot for the referendum stated:

***25** *Question 5*

Referendum Petition

(*Ch. 1 of the 2011 Special Session*)

Congressional Districting Plan

Establishes the boundaries for the State's eight United States Congressional Districts based on recent census figures, as required by the United States Constitution.

For the Referred Law Against the Referred Law

26. On July 23, 2014, the Court of Special Appeals affirmed the ruling of the Circuit Court in the Referendum Litigation in an unpublished opinion. *See Parrott, et al. v. McDonough et al,* No. 1445, Sept. Tenn 2012 (Md. App. July 23, 2014). A true and accurate copy of the unpublished opinion in that case is attached hereto as Exhibit XII.[30] On October 22, 2014, the Court of Appeals denied a petition for certiorari by the appellants in that ease. *See Parrott, et al, v. McDonough, et al.,* No. 382, Sept. Term 2014 (Md. Oct, 22, 2014).

30 The identification of exhibits attached to this Court's Opinion has been changed from alphabetical identifications, which were previously labeled by the parties in these stipulations, to roman numeral identifications, so as to avoid any confusion between the exhibits admitted at trial and the exhibits attached to this Opinion.

27. Republican Roscoe G. Bartlett won election as United States Representative for Maryland's Congressional District 6 in each of the following years, with the indicated margins of victory over his Democratic challenger; 1992 (8.3%); 1994 (31.9%); 1996 (13.7%); 1998 (26.8%); 2000 (21.4%); 2002 (32.3%); 2004 (40.0%); 2006 (20.5%); 2008 (19.0%); 2010 (28.2%).

28. Democrats Goodloe E. Byron (1970-1976) and Beverly Byron (1978-1990) won election United States Representative for Maryland's Congressional District 6 in each of the following years, with the indicated margins of victory over their respective Republican challenger: 1970 (3.3%); 1972 (29.4%); 1974 (41.6%); 1976 (41.6%); 1978 (79.4%); 1980 (39.8%); 1982 (48.8%); 1984(30.2%); 1986(44.4%); 1988(50.7%); 1990(30.7%). *See Election Statistics: 1920 to Present,* HIST., ART & ARCHIVES, U.S. HOUSE OF REPRESENTATIVES, https://perma.cc/98LQ-8VXK.

29. The congressional districts created through the 2031 Plan were used in the 2012-2020 congressional elections. Since 2012, a Democrat has held District 6 and Maryland's congressional delegation has always included 7 Democrats and 1 Republican, The margins of vict01y for the Democrat in District 6 (John Delaney from 2012-2016; David Trone in 2018-2020) have been: 2012 (20.9%); 2014 (1.5%); 2016 (15.9%); 2018 (21.0%); 2020 (19.6%), *See Election Statistics: 1920 to Present,* HIST., ART & ARCHIVES, U.S. HOUSE OF REPRESENTATIVES, https://perma.cc/98LQ-8VXK.

30. Maryland Governor Larry Hogan signed an executive order on August 6, 2015, which created the Maryland Redistricting Refolm Commission. A true and accurate copy of the August 6, 2015 executive order is attached hereto as Exhibit I.

31. The Commission was comprised of seven members appointed by the (Republican) Governor, two members appointed by the (Republican) minority leaders in the Maryland Legislature, and two members appointed by the (Democratic) majority leaders In the Maryland Legislature, The Governor's appointees consisted of three Republicans, three Democrats, and one not affiliated with any party. The Legislature's appointments consisted of two Democrats and two Republicans.

***26** 32. After several months of soliciting input from citizens and legislators across the State, the Commission observed that Maryland's constitution and laws offer no criteria or guidelines for congressional redistricting, and that the Maryland Constitution is otherwise silent on congressional districting. The Commission recommended, among other things, that districting criteria should include compactness, contiguity, congruence, substantially equal population, and compliance with the Voting Rights Act and other applicable federal laws. The Commission also recommended the creation of an independent redistricting body, whose members would be selected by a panel of officials drawn from independent branches of government such as the judiciary, charged with reapportioning the state's districts ever}' ten years after the decennial census, A true and accurate copy of the Commission's Final Report is attached hereto as Exhibit X.

33. During each regular session of the General Assembly between 2016 and 2020, Governor Hogan caused one or more legislative bills to be introduced that would have established a processes by which State legislative and congressional maps were created in the first instance by a purportedly independent and bipartisan commission, and ultimately by the Court of Appeals in the event that the commission-proposed maps were not approved by the General Assembly or were vetoed by the Governor, These bills were House Bill 458 and Senate Bill 380 introduced in the 2016 regular session of the General Assembly, House Bill 385 and Senate Bill 252 introduced in the 2017 regular session, House Bill 356 and Senate Bill 307 in the 2018 regular session, House Bills 43 and 44 and Senate Bills 90 and 91 in the 2019 regular session, and House Bills 43 and 90 and Senate Bills 266 and 284 in the 2020 regular session. None of these bills was voted out of committee.

34. On January 12. 2021, Governor Hogan issued an executive order establishing the Maryland Citizens Redistricting Commission (MCRC) for the purposes of redrawing the state's congressional and legislative districting maps based on newly released census data. The MCRC was comprised of nine Maryland registered voter citizens, three Republicans, three Democrats, and three registered with neither party. Governor Hogan's Executive Order directed the MCRC to prepare maps that, among other things: respect natural boundaries and the geographic integrity and continuity of any municipal corporation, county, or other political subdivision to the extent practicable; and be geographically compact and include nearby areas of population to the extent practicable. A true and accurate copy of the January 12, 2021 Executive Order is attached heretoas Exhibit XI.

35. Over the course of the following months, the MCRC held over 30 public meetings with a total of more than 4,000 attendees from around the State. The Commission provided a public online application portal for citizens to prepare and submit maps, and it received a total of 86 maps for consideration.

36. After receiving public input and deliberating, on November 5, 2021, the MCRC recommended a congressional redistricting map to Governor Hogan.

37. On November 5. 2021, Governor Hogan accepted the MCRC's proposed final map and issued an order transmitting the maps to the Maryland General Assembly for adoption at a special session on December 6, 2021,

38. In July 2021, following the 2020 decennial census. Bill Ferguson, President of the Maryland Senate, and Adrienne A, Jones, Speaker of the Maryland House of Delegates, formed the General Assembly's Legislative Redistricting Advisory Commission (the “LRAC”). The LRAC was charged with redrawing Maryland's congressional and state legislative maps,

39. The LRAC included Senator Ferguson, Delegate Jones, Senator Melony Griffith, and Delegate Eric G. Luedtke, all of whom are Democratic members of Maryland's General Assembly. Two Republicans, Senator Bryan W, Simonaire and Delegate Jason C. Buckel, also, were appointed to the LRAC by Senator Ferguson and Delegate Jones. Karl S. Aro, who is not a member of Maryland's General Assembly, was appointed as Chair of the LRAC by Senator Ferguson and Delegate Jones. Mr. Aro previously served as Executive Director of the non-partisan Department of Legislative Services for 18 years until his retirement in 2015, and was appointed by the Court of Appeals to assist in preparing a remedial redistricting plan that complied with state and federal law in 2002,

***27** 40. The LRAC held 16 public hearings across Maryland. At the hearings, the LRAC received testimony and comments from numerous citizens.

41. One of the themes that emerged from the public testimony and comments was that Maryland's citizens wanted congressional maps that were not gerrymandered. Other citizens indicated in these comments or public testimony that they did not want, to be moved from their current districts. Still others advocated for the creation of majority-Democratic districts in every district of the State. And others requested that districts be drawn so as to eliminate the likelihood that a current incumbent might be reelected.

42. At the conclusion of the public hearings, the Department of Legislative Services ("DLS") was directed to produce maps for the LRAC's consideration.

43. On November 9, 2021, the LRAC issued four maps for public review and comment.

44. In a cover message releasing the maps, Chair Aro wrote: "These Congressional map concepts below reflect much of the specific testimony we've heard, and to the extent practicable, keep Marylanders in their existing districts. Portions of these districts have remained intact for at least 30 years and reflect a commitment to following the Voting Rights Act, protecting existing communities of interest, and utilizing existing natural and political boundaries. It is our sincere intention to dramatically improve upon our current map while keeping many of the bonds that have been forged over 30 years or more of shared representation and coordination,"

45. On November 23, 2021, the LRAC chose a final map to submit to the General Assembly for approval (the "2021 Plan"). Neither Republican member of the LRAC supported the 2021 Plan,

46. On November 23, 2021, by a strict party-line vote, the LRAC chose a final map to submit to the General Assembly for approval, referred to as the 2021 Plan. Neither Republican member of the LRAC supported the 2021 Plan, Senator Simonaire uttered the statement during the LRAC hearing on November 23, 2021, "[o]nee again, I've seen politics overshadow the will of the people,"

47. A true and accurate copy of the 202! Plan is attached as Exhibit I,

48. On December 7, 2021, the Maryland House of Delegates voted to reject an amendment that would have substituted the MCRC's map for the 202.1 Plan, Two Democrats joined all of the Republicans in voting to substitute the MCRC's map for the Plan. No Republican member voted against the amendment.

49. On December 8, 2021, the General Assembly enacted the 202.1 Plan. One Democratic member voted against the 2021 Plan. No Republican member voted to approve the 2021 Plan.

50. On December 8, 2021, the General Assembly enacted the 2021 Plan on a strict party-line vote. Not a single Republican member of the General Assembly voted to approve the 2021 Plan.

51. According to the Princeton Gerrymandering Project, Democrats now have an estimated vote-share advantage in every single Maryland congressional district.

52. On December 9, 2021, Governor Hogan vetoed the 2021 Plan.

53. On December 9, 2021, the General Assembly overrode Governor Hogan's veto, thus adopting the 2021 Plan into law. One Democratic member of the General Assembly voted against overriding Governor Hogan's veto, while no Republican member of the General Assembly voted in favor of override,

***28** 54. After passage of the 2021 Plan, Senator Ferguson and Delegate Jones issued, a joint statement emphasizing that the 2021 Plan "keep[s] a significant portion of Marylanders in their current districts, ensuring continuity of representation."

55. Under Maryland's 2021 adopted congressional plan, portions of Anne Arundel County are in Districts 1, 2, and 4, and that District 1 includes population residing on the Eastern Shore and in Anne Arundel County.

56. Under Maryland's 2021 adopted congressional plan, portions of Baltimore City are in Districts 2, 3, and 7,

57. Under Maryland's 2021 adopted congressional plan, portions of Baltimore County are in Districts 2, 3, and 7.

58. Under Maryland's 2021 adopted congressional plan, portions of Montgomery County are in Districts 3, 4, 6, and 8.

59. Under Maryland's 2021 adopted congressional plan, nine counties have population assigned to more than one congressional district.

60. Congressmen Andy Harris, who currently represents the First Congressional District, under the Enacted Plan and represented the First Congressional District under the 2011 Plan, was in the Seventh Congressional District, which is the District represented by Kweisi Mfume. Since that time, according to the Board of Elections' registration records, in early February 2022, Congressmen Harris registered to vote at a residence in Cambridge. Maryland, in the First Congressional District, which is on the Eastern Shore at a residence or place where Congressmen Harris has owned since 2009.

61. Exhibit II reports the adjusted population of Maryland's eight congressional districts following the 2010 census under Maryland's 2002 redistricting map. The parties stipulate that the matters of fact asserted, stated, or depicted in Exhibit II are a true and accurate representation of data derived from government sources.

62. Exhibit III reports the adjusted population of Maryland's eight congressional districts following the 2020 census under the 2011 Plan and under the 2021 Plan. The parties stipulate that the matters of fact asserted, stated, or depicted in Exhibit III are a true and accurate representation of data derived from government sources.

63. Exhibit IV reports the number of eligible active voters in each of Maryland's eight congressional districts, and the respective political-party affiliations of those registered eligible voters, as of October 17, 2010. The parties stipulate that the matters of fact asserted, stated, or depicted in Exhibit IV are a true and accurate representation of data derived from government sources.

64. Exhibit V reports the number of eligible active voters and the respective political-party affiliations of those eligible active voters in each of Maryland's eight congressional districts on October 21, 2012. The parties stipulate that the matters of fact asserted, stated, or depicted in Exhibit V are a true and accurate representation of data derived from government sources.

65. Exhibit VI reports the number of eligible active voters in each of Maryland's eight congressional districts, and the respective political-party affiliations of those registered eligible voters, as of October 17, 2020. The parties stipulate that the matters of fact asserted, stated, or depicted in Exhibit VI are a true and accurate representation of data derived from government sources.

***29** 66. Exhibit VII reports the number of eligible active voters in each of Maryland's eight congressional districts, and the respective political-party affiliations of those registered eligible voters, under the 2021 Plan, The parties stipulate that the matters of fact asserted, stated, or depicted in Exhibit VII are a true and accurate representation of data derived from government sources.

67. Exhibit VIII depicts Maryland's eight congressional districts under the 2011 Plan. The parties stipulate that the matters of fact asserted, stated or depicted in Exhibit VIII are a true and accurate representation of data derived from government sources.

Findings Derived by the Trial Judge from Testimony and Other Evidence Adduced at Trial

Mr. Sean Trende

68. Mr. Sean Trende testified and was qualified as an expert witness in political science, including elections, redistricting, including congressional redistricting, drawing redistricting maps, and analyzing redistricting.

69. Mr. Trende was asked to analyze the Congressional districts adopted by the Maryland Legislature in the recent rounds of redistricting and opine as to whether traditional redistricting criteria was [subordinated] for partisan considerations.[31]

31 The transcript stated, "whether traditional redistricting criteria was coordinated for partisan considerations," however, the trial judge recalls the correct verbiage was "whether traditional redistricting criteria was *subordinated* for partisan considerations." March 15, 2022, A.M. Tr. 45: 2--7.

70. Mr. Trende's opinions and conclusions were rendered to a reasonable degree of scientific certainty typical to his field,

71. In deriving his opinions, Mr. Trende conducted a three-part analysis; the first part analyzed traditional redistricting criteria in Maryland, with specific reference to the compactness of the maps with a comparison to other maps that had been drawn both in Maryland and across the country; he then examined the number of county splits, "the number of times the counties were split up by the maps" and finally, he then conducted a "qualitative assessment" to see how precincts were divided.

72. In the first part, Mr. Trende conducted a simulation analysis. In doing so, he "used the same techniques that were used in Ohio and in North Carolina" and "similar to that which has been used in Pennsylvania." The purpose of Mr. Trende's analysis was to analyze "partisan bias of the Maryland 2021 congressional districts."

73. Mr. Trende's methodology relied on "shape files."

74. In analyzing the shape files, he used "widely used statistical programming software called R."

75. Mr. Trende also conducted an analysis of the county splits for Maryland utilizing the "R" software.

76. Based upon his analysis of the county splits, referring to Exhibit 2-A, Mr. Trende found that the 1972 Congressional map included 8 splits.

77. In 1982, there were 10 county splits in the Congressional map.

78. In 1992, there were 13 county splits in the Congressional map.

79. In 2002, there were 21 county splits in the Congressional map.

80. in 2012, there were 21 county splits in the Congressional map,

81. In the 2021 Plan, there are 17 county splits.

82. The 2021 Plan has a historically high number of county splits compared to other Congressional plans, except the 2011 Map.

83. Mr. Trende testified that "you really only need 7 county splits in a map with 8 districts."

***30** 84. With respect to "compactness" of the 2021 Plan, Mr. Trende used four of the "most common compactness metrics": the Reock score; the Polsby-Popper score; the Inverse Schwartzberg score; and the Convex Hull score; the lower the score the less compact a Congressional plan is,

85. The four scores were presented to strengthen his presentation as well as to present a different "aspect" of compactness.

86. Exhibits 4-A, 4-B, 4-C, and 4-D reflect the bases for Mr. Trende's compactness analyses, which included scores for all of Maryland's congressional districts dating back to 1788.

87. Exhibit 5 reflects the analysis of the four scores using a scale of 0 to 1, where "1 is a perfectly compact district, and 0 is a perfectly non-compact score."

88. There is no "magic number" that reflects whether a district is not compact. Comparisons to historical data supported Mr. Trende's conclusion that the 2021 Plan is "an outlier,"

89. Based upon Mr. Trends's testimony, the Court finds that for "much of Maryland's history, including for a large portion of the *post-Baker v. Carr* history, Maryland had reasonably compact districts that showed a similar degree of compactness from cycle to cycle."

90, The Court also finds, based upon Mr. Trende's analysis that by Maryland's historic standards, the 2021 Congressional lines are "quite non-compact" regardless of which of the four metrics is used or analyzed.

91. Mr. Trende also analyzed the 2021 Plan with reference to every district in the United States going back to 1972, which is represented by Exhibits 6-A, 6-B, 6-C, and 6-D.

92. Mr. Trende testified that there are a limited number of maps for other states that have lower Reock scores than the 2021 Plan (*see* Exhibit 6-A).

93. Mr. Trende also testified with reference to Exhibit 6-B that, there are only "six maps that have ever been drawn in the last 50 years with worse average Polsby-Popper scores than the current Maryland maps."

94. Mr. Trende further testified with reference to Exhibit 6-C that the 2021 Plan reflects one of the "worst Inverse Schwartzberg score[] in the last 50 years in the United States."

95. With reference to Exhibit 6-D, Mr. Trende testified that it scored, under the Convex Hull analysis, "very poorly relative to anything that's been drawn in the United States in the last 50 years."

96. Mr. Trende testified relative to compactness in the 2002 and 2012 Congressional plans in comparison to the 2021 Plan and concluded that the 2021 Plan is not compact.

97. Mr. Trende testified that relative to Exhibits 7-A, 7-B, 7-C, and 7-D, that the first Congressional district under the 2021 Plan "lower[ed] the Republican vote share in the First" and "[left] the democratic districts or precincts on the bay." He concluded that the "Democrats have an increased chance of winning this district in a normal or good democratic year."

98. As to Exhibits 8-A, 8-B, 8-C, and 8-D, he concluded that "almost all of the Republican precincts were placed into District 3 or District 7," while "[a]lmost all of the democratic precincts were placed into District 1."

99. Mr. Trende then presented a simulation approach to redistricting utilizing "R" software. The simulation package was dependent on the work of Dr. Imai using an approach that samples maps drawn without respect to politics. In each of Mr. Trende's

simulations he used 250,000 maps all suppressing politics and utilizing two minority/majority districts mandated by the Voting Rights Act; he discarded duplicative maps and arrived at between 30,000 to 90,000 maps to be sampled for each simulation.

***31** 100. He then fed various "political data" into the program to measure partisanship,

101. Mr. Trende's simulations relied upon the correlations between vote shares and Presidential data, because he testified that Presidential data is the most predictive in analyzing election outcomes. Mr. Trende further testified that he used other elections at the Presidential, senatorial, and gubernatorial levels to check his simulation results.

102. In the first set of 250,000 maps, Mr. Trende depended upon population parity or equality and contiguity as well as a "very, very light compactness parameter." Other traditional redistricting criteria was not considered.

103. The second set of 250,000 maps depended on a "modest compactness criteria," "drawing without any political information."

104. The third set of 250,000 maps added respect for county subdivisions.

105. The three analyses are represented in Exhibits 9-A, 9-B, and 9-C.

106. In every one of the maps from which Mr, Trende drew his opinions, there are at least "two majority/minority districts to comport with the Voting Rights Act."

107. With respect to the first set of maps drawn with very little regard to compactness but regard given to contiguity and equal population, 14,000 of the maps have seven districts that were won by President Joseph Biden and only 4.4% have eight districts won by President Joseph Biden. Mr. Trende concluded that "it is exceedingly unlikely that if you were drawing by chance, you would end up with a map where President Joe Biden carried all eight districts."

108. With respect, to the application of compactness and contiguity as well as equal population, he concluded that the 2021 Plan would result in eight districts won by President Biden, which he concluded was "an extremely improbable outcome if you really were drawing -- just caring about traditional redistricting criteria and weren't subordinating those considerations for partisanship,"

109. With respect to Exhibit 9-C, which reflects maps drawn with consideration of population equality, contiguity, compactness, and respect for county lines, Mr. Trende testified that "you almost never produce eight districts that Joe Biden carries." Specifically, Mr. Trende found that of the 95,000 maps that survived the initial sort, 134 of them, or .14%. produced eight districts that President Biden won.

110. Mr. Trende then presented data dependent on box plots, which are reflected in Exhibits 10-A, 10-B, 10-C, 10-D, and 10-E. On the basis of his box plot analysis, Mr. Trende concluded that, "[pjolitics almost certainly played a role" in the 2021 Plan. He also concluded that, "there is a pattern that appears again and again and again, which is heavily democratic districts are made more Republican hut still safely democratic. And that, in turn, allows otherwise Republican competitive districts to be drawn out of that Republican competitive range into an area where Democrats are almost guaranteed to have seven districts, have a great shot at winning that eighth District [that being, the First Congressional District]."

111. With respect to his final analysis, he utilized a "Gerrymandering Index," which is "a number that summarizes, on average, how far the deviations are from what ... would [be] expect[ed] for a map drawn without respect to politics."

***32** 112. Mr. Trende relied Dr. Imai's work in his paper on the Sequential Monte Carlo methods.[32]

32 Kosuke Imai & Cory McCartan, *Sequential Monte Carlo far Sampling Balanced and Compact Redisricting Plans,* HARV. UNIV. 6-17 (Aug. 10, 2021), available at: https://perma.cc/Z2DT-A2RW.

113. Exhibits 11-A, 11-B, and 11-C, illustrate.Mr. Trende's conclusions with respect to the Gerrymandering index. Lower scores are Indicative of greater gerrymandering,

114. Mr. Trende concludes that the 2021 Plan is an outlier with respect to the Gerrymandering Index. In fact, he concludes with respect to Exhibit 11-A, which included considerations regarding contiguity and equal population, that "It's exceedingly unlikely" that a map would result that would have a larger Gerrymandering Index, because there were only 97 maps of the 31, 316 maps that were consulted that would have a larger gerrymandering index.

115. With respect to Exhibit 11-B in which compact districts are drawn, Mr, Trende concluded that there were only 102 maps with larger gerrymandering indexes than the 2021 Plan: "[i]t's exceedingly unlikely if you were really drawing without respect to partisanship, just trying to draw compact maps that are contiguous and equipopulous, its exceedingly unlikely you would get something like this."

116. The final Gerrymandering Index Exhibit, 11-C, reflects compact plans that are contiguous and of equal population and respect county lines (with due consideration to the Voting Rights Act: two majority/minority districts).

117. On the basis of Exhibit 1 1-C, Mr. Trends concludes that the 2021 Plan is a "gross outlier," such that of the 95,000 maps under considerations, only one map had a Gerrymandering Index larger than the 2021 Plan.

118. Utilizing the Gerrymandering Index, Mr. Trende concluded that "it's just extraordinarily unlikely you would get a map that looks like the enacted plan."

119. Mr. Trende ultimately concluded that "the far more likely thing that we would accept in social science is given all this data is that partisan considerations predominated in the drawing of this map and that as was the ease in Pennsylvania, North Carolina, and Ohio and other states where this type of analysis was conducted, traditional redistricting criteria were subordinated to these partisan considerations."

120. Mr. Trende also concluded that the 2021 Plan has a very high Gerrymandering Index and the same pattern of districts being drawn up in heavily Republican areas made more Democratic, as well as districts drawn down into the Democratic areas made more Republican, even when three majority/minority districts under the Voting Rights Act are conceded in the 2021 Plan.

121. Ultimately, Mr. Trende concludes that the 2021 Plan was drawn with partisanship as a predominant intent, to the exclusion of traditional redistricting criteria,

122. Mr. Trende had no opinion with respect to the Maryland Citizens Redistricting Commission ("MCRC") Plan,

123. Mr. Trende's simulations did not account for communities of interest and "double bunking of incumbents" into a single district.

124. Mr. Trende did not consider in his simulations the effect of Governor Hogan's victories in 2014 and 2018.

***33** 125. Mr. Trende did not account for unusually strong Congressional candidates running in an election using the 2021 Plan.

126. Mr, Trende used voting patterns rather than registration patterns in his analyses of the 2021 Plan.

127. Mr. Trende testified that the absolute minimum, number of county splits in a snap with eight congressional districts is seven splits.

128. Mr. Trende, when asked to defined an "outlier," explained that it "means a map that would have a less than 5% chance of being drawn without respect to politics" and that with respect to his simulations, a map that is .00001% is "under any reasonable definition of an extreme outlier."

129. Mr. Trende testified within his expertise to a reasonable degree of scientific, professional certainty, that under any definition of extreme gerrymandering, the 2021 Plan "would fit the bill"; "[i]ts a. map that, you know -- if traditional redistricting criteria predominated, would be extraordinarily unlikely to be drawn. You know, with compactness and respect for county lines, ,00001 percent. That's extreme."

130. Mr. Trende further opined that the 2021 Plan reflects "the surgical carving out of Republican and Democratic precincts" and that "there are a lot. of individual things that tell an extreme-gerrymandering story." and "when you put them all together, it's just really hard to deny it."

131. Mr. Trende further staled that the 2021 Plan was drawn "with an intent to hurt the Republican party's chances of letting anyone in Congress."

132. Mr. Trende testified that, the 2021 Plan "dilutes and diminishes the ability of Republicans to elect candidates of choice."

133. Mr. Trende also testified that among the implications of an extreme partisan gerrymandering, that it "becomes harder for political parties to recruit candidates to run for office, because who wants to raise all that money and then be guaranteed to lose in your district."

134. Mr. Trende did not conduct an efficiency gap analysis in this case.

Dr. Thomas L. Brunell

135. Dr. Brunell testified and was qualified as an expert in political science, including partisan gerrymandering, identifying partisan gerrymandering, and redistricting.

136. Dr. Brunell was asked to examine two Congressional districting maps for the State of Maryland: the 2021 Plan and the MCRC Plan and compare them using metrics for partisan gerrymandering.

137. In his comparison, he looked at city and county splits and compared the outcomes to proportionality regarding the relationship between the statewide vote for each party and the total number of seats in Congress for each party. He also looked at compactness and calculated the efficiency gap regarding statewide elections during the last ten years for both the 2021 Plan and the MCRC Plan.

138. Dr. Brunell testified that the MCRC Map is more compact on average than the eight districts for the 2021 Plan. He testified that the average compactness score using the Potsby-Popper index was lower for the 2021 Plan than the MCRC Plan. Dr. Brunnell also concluded that In comparison to 29 states, the 2021 Plan had a Reock score that was higher than only two other states, Illinois and Idaho, He also concluded that only Illinois and Oregon had a lower Polsby-Popper score than Maryland with respect to the 2021 Plan.

***34** 139. Dr. Brunell utilized the actual number of voters in his analysis rather than voter registration.

140. Dr. Brunell testified that with respect to the 2016 Presidential election, similar to the 2012 Presidential election, the Democratic candidate received 64% of the statewide vote in Maryland and the Democrats carried seven of the eight Congressional districts in Maryland under the 2021 Plan. Using the 2020 Presidential data in evaluating the 2021 Plan, Democrats would carry all eight of the Congressional districts under the 2021 Plan. Using the 2012 Senate candidate data in evaluating the 2021 Plan, the Democrats would carry all eight Congressional districts. Using the 2016 Senate elections in evaluating the 2021 Plan, he testified that the Democrats would carry seven of the eight districts. Using the 2018 Senate elections data, the Democrats under the 2021 Plan would carry all eight districts. Using the 2014 and 2018 gubernatorial elections, he concluded that the Democrats would carry three of the eight seats in the Congressional elections under the 2021 Plan.

141. Dr. Brunell conducted an efficiency test to determine wasted votes, *i.e.,* those cast for the losing party and those cast for the winning party above the number of votes necessary to win.

142. In order to determine the efficiency gap, he added all the wasted votes for both parties in the same district to get a measure of who is wasting more votes at a higher rate.

143. A lower number of votes wasted reflects less likelihood of partisan gerrymandering.

144. Dr., Brunell testified that just considering the efficiency gap would not be enough to find that a map is gerrymandered. Dr. Brunell testified that one would need to look at "the totality of the circumstances, use different, measures, different metrics, to see if they're telling you the same thing [or] different things."

145. Dr. Brunell testified that by using an efficiency gap measure, there was a bias in favor of the Republicans in the MCRC Plan, although that bias was not significant.

146. Dr. Brunell testified that there were many more county segments and county splits in the 2021 Plan than in the MCRC Plan.

147. Dr. Brunell testified that redrawing electoral districts "is a complex process with dozens of competing factors that need to be taken into account, ... like compactness, contiguity, where incumbents live, national boundaries, municipal boundaries, county boundaries, and preserving the core confirmed districts."

148. Dr. Brunell only considered compactness of the districts in his analysis of the 2021 Plan.

149. Dr. Brunell did not take into consideration in his analysis the Voting Rights Act or incumbency bias. He testified he did assume population equality and contiguity having been met in the 2021 Plan.

Mr. John T. Willis

150. Mr. Willis testified and was qualified as an expert in Maryland political and election history and Maryland redistricting, including Congressional redistricting,

151. Mr. Willis was asked to evaluate the 2021 Plan and determine if it was consistent with redistricting in the course of Maryland history and to give his opinion as to its validity and whether it was based on reasonable factors.

***35** 152. Mr. Willis opined that Maryland's population over time has changed with an east-to-west migration, "in significant numbers."

153. Mr. Willis referred to a series of Maryland maps reflecting population migration every 50 years from 1800 to 2000, admitted into evidence as Exhibit H.

154. Exhibit H had been prepared by Mr. Willis in anticipation of the 2001 redistricting process.

155. Exhibit. H shows population migration to the west in Maryland and towards the suburbs of the District of Columbia.

156. Mr. Willis testified regarding Defendants' Exhibit L admitted into evidence, which reflects concentrations of population during the Fall of 2010.

157. He testified almost 70% of the Maryland population is "in a central core, which is roughly I-95 and the Beltway."

158. Mr. Willis also testified that geography impacts the redistricting process as well as natural boundary lines, "quarters of transportation," the changing nature of the economy, major federal installations and where they are located and their connection to the economy, institutional factors, and migration patterns.

159. With respect to Defendants' Exhibit J, Mr. Willis testified regarding the population changes from 2010 to 2020.

160. Mr. Willis further testified that each district in the 2021 Plan had to have a target population of 771,925.

161. Mr. Willis further testified that in Congressional redistricting the General Assembly starts with the map in existence to avoid disturbing existing governmental relationships.

162. Exhibit K includes ail of the Congressional redistricting maps from 1789 to the present 2021 Plan, which includes a set of 17 maps. The last map--map 17--Mr. Willis testified that the district lines in the First District appeared to be based on reasonable factors and are consistent with the historical district lines enacted in Maryland. As the basis for his opinion, Mr. Willis explained that there has always been a population deficit in the First District which requires the boundary to cross over the Chesapeake Bay or to cross north over the Susquehanna River in Harford County and that there have been more crossings over the Chesapeake Bay historically than into Harford County.

163. Mr. Willis further testified regarding regional and county-based population changes over the decades in Maryland since 1790, on a decade basis, reflected in Exhibit L. He testified that the district lines in the Second Congressional District appear to be based upon reasonable factors and are consistent with historical district lines enacted in Maryland and reflects migration patterns relative to Baltimore City.

164. Mr. Willis further testified about the district lines for the Third Congressional District, which he opined were based on reasonable factors and consistent with historical district lines enacted in Maryland.

165. With respect to the liens of the Fourth Congressional District, Mr. Willis testified that the district lines appear to be based on reasonable factors and are consistent with historical district lines enacted in Maryland. He testified that the Fourth District is also what is known as a "Voting Rights Act District."

***36** 166. With respect to the district lines of the Fifth Congressional District, he opined that the lines appear to be based on reasonable factors and are consistent with historical district, lines enacted in Maryland. The district, lines are also based on major employment centers and major public institutions.

167. With respect to the district lines of the Sixth Congressional District, following the Potomac River, Mr. Willis testified that the lines reflect commercial and family connections tying the area together since the State was founded. On that basis, he testified that the lines of the Sixth District appear to he based on reasonable factors and are consistent with historical district lines enacted in Maryland.

168. Mr. Willis testified that the Seventh Congressional District is another "Voting Rights Act district."

169. Mr. Willis then testified about the Eighth Congressional District, the lines of which appear to be based on reasonable factors and consistent with historical district lines enacted in Maryland. Mr. Willis attributes the lines to traffic patterns along what is basically State Route 97.

170. He finally testified that the ail the district lines as they are drawn in the 2021 Plan appear to be based on reasonable factors and are consistent with historical district lines enacted in Maryland.

171. Mr. Willis testified that for every election prior to 2002 in Congressional District 2, a Republican candidate won the Congressional seat, A Republican candidate also won every election in Congress in District 8 from 1992 to 2000, that being Congresswoman Constance Morella. Thereafter, from 2002 to 2010, no Republican candidate won a Congressional election in District 8. He then testified that in District 2, a Democratic candidate has won the Congressional election every single year since the 2002 map was drawn, *i.e.,* Congressman C.A. Dutch Ruppersberger.

172. Mr. Willis further testified with respect to the First Congressional District that as a result of a Federal Court decision. District 1 included all of the Eastern Shore and Cecil County as well as St. Mary's County, Calvert County, and part of Anne Arundel County.

173. As a result of the redistricting plan from 2002 to 2010, District 1 was drawn a different way, which included all of the Eastern Shore counties and an area across the Bay Bridge into Anne Arundel County, as well as parts of Harford and Baltimore County.

174. Mr. Willis characterized the Congressional map from 2002 to 2010 as "fraught with politics to favor some candidates over another."

175. He testified that since the Federal Court ordered the drawing of the Congressional districts in Maryland, the First Congressional District has crossed the Chesapeake Bay in southern Maryland, has crossed the Chesapeake Bay in northern Maryland, as well as crossed parts of Cecil, Harford, Baltimore, and Carroll County.

176. Mr. Willis testified that from the 1842 until the 2012 Congressional maps, Frederick County was linked in its entirety with the westernmost counties of Maryland, as well as in the Federal District Court redistricting map.

177. During the Court's questioning, Mr. Willis testified that the biggest "driver" in the redistricting process is populations shifts with gains in population in places like Prince George's County for example, and loss of population, for example, in Baltimore City.

***37** 178. He also testified about other factors affecting the redistricting process such as "transportation patterns," preservation of Sand, federal installations, state institutions, major employment centers, prior history, election history, as well as ballot questions that "show voter attitude." He further testified that incumbency protection might be a factor as well as political considerations.

Dr. Allan J. Lichtman

179. Dr. Allan J. Lichtman testified and was qualified as an expert in statistical historical methodology, American political history, American politics, voting rights, and partisan redistricting.

180. Dr. Lichtman testified that "politics inevitably comes into play" in the redistricting process and that the balance in democratic government is "between political values and other considerations" to include "public policy, preserving the cores of

existing districts, avoiding the pairing of incumbents, looking at communities of interest, shapes of the districts, and a balance between political considerations,"

181. Dr. Lichtman testified that, "[w]hen you're involved with legislative bodies, it's inevitably a process of negotiation, log rolling, compromise."

182. Dr. Lichtman denied as unrealistic comparing the 2021 Plan with "ensembles of plans with zero - the politics totally taken out,"

183. Dr. Lichtman's test of the 2021 Plan, according to his testimony, evaluates whether the 2021 Plan was "a partisan gerrymander based on the balance of party power in the state," His conclusions were that the likely partisan alignment of the 2021 Plan was "status quo, 7 likely Democratic wins, 1 likely Republican win"; that there could be Democratic districts in jeopardy in 2022 because "2022 is a midterm with a Democratic President." In doing his analysis, he looked at other states which were "actually mostly Republican states, where the lead party got 60% or more of the Presidential vote," which he termed are "unbalanced political states," According to Dr. Lichtman, he looked at "gerrymandering" in multiple ways, "all based on real-world considerations, not the formation of abstract models."

184. Using an "S-curve" representation in Exhibit N, he determined that a party with 60% of the vote-share would win all of the Congressional districts. He continued in his testimony to discuss how he determined that the Democratic advantage under the 2021 Plan was likely a 7-to-1 advantage based upon the Cook's Partisan Voter Index ("PVI"), referring to Exhibit R.

185. Dr. Lichtman posited through Exhibit T that traditionally there are many midterm losses by the party of the President.

186. Dr. Lichtman testified that the Democrats could have drawn a stronger First Congressional District for themselves in the 2021 Map than they did to ensure a Republican defeat.

187. Dr. Lichtman testified pursuant to Exhibit U that the Democratic advantage in Maryland in federal elections is in the mid to upper 60% range so that the Democratic seat-share in a "fair" plan would exceed 80% of the seats.

188. With reference to Exhibit V. Dr. Lichtman presented a "trend line" from which he concluded that Maryland's enacted plan was not a partisan gerrymander because a 7-to-1 seat share was not commensurate with the Presidential vote for the Democratic party in 2020. He concluded that based on the trend line, "you would expect Maryland to be close to 100% of the [Congressional] seats."

***38** 189. Utilizing Exhibit W, he testified regarding "unbalanced states" in which the lead party secured more than 64.2% of the vote in the 2020 Presidential election. He included that the Democrats were performing below expectation in terms of its share of Congressional seats.

190. Dr. Lichtman testified that, in his opinion, "empirically, Maryland's Congressional seat allocation under the 2021 Plan is exactly what you would expect, assuming a 7-to-1 seat share."

193. He also testified that the Governor's plan, otherwise referred to as the MCRC Plan, is indicative of a gerrymander by "packing Democrats." He also concluded it was a gerrymander because it paired two or more incumbents of the opposition party, which he believed to be indicative of a gerrymander as reflected by Exhibit Z.

192. He testified that when you pair incumbents, "you are forcing them to rescrambie and figure out. how to rearrange their next election."

193. He also testified that the MCRC Plan also "dismantled the core of the existing districts and disrupted incumbency advantage again and the balance between representatives and the represented," referring to Exhibit AA.

194. Referring to Exhibit AB, he concluded that the MCRC Plan unduly packed Democrats, because In the MCRC Plan, there would be six Democratic districts over 70% and four Democratic districts close to or over 80%.

195. He testified further that the MCRC Plan is a "packed gerrymander." He testified that the Governor's Commission developing the plan was "extraordinarily under representative of Democrats" and that the Commission was appointed by a partisan elected official. He also testified that the Governor's instructions in developing the plan helps explain "why it turns out to be a Republican-packed gerrymander and a paired gerrymander"; "no attention was given to incumbency whatsoever." Instructions included considerations to include compactness and political subdivisions which he concludes "automatically" plays into, what he calls, partisan clustering. He also testified that the Governor's Secretary of Planning, Edward Johnson, sat in on deliberations while "there was no comparable Democratic representative sitting in."

196. Dr. Lichtman was critical of every one of Mr. Trende's simulation analyses because each one presumed "zero politics." Dr. Lichtman opined that "when state legislative body creates a plan, political considerations are one element to be balanced with a whole host of other elements and the process of negotiation, bartering, and trading that goes on in the legislative process and a demonstration that politics is not zero, is by not any stretch equivalent to a demonstration that the plan is a partisan gerrymander." He continued in his criticism of Mr. Trende's analysis that Mr. Trende did not provide "an absolute standard" and no comparative state-to-state standard. He testified in criticism of Mr. Trende's simulations not only based on "zero politics," but also because Mr. Trende's simulations did not consider "where to place historic landmarks, historic buildings, deciding how to deal with parks or airports or large open spaces of water," He concluded that Mr. Trende's analysis was deficient because "you can't measure gerrymandering relative to zero politics, you can't measure gerrymandering without, a standard, and you can't measure gerrymandering when comparing if to unrealistic simulated plans that don't consider much of the factors that routinely go into redistricting."

***39** 197. Dr. Lichtman attributed the problems of Republicans across the Congressional districts "not [to] the plan," but rather "the problem is that they are simply not getting enough votes, an absolutely critical distinction in assessing a gerrymander," based upon his review of Governor Hogan's two victories in 2014 and 2018 and the Republican vote-share in the 2014 Attorney General's race.

198. Dr. Lichtman concluded, in criticism of Mr. Trende's simulation analyses, that, "[a] supposed neutral plan based upon zero politics and supposedly neutral principles when applied in the real world into a place like Maryland, in fact, as demonstrated by this chart, produces extreme packing to the detriment of Democratic voters in the State of Maryland. Votes are extremely wasted for Democrats in at least half and maybe even more than half of the districts,"

199. Dr. Lichtman, with respect to the 2021 Plan, does not dispute Mr. Trende's use of the four scores beginning with the Reock score, hut opines that the scores of compactness reflect an improvement in compactness from the 2012 plan to the 2021 Plan. He then explains that the county splits decreased from the 2012 plan to the 2021 Plan, specifically, from 21 to 17 splits in the latter.

200. Dr, Lichtman further concluded, using the PVI, that the 2023 Plan "may not even be 7-1 in the real world." It may be "6-2, or even 5-3."

201. Dr. Lichtman later concludes that the very structure of the 2021 Plan "pretty much assures that Republicans are going to win two districts and that Democrats have wasted huge numbers of votes in the other districts,"

202. In criticizing Dr. Branch's analysis, he concludes that the 2021 Plan is not a gerrymander "just like [the] 2002 and 2012 plans were not gerrymanders."

203. Ultimately, Dr. Lichtman testified that "through multiple analyses -- affirmative analyses in [his] own report and scrutiny of the analyses of experts for the plaintiffs, it's clear that the Democrats did not operate to create a partisan gerrymander in their favor," and that "[t]he Governor's Commission plan is a partisan gerrymander that favors Republicans."

204. On cross-examination, Dr. Lichtman testified that non-compactness of Congressional districts could be, and it could not be, an indicator of partisan gerrymandering and concluded that "certainly nothing about compactness or municipal splits or county splits proves that a plan is not fair on a partisan basis, hut they can be indicators,"

205. On cross-examination. Dr. Lichtman acknowledged that for the past ten years, even when a midterm election occurred during the Democratic presidency of Barack Obama, the Maryland Delegation has been 7-1 Democratic/Republican, so that the Democrats did not lose any seats in any midterm elections, and prior to that, for a number of years, the outcome of Maryland's Congressional elections had been 6-2 Democratic/Republican, year after year,

206. Dr. Lichtman, during cross-examination, further stated that he had "checked the addresses of the incumbents to make sure there was not an unfair double bunking, which [Mr. Trende] meant the pairing of incumbents in the same districts" and indicated that he did not see any pairings in the 2021 Plan.

207. Dr. Lichtman, during cross-examination, concluded that if the General Assembly was "intent upon destroying a Republican district, they could have done so and didn't," which he concludes was a deliberate decision by Democratic leaders, including the Senate President, Bill Ferguson." He further concluded that the General Assembly "created a district that Andy Harris is overwhelmingly likely to win in the crucial first election under the redistricting plan."

***40** 208. Finally, Dr. Lichtman stated that he had not seen evidence that the General Assembly bumped "Andy Harris into the Seventh District with Kweisi Mfume."

209. On cross-examination, Dr. Lichtman reiterated that Mr. Trende's simulations "do not account for all traditional redisricting ideas. A whole host of them -- and we've gone over that numerous times -- are left out," and that Mr. Trende's simulation resulted in an "extraordinarily high degree of packing, which wastes large numbers of Democratic votes to the detriment of Democrats in Maryland."

210. In response to questioning from the Court, based on his opinion to a reasonable degree of professional certainty as to whether the 2021 Plan comports with Article III, Section 4, of the Maryland Constitution, Dr. Lichtman testified that the 2021 Plan comported with Article III, Section 4 because the drafters "actually made the districts-substantially more compact than they had been in 2012 and equally compact as they had been in 2002." In providing that opinion relative to compactness, Dr. Lichtman testified that "instead of. distorting compactness and violating Section 4, they made their district substantially more compact and in line with what compactness had been over long periods of time." Dr. Lichtman acknowledged that historical compactness is not necessarily the measure of Article III, Section 4 compactness and reiterated that there is no objective standard by which, to judge any of the measures utilized by Mr. Trende. He reiterated that he was "not aware of any study which establishes, on an objective scientific basis, a line you can draw in one or more compactness measures, which would distinguish between compact and noncompact."

211. In response to the question of whether in his opinion, to a reasonable degree of professional, scientific certainly that the standards of due regard shall be given to the natural boundaries and the boundaries of political subdivisions was met, he acknowledged that he had not done any of his own individual research. He opined, however, that "there has not been the presentation of proof by plaintiffs' experts that it doesn't comply." He reiterated "Plaintiffs did not prove that the 2021 Plan violates the Constitution,"

212. Dr. Lichtman opined that Article 7 of the Declaration of Rights, dealing with free and frequent elections, Article 24 of the Declaration of Rights, entitled Due Process, as well Article 40, the free speech clause, would not apply to districting because

"none of them mentioned districting or anything like that." He further opined that the free and frequent elections clause "clearly was designed for legislative elections" and that based upon his delineation of its history, that the free speech clause did not apply at all.

213. Dr. Lichtman further opined that he did not think that Article III, Section 4 or any of the provisions in the Maryland Constitution or Declaration of Rights applied to Congressional gerrymandering, nevertheless, even assuming were the standards to apply, partisan considerations would not predominate.

Application of the Law to the Findings of Fact

Applying the Saw to the findings of fact adduced during a trial with a "battle of the experts" initially requires a trial judge to transparently reflect what weight was given to a particular opinion or sets of opinions and why. Each expert in the instant case was qualified as an expert in particular areas. The qualification of each witness, however, was only the beginning of the analysis.

***41** Whether the expert's testimony was reliable and helpful to the trier of fact and law. the trial judge herein, informs the weight to be afforded to each of the opinions. Obviously, the newly adopted *Dauhert* standard, under *Rochkind v. Stevenson,* 471 Md. 1 (2020), was a point of discussion with respect to the opinions of Mr. Willis and Dr. Lichtman, but that challenge was withdrawn in the end by the Plaintiffs, and the State did not mount a *Dauhert* challenge at all. Beyond *Dauhert,* then, the weight given to an expert's opinion depends on many factors including, as well as irrespective, of their qualifications, but based upon a consideration of ail of the other evidence in the case, under Maryland Rule 5-702.

In the present case, the trial judge gave great weight to the testimony and evidence presented by and discussed by Sean Trende. His conclusions regarding extreme partisan gerrymandering in the 2021 Plan were undergirded with empirical data that could be reliably tested and validly replicated. He used multifaceted analyses in his studies of compactness and splits of counties and acknowledged the data that he did not consider, such as voter registration patterns, might have yielded additional data, although the reliance on such data had not been studied. He readily acknowledged that he was not yet a PhD, although that title was soon to come, and that he was being paid for his work by the Plaintiffs.

Importantly, although he testified that he was on the Republican side of a number of redistricting cases in which Republican plans had been challenged--*Dickson v Rucho,* No. 11 CVS 16896, 2013 WL 3376658 (N.C. Super. July 08, 2013); *Ohio A, Philip Randolph Inst. v. Smith,* 360 F. Supp. 3d 681 (S.D. Ohio 2018), *vacated sub nam, Ohio A. Philip Randolph Inst. v. Obhof* 802 F. App'x 185 (6th Cir. 2020); *Whitford v. Nichol,* 151 F. Supp. 3d 91.8 (W.D. Wis. 2015); *Common Cause v. Rucho,* 318 F. Supp. 3d 777 (M.D.N.C, 2018), *vacated and remanded,* 139 S. Ct. 2484 (2019); and *League of Women Voters of Ohio v. Ohio Redistricting Comm'n,* _____ N.E.3d _____, 2022-Ohio-789 (2022)--he apparently learned what would be helpful to a court in evaluating a Congressional redistricting plan, because he clearly relied on methodologies that were persuasive in North Carolina, *Harper v. Hall,* 2G22-NCSC-17, 868 S.E.2d 499 (2022), and Pennsylvania, *League of Women Voters of Pa. v. Commonwealth,* 645 Pa. 576 (2018).

The impeachment of Mr. Trende's presentation undertaken by Dr. Lichiman was unavailing, in large part, because of the bias that Dr. Lichiman portrayed against simulated maps utilizing "zero politics" and county splits that "happened" to he less in number than what had occurred in a map that had been the subject of criticism in 2012 at the Federal District Court level but not addressed in *Rucho* in 2019. Mr. Trende's presentation was an example of a deliberate, multifaceted, and reliable presentation that this fact finder found and determined to be very powerful.

Dr. Brunell's testimony and evidence in support was much less valuable and helpful to the trial judge, because to evaluate compactness, the efficiency gap, as presented, did not have the power that was portrayed in other cases. *See e.g., Ohio A. Philip Randolph Inst. v. Householder,* 373 F. Supp. 3d 978 (S.D. Ohio) (finding that around 75% of historical efficiency gaps around the country were between ~10% and 10%, and only around 4% had an efficiency gap greater than 20% in either direction, and therefore, noting that several of Ohio's prior elections had efficiency gaps indicative of a plan that was a "historical outlier,"

including an efficiency gap of ~22.4% in its 2012 election and an efficiency gap of ~20% in its 2018 election, compared to efficiency gaps in 2014 and 2016 that were ~9% and ~8.7%, respectively). Dr. Brunell's presentation was murky and lacking in sufficient detail. He made no attempt to establish the interaction of an efficiency gap analysis with other types of testing for compactness and certainly, no basis to believe that allocating Republicans two of eight Congressional seats is appropriate, let alone reliable or valid,

***42** The opinions of Mr. Willis, while of interest, to gain a perspective as to what legislators considered in 2002, 2012, and possibly may have considered in 2021 to draw the various Congressional boundaries, such as natural boundary lines, "quarters of transportation," the changing nature of the economy, major federal installations and where they are located and their connection to the economy, institutional factors, major employment centers, preservation of land, political considerations, and migration patterns, may in fact be "reasonable," but not, in any way, helpful in the determination of whether "constitutional guideposts" have been honored in the 2021 Plan. As Chief Judge Robert M. Bell from the Maryland Court of Appeals, in 2002 in *In re Legislative Districting of State,* eloquently stated in opinion regarding the influence of such criteria on Constitutional redistricting standards:

> Instead, however, the Legislature chose to mandate only that legislative districts consist of adjoining territory, be compact in form, and be of substantially equal population, and that due regard be given to natural boundaries and the boundaries of political subdivisions. That was a fundamental and deliberate political decision that, upon ratification by the People, became part of the organic law of the State. Along with the applicable federal requirements, adherence to those standards is the essential prerequisite of any redistricting plan.
>
> That is not to say that, in preparing the redistricting plans, the political branches, the Governor and General Assembly, may consider only the stated constitutional factors. On the contrary, because, in their hands, the process is in part a political one. they may consider countless other factors, including broad political and narrow partisan ones, and they may pursue a wide range of objectives. Thus., so long as the plan does not contravene the constitutional criteria, that it may have been formulated in an attempt to preserve communities of interest, to promote regionalism, to help or injure incumbents or political parties, or to achieve other social or political objectives, will not affect its validity.
>
> On the other hand, notwithstanding that there is necessary flexibility in how the constitutional criteria are applied - the districts need not he exactly equal in population or perfectly compact and they are not absolutely prohibited from crossing natural or political subdivision boundaries, since they must do so if necessary for population parity -- those non-constitutional criteria cannot override the constitutional ones.

370 Md. at 321-22.

Finally, this trial judge gave little weight to the testimony of Dr. Allan J, Lichtman. Dr. Lichtman's presentation was dismissive of empirical studies presented by Mr. Trende because of their "zero politics" and disavowed their use because of their lack of absolute standards or comparative standards to guide what an outlier is. Juxtaposed against Mr. Trende's use of reliable valid measures that have been accepted in other state courts, such as simulations in North Carolina and Pennsylvania, Dr. Lichtman's own data urged the "realities" of Maryland polities, as he used a "predictive" model to address alleged Democratic concerns about losing not only one, but two or three seats in the midterm election in 2022, because of having a Democratic-President in power; in fact the realities of Maryland politics, in the last ten years, under Republican as well as Democratic Presidents, as well as a Republican Governor, have been that the Congressional delegation has stayed essentially the same--7 Democrats to 1 Republican.

Dr. Lichtman's denial of the fact that the 2021 Plan, as enacted, actually "pitted" Congressman Andy Harris against Congressman Kweisi Mfume in the Seventh Congressional District when the 2021 Plan did so, reflects a lack of thoughtfulness and deliberativeness that, a trial judge would expect of experts. The fact that only a short period of time was afforded for the development of Dr. Lichtman's report does not excuse that it would have taken a review of the 2021 Plan as enacted in December of 2021, rather than in February of 2022, to know that Congressman Harris had to move to Cambridge to reside in the First

Congressional District to avoid being "paired" in the 2021 Plan with a Democratic Congressional incumbent, in the Seventh Congressional District.

***43** Finally, although a cold record does not always reflect the nuances of a witness's demeanor, it is apparent from the words Dr. Lichtman used that he was dismissive of the use of a normative or legal framework to evaluate the "structure," as he called it, of redisricting. He began his discussion by referring to legal "machinations" in referring to his testimony discussing a challenge by the plaintiffs in *Vieth v. Jubelirer,* 541 U.S. 267, 124 S. Ct. 1769 (2004) against the redistricting plan of Pennsylvania for Congress, and ended with what amounted to a refrain of an "apologist" of the work of politicians.

There is no question that map-making is an extremely difficult task, but like most of the complexities of the modem world, justifications of map-making must be evaluated by the application of principles--here, the organic law of our State, its Constitution and Declaration of Rights.

Analysis and Conclusion

Application of the legal tenets that survived the Motion to Dismiss, as articulated heretofore, to the Joint Stipulations, Judicial Admissions and the stipulation orally presented by the State at the end of the trial with consideration of the weight afforded to the evidence presented by the experts yields the conclusion that the 2021 Congressional Plan in Maryland is an "outlier," an extreme gerrymander that subordinates constitutional criteria to political considerations. In concluding that the 2021 Congressional Plan is unconstitutional under Article III, Section 4, either on its face or through a nexus to the Free Elections Clause, MB. CONST, DECL. OF RTS. art. 7, the trial judge recognized that the 2021 Plan embodies population equality as well as contiguity, as Dr. Brunell acknowledged. The substantial deviation from "compactness" as well as the failure to give "due regard" to "the boundaries of political subdivisions" as required by Article III, Section 4, are the bases for the constitutional failings of the 2021 Plan, which has been challenged in its entirety.

In evaluating the criteria of compactness required under Article III, Section 4, it is axiomatic that it and contiguity, but particularly compactness, "are intended to prevent political gerrymandering," *1984 legislative Districting,* 299 Md. at 675 (citing *Schrage v. State Bd. of Elections,* 88 I11.2d 87 (1981); *Preiler v. Doherty,* 365 Mo. 460 (1955); *Schneider v. Rockefeller,* 31 N.Y.2d 420 (1972); *Opinion to the Governor,* 101 R.I. 203 (1966)). With respect to compactness, while it is true that our cases do not "insist that the most geometrically compact district be drawn," *In re Legislative Districting of State,* 370 Md. at 361, we recognized that compactness must be evaluated by a court in light of all of the constitutional requirements to determine if all of them "have been fairly considered and applied in view of all relevant considerations." *Id.* at 416.

The task of evaluating whether "compactness" and other constitutional requirements have been fairly considered by the Legislature is informed by the various analyses performed by Mr. Trende. Initially, by application of each of the four "most common compactness metrics," *i.e.,* the Reock score; the Polsby-Poppper score; the inverse Schwartzberg score; and the Convex Hull score, the districts included in the 2021 Plan are "quite non-compact" compared to prior Maryland Congressional maps and to other Congressional maps in other, states based upon a comparison of the scores achieved with reference to the four metrics. It is notable that the 2021 Plan reflects compact scores that range from a "limited" number of state maps worse than Maryland, to only six other maps with worse scores, to the worst Inverse Schwartzberg score in the last fifty years in the United States, to "very poorly relative to anything drawn in the last fifty years in the United States."

***44** The simulations conducted by Mr. Trende, of the type already accepted in North Carolina and Pennsylvania, when infused with the same constitutional criteria as embodied in Article III, Section 4 and allowing for two Voter Rights districts, result in only .14% or 134 maps of the 95,000 reflected produce a victory for President Biden in all eight Congressional districts in Maryland, based upon predictive Presidential votes, as acknowledged by the experts. Importantly. Exhibit 11-C, the Gerrymandering Index exhibit, which embodies all of the constitutional mandates and two Voting Rights districts, reflects that the 2021 Congressional Plan is a "gross outlier", as Mr. Trende opined, "such that of the 95,000 maps under consideration, only one map had a Gerrymandering Index larger than the 2021 Plan. It is extraordinarily unlikely that a map that looks like the

2021 Plan could be produced without extreme partisan gerrymandering." As a result, the notion that the 2021 Plan is compact is empirically extraordinarily unlikely, a conclusion that utilizes comparative metrics and data throughout the various states. The notion that a plan must pass an absolute standard, as Dr. Liehtman suggested, is without merit, for the test is whether the constitutional conditions, especially compactness, are met.

With respect to county splits, it is clear that the number of crossings over county lines are 17 in the 2021 Plan, which is a historically "high number" of splits since 1972, only less than the 21 splits in 2002 and 2012. The importance of the due regard to political subdivisions language is a reflection of the importance of counties in Maryland, as recognized in *Md. Comm. for Fair Representation v. Tawes,* 229 Md. 406 (1962):

> The counties of Maryland have always been an integral part of the state government. St. Mary's County was established in 1634 contemporaneous with the establishment of the proprietary government, probably on the model of the English shire ... Indeed, Kent County had been established by Claiborne before the landing of the Mary landers ... We have noted that there were eighteen counties at the time of the adoption of the Constitution of 1776. They have always possessed and retained distinct individualities, possibly because of the diversity of terrain and occupation.... While it is true that the counties are not sovereign bodies, having only the status of municipal corporations, they have traditionally exercised wide governmental powers in the fields of education, welfare, police, taxation, roads, sanitation, health and the administration of justice, with a minimum of supervision by the State, In the diversity of their interests and their local autonomy, they are quite analogous to the states, in relation to the United States.

Id. at 411-12. In dissent in *Legislative Redistricting Cases,* 331 Md. 574 (1993), Judge Eldridge reiterated the pivotal governing function of counties:

> Unlike many other states, Maryland has a small number of basic political subdivisions: twenty-three counties and Baltimore City. Thus, "[t]he counties in Maryland occupy a far more important position than do similar political divisions in many other states of the union."
>
> The Maryland Constitution itself recognizes the critical importance of counties in the very structure of our government. See, e.g., Art. I, § 5; Art. III, §§ 45, 54; Art. IV, §§ 14, 19, 20, 21, 25, 26, 40, 41, 41B, 44, 45: Art. V, §§ 7, 11, 12; Art. VII, § 1; Art. XI; Art. XI-A; Art. XI-B; Art. XI-C; Art. XI-D; Art. XI-F; Art. XIV, § 2; Art. XV, § 2; Art. XVI, §§ 3, 4, 5; Art. XVII, §§ 1, 2, 3, 5, 6. After the State as a whole, the counties are the basic governing units in our political system. Maryland government is organized on a county-by-county basis. Numerous services and responsibilities are now, and historically have been, organized at the county level.
>
> The boundaries of political subdivisions are a significant concern in legislative redistricting for another reason: in Maryland, as in other States, many of the laws enacted by the General Assembly each year are public local laws, applicable to particular counties, fee *Reynolds v. Sims,* 377 U.S. 533, 580-[]81, 84 S.Ct. 1362, 1391, 12 L,Ed,2d 506, 538 (1964) ("In many States much of the legislature's activity involves the enactment of so-called local legislation, directed only to the concerns of particular political subdivisions").

***45** *Id.* at 620-21.

Due regard for political subdivision lines is a mandatory consideration in evaluating compliance with constitutional redistricting, as Chief Judge Bell noted in the 2002 Legislative districting case, *In re Legislative Districting of State,* 370 Md. at 356, such that fracturing counties to the extent accomplished in the 2021 Plan does not even give lip service to the historical and constitutional significance of their role in the way Maryland is governed. To say that the 2021 Plan is four splits better than the 2002 and 2012 Plans (which have never been examined in a State court, let alone sanctioned), and so must be lawful, is a fictitious narrative, because it is inherently invalid; in 2002, Chief Judge Bell, writing on behalf of the Court, rejected similar justifications offered by the experts on behalf of the Defendants in this case. "There is simply an excessive number of political subdivision crossings in this redistricting plan ...." The State has failed to meet its burden to rebut the proof adduced that the constitutional mandate that due regard to political subdivision lines was violated in the 2021 Plan.

To the extent that Dr. Lichtman and Mr. Willis discussed and prioritized a myriad of considerations that Dr. Lichtman called "political" and Mr. Willis called "reasonable factors," would require that this Court accept their implicit bias that constitutional mandates can be subordinated to politics and/or "reasonable factors." Again, Chief Judge Bell, more eloquently and precedentially than this judge could, addressed the same justifications offered by the State, then and now, when in 2002, he said,

> [b]ut neither discretion nor political considerations and judgments may be utilized in violation of constitutional standards. In other words, if in the exercise of discretion, political considerations and judgments result in a plan in which districts: are non-contiguous; are not compact; with substantially unequal populations; or with district lines that unnecessarily cross natural or political subdivision boundaries, that plan cannot be sustained. That a plan may have been the result of discretion, exercised by the one entrusted with the responsibility of generating the plan, will not save it. The constitution "trumps" political considerations. Politics or non-constitutional considerations never "trump" constitutional requirements.

Id. at 370.

Mr. Trende's analysis of the 2021 Plan with respect to its extreme nature and its status as an "outlier" reflects the realities of the 2021 Plan; an "outlier means a map that would have a less than five percent chance ... of being drawn without respect to polities" and with respect to his simulations, a map that is .00001% is "under any reasonable definition of an extreme outlier," therefore, the 2021 Plan "would fit the bill"; "[i]ts a map that, you know -- if traditional redistricting criteria predominated, would be extraordinarily unlikely to be drawn. You know, with compactness and respect for county lines, .00001 percent. That's extreme." This trial judge agrees; the 2021 Plan is an outlier and a product of extreme partisan gerrymandering.

***46** With regard to the violations of the of the Articles of the Maryland Declaration of Rights. the 2021 Plan fails constitutional muster under each Article,

With regard to Article 7 of the Maryland Declaration of Rights, the 2021 Congressional Plan, the Plaintiffs, based upon the evidence adduced at trial, proved that the 2021 Plan was drawn with "partisanship as a predominant intent, to the exclusion of traditional redistricting criteria," *Findings of Fact, supra,* ¶ 121, accomplished by the party in power, to suppress the voice of Republican voters. The right for ail votes of political participation in Congressional elections, as protected by Article 7, was violated by the 2021 Plan in its own right and as a nexus to the standards of Article III, Section 4.

Alternatively, Article 24, the Maryland Equal Protection Clause, applicable in redistricting cases, was violated under the 2021 Plan. The application of the Equal Protection Clause requires this Court to strictly scrutinize the 2021 Plan and balance what the State presented under a "compelling interest" standard. It is clear from Mr. Trende's testimony that Republican voters and candidates are substantially adversely impacted by the 2021 Plan. The State has not provided a "compelling state interest" to rationalize the adverse effect.

Alternatively, the same rationale holds true for the violation of Article 40 of the Maryland Declaration of Rights, the Free Speech Article, which requires a "strict scrutiny" analysis because a fundamental right is implicated, a citizen's right to vote. In many respects, all of the testimony in this case supports the notions that the voice of Republican voters was diluted and their right to vote and be heard with the efficacy of a Democratic voter was diminished. No compelling reason for the dilution and diminution was ever adduced by the State.

Finally, with respect to the evaluation of the 2021 Plan through the lens of the Constitution and Declaration of Rights, it is axiomatic that popular sovereignty is the paramount consideration in a republican, democratic government. The limitation of the undue extension of power by any branch of government must be exercised to ensure that the will of the people is heard, no matter under which political placard those governing reside. The 202! Congressional Plan is unconstitutional, and subverts that will of those governed.

As a result, this Court will enter declaratory judgment in favor of the Plaintiffs, declaring the 2021 Plan unconstitutional, and permanently enjoining its operation, and giving the General Assembly an opportunity to develop a new Congressional Plan that is constitutional. A separate declaratory judgment will be entered as of today's date.

3/25/2022

Date

<<signature>>

LYNNE A. BATTAGLIA

Senior Judge

League of Women Voters of Utah v. Utah Legislature

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

LEAGUE OF WOMEN VOTERS OF UTAH, MORMON WOMEN FOR ETHICAL GOVERNMENT, STEFANIE CONDIE, MALCOLM REID, VICTORIA REID, WENDY MARTIN, ELEANOR SUNDWALL, JACK MARKMAN, and DALE COX, Plaintiffs, v. UTAH STATE LEGISLATURE; UTAH LEGISLATIVE REDISTRICTING COMMITTEE; SENATOR SCOTT SANDALL, in his official capacity; REPRESENTATIVE BRAD WILSON, in his official capacity; SENATOR J. STUART ADAMS, in his official capacity; and LIEUTENANT GOVERNOR DEIDRE HENDERSON, in her official capacity, Defendants.	**RULING AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS** Case No. 220901712 Judge Dianna M. Gibson

Before the Court is the Motion to Dismiss filed by Defendants Utah State Legislature, Utah Legislative Redistricting Committee, Senator Scott Sandall, Representative Brad Wilson, and Senator Stuart Adams (collectively, "Defendants")[1] on May 2, 2022 ("Motion"). The Court heard oral argument on August 24, 2022. On October 14, 2022, Defendants filed a Notice of Supplemental Authority Regarding Legislative Defendants' Motion to Dismiss and Memorandum in Support. Having considered the Motion, the memoranda submitted both in support and opposition to it, and the arguments of counsel at oral argument, the Court issued a Summary Ruling on October 24, 2022. The Court now issues the legal analysis supporting that Ruling.

BACKGROUND

Defendants move to dismiss this action for lack of subject matter jurisdiction under Rule 12(b)(1) and for failure to state a claim under Rule 12(b)(6) of the Utah Rules of Civil Procedure. In reviewing a motion to dismiss under Rule 12(b)(6), courts accept all the facts alleged in the Complaint as true. *Oakwood Vill. LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 9, 104 P.3d 1226. Legal conclusions or opinions couched as facts are not "facts," and therefore are not accepted as true. *Koerber v. Mismash*, 2013 UT App 266, ¶ 3, 315 P.3d 1053.

With respect to a motion to dismiss for lack of subject matter jurisdiction under Rule 12(b)(1), when a defendant mounts only a "facial attack" to the court's jurisdiction, courts presume that "all of the factual allegations concerning jurisdiction are . . . true."[2] *Salt Lake County v. State*, 2020 UT 27, ¶¶ 26-27, 466 P.3d 158. Here, Defendants have mounted a facial

[1] Lieutenant Governor Deidre Henderson is not a party to this Motion.

[2] "Motions under rule 12(b)(1) fall into two different categories: a facial or a factual attack on jurisdiction." *Salt Lake County*, 2020 UT 27, ¶26. Because a factual challenge "attacks the factual allegations underlying the assertion of jurisdiction," courts do not presume the truth of plaintiff's factual allegations. *Id.* However, in a facial challenge, "all of the factual allegations concerning jurisdiction are presumed to be true and the motion is successful if the plaintiff fails to allege an element necessary for subject matter jurisdiction." *Id.*

attack on jurisdiction. Therefore, under Rule 12(b)(1) and 12(b)(6), the Court accepts the allegations in the Complaint as true in reciting the facts of this case. In addition, the Court views those facts and all reasonable inferences drawn from them in the light most favorable to Plaintiffs as the non-moving party." *Oakwood Vill. LLC.*, 2004 UT 101, ¶ 9. The facts recited below are taken from Plaintiffs' Complaint.

In November 2018, Utah voters passed Proposition 4, titled the Utah Independent Redistricting Commission and Standards Act, which was a bipartisan citizen initiative created specifically to reform the redistricting process and establish anti-gerrymandering standards that would be binding on the Utah Legislature. (Compl. ¶¶ 2, 73, 75.) Proposition 4 was presented to Utah voters as a "government reform measure invoking the people's constitutional lawmaking authority." (*Id.* ¶ 77.) Proponents of the measure argued "[v]oters should choose their representatives, not vice versa." (*Id.* ¶ 78.) Under then-existing laws, proponents maintained, "'Utah politicians can choose their voters' because 'Legislators draw their own districts with minimal transparency, oversight or checks on inherent conflicts of interest.'" (*Id.*)

Proposition 4 created the Independent Redistricting Commission, a seven-member bipartisan-appointed commission that would take the lead in formulating various state-wide redistricting plans. (*Id.* ¶¶ 2, 80-82.) The Independent Redistricting Commission was required to conduct its activities in an independent, transparent, and impartial manner, to apply "traditional non-partisan redistricting standards" to establish neutral map-making standards and to abide by certain listed redistricting standards. (*Id.* ¶¶ 83-84, 86.) Specifically, Proposition 4 provided that final maps must "abide by the following redistricting standards to the greatest extent practicable and in the following order of priority:" (a) "achieving equal population among districts" using the most recent census; (b) "minimizing the division of municipalities and counties across

multiple districts;" (c) "creating districts that are geographically compact;" (d) "creating districts that are contiguous and that allow for the ease of transportation throughout the district;" (e) "preserving traditional neighborhoods and local communities of interest;" (f) "following natural and geographic features, boundaries, and barriers;" and (g) "maximizing boundary agreement among different types of districts." (Compl. ¶ 86.)

In addition, all redistricting plans were to be open for public comment, considered in a public hearing, and voted on by the Legislature. (*Id.* ¶¶ 85, 88.) If the Legislature voted to reject the redistricting map, "Proposition 4 required the Legislature to issue a detailed written report explaining its decision and why the Legislature's substituted map(s) better satisfied the mandatory, neutral redistricting criteria." (*Id.* ¶ 88.) Proposition 4 also authorized "Utahns to sue to block a redistricting plan that failed to conform to the initiative's structural, procedural, and substantive standards." (*Id.* ¶ 89.) "A majority of Utah citizens from a range of geographic areas and across the political spectrum voted to approve Proposition 4 and enact it into law." (*Id.* ¶ 90.)

Sixteen months later, on March 11, 2020, Plaintiffs contend that the Legislature effectively repealed the Utah Independent Redistricting Commission and Standards Act and instead passed SB 200, which established new redistricting criteria. (*Id.* ¶ 93.) SB 200 effectively "eliminated all mandatory anti-gerrymandering restrictions imposed by the people on the Legislature as well as Proposition 4's enforcement mechanisms." (*Id.* ¶ 96.) While SB 200 retained the Independent Redistricting Commission, its role is now wholly advisory; the Legislature is not required to consider any recommended redistricting maps and in fact, the Legislature may disregard any recommended maps without explanation. (*Id.* ¶ 94.) "SB200 returned redistricting to the pre-Proposition 4, unreformed status quo where the Legislature could freely devise anti-democratic maps—as if the people had never spoken." (*Id.* ¶ 97.) SB200

eliminated neutral redistricting criteria, enforcement mechanisms and all transparency and public accountability provisions. (*Id.* ¶¶ 97-98.) In April 2021, the Utah Legislature formed its twenty-member Legislative Redistricting Committee (LRC). (*Id.* ¶¶ 142-143.)

Even after SB200's reforms, many legislators represented that the Legislature would honor the people's will to prevent undue partisanship in the mapmaking process. (*Id.* ¶ 99.) For example, Senator Curt Bramble, the chief sponsor of SB200 said he was "committed to respecting the voice of the people and maintaining an independent commission." (*Id.* ¶ 100.) Then-Senate Majority Leader Evan Vickers vowed that the Legislature would "meet the will of the voters" and reinstate in SB200 "almost everything they've asked for." (*Id.*) Representative Brad Wilson indicated the Legislature would leave Proposition 4's anti-gerrymandering provisions largely intact, and Representative Steinquist represented the Legislature would "make sure that we have an open and fair process when it comes time for redistricting." (*Id.* ¶ 101.)

Despite these representations, the LRC conducted a "closed-door" mapmaking process. (*Id.* ¶¶ 142-143.) The LRC did not publish the full list of criteria that guided its redistricting decisions, but instead offered a one-page infographic for public map submissions that stated three criteria the Legislature said it would consider: "population parity among districts, contiguity, and reasonable compactness." (*Id.* ¶ 145.) The LRC "did not commit to avoid unduly favoring or disfavoring incumbents, prospective candidates, and/or political parties in its redistricting process." (*Id.* ¶ 147.) The LRC solicited some public input about Utah's communities and voters' preferences during hearings, but Plaintiffs allege "the LRC does not appear to have used that testimony to guide its redistricting process." (*Id.* ¶ 148.)

Notwithstanding SB200, the Independent Redistricting Commission met thirty-two times from April to November 2021, and fulfilled its duties as originally contemplated under

Proposition 4. (*See generally id.* ¶¶ 104-126, 132-140.) Just before the Commission's final deadline, former Republican Congressman Rob Bishop abruptly resigned from the Commission. (*Id.* ¶ 127.) He cited the proposed map, which he believed would result in one Democrat being elected to Congress, as a reason for his resignation. (*Id.* ¶ 129.) He stated that "[f]or Utah to get anything done" in Congress, the State "need[s] a united House delegation . . . having everyone working together." (*Id.*) On November 1, 2021, the Independent Redistricting Committee presented three maps to the Utah Legislature's LRC and explained in detail the non-partisan process used to prepare the maps. (*Id.* ¶¶ 139-140.)

In early November 2021, the Legislature adopted its own map – the 2021 Congressional Plan ("Plan") – over the three maps created and proposed by the Independent Redistricting Committee. (*Id.* ¶¶ 141, 149.) Despite the Legislature's ostensible goal of hearing public input on the Plan at a public hearing scheduled on Monday, November 8, 2021, the LRC released the Plan publicly on Friday, November 5, 2021 around 10:00 pm, giving the public just two weekend days to review the Plan. (*Id.* ¶¶ 156, 159-60.) The LRC received significant public response at the public hearing and through comments on the LRC's website, hundreds of emails, protests at the Capitol, and a letter to the Legislature from prominent Utah business and community leaders. (*Id.* ¶¶ 161-65, 169.)

Notwithstanding significant public opposition to the LRC's map, on November 9, 2021, the Utah State House voted to approve the 2021 Congressional Plan. (*Id.* ¶¶ 171, 173.) Five House Republicans joined all House Democrats in voting against the Plan. (*Id.*) The next day, November 10, 2021, the Senate voted 21-7 to approve the Plan. (*Id.* ¶ 180.) One Republican Senator joined all Democratic Senators to vote against the Plan. (*Id.*) On November 12, 2021, Governor Cox signed the bill into law. (*Id.* ¶ 201.) While answering questions from the public

about the Plan, Governor Cox "acknowledged there was 'certainly a partisan bend' in the Legislature's redistricting process and conceded that 'Republicans are always going to divide counties with lots of Democrats in them, and Democrats are always going to divide counties with lots of Republicans in them.'" (*Id.* ¶ 200.) Governor Cox additionally "agreed that 'it is a conflict of interest' for the Legislature to 'draw the lines within which they'll run.'" (*Id.*)

The 2021 Congressional Plan splits both Salt Lake and Summit Counties, the two counties that typically oppose Republican candidates. (*Id.* ¶ 192.) The Plan "cracks" urban voters in Salt Lake County—Utah's largest concentration of non-Republican voters—dividing them between all four congressional districts and immersing them into sprawling districts reaching all four corners of the state. (*Id.* ¶¶ 192, 207.) It also divides Summit County into two. (*Id.* ¶ 192.) The Plan, however, leaves intact urban and suburban voters in both Davis and Utah counties, because those voters tend to support Republican candidates. (*Id.*) In addition, fifteen municipalities were divided up into thirty-two pieces, and numerous communities of interest, school districts, and racial and ethnic minority communities were divided. (*See generally* Compl. ¶¶ 205-45, 250-51, 254.) Urban neighborhoods, school districts and communities of interests – that may share common goals and interests based on proximity – do not vote with neighbors within a five-minute walk; they now vote with other rural voters who live eighty and up to three hundred miles away. (*Id.* ¶¶ 242-251.)

Proponents of the Plan maintain that the boundaries were drawn with the intent of ensuring a mix of urban and rural interests in each district. (*Id.* ¶ 158.) In a statement explaining the decision to divide Salt Lake County between all four districts, the LRC said, "[w]e are one Utah, and believe both urban and rural interests should be represented in Washington, D.C. by the entire federal delegation." (*Id.*) Notably, rural voters and rural elected officials opposed the

Legislature's urban-rural justification. Two reported commenters stated: "[a]s a voter in a rural area I'm entirely uncomfortable with my vote being used to dilute the power of another"; and "[a]s a Republican who lives in a more rural part of the state, I have the same complaint as those living in Salt Lake. Please do not dilute our vote by splitting us up between all four districts! I'm far more interested in having everybody fairly represented than I am in electing more people from my own party." (*Id.* ¶¶ 194, 195.) This sentiment was also echoed by Governor Cox, who "stated that he supports a redistricting process that focuses on preserving 'communities of interest,' such as the Commission's neutral undertaking, which he reaffirmed is 'certainly one area where that is a good way to make maps, try to keep people similarly situated together, communities together is something that I think is positive." (*Id.* ¶ 200.)

Plaintiffs assert that the "LRC's process was designed to achieve—and did in fact achieve—an extreme partisan gerrymander." (*Id.* ¶ 144.) Plaintiffs assert the Plan was intentionally created to maximize Republican advantage in all four congressional districts, not to ensure an urban-rural mix. (*Id.* ¶ 190.) Plaintiffs contend that "amplifying representation of rural interests at the cost of urban interests" is not a legitimate redistricting consideration, and the "purported need" to have rural interests represented in all four districts was "a pretext to unduly gerrymander the 2021 Congressional Plan for partisan advantage." (*Id.* ¶¶ 188, 189.)

Based on the 2021 Congressional Plan, each district contains a minority of non-Republican voters "that will be perpetually overridden by the Republican majority of voters in each district, blocking these disfavored Utahns from electing a candidate of choice to any seat in in the congressional delegation." (*Id.* ¶ 226.) While congressional plans from previous years had contained at least one competitive congressional district, all four districts under the 2021 Plan contain a substantial majority of Republican voters. (*Id.* ¶¶ 65, 175, 226, 232.) Notably, Senator

Scott Sandall admitted that political considerations affected the Legislature's redistricting decisions. (*Id.* ¶ 151.) He said the LRC "never indicated the legislature was nonpartisan. I don't think there was ever any idea or suggestion that the legislative work wouldn't include some partisanship." (*Id.*)

Some partisanship is inherent in the redistricting process. Here, however, Plaintiffs contend that the 2021 Congressional Plan subordinates the voice of Democratic voters and entrenches the Republican party in power for the next decade. (*Id.* ¶ 205, 206.) The Plan "protects preferred Republican incumbents and draws electoral boundaries to optimize their chances of reelection." (*Id.* ¶ 197.) And it converts "the competitive 4th District into a safe Republican district to enhance Republican Representative Burgess Owens' prospects to win reelection." (*Id.* ¶ 198.)

As a result, on March 17, Plaintiffs, including two organizational plaintiffs—the League of Women Voters of Utah and Mormon Women for Ethical Government—and seven individual plaintiffs, filed suit, alleging that Defendants violated Plaintiffs' constitutional rights by repealing Proposition 4 and adopting the intentionally-gerrymandered 2021 Congressional Plan. All Defendants, except for Defendant Lieutenant Governor Deidre Henderson, moved to dismiss Plaintiffs' Complaint.[3]

ANALYSIS

Defendants filed a Motion to Dismiss the action, in its entirety, arguing the Court lacks subject matter jurisdiction under Rule 12(b)(1) of the Utah Rules of Civil Procedure. In addition, they move to dismiss each of Plaintiffs' five claims for failure to state a claim for which relief can be granted under Rule 12(b)(6) of the Utah Rules of Civil Procedure. Essentially, Defendants

[3] Because Lieutenant Governor Henderson did not join in the Motion, any claims against her are unaffected by this Court's ruling.

contend that claims of partisan gerrymandering are not justiciable. And, if they are, partisan gerrymandering does not violate the Utah Constitution. Many of the issues raised in this case are matters of first impression, including whether partisan redistricting / gerrymandering presents a purely political question.

A motion to dismiss under Rule 12(b)(1) of the Utah Rules of Civil Procedure "is successful if the plaintiff fails to allege an element necessary for subject matter jurisdiction." *Salt Lake County v. State*, 2020 UT 27, ¶ 26, 466 P.3d 158 (quoting *Titus v. Sullivan*, 4 F.3d 590, 593 (8th Cir. 1993)). A motion under Rule 12(b)(6) challenges a plaintiffs' right to relief based on the alleged facts. *Oakwood Vill. LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 8, 104 P.3d 1226 (citation omitted). At this stage of the litigation, the Court's "inquiry is concerned solely with the sufficiency of the pleadings, and not the underlying merits of the case." *Id.* ¶ 8 (cleaned up).

I. Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction is DENIED. This Court Has Jurisdiction to Hear Plaintiffs' Redistricting Claims. Plaintiffs' Constitutional Claims are Justiciable.

Defendants argue that this Court lacks subject matter jurisdiction because Plaintiffs' redistricting claims (Counts One through Four) present nonjusticiable political questions. (Defs.' Mot. at 5.) The Court disagrees.

Under the political question doctrine, a claim is not subject to the Court's review if it presents a nonjusticiable political question. *See Skokos v. Corradini*, 900 P.2d 539, 541 (Utah Ct. App. 1995). "The political question doctrine, rooted in the United States Constitution's separation-of-powers premise, prevents judicial interference in matters wholly within the control and discretion of other branches of government. Preventing such intervention preserves the integrity of functions lawfully delegated to political branches of government." *Id.* (cleaned up).

Political questions are those questions which have been wholly committed to the sole discretion of a coordinate branch of government, and those questions which can be resolved only

by making "policy choices and value determinations." *Japan Whaling Ass'n v. Am. Cetacean Soc'y*, 478 U.S. 221, 230 (1986). When presented with a purely political question, "the judiciary is neither constitutionally empowered nor institutionally competent to furnish an answer." *Harper v. Hall*, 868 S.E.2d 499 (N.C. 2022). In deciding whether a claim presents a nonjusticiable political question, the Court must consider two questions: (1) whether it "involve[es] 'a textually demonstrable constitutional commitment of the issue to a coordinate political department[]"or (2) whether there is "a lack of judicially discoverable and manageable standards for resolving it.'" *Matter of Childers-Gray*, 2021 UT 13, ¶ 64, 478 P.3d 96 (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). Defendants contend that Plaintiffs' claims involve political questions for both these reasons. For the reasons discussed below, Defendants are incorrect on both points.

A. Redistricting is not exclusively within the province of the Legislature.

Defendants first assert that Article IX, Section 1 of the Utah Constitution represents a "textually demonstrable constitutional commitment" of the redistricting power to the Legislature." (Defs.' Mot. at 6.) Article IX, Section 1 states, in relevant part: "the Legislature shall divide the state into congressional, legislative, and other districts accordingly." Utah Const. art. IX, § 1. Defendants argue this provision delegates the responsibility for drawing congressional districts to the Legislature, and because no other provision in the Utah Constitution confers redistricting authority on any other branch or to the people, redistricting authority rests exclusively with the Legislature and is exempt from judicial review. (Defs.' Mot. at 7.)

The Utah Constitution does give the Legislature authority to "divide the state into congressional, legislative and other districts," but nothing in the Utah Constitution restricts that power to the Legislature or states that such power is exclusively within the province of the

Legislature. Even a cursory analysis reveals that the redistricting power is not exercised solely by the Legislature. While redistricting is primarily a legislative function, the governor and the people also exercise some degree of redistricting power. Redistricting laws and maps are submitted to the governor for veto like any other law under Article VII, Section 8 of the Utah Constitution. In addition, the Utah Constitution makes clear that "[a]ll political power is inherent in the people." Utah Const. art. I, § 2. In line with this authority, Utah's citizens have historically exercised power over redistricting through initiatives and referendums, including Proposition 4. *See also Parkinson v. Watson*, 291 P.2d 400, 403 (Utah 1955) (describing redistricting referendum proposing a constitutional amendment, which was submitted to the people in 1954 after the Legislature failed to reach a compromise regarding congressional district apportionment). And in the past, independent citizen redistricting committees have conducted redistricting. *See* 1965 Utah Laws, H.B. No. 8, Section 4, eff. May 11, 1965. At a minimum, because the executive branch and the people share in the redistricting power, both under the Utah Constitution and historically, this Court concludes that redistricting power is not solely committed to the Legislature.

Further, the constitutionality of legislative action is not beyond judicial review. Courts regularly review legislative acts for constitutionality. The United States Supreme Court in *Marbury v. Madison* famously stated that reviewing statutes to determine if they are constitutional is "the very essence of judicial duty" under our constitutional form of government. 5 U.S. (1 Cranch) 137, 178, 2 L.Ed. 60 (1803). In fact, "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Id.* at 177. Courts have a duty to review acts of the Legislature to determine whether they are constitutional. *Matheson v. Ferry*, 641 P.2d 674, 680 (Utah 1982) (stating courts cannot "shirk [their] duty to find an act of the Legislature

unconstitutional when it clearly appears that it conflicts with some provision of our Constitution."); *see also Skokos,* 900 P.2d at 541 ("If a claim involves the interpretation of a statute or questions the constitutionality of a particular political policy, courts are acting within their authority in scrutinizing such claims."). Courts also cannot "simply shirk" their duty by finding a claim nonjusticiable, merely because the case involves "significant political overtones." *Matter of Childers-Gray*, 2021 UT 13, ¶ 67 (quoting *Japan Whaling Ass'n*, 478 U.S. at 230). Were it otherwise, the legislature would be the sole judge of whether its actions are constitutional, which is inconsistent with our Constitution, separation of powers, and longstanding principles of judicial review. *See, e.g.*, *Matheson*, 641 P.2d at 680; *Marbury*, 5 U.S. at 178; *see also Ritchie v. Richards,* 14 Utah 345, 47 P. 670, 675 (1896) (Batch, J., concurring) ("[t]he power to declare what the law shall be is legislative. The power to declare what is the law is judicial.").

Other constitutional provisions designate various duties to the Legislature—e.g., the compensation of state and local officers in art. VII, § 18; public education in art. X, § 2; and gun regulation in art. I, § 6—but that does not mean that the Legislature's power in those areas is beyond judicial review. For example, in the case of public education, the Utah Supreme Court has held:

> [t]he legislature has plenary authority to create laws that provide for the establishment and maintenance of the Utah public education system. . . . However, its authority is not unlimited. The legislature, for instance, cannot establish schools and programs that are not open to all the children of Utah or free from sectarian control . . . for such would be a violation of . . . the Utah Constitution.

Utah Sch. Bds. Ass'n v. Utah State Bd. of Educ., 2001 UT 2, ¶ 14, 17 P.3d 1125. Even though the Utah Constitution explicitly grants authority over education to the Legislature, that authority must be exercised in a manner consistent with the Utah Constitution.

This principle equally applies to redistricting. As Defendants' counsel acknowledged during oral argument, the Legislature is bound to follow the United States and Utah Constitutions when engaging in the redistricting process. And outside the context of this litigation, Defendants have acknowledged that "[t]he redistricting process is subject to the legal parameters established by the United States and the Utah Constitutions, state and federal laws, and caselaw."[4] Given these acknowledgements, it follows that "the mere fact that responsibility for reapportionment is committed to the [Legislature] does not mean that the [Legislature's] decisions in carrying out its responsibility are fully immunized from any judicial review." *Harper*, 868 S.E.2d at 534. That proposition would be wholly inconsistent with this Court's obligation to enforce the provisions of the Utah Constitution. *See Matheson*, 641 P.2d at 680.

In addition, the Utah Supreme Court has previously reviewed the Utah Legislature's redistricting actions. In *Parkinson*, the plaintiffs challenged the Legislature's redistricting act alleging that it created districts with vastly unequal populations. *Parkinson*, 291 P.2d at 401. In its decision, the Utah Supreme Court initially expressed reluctance to interfere with the Legislature's redistricting actions given the importance that the three branches of government remain separate. *See id.* at 403. The Utah Supreme Court, however, did not dismiss the claim as a nonjusticiable political question. *Id.* at 400. Instead, it engaged in judicial review and reviewed the map for constitutionality, ultimately determining that congressional districts with unequal populations were not unconstitutional.

Notably, after previously reviewing partisan gerrymandering cases, the United States Supreme Court, in a 5 - 4 decision, recently concluded that such claims are nonjusticiable in

[4] Plaintiffs cited this quote from a report by Utah State Legislature on Utah's redistricting in 2001. Office of Legislative Research and General Counsel, 2001 Redistricting in Utah (Jan. 2022), le.utah.gov/documents/redistricting/redist.htm (last accessed May 25, 2022). The Court takes judicial notice of the report pursuant to Utah Rules of Evidence 201(b)(2).

federal courts. *Rucho v. Common Cause*, 139 S.Ct. 2484, 2506 (2019). While the United States Supreme Court has backed away from evaluating redistricting claims, it does not follow that such claims are nonjusticiable in Utah courts for several reasons. First and foremost, the *Rucho* Court specifically stated: "Our conclusion does not condone excessive partisan gerrymandering. Nor does our conclusion condemn complaints about districting to echo into a void.... Provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply." *Id.* at 2507.

Utah courts also are not bound by the same justiciability requirements as federal courts under Article III. Several Utah cases have noted that, on matters like standing and justiciability, a lesser standard may apply. *See, e.g., Laws v. Grayeyes*, 2021 UT 59, ¶ 77, 498 P.3d 410 (Pearce, J., concurring); *Gregory v. Shurtleff*, 2013 UT 18, ¶ 12, 299 P.3d 1098; *Brown v. Div. of Water Rts. of Dep't of Nat. Res.*, 2010 UT 14, ¶¶ 17-18, 228 P.3d 747; *Jenkins v. Swan*, 675 P.2d 1145, 1149 (Utah 1983).

Utah courts at times decline to merely follow and apply federal interpretations of constitutional issues. *S. Salt Lake City v. Maese*, 2019 UT 58, ¶ 27, 450 P.3d 1092. They "do not presume that federal court interpretations of federal constitutional provisions control the meaning of identical provisions in the Utah Constitution." *State v. Briggs*, 2008 UT 83, ¶ 24, 199 P.3d 935. They do not merely presume that federal construction of similar language is correct, *State v. Tiedemann*, 2007 UT 49, ¶ 37, 162 P.3d 1106. And they recognize that federal standards are sometimes "based on different constitutional language and different interpretative case law." *Jensen ex rel. Jensen v. Cunningham*, 2011 UT 17, ¶ 45. Utah courts have also interpreted the Utah constitution to provide more protection than its federal counterpart when federal law was an "inadequate safeguard" of state constitutional rights. *Tiedmann*, 2007 UT 49, ¶¶ 33, 42-44.

While the *Rucho* majority decision conclusively resolved the issue justiciability for federal courts, given the split in the decision and the dissent authored by Justice Kagan, the issue was clearly not that cut and dry, even for the federal courts. Justice Kagan wrote that most members of the Supreme Court agree that partisan gerrymandering is unconstitutional. And four of the nine justices agreed that partisan gerrymandering is justiciable, judicially manageable standards exist, and the dissent discussed tests that exist and have been applied by the federal courts. *Rucho v. Common Cause*, 139 S. Ct. at 2509-2525 (Kagan, J., dissenting) (stating, in reference to the majority opinion, "For the first time ever, this Court refuses to remedy a constitutional violation because it thinks it is beyond judicial capabilities."). Federal caselaw may prove helpful in this case as the litigation proceeds, but the majority's holding in *Rucho* – that partisan gerrymandering is not justiciable – is not binding on this Court and this Court declines to follow it.

B. Judicially discoverable and manageable standards exist.

Defendants argue that the Court lacks jurisdiction because there are no judicially discoverable or manageable standards for resolving redistricting claims because redistricting is a purely political exercise, based entirely on the Legislature's consideration and weighing of competing policy interests in deciding where to draw boundary lines. (Defs.' Mot. at 10.) The Court disagrees.

Plaintiffs' Complaint challenges the constitutionality of the 2021 Congressional Plan and the Utah Legislature's action. Determining whether the 2021 Congressional Plan violates the Utah Constitution involves no "policy determinations for which judicially manageable standards are lacking." *Baker*, 369 U.S. at 226. Instead, it involves legal determinations, the standards for which are provided both in the Utah Constitution and in caselaw. Utah courts have previously

addressed the Free Elections, Uniform Operation of Laws, Freedom of Speech and Association and the Right to Vote clauses of the Utah Constitution and, for some clauses, there are well-developed standards that have been applied by Utah courts in various scenarios.[5] And Utah courts are regularly asked to address issues of first impression, to interpret constitutional provisions and statutes for the first time and to apply established constitutional principles to new legal questions and factual contexts.[6] There is no reason why this Court cannot do the same here.

In reviewing Plaintiffs' redistricting claims, the Court will simply be engaging in the well-established judicial practice of interpreting the Utah Constitution and applying the law to the facts. The Utah Supreme Court has stated that "the Utah Constitution enshrines principles, not application of those principles," and it is the court's duty to determine "what principle the constitution encapsulates and how that principle should apply." *Maese,* 2019 UT 58, ¶ 70 n. 23. In applying constitutional principles to new types of claims, the Court uses "traditional methods of constitutional analysis," which starts with analyzing the plain language of the constitution and taking into consideration "historical and textual evidence, sister state law, and policy arguments in the form of economic and sociological materials to assist us in arriving at a proper

[5] While the constitutional provisions Plaintiffs cite have never been applied by Utah courts for redistricting claims, they have been applied in a variety of other contexts. The following are examples, not an exhaustive list. The Utah Supreme Court has applied Article I, Section 17 of the Utah Constitution (Free Elections Clause, Plaintiffs' Count One) while analyzing the right of a political candidate to appear on a party's ticket. *Anderson v. Cook*, 102 Utah 265, 130 P.2d 278, 285 (1942). It has applied Sections 2 and 24 of Article I (Uniform Operation of Laws, Count Two) in the context of a citizen initiative. *Gallivan v. Walker,* 2002 UT 89, 54 P.3d 1069. It has applied Sections 1 and 15 of Article I in an obscenity case. *American Bush v. City of South Salt Lake*, 2006 UT 40, 140 P.3d 1235. And the Utah Supreme Court has applied Article IV, Section 2 in a case in which a prison inmate challenged a residency requirement in registering to vote. *Dodge v. Evans*, 716 P.2d 270, 273 (Utah 1985).

[6] For example, in *State v. Roberts*, the Utah Supreme Court applied the Utah Constitution to determine whether a reasonable expectation of privacy exists for electronic files shared in a "peer-to-peer file sharing network." 2015 UT 24, ¶ 1, 345 P.3d 1226. *See also State v. Limb*, 581 P.2d 142, 144 (Utah 1978) (addressing automobile exception); *Dexter v. Bosko*, 2008 UT 29, ¶ 19 (unnecessary rigor provision applied to seatbelts); *State v. James*, 858 P.2d 1012, 1017 (Utah Ct. App. 1993) (due process applied to video recorded interrogations).

interpretation of the provision in question." *Soc'y of Separationists, Inc. v. Whitehead*, 870 P.2d 916, 921, n.6 (Utah 1993).

In addition, in addressing redistricting, Utah's court are not without judicially-discoverable or manageable standards. *Rucho* specifically recognized that "provisions in state statutes and state constitutions can provide standards and guidance for state courts to apply." *Rucho v. Common Cause*, 139 S. Ct. at 2507. Here, the people of Utah passed Proposition 4, which codified into law the people's will to apply traditional redistricting criteria in congressional districting. *See supra* pp. 3-4. Other state courts have addressed claims involving partisan gerrymandering. In fact, seven state courts in North Carolina, Pennsylvania, Florida, Ohio, Maryland, New York, and Alaska have concluded that partisan gerrymandering claims are cognizable under their respective state constitutions.[7] Some have set forth criteria and factors that may be considered in such analyses. *See, e.g., League of Women Voters v. Commonwealth*, 645 Pa. 1, 118-21 (Pa. 2018) (discussing consideration of traditional redistricting criteria, including contiguity, compactness, and respect for political subdivisions, and establishing "neutral benchmarks" for evaluating gerrymandering claims). Federal courts have applied various tests to address partisan gerrymandering. *See, e.g., Rucho*, 139 S. Ct. at 2516 (Kagan, J., dissenting) (discussing application of a three-part test, including consideration of intent, effects, and causation, and discussing generally other tests previously applied). Utah courts have historically relied on case law from other state and federal courts in addressing questions that arise under Utah law. *See, e.g., Am. Bush*, 2006 UT 40, ¶ 11; *Ritchie v. Richards*, 47 P. 670, 677-79 (1896).

[7] *See Harper*, 868 S.E.2d at 558-60; *League of Women Voters v. Commonwealth*, 645 Pa. 1, 128 (Pa. 2018); *League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 371-72 (Fla. 2015); *Adams v. DeWine*, 2022 WL 129092 at *1-2 (Ohio Jan. 14, 2022); *Szeliga v. Lamone*, Nos. C-02-cv-21-001816 & C-02-CV-21-001773 at 93-94 (Anne Arundel Cnty. Cir. Ct. Mar. 25, 2022), https://redistricting.lls.edu/wp-content/uploads/MDSzeliga-20220325-order-granting-relief.pdf; *Harkenrider v. Hochul*, No. 60, 2022 WL 1236822 (N.Y. Apr. 27, 2022); *In the Matter of the 2021 Redistricting Cases*, S-18419 (Alaska May 24, 2022) (applying *Kenai Peninsula Borough v. State*, 743 P.2d 1352, 1371 (Alaska 1987)) (opinion forthcoming).

This Court can do the same here, taking into consideration material differences in our constitutions and state laws.

This case is in the beginning stages. The parties have not conducted discovery. No evidence has been presented and the parties have not yet presented their positions regarding appropriate tests or criteria that should be considered and applied. As this case proceeds through litigation and with specific input from both parties, this Court can determine what criteria or factors should be considered in this case, under Utah law. *See Harper*, 868 S.E.2d at 547-48 (stating specific standards for evaluating state legislative apportionment schemes should be developed in the context of actual litigation); *accord Reynolds v. Sims*, 377 U.S. 533, 578 (1964) ("What is marginally permissible in one [case] may be unsatisfactory in another, depending on the particular circumstances of the case. Developing a body of doctrine on a case-by-case basis appears to us to provide the most satisfactory means of arriving at detailed constitutional requirements in the area of . . . apportionment.").

Utah courts, including this one, recognize the separation of powers. To be clear, this Court will not review the Legislature's legitimate weighing of policy interests. The judiciary is not a political branch of government; policy determinations are for the Legislature to decide. As the Utah Supreme Court has stated, "[i]t is a rule of universal acceptance that the wisdom or desirability of legislation is in no wise for the courts to consider. Whether an act be ill advised or unfortunate, if it should be, does not give rise to an appeal from the legislature to the courts." *Parkinson*, 291 P.2d at 403. However, even in cases involving political issues, the Court is bound to review the Legislature's actions, not to weigh in on policy matters, but to determine whether there has been a constitutional violation. *Matheson*, 641 P.2d at 680.

Judicial review of legislative action to determine constitutionality does not derogate from the primacy of the state legislature's role in redistricting. However, because redistricting is not wholly within the control of the Legislature, the constitutional claims presented here are not political questions, and because judicially discoverable and manageable standards exist to review constitutional challenges and redistricting claims, the Court concludes that it has jurisdiction in this case to review the Legislature's actions to determine if they are constitutional.

Therefore, Defendants' Motion to Dismiss for lack of subject matter jurisdiction under Rule 12(b)(1) is DENIED.

II. Defendants' Motion to Dismiss the Committee and Individual Defendants is DENIED.

Defendants move to dismiss Defendants Utah Legislative Redistricting Committee, Senator Scott Sandall, Senator J. Stuart Adams, and Representative Brad Wilson (collectively, Committee and Individual Defendants). (Defs.' Mot. at 14.) Defendants' Motion is based on two arguments. First, they argue that the Committee and Individual Defendants are immune from suit based on claims related to their actions as legislators. Second, the Committee and Individual Defendants assert they are unable to provide Plaintiffs' requested relief, and as such, should be dismissed. (*Id.*).

Regarding immunity, the Committee and Individual Defendants are correct that Utah law grants them immunity from certain lawsuits. However, that grant of immunity does not make them immune to all claims. To the contrary, Utah law only grants legislators immunity from claims of *defamation* related to their actions as legislators. Utah has adopted the common law legislative immunity and legislative privilege doctrines through its Speech or Debate Clause,[8]

[8] Utah's Speech or Debate Clause states: "[m]embers of the Legislature, in all cases except treason, felony or breach of the peace, shall be privileged from arrest during each session of the Legislature, for fifteen days next preceding

which Utah courts interpret as providing legislative immunity only from *defamation* liability. *See Riddle v. Perry*, 2002 UT 10, ¶ 10, 40 P.3d 1128. In *Riddle*, the Utah Supreme Court declined to provide absolute legislative immunity in all instances. It explained that the policy consideration behind the legislative immunity doctrine is "the importance of full and candid speech by legislators, even at the possible expense of an individual's right to be free from defamation." *Id.* ¶ 8. Here, Plaintiffs are not seeking relief from defamation. Under this limited view of legislative immunity,[9] the Committee and the Legislative Defendants are not immune.

The Committee and Individual Defendants also assert that they cannot provide the relief requested and that any order from this Court directed at them "would blatantly violate the separation of powers." (Reply at 15.) The Committee's and Individual Defendants' argument on this point is less than two pages. They do not cite any authority, legal or otherwise, to support that the Committee and the Defendants cannot provide *any* relief requested or that any order from the Court, directed at them, would violate the separation of powers.[10] Such unsupported arguments are insufficient to satisfy Defendants' burden on a motion to dismiss. *See Bank of Am. v. Adamson*, 2017 UT 2, ¶ 13, 391 P.3d 196 ("A party must cite the legal authority on which its

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each session, and in returning therefrom; and for words used in any speech or debate in either house, they shall not be questioned in any other place." Utah Const. art. VI, § 8.

[9] The *Riddle* Court explained the limits of the Utah's legislative immunity doctrine:

> In determining the contours of the legislative proceeding privilege, we adopt the privilege as set forth in section 590A of the Restatement (Second) of Torts: "A witness is absolutely privileged to publish defamatory matter as part of a legislative proceeding in which he [or she] is testifying or in communications preliminary to the proceeding, if the matter has some relation to the proceeding."

Id. ¶ 11 (alteration in original).

[10] Notably, Utah courts have allowed lawsuits against individual legislators to proceed. *See, e.g.*, *Matheson v. Ferry*, 657 P.2d 240, 244 (Utah 1982); *Jenkins v. State*, 585 P.2d 442, 443 (Utah 1978); *Rampton v. Barlow*, 23 Utah 2d 383, 384, 464 P.2d 378 (1970); *Romney v. Barlow*, 24 Utah 2d 226, 227, 469 P.2d 4497 (1970). This Court is not aware of any legal authority, either at the state or federal level, that prohibits all lawsuits naming legislators. If any legal precedent exists to justify the dismissal of any defendant, it is incumbent on the moving party to present that authority to the Court.

argument is based and then provide reasoned analysis of how that authority should apply in the particular case."). While Defendants certainly raise important issues that the parties and this Court will consider as this case proceeds,[11] the arguments made at this stage are simply insufficient to justify dismissing the Committee and the Individual Defendants. *See Gardiner v. Anderson*, 2018 UT App 167, ¶ 21 n.14, 436 P.3d 237 ("[I]t is not the district court's burden to research and develop arguments for a moving party.").

Regarding the Committee and Legislative Defendants' separation of powers argument, the Court has a duty to review the Legislature's acts if it appears they conflict with the Utah Constitution. *Matheson*, 657 P.2d at 244. Indeed, to hold otherwise would make the Legislature the ultimate arbiter of what is constitutional, which would in fact violate the separation of powers principle by intruding on this Court's constitutional role. *See id.* At this stage, it appears this Court can give Plaintiffs at least some of the relief requested without intruding on the Legislature's powers, which is sufficient to defeat Defendants' Motion to Dismiss.

Defendants' Motion to Dismiss the Committee and the Legislative Defendants is DENIED.

III. Defendants' Motion to Dismiss Counts One through Four is DENIED; Defendants' Motion to Dismiss Count Five is GRANTED.

Defendants' move to dismiss each of Plaintiffs' four constitutional challenges to the 2021 Congressional Plan asserting that Utah's Constitution, and specifically the Free Elections Clause, Equal Protection Clause, Free Speech and Association Clause and the Right to Vote Clause, does not expressly prohibit partisan gerrymandering. Defendants

[11] The precise relief that Plaintiffs seek and might be entitled to is not entirely clear at this stage of the litigation. Thus, any ruling the Court could make would be merely advisory and the Court declines to do so. *Salt Lake County v. State*, 2020 UT 27, ¶36, 466 P.3d 158 ("[W]e do not issue advisory opinions."). The Court recognizes, however, that the issues raised by Defendants are legitimate questions that the Court will address if and when the issues are fully ripe and briefed.

take the position that these provisions should be interpreted narrowly to protect *only* every citizen's right to cast a vote in an election. Nothing more. They argue generally that the 2021 Congressional Plan does not prohibit any citizen from voting in an election. New boundary lines do not prohibit each citizen from physically casting a vote or from freely speaking and associating with like-minded voters on political issues. Further, they argue that the Utah Constitution does not guarantee "equal voting power," a vote that is politically "equal in its influence," any political success, or a beneficial political outcome. In addition, Defendants move to dismiss Plaintiffs' fifth claim, asserting that the Utah Constitution does not prohibit the Legislature from either amending or repealing the Utah Independent Redistricting Commission and Standards Act, Title 20A, Chapter 19, of the Utah Code, which is the law that went into effect with the successful passage of Proposition 4.

Defendants' motion is made under Rule 12(b)(6) of the Utah Rules of Civil Procedure, asserting that Plaintiffs have failed to state a claim under the Utah Constitution.

> "The purpose of a rule 12(b)(6) motion is to challenge the *formal sufficiency of the claim for relief, not to establish the facts or resolve the merits of a case*." *Van Leeuwen v. Bank of Am. NA*, 2016 UT App 212, ¶ 6, 387 P.3d 521 (cleaned up). Accordingly, "dismissal is justified *only* when the allegations of the complaint clearly demonstrate that the plaintiff does not have a claim." *Id.* (cleaned up).

Pioneer Homeowners Ass'n v. TaxHawk Inc., 2019 UT App 213, ¶ 19, 457 P.3d 393, *cert. denied sub nom., Pioneer Home v. TaxHawk, Inc.*, 466 P.3d 1073 (Utah 2020) (emphasis added). The Court's review of Defendant's Motion at this stage is limited to considering only "the legal viability of a plaintiff's underlying claim as presented in the pleadings." *Lewis v. U.S. Bank Tr. NA*, 2020 UT App 55, ¶ 9, 463 P.3d 694, 697 (internal quotation marks excluded).

Each of Plaintiffs' claims is based on the Utah Constitution. Constitutional interpretation starts with evaluating the plain text to determine "the meaning of the text as understood when it

was adopted." *S. Salt Lake City v. Maese,* 2019 UT 58, ¶ 18, 450 P.3d 1092 (discussing generally process of constitutional interpretation). "The goal of this analysis is to discern the intent[12] and purpose of both the drafters of our constitution and, more importantly, the citizens who voted it into effect." *Am. Bush v. City of S. Salt Lake*, 2006 UT 40, ¶ 12, 140 P.3d 1235. "While we first look to the text's plain meaning, we recognize that constitutional language is to be read not as barren words found in a dictionary but as symbols of historic experience illumined by the presuppositions of those who employed them." *Id.* ¶ 10. The Court's focus is on "how the words of the document would have been understood by a competent and reasonable speaker of the language at the time of the document's enactment." *Patterson v. State of Utah*, 2021 UT 52, ¶ 91, 405 P.3d 92.

In addition to analyzing the text, prior caselaw guides us to analyze "historical evidence of the state of the law when it was drafted, and Utah's particular traditions at the time of drafting.'" *Maese,* 2019 UT 58, ¶ 18 (quoting *Am. Bush*, 2006 UT 40, ¶ 12). The language of the text, in certain circumstances, may begin and end the analysis. However, "[w]here doubt exists about the constitution's meaning, we can and should consider all relevant materials. Often that will require a deep immersion in the shared linguistic, political, and legal presuppositions and understandings of the ratification era." *Maese,* 2019 UT 58, ¶ 23 (cleaned up) (explaining merely "asserting one, likely true, fact about Utah history and letting the historical analysis flow from that single fact is not a recipe for sound constitutional interpretation.").[13] The Court may also

[12] The Utah Supreme Court has explained that "[w]hile we have at times used language of 'intent' in discussing our constitutional interpretation analysis, our focus is on the objective original public meaning of the text, not the intent of those who wrote it. Evidence of framers' intent can inform our understanding of the text's meaning, but it is only a means to this end, not an end in itself." *Maese*, 2019 UT 58, ¶ 59 n.6.

[13] In interpreting the Utah Constitution, "we consider all relevant factors, including the language, other provisions in the constitution that may bear on the matter, historical materials, and policy. Our primary search is for intent and purpose. Consistent with this view, this court has a very long history of interpreting constitutional provisions in light

consider caselaw from sister states, with similar provisions made contemporaneously to the framing/ratification of Utah's Constitution, and federal caselaw interpreting similar provisions from the United States Constitution. *Am. Bush*, 2006 UT 40, ¶ 11.

Both parties have provided to the Court some relevant material to support their competing interpretations of the Utah Constitution, of which this Court may take judicial notice of under Rule 201 of the Utah Rules of Evidence. At this stage, the Court cannot consider factual matters outside the pleadings on a motion to dismiss without converting the motion into to one for summary judgment. Utah R. Civ. P. 12(b); *Oakwood Vill. LLC v. Albertsons, Inc.*, 2004 UT 101, ¶ 12, 104 P.3d 1226. Neither party has made such a request. Therefore, at this stage, the Court need only decide whether Plaintiffs have stated a claim, not whether Plaintiffs will succeed on those claims. Because each claim involves separate legal issues, the Court addresses each individually below.

a. Plaintiffs Sufficiently State a Claim under the Free Elections Clause (Count One).

Defendants assert that Plaintiffs have failed to, and cannot, state a claim under the Free Elections Clause. Defendants argue the plain language of the Free Elections Clause does not expressly prohibit partisan gerrymandering and that it guarantees only "the freedom to *cast a vote* without interference from civil or military power." (Defs.' Reply at 17 (emphasis added).) The Court disagrees.

The Free Elections Clause states: "All elections shall be free, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Utah

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of their historical background and the then-contemporary understanding of what they were to accomplish. This case, like many others, proves the wisdom of the axiom that '[a] page of history is worth a volume of logic.'" *S. Salt Lake City v. Maese*, 2019 UT 58, ¶ 23, 450 P.3d 1092, 1098 (discussing and quoting *Society of Separationists v. Whitehead*, 870 P.2d 916, 920–21, and n. 6 (Utah 1993)).

Const. art. I, § 17. Defendants argue that this Court must interpret the provision as a whole, arguing that the second clause, which states that "no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage," necessarily modifies or limits the first. (Defs.' Reply at 17.) The Court rejects this interpretation.

1. The Plain Meaning of "All *elections* shall be *free.*"

There are two express rights guaranteed by the Free Elections Clause, not just one. First and foremost, "all *elections* shall be *free.*" The second, "no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." The clause is constructed as a compound sentence, separating two independent clauses by the conjunction "and." This sentence construction supports that these two clauses are to be given equal value. Nothing in the construction or choice of conjunction suggests to this Court that the second independent clause was intended to limit the first. Defendants also provide no authority, legal or otherwise, to support such interpretation.

What did the term "all *elections* shall be *free*" mean to the people of Utah in 1895, when the Utah Constitution was adopted? There is little historical information on Utah's Free Elections Clause. While the Clause was discussed during the Proceedings and Debates of the Convention Assembled to Adopt a Constitution for State of Utah, in Mar. 25, 1895,[14] the discussion provides no guidance as to what the clause was intended to protect or how to interpret the key words. The reported transcript of the proceedings reflects that the Free Elections Clause was passed with no debate. One modification was made to the final text. As originally proposed, the Free Elections Clause stated that "[a]ll elections shall be free and equal." A successful motion was made to remove "equal," but with no discussion. Defendants argue the removal is significant, revealing

[14] Found at le.utah.gov/documents/conconv/22.htm ("Convention Proceedings").

the drafter's intent to not guarantee "voting power." (Defs.' Mot. at 21, n.16.) Plaintiffs, on the other hand, argue that "equal" was removed because it was "superfluous," because the term "free," as defined in 1891, already contained an equality component. (Pls' Opp'n at 26.) Neither party, however, provided any authority to support their respective arguments.[15] And the debate regarding this clause is of little assistance.

There are no early Utah common law cases discussing the Free Elections Clause. There are no Utah cases from any time period defining the term "elections." Notably, neither party focused on this term nor provided a definition or any legal analysis of it.[16] The meaning of the term "elections," however, is critical to this analysis and critical to interpreting this clause.

An "election" is defined by Merriam-Webster as the "act or process of electing." *Election*, Merriam-Webster, https://www.merriam-webster.com/dictionary/elections (noting first known use of this term, with this definition, was the 13th century). To "elect" is "to select by vote for an office, position or membership." *Elect,* Merriam-Webster, https://www.merriam-webster.com/dictionary/elect. Other dictionary sources define the term similarly: "An election is a process in which people vote to choose a person or group of people to hold an official position." *Election*, (noun), Collins Dictionary, https://www.collinsdictionary.com/us/dictionary/english/election.[17]

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[15] The Court agrees with Defendants that the removal means something. But there is insufficient historical information before the Court to determine what was intended by the removal. The Court need not determine why it was removed; instead, the Court focuses on interpreting the clause as it is written.

[16] Notably, neither party provided a definition of "elections." Both parties focused primarily on and provided definitions for the word "free." Based on the Court's analysis, the definition of "elections" does not appear to have changed over time and it does not appear to be subject to widely different interpretations. This Court is not a linguistics expert and did not undertake independent scientific research, but it did resort to standard dictionary definitions to assist in interpreting the plain language of the Free Elections Clause. *See generally State v. Rasabout*, 356 P.3d 1258 (2015) (discussing generally interpretation methods under Utah law).

[17] "*Election* (noun), the act or process of choosing someone for a public office by voting." *Election*, Britannica Dictionary, https://www.britannica.com/dictionary/election. An "election" is "the process of choosing a person or a

"Election" also means the "right, power, or privilege of making a choice." *Election,* Merriam-Webster, https://www.merriam-webster.com/dictionary/elections. Similar definitions were used in the late 1800s. *See e.g., State v. Hirsch,*[18] 125 Ind. 207, 24 N.E. 1062, 1063 (1890) (discussing various definitions of "election" and stating it "is not limited in its definition and meaning to the act or process of choosing a person for a public office by a vote of the qualified electors at the time, place, and manner prescribed by law.").

The term "free" as defined in the 1891 Black's Law Dictionary means: "[u]nconstrained; having power to follow the dictates of his own will;" "[e]njoying full civic rights;" and "[n]ot despotic; assuring liberty;[19] defending individual rights against encroachment by any person or class; instituted by a free people; said of governments, institutions, etc." *Free*, Black's Law Dictionary, 1st ed. 1891. (Pls.' Opp'n at 26-29; Defs.' Reply at 16-20). "Free" was also defined as "[o]pen to all citizens alike[.]" *Free,* Anderson, Dictionary of Law, 1889.

Two notable terms justify further analysis. First, "unconstrained" means "not held back or constrained." *Unconstrained*, Merriam-Webster, https://www.merriam-webster.com/dictionary/unconstrained (noting definition first used in the 14th century). "Constrained" means "to force by imposed stricture, restriction or limitation;" "to force or produce in an unnatural or strained manner." *Constrained*, Merriam-Webster,

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group of people for a position, especially a political position, by voting." *Election (noun)*, Oxford Learner's Dictionaries, https://www.oxfordlearnersdictionaries.com/us/definition/english/election.

[18] In *State v. Hirsch*, 125 Ind. 207, 24 N.E. 1062, 1063 (Ind. 1890), the Indiana Supreme Court analyzed the meaning of the term "elections" to interpret a state statute prohibiting liquor sales on "election day." Notably, the Court recognized that "[u]nder our form of government we have a well-defined system of choosing or electing officers, regulated by law." *Id.*

[19] "Liberty" is defined as "the quality or state of being free; the power to do as one pleases; freedom from physical restraint; freedom from arbitrary or despotic control; the positive enjoyment or various social, political, or economic rights and privileges; the power of choice." *Liberty,* Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/liberty (noting the definition has been used since the 14th century).

https://www.merriam-webster.com/dictionary/constrain (noting definition used in the 14th century).

Second, "despotic" means "of, or relating to, or characteristic of a despot // a despotic government." *Despotic*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/despotic#h1 (noting this term, with this definition, was first used in 1604). "Despot" in turn means "a ruler with absolute power and authority; one exercising power tyrannically; a person exercising absolute power in a brutal or oppressive way." *Despot*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/despot (noting this definition came into being with the beginning of democracy at the end of the 18th century). The United States Supreme Court in 1866 explained what it means to be despotic: "In a despotism the autocrat is unrestricted in the means he may use for the defence of his authority against the opposition of his own subjects or others; and that is what makes him a despot." *Ex parte Milligan*, 71 U.S. 2, 81, 18 L. Ed. 281 (1866).

The first clause "all elections shall be free" guarantees to Utah's citizens an election *process* that is free from despotic and tyrannical government control and manipulation. A "free election" involves an unconstrained process, that does not "produce" results "in an unnatural or strained manner." And it prohibits governmental manipulation of the election process to either ensure continued control or to attain an electoral advantage. This right given to Utah citizens, necessarily imposes a limit on the legislature's authority when overseeing the election process.

The second clause specifically provides that "no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage." Utah Const. Art. I, § 17. This portion of the clause prohibits a civil or military power from interfering with the free exercise of the right of suffrage. It does not, however, expressly preclude a governmental power, like the

legislature, from providing "by law for the conduct of elections, and the means of voting, and the methods of selecting nominees." *Anderson v. Cook*, 102 Utah 265, 130 P.2d 278, 285 (1942).

Anderson v. Cook is the only Utah case discussing the Free Elections Clause. In *Anderson,* a potential candidate submitted a petition to appear on a primary election ballot, but the acting county clerk refused to certify the nomination of the candidate for the primary election. *Id.* at 280. In affirming the county clerk's decision, the *Anderson* Court concluded that the petition was not timely filed, that the political party could not designate a candidate without an effective petition, and that the primary election laws did not provide for a "write in" candidate (while noting that general election laws did). *Id.* at 281-82. The candidate argued to deny him the right to appear on the ballot would violate the Free Elections Clause. *Id.* at 285. The *Anderson* Court did not fully interpret or analyze the clause. More importantly, it did not conclude that the Free Elections Clause did not apply to the issues presented. Rather, it held:

> While this provision guarantees the qualified elector the free exercise of his right of suffrage, it does not guarantee any person the unqualified right to appear as a candidate upon the ticket of any political party. It cannot be construed to deny the legislature the power to provide regulations, machinery and organization for exercising the elective franchise, or inhibit it *from prescribing reasonable methods and proceedings* for determining and selecting the persons who may be voted for at the election.

Anderson v. Cook, 102 Utah 265, 130 P.2d 278, 285 (1942) (emphasis added).

While the *Anderson* Court found no constitutional violation (i.e., because the candidate's petition was not filed in accordance with the law), the case does support that claims regarding the election *process* cannot be made under the Free Elections Clause. It supports that the Legislature necessarily has a role in providing "reasonable" regulation, machinery, and organization of the exercise of the right to vote. Additionally, the Legislature must "provide by law for the conduct

of elections, and the means of voting, and the methods of selecting nominees." *Anderson*, 130 P.2d at 285.

Based on the Court's analysis, and contrary to Defendants' arguments, Utah's Free Elections clause guarantees more than merely the right to vote.

2. Free Election Clauses and the English Bill of Rights

The history of free election clauses also supports that they were intended to prohibit tyrannical or despotic governmental manipulation of the election process to either ensure continued power or to attain electoral advantage. The first state free election clauses derived from a provision in the English Bill of Rights of 1689. *See Harper v. Hall*, 868 S.E.2d 499, 540 (N.C. 2022) (quoting historical sources discussing the origin of Free Elections Clauses in Virginia, Pennsylvania, and North Carolina). The original provision provided: "election of members of parliament ought to be free," and "was adopted in response to the king's efforts to manipulate parliamentary elections by diluting the vote in different areas to attain electoral advantage." *Id.* (citing Bill of Rights, 1689, 1 W. & M. Sess. 2 c. 2 (Eng.)). The key principle driving these reforms was "avoiding the manipulation of districts that diluted votes for electoral gain." *Id.* North Carolina's free election clause was enacted following passage of similar provisions in Virginia and Pennsylvania, with the intent to "end the dilution of the right of the people to select representatives to govern their affairs," and to "codify an explicit provision to establish protections of the right of the people to fair and equal representation in the governance of their affairs." *Id.* (cleaned up). While not identical to Utah's, North Carolina's free election clause states simply: "All elections shall be free."

Defendants argue there is no evidence that Utah's Free Elections Clause, specifically, was based on the English Bill of Rights. This is true. Utah does not have the same well-

developed caselaw like North Carolina, specifically tracing the origin of this specific constitutional provision directly to the English Bill of Rights. However, the Utah Supreme Court has recognized that at least one provision in the Utah Constitution arose from the English Bill of Rights of 1689. *See, e.g.*, *Bott v. DeLand*, 922 P.2d 732, 737 (Utah 1996) (discussing Utah's cruel and unusual punishment clause), *abrogated by Spackman ex rel. Spackman v. Bd. of Educ. of Box Elder Cnty. Sch. Dist.*, 2000 UT 87, 16 P.3d 533; *see also State v. Houston,* 2015 UT 40, ¶¶ 166-170, 353 P.3d 55, 99-100 (Lee, J. concurring) (discussing English Bill of Rights and English origins of protection against "cruel and unusual punishment"). Based on *Bott,* the English Bill of Rights certainly had some influence on Utah's Constitution, as did other state constitutions and the United States Constitution. *Am. Bush*, 2006 UT 40, ¶ 31 (stating "the drafters of the Utah Constitution borrowed heavily from other state constitutions and the United States Constitution" and English common law.).

The history and evolution of our representative democracy in the United States was well known to the Utah Supreme Court in 1896, as it evaluated legislative action and various challenges to an election process. *See Ritchie v. Richards*, 14 Utah 345, 47 P. 670, 675 (1896) (stating elections should be "honest and fair"). In a concurring opinion, Justice Batch rejected the proposition that all legislative action is presumed constitutional and beyond judicial review. *Id.* at 675. Specifically, he rejected an interpretation of the Utah Constitution that would vest the legislature with "a power so arbitrary" that it likened it to "the parliament of Great Britain, under a monarchial form of government." *Id.*; *see also id.* at 681 (Miner, J., concurring in J. Batch's opinion).

Utah caselaw from 1891 reflects the strong sentiment at that time regarding the fundamental nature of the right to vote and the importance of protecting it from illegal acts of

election/government officials. *See Ferguson v. Allen,* 7 Utah 263, 26 P. 570, 574 (1891). The Utah Supreme Court in *Ferguson*, while analyzing allegations of election fraud, stated that the right to vote is fundamental and "[t]hat no legal voter should be deprived of that privilege by an illegal act of the election authorities is a fundamental principle of law." *Id.* at 573. The *Ferguson* court stated: "[a]ll other rights, civil or political, depend on the *free* exercise of this one, and *any material impairment* of it is, to that extent, a subversion of our political system." *Id.* at 574 (emphasis added). It further reasoned that the "rights and wishes of all people are too sacred to be cast aside and nullified by the illegal and wrongful acts of their servants, no matter under what guise or pretense such acts are sought to be justified." *Id.*

3. *Harper v. Hall* and Defendants' cited cases.

In line with the reasoning in *Ferguson*, the North Carolina Supreme Court in *Harper v. Hall* held that partisan gerrymandering is a cognizable claim under North Carolina's free elections clause, stating:

> partisan gerrymandering, through which the ruling party in the legislature manipulates the composition of the electorate to ensure that members of its party retain control, is cognizable under the free elections clause 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. *Partisan gerrymandering prevents election outcomes from reflecting the will of the people* and such a claim is cognizable under the free elections clause.

Harper v. Hall, 868 S.E.2d 499, 542, *cert. granted sub nom. Moore v. Harper,* 142 S. Ct. 2901 (2022) (emphasis added).

Defendants cite two cases from Colorado and Idaho, suggesting that those states narrowly interpret their free elections clauses. They do not. In fact, in reviewing both cases, the Colorado

and Idaho courts apply their respective free elections clauses to address the "process" and not just merely the act of casting voting.

Defendants cite the Colorado case *Neelley v. Farr*, 158 P. 458 (Colo. 1916), stating that the Colorado Supreme Court interpreted Colorado's "free and open elections" provision to mean that "voters' right to the act of suffrage [be] free from coercion." *Id.* at 467. While that quote is part of the analysis, the *Neelley* court's decision does not support that the Court narrowly interpreted the Colorado free and open election clause to mean only that it protects against vote coercion. Notably, the case did not address redistricting. Rather, it addressed whether votes obtained from a "closed precinct," where the non-preferred candidates' party and voter information were prohibited (due to alleged industrial necessity), violated the free and open elections clause. The *Neelley* Court concluded that it did, and it excluded all votes cast, legal and illegal, from the precinct. *Id.* at 515.[20] While there are numerous quotes from the case regarding "free and open elections" that support that free and open elections means more than simply casting a vote, one quote is particularly instructive:

> There can be no free and open election in precincts where the legitimate activity of a political organization is interfered with and its members excluded either by private interests or public agencies or by the co-operation of both. So here a private, extrinsic agency, assisted by a public agency, the board of county commissioners, obtruded itself between a political organization and the electorate, and excluded one side to the controversy from the public territorial entity wherein the right of suffrage must be exercised.

Neelley v. Farr, 61 Colo. 485, 526, 158 P. 458, 472 (1916). This case supports that Colorado's free and open elections clause protects the *process*. In addition, congressional

[20] The *Neelley* court also stated: "under our form of government, if there is anything that should be held sacred, it is the ballot; and, if the aspirants for office, the election officials, and the party leaders so far forget themselves as to commit, or permit the commission of, gross frauds, so that the will of the legal electors cannot be determined, there is nothing left for the courts to do but to set aside the election in the precincts contaminated by such fraudulent conduct." *Neelley v. Farr*, 61 Colo. 485, 515, 158 P. 458, 468 (1916).

districts drawn through partisan gerrymandering to ensure one parties' election success to the exclusion of others does not meet the *Neelley* court's definition of a "free and open" election.

Defendants also cite *Adams v. Lansdon*, 110 P. 280 (Idaho 1910). *Adams* also does not deal with redistricting. Rather, the issue before the *Adams* court was whether requiring voters to vote for a first and second choice violated the portion of the Idaho's free and lawful elections clause, which stated: "No power, civil or military, shall at any time interfere with or prevent the free and lawful exercise of the right of suffrage." *Id.* at 282. In rejecting the argument, the *Adams* court interpreted the provision to prevent only "civil or military officers" from "meddl[ing] with or intimidat[ing] electors" at polls; it ruled that imposing the requirement to vote for a first and second choice was a reasonable exercise of the legislature's power. *Id.* Notably, the *Adams* courts' ruling does not generally determine what "free elections" means. It also does not hold that a congressional map that predetermines elections is a reasonable exercise of the legislature's power and that such map does not meddle or interfere with the lawful exercise of the right to vote.

Based on the plain text of the Free Elections Clause, Utah caselaw, and decisions from other state courts, Utah's Free Elections Clause guarantees more than merely the right to cast a vote. It guarantees an election *process* free from despotic and tyrannical government control and manipulation. A "free election" involves an unconstrained *process*, that does not "produce" results "in an unnatural or strained manner." And it prohibits governmental manipulation of the election process, including through redistricting, to either ensure continued control or to attain an electoral advantage. As such, this Court concludes that partisan gerrymandering is a cognizable claim under Utah's Free Elections Clause.

4. Application of Plaintiffs' "effects-based" test.

Plaintiffs assert that this Court should assess Plaintiffs' Free Elections Clause claim under an effects-based test, which evaluates whether: "(1) the Enacted Plan has the effect of substantially diminishing or diluting the power of voters based on their political views, and (2) no legitimate justification exists for the dilution." (Pls.' Opp. at 17, 29.) The Court notes that this is Defendants' Motion, but Defendants neither address nor object to Plaintiffs' proposed test. Under the circumstances, and without adequate briefing, the Court adopts Plaintiffs' test solely for the purposes of deciding the current motion.

Assuming the allegations in the Complaint to be true, the Court concludes that Plaintiffs have sufficiently pled a claim under Utah's Free Elections Clause. First, Plaintiffs have sufficiently alleged that the 2021 Congressional Plan has the effect of substantially diminishing or diluting the power of democratic voters, based on their political views. Plaintiffs allege that the Plan achieves extreme and durable partisan advantage by cracking Utah's large and concentrated population of non-Republican voters, centered in Salt Lake County, and dividing them between all four of Utah's congressional districts to diminish their electoral strength. (Compl. ¶ 207.) In doing so, the Plan makes it systematically harder for non-Republican voters to elect a congressional candidate. It entrenches a single party in power and will reliably ensure Republicans and Republican incumbents are elected in all of the State's congressional seats for the next decade, despite a compact and sizeable population of non-Republican voters that, in a partisan-neutral map, would comprise a majority of a district covering most of Salt Lake County. (*Id.* ¶¶ 6, 206-209, 226-231.)

Second, there is no legitimate justification to dilute Plaintiffs' vote, and the dilution cannot be explained by application of traditional redistricting principles. (*Id.* ¶¶ 187-98, 233-54.)

The only stated justification is that Defendants intended "to ensure a mix of urban and rural areas in each congressional district." (Defs.' Mot. at 5, 23, 26.) Defendants contend that explanation is nothing more than a pretext. (Compl. ¶¶ 128-130, 177-78, 180-81, 187-198.) At this stage, the Court cannot resolve any disputes of fact. Therefore, it must accept Plaintiffs' well-pled allegations as true.

Further, Plaintiffs allege that the Plan was enacted for partisan advantage, based on the nature of the boundary lines, lack of transparency in the redistricting process, and the actions and statements made by elected officials involved in approving the Plan. (*Id.* ¶¶ 3-5, 141-198, 200, 233-235, 254, 275.) Finally, seeking partisan advantage is neither a compelling nor a legitimate governmental interest, because it "in no way serves the government's interest in maintaining the democratic processes which function to channel the people's will into a representative government." *Harper*, 868 S.E.2d at 549.

Based on the facts alleged in the Complaint, and the Court's legal analysis above, the Court concludes that Plaintiffs have sufficiently stated a claim under the "effects-based" test for violation of Utah's Free Elections Clause.

This Court recognizes that there will always be incidental political considerations and partisan effects during redistricting, even when neutral and traditional redistricting criteria are applied. The United States Supreme Court recognizes that "[n]ot every limitation on the right to vote requires judicial intervention. Some administrative burdens on the franchise are unavoidable. But some so alter the nature of the franchise that they deny a citizen's 'inalienable right to full and effective participation in the political process.'" *Reynolds v. Sims*, 377 U.S. 533, 565 (1964). "Because self-government is fundamentally predicated upon voters choosing winners and losers in the political marketplace, elections must reflect the voters' judgments and

not the state's." *Cal. Democratic Party v. Jones*, 530 U.S. 567, 590 (2000) (Kennedy, J. concurring) ("In a free society the State is directed by political doctrine, not the other way around."). Key to the success of our government is "public confidence in the integrity of the electoral process," which ultimately "encourages citizen participation in the democratic process." *Crawford v. Marion Cty. Election Bd.*, 553 U.S. 181, 197 (2008). What is clear in a representative democracy, and under Utah's Free Elections clause, is that the way in which a government/legislature regulates, manages, provides for, and ultimately shapes the electoral process matters. As such, government/legislative action in this area should not be, and in this case is not, beyond constitutional challenge.

Plaintiffs should have the opportunity to present their case. Defendants' Motion to Dismiss Count One is DENIED.

b. **Plaintiffs Sufficiently State an Equal Protection Claim (Count Two).**

Next, Defendants maintain that Plaintiffs fail to state an equal protection claim because the Congressional Plan does not impact any fundamental right or the right to vote because each voter can freely vote for the candidate of their choice. Defendants also argue the 2021 Congressional Plan doesn't create a suspect classification. And, Defendants argue, any "perceived inequality" is the "product of the imbalance in the political makeup in the state and the corresponding political outcomes that reflect that imbalance of political opinion." (Defs.' Mot. at 22; Defs.' Rep. at 21.) The Court disagrees. Based on the well-established three-part test set forth in *Gallivan v. Walker*, 2002 UT 89, ¶ 31, 54 P.3d 1069, Plaintiffs sufficiently state a claim for violation of Utah's Equal Protection Clause.

Plaintiffs' equal protection claim is based on their contention that partisan gerrymandering as reflected in the 2021 Congressional Plan violates their equal protection rights

under the Uniform Operation of Laws Clause of the Utah Constitution. (Compl. ¶¶ 187-198, 271-82.) The Utah Constitution states that "all free governments are founded on their authority for their equal protection and benefit." Utah Const. art. I, § 2. The Uniform Operation of Laws Clause states that "[a]ll laws of a general nature shall have uniform operation." *Id.* art. I, § 24. Equal protection is inherent in the basic concept of justice. *Malan v. Lewis,* 693 P.2d 661, 670 (Utah 1984).

In comparing the federal Equal Protection Clause and Utah's equal protection guarantees (which are embodied in the Uniform Operation of Laws Clause), the Utah Supreme Court noted that both embody similar fundamental principles, generally that "persons similarly situated should be treated similarly, and persons in different circumstances should not be treated as if their circumstances were the same." *Gallivan*, 2002 UT 89, ¶ 31 (internal quotation marks omitted). Utah courts have noted that Utah's constitutional protections are "in some circumstances, more rigorous than the standard applied under the federal constitution." *Id.* ¶ 33.[21] In other words, Utah's protections are "at least as exacting," *id.*, but in some cases more protective that its federal counterpart. *Blue Cross & Blue Shield of Utah v. State Tax Comm'n,* 779 P.2d 634, 637 (Utah 1989). For instance, "article I, section 24 demands more than facial uniformity; the law's *operation* must be uniform." *Gallivan*, 2002 UT 89, ¶ 37. The test applied

[21] The *Gallivan* Court reasoned:

> Even though there is a similitude in the "fundamental principles" embodied in the federal Equal Protection Clause and the Utah uniform operation of laws provision, "our construction and application of Article I, § 24 are not controlled by the federal courts' construction and application of the Equal Protection Clause," *Malan,* 693 P.2d at 670; *see also Ryan v. Gold Cross Servs., Inc.*, 903 P.2d 423, 426 (Utah 1995), and "[w]e have recognized that article I, section 24 ... establishes different requirements from the federal Equal Protection Clause." *Whitmer v. City of Lindon,* 943 P.2d 226, 230 (Utah 1997).

Gallivan v. Walker, 2002 UT 89, ¶ 33.

to determine compliance with the Uniform Operation of Laws Clause remains the same in all cases; however, the level of scrutiny given to legislative enactments varies. *Blue Cross*, 779 P.2d at 637 (stating this provision operates to restrain the legislature from "classifying persons in such a manner that those who are similarly situated with respect to the purpose of a law are treated differently by the law").

Under Utah law,

> A law does not operate uniformly if persons similarly situated are not treated similarly or if persons in different circumstances are treated as if their circumstances were the same. In other words, [w]hen persons are similarly situated, it is unconstitutional to single out one person or group of persons from among the larger class on the basis of a tenuous justification that has little or no merit."

Id. ¶ 37 (cleaned up). The Uniform Operation of Laws Clause "protects against discrimination within a class and guards against disparate *effects* in the application of laws." *Id.* ¶ 38 (emphasis added). The courts have a responsibility to determine "whether a classification operates uniformly on all persons similarly situated within constitutional parameters." *Id.* Utah laws must not "operate unequally, unjustly, and unfairly upon those who come within the same class." *Blackmarr v. City Ct. of Salt Lake City,* 86 Utah 541, 38 P.2d 725, 727 (1934).

Gallivan v. Walker is not a redistricting case, however, the principles espoused in the context of apportionment are no less applicable here. Notably, the *Gallivan* Court stated: "Since the achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment, we conclude that the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators. Diluting the weight of votes because of place of residence impairs basic constitutional rights under the Fourteenth Amendment just as much as invidious discriminations based upon factors such as race or economic status." *Gallivan*, 2002 UT 89, ¶ 72 (citing *Reynolds v. Sims,* 377 U.S. 533,

565–66, 84 S. Ct. 1362 (1964) (citing *Brown v. Bd. of Educ.*, 347 U.S. 483, 74 S.Ct. 686 (1954))). *Gallivan* also recognized that "[w]eighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems just." *Id.*

Plaintiffs assert that the right to vote is fundamental, and therefore heightened scrutiny applies based on the test set forth in *Gallivan*, 2002 UT 89, ¶¶ 42-43. Defendants, on the other hand, argue that because no fundamental or critical right or suspect classifications are implicated, the "rational basis" test, set forth in *State v. Angilau*, 2011 UT 3, ¶ 12, 245 P.3d 745, applies. At this stage, the Court need not decide which test applies as a matter of law because Plaintiffs have alleged facts sufficient to satisfy both standards.

Plaintiffs sufficiently allege facts to support that heightened scrutiny should apply. Plaintiffs have alleged that the 2021 Congressional Plan affects their fundamental right to vote. (Compl. ¶¶ 2, 261-262, 276-277, 301-307.) They have alleged that their right to vote has been burdened, diluted, impaired, abridged and is effectively meaningless, solely because of their political views and past votes. (*Id.*) The *Gallivan* court recognizes the right to vote as fundamental, stating:

> [n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.

Id. (citing *Reynolds*, 377 U.S. at 560 (1964)).

Under the Uniform Operation of Laws analytical model set forth in *Gallivan*, at this stage, Plaintiffs must allege that (1) the challenged law creates a classification, (2) that the "classification is discriminatory" or "treats the members of the class or subclasses disparately," and that it is (3) reasonably necessary to further a legitimate legislative goal. *Id.* ¶¶ 42-43.

First, Plaintiffs allege that the 2021 Congressional Plan, like the multi-county signature requirement in *Gallivan*, operates to create classifications. (Pls.' Opp'n at 34.) Plaintiffs allege that the district boundary arbitrarily classifies voters based on partisan affiliation and geographic location. (Compl. ¶¶ 4, 207-227, 274-275.) *Gallivan* recognized that the multi-county signature requirement created two subclasses of registered voters based on where they lived, rural and urban voters. *Gallivan*, 2002 UT 89, ¶ 44. Defendants contend that party affiliation is not a "suspect classification." However, at this stage, Plaintiffs have alleged, and this Court accepts as true, that the 2021 Congressional Plan operates to classify voters by both partisan affiliation and geographic location.

Second, Plaintiffs allege that the 2021 Congressional Plan treats similarly situated voters disparately. (*Id.* ¶¶ 4, 15, 23, 29-33, 36, 130, 187-198, 271-276.) Plaintiffs allege that Utah's Republican and non-Republican voters are similarly situated for redistricting purposes because both groups are entitled to equally weighted votes. The same is true for voters living in both urban and rural settings. Plaintiffs allege that the 2021 Congressional Plan diminishes the voting strength of non-Republican and urban voters, while amplifying the strength of Republican and rural voters. (*Id.* ¶¶ 30-33, 36, 188, 265, 276.)

Third, Plaintiffs sufficiently allege that there is no "legitimate" legislative goal in seeking a partisan advantage through redistricting, which effectively pre-determines election outcomes, targets disfavored voters, dilutes their vote and shifts voting power from all the people to a subset of people. (*Id.* ¶¶ 270-82.) They also allege there is no legitimate interest in amplifying the interests of rural or suburban voters to the detriment of urban voters.[22] (*Id.* ¶ 280.) Plaintiffs

[22] The *Gallivan* Court held that the multi-county signature requirement did not further a legitimate legislative purpose because it "invidiously discriminates against urban registered voters in violation of the one person, one vote principle." *Gallivan*, 2002 UT 89, ¶ 49.

also allege that Defendants' stated justification for the placement of district boundaries, to ensure an urban/rural mix, was merely a pretext to ensure partisan advantage and dilution of non-Republican votes. (*Id.* ¶¶ 177, 187-197.) Accepting these facts and the facts in the Complaint as true, Plaintiffs have stated a claim for equal protection under the Uniform Operation of Laws Clause.

Defendants contend that no fundamental right is implicated, and that partisan affiliation is not a suspect classification. As such, they maintain the Court should apply the rational basis standard. Based on that standard, Defendants assert that "the Legislature voted on congressional district lines for the *reasonable* purpose of ensuring balance of urban and rural areas in each congressional district." (Defs.' Mot. at 26 (citing Compl. ¶ 187).). Defendants' argument goes to the merits of Plaintiffs' claim, rather than to whether they have sufficiently stated a claim. While the Complaint does reflect that proponents of the 2021 Congressional Plan represented that the district lines were "necessary" to balance urban and rural interests, it does not state that the purpose was reasonable. In addition, Defendants ignore paragraphs 188 to 198 of the Complaint, in which Plaintiffs allege that rationale was a pretext. On a motion to dismiss, this Court does not decide the merits. Rather, it assumes the well-pleaded facts in the Complaint to be true. Plaintiffs allege that Defendants' urban/rural justification is merely a pretext. For purposes of this motion, this Court assumes that fact to be true. This Court cannot, at this stage, resolve disputes of fact or make credibility determinations.

Even reviewed under the rational basis test, Plaintiffs' Complaint still states a claim. Under that standard, this Court considers: "(1) whether the classification is reasonable; (2) whether the objectives of the legislative action are legitimate, and (3) whether there is a

reasonable relationship between the classification and the legislative purpose."[23] *State v. Angilau*, 2011 UT 3, ¶ 21, 245 P.3d 745 (internal quotation marks omitted). Courts will "uphold a statute under the rational basis standard if [the statute] has a reasonable relation to a proper legislative purpose, and [is] neither arbitrary nor discriminatory." *Id.* ¶ 10 (internal quotation marks omitted) (second alteration in original) (emphasis added). Assuming factors one and three are established, the Complaint alleges sufficient facts to show that there is no legitimate legislative objective in either seeking partisan advantage through redistricting or in establishing districts to predetermine the outcome of elections and to ensure that incumbents continue to hold their seats.

For the reasons stated above, Plaintiffs have stated an equal protection claim under both a heightened scrutiny and rational basis standard. The Motion to Dismiss Count Two is DENIED.

c. Plaintiffs Sufficiently State a Claim for Violation of Plaintiffs' Right to Free Speech and Association (Count Three).

Defendants assert that the 2021 Congressional Plan and the congressional district boundaries established therein neither implicate nor violate Plaintiffs' Free Speech and Association rights. The Court disagrees.

Article I, Section 1 of the Utah Constitution states that "[a]ll persons have the inherent and inalienable right to . . . assemble peaceably, . . . petition for redress of grievances, [and to] communicate freely their thoughts and opinions, being responsible for the abuse of that right." Utah Const. art. I, § 1. Article I, Section 15 states, in pertinent part, that "[n]o law shall be passed to abridge or restrain the freedom of speech." Utah Const. art. I, § 15. The Utah Supreme Court has explained that together, Sections 1 and 15 of Article I "prohibit laws which either directly

[23] The Court also notes that whether a classification is in fact "reasonable" or whether legislative objectives are "legitimate" are inherently factual determinations. At this stage, the Court cannot "find facts" nor decide if the classification is "reasonable" or if the legislative objectives are "legitimate," without a developed factual record. On a motion to dismiss, the only issue before the Court is whether Plaintiffs have alleged sufficient facts to state a claim under Utah's Uniform Operation of Laws Clause.

limit protected [free speech] rights or indirectly inhibit the exercise of those rights." *Am. Bush*, 2006 UT 40, ¶ 21 (noting drafter of Utah's Constitution borrowed heavily from other state constitutions and the United States Constitution and finds its roots in English common law). Notably, the United States Supreme Court has recognized a First Amendment interest in voting. *Doe v. Reed*, 561 U.S. 186, 224 (2010) (Scalia, J., concurring) (citing *Burdick v. Takushi*, 504 U.S. 428, 438 (1992)); *Burdick*, 504 U.S. at 438 (observing that "voters express their views in the voting booth.").

The role of free speech is central to our representative democracy. In *American Bush*, the Utah Supreme Court discussed the history of free speech in Utah. 2006 UT 40, ¶ 13. That court recognized that "[t]he framers of Utah's constitution saw the will of the people as the source of constitutional limitations upon our state government." *Id.* And, because "'[a]ll political power is inherent in the people,' only Utah's citizens themselves had the right to limit their own sovereign power to act through their elected officials." *Id.* ¶ 14 (citing Utah Const. art. I, § 2). "'Once one accepts the premise of the Declaration of Independence—that governments derive 'their just powers from the consent of the governed'—it follows that the governed must, in order to exercise their right of consent, have full freedom of expression both in forming individual judgments and in forming the common judgment.'" *Harper*, 868 S.E.2d at 545 (citing Thomas I. Emerson, *The System of Freedom of Expression* 7 (1970)).

Plaintiffs allege that the 2021 Congressional Plan divides up the only two predominately Democratic counties in Utah. Salt Lake County is divided among the four congressional districts; Summit County is divided among two. Fifteen municipalities are divided up into thirty-two pieces, and numerous communities of interest, school districts, and racial and ethnic minority communities are divided. (*See generally* Compl. ¶¶ 205-45, 250-51, 254.) Plaintiffs allege free

speech and association rights have in fact been burdened by these new boundaries. Urban neighborhoods, school districts and communities of interests – that may share common goals and interests based on proximity – do not vote with neighbors within a five-minute walk; they now vote with other rural voters who live eighty to three hundred miles away. (*Id.* ¶¶ 242-251.) The proximity between voters discourages, burdens, or effectively impacts free speech and association. Plaintiffs allege that these predominately democratic communities were intentionally divided or "cracked" solely because of their political views and past votes. (*Id.* ¶¶ 192, 275.) The effect of the "cracking" is that their non-Republican views are subordinated, votes are diluted, voices are silenced, and Republican-advantage and control is locked in in all four congressional districts for the next decade. (*Id.* ¶¶ 36, 275, 293-94.)

Plaintiffs allege that partisan gerrymandering as reflected in the 2021 Congressional Plan violates their free speech and association protections. They allege the 2021 Congressional Plan is both discriminatory and retaliatory and based solely on their protected political views and past votes. (Compl. ¶ 3-4, 36, 205-207. 209, 283-97.) Plaintiffs allege that the 2021 Congressional Plan burdens free speech and association in multiple ways. Specifically, it "restrains and mutes Plaintiffs' ability to express their viewpoints," "abridges the ability of voters with disfavored views to effectively associate with other people holding similar viewpoints," "impairs Plaintiffs' ability to recruit volunteers, secure contributions, and energize other voters to support Plaintiffs' expressed political views and associations," "retaliates against Plaintiffs for exercising political speech that Defendants disfavor," "prevent[s] [voters] from being able to associate and elect their preferred candidates who share their political views," divides Plaintiffs "to make their voices too diluted to be heard and guarantee they are not represented in any meaningful way because of

their disfavored views," and dilutes non-Republican votes. (*See generally* Compl., Compl. ¶¶ 289-294.)

Defendants assert that the Free Speech and Association Clauses do not apply to the redistricting process. (Defs.' Mot. at 26.) Defendants contend that the placement of a congressional district boundary "does not in any way restrict an individual's speech or impair an individual's ability to communicate," citing two federal district court cases, *Radogno v. Ill. State Bd. Of Elections*, No. 11-CV-04884, 2011 WL 5025251 (N.D. Ill. Oct. 21, 2011) and *Johnson v. Wis. Elections Comm'n*, 967 N.W.2d 469, 487, but without any legal analysis. (Defs.' Reply at 26-27.)

In *Radogno*, the federal district court rejected Plaintiffs' First Amendment claims, holding that such rights were not burdened by the redistricting plan at issue. Specifically, the *Radogno* Court reasoned:

> Plaintiffs are every bit as free under the new redistricting plan to run for office, express their political views, endorse and campaign for their favorite candidates, vote, or otherwise influence the political process through their expression. Plaintiffs' freedom of expression is simply not burdened by the redistricting plan. It may very well be that Plaintiffs' ability to successfully elect their preferred candidate is burdened by the redistricting plan, but that has nothing to do with their First Amendment rights.

Radogno, 2011 WL 5025251, at *7 (N.D. Ill. Oct. 21, 2011).[24] *Radogno*'s First Amendment analysis of partisan political gerrymandering, under federal law, makes sense and is persuasive generally. However, that rationale may not apply to every case or to every fact scenario. In addition, it is not binding on this Court.

[24] Notably, the *Radogno* court did not dismiss outright plaintiffs' equal protection claim under the Fourteenth Amendment, but instead granted plaintiffs' leave to amend to plead a "workable test" or "reliable standard" to evaluate such claim. *Radogno*, 2011 WL 5025251, at *6 (discussing generally partisan gerrymandering cases under federal law, noting that some have reached the conclusion that they are justiciable, but not solvable).

In *Johnson v. Wis. Elections Comm'n*, the Wisconsin Supreme Court noted that in *Rucho v. Common Cause*, 204 L. Ed. 2d 931, 139 S. Ct. 2484, 2499–500 (2019), "[t]he United States Supreme Court recently declared there are no legal standards by which judges may decide whether maps are politically 'fair.'" *Johnson*, 2021 WI 87, ¶ 3, 399 Wis. 2d 623, 631. The *Johnson* court agreed that "fairness" is not a judicially manageable standard and that "deciding what constitutes 'fair' partisan divide . . . would encroach on the constitutional prerogatives of the political branches." *Id.* ¶ 45. The court emphasized that it would not decide whether the maps were fair but would fulfill its judicial role of "declaring what the law is and affording the parties a remedy for its violation." Like the *Johnson* court, this Court is not asserting that it has a role in deciding "fairness." And Plaintiffs here are not arguing that the 2021 Congressional Plan is unfair. They assert that it violates the Utah Constitution, and, as previously emphasized, the Court does not hesitate to engage in constitutional review.

Defendants also assert that the Free Speech and Association clauses of the Utah Constitution do not protect the redistricting process because "the framers of our [Utah] constitution . . . envisioned a limited freedom of speech." *Am. Bush*, 2006 UT 40, ¶ 42. The *American Bush* case, however, has only minimal relevance, if any, to this specific issue. *American Bush* did not involve redistricting, allegations of gerrymandering or voting rights. Instead, the *American Bush* court characterized the right to free speech as "limited" while discussing whether obscenity—in that case, nude dancing—was protected speech. *Am. Bush*, 2006 UT 40, ¶¶ 31-58. Consequently, the holding that the Utah Constitution's free speech protections do not extend to obscenity has little, if any, relevance to the issues at bar. Notably, unlike obscenity, voting is a fundamental right, and its exercise is a form of protected speech.

Laws v. Grayeyes, 2021 UT 59, ¶ 61 (stating "the right to vote is sacrosanct"); *Doe v. Reed*, 561 U.S. at 224 (recognizing a First Amendment interest in voting).

Defendants also assert there can be no First Amendment violation because Plaintiffs have no right to political success. *See Cook v. Bell*, 2014 UT 46, ¶ 34, 344 P.3d 634 (addressing whether the Legislature's limits on the right to initiative imposed severe restrictions on free speech and association). The Court does agree that "First Amendment jurisprudence . . . does not guarantee unlimited participation in political activity, nor does it establish a right to political success." *Id.* ¶ 57. However, it does protect "individuals from regulations that directly discourage or prohibit political expression." *Id.*

This Court notes there is a distinction between incidental political impacts that flow from neutral government action and government action aimed at discouraging, burdening, or prohibiting speech and association in order to secure an electoral advantage. Where "one-party rule is entrenched [because] voters approve of the positions and candidates that the party regularly puts forward," courts cannot and should not intervene in a neutrally administered electoral system. *New York State Bd. Of Elections v. Lopez Torres*, 552 U.S. 196, 208, 128 S. Ct. 791 (rejecting argument that "one-party rule" demands application of First Amendment to ensure competition or a "fair shot at party endorsement"). But when a state takes steps, under either election laws or by redistricting, to grant its preferred party a durable monopoly, this deviation from neutrality undermines the competitive mechanism that undergirds the democratic process, and it burdens a voters' right to participate in a fair election. *See Williams v. Rhodes*, 393 U.S. 23, 31-32, 89 S. Ct. 5, 10-11 (1968) (holding Ohio's ballot-access laws, which favored the long-established Republican and Democratic parties, placed an unequal burden on the right to vote

and the right to associate to form a new political party).[25] "There is no right more basic in our democracy than the right to participate in electing our political leaders." *McCutcheon v. FEC,* 572 U.S. 185, 191, 134 S. Ct. 1434, 1444 (2014). As such, the government cannot and should not "restrict political participation of some in order to enhance the relative influence of others." *Id.*

In *Harper v. Hall,* the North Carolina Supreme Court recognized that there is a cognizable claim for violation of free speech and association rights based on partisan gerrymandering. *Harper v. Hall*, 868 S.E.2d 499, 546 (N.C. 2022). The North Carolina Supreme Court stated:

> When legislators apportion district lines in a way that dilutes the influence of certain voters based on their prior political expression—their partisan affiliation and their voting history—it imposes a burden on a right or benefit, here the fundamental right to equal voting power on the basis of their views. When the General Assembly systematically diminishes or dilutes the power of votes on the basis of party affiliation, it intentionally engages in a form of viewpoint discrimination and retaliation that triggers strict scrutiny."

Id. (holding congressional map subject to strict scrutiny and requiring it to be "narrowly tailored to advance a compelling governmental interest"). This practice "distorts the expression of the people's will." *Id.* Under these circumstances, "[t]he diminution or dilution of voting power based of partisan affiliation . . . suffices to show a burden on that voter's speech and associational rights." *Id.* ¶ 161. This Court is persuaded that partisan gerrymandering that effectively entrenches a state's preferred party in office discriminates on the basis of viewpoint dilutes the

[25] In *Williams,* the State of Ohio asserted "that it has absolute power to put any burdens it pleases on the selection of electors because of the First Section of the Second Article of the Constitution, providing that 'Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors . . . to choose a President and Vice President." *Williams*, 393 U.S. at 28–29. While noting that there "can be no question but that this section does grant extensive power to the States to pass laws regulating the selection of electors," the Court stated: "the Constitution is filled with provisions that grant Congress or the States specific power to legislate in certain areas; these granted powers are always subject to the limitation that they may not be exercised in a way that violates other specific provisions of the Constitution. *Id.*

non-favored party's vote, burdens / impairs the citizens' rights to exercise a meaningful vote and to associate. *See Vieth*, 541 U.S. at 314 (Kennedy, J, concurring); *see also Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. at 2658.

Plaintiffs assert that heightened scrutiny applies to the free speech and association claims. Plaintiffs have also cited several cases in support of that assertion. *See, e.g., Reed v. Town of Gilbert*, Ariz., 135 S. Ct 2218, 2227 (2015); *Harper v. Hall*, 868 S.E.2d at 546. In their Reply, Defendants do not challenge that contention or seek to distinguish these cases with respect to this issue. Thus, in the absence of any contrary argument or authority, the Court assumes, for purposes of analyzing the motion at bar, that strict scrutiny applies to the free speech and association claims.[26] Based on the factual allegations in the Complaint, which this Court must accept as true, Plaintiffs have sufficiently alleged that the 2021 Congressional Plan violates their rights to free speech and association because it discourages and burdens political expression, is discriminatory and retaliatory based on disfavored political views and past voting history, and it dilutes Plaintiffs' voting power. (*See generally* Compl.; Compl. ¶¶ 288-294.) Plaintiffs also allege that Defendants have "cracked" and "packed" the congressional voting districts to intentionally dilute the voting power of those who have disfavored views, namely Democrats.

Plaintiffs also have sufficiently alleged that there is no compelling or legitimate government interest in drawing congressional district boundaries to give Republicans an electoral advantage, to the detriment of non-Republican voters' right to free speech and association. (*Id.* ¶ 295.) Plaintiffs also allege the 2021 Congressional Plan is not narrowly

[26] By applying strict scrutiny for purposes of this Motion, the Court is not necessarily ruling that Plaintiffs' assertion is correct. But given the briefing and accepting the factual allegations in the Complaint as true, including that the Legislature intentionally drawing the maps to punish Plaintiffs for expressing disfavored views, the Court adopts this standard solely for the purpose of determining if Plaintiffs have stated a viable claim for relief.

tailored to serve any legitimate state interest. (*Id.* ¶ 296.) Plaintiffs have sufficiently stated a claim for violation of their Free Speech and Association rights.

For the reasons stated above, Defendants' Motion to Dismiss Count Three is DENIED.

d. Plaintiffs Sufficiently State a Right to Vote Claim (Count Four).

Defendants assert Plaintiffs fail to state a claim for violation of the Right to Vote Clause. Defendants also argue, without citation to any legal authority, that the Right to Vote Clause was intended to deal solely with voter qualifications and that there is no basis in Utah law to interpret the provision to guarantee anything other than the right to physically cast a ballot. Defendants also argue that the 2021 Congressional Plan does not prevent Plaintiffs or any other qualified Utah citizens from voting, therefore there can be no constitutional violation. (Defs.' Mot. at 27-28; Defs.' Rep. at 25-26.) The Court disagrees.

The Right to Vote Clause provides that "[*e*]*very citizen* of the United States, eighteen years of age or over, who makes proper proof of residence in this state for thirty days next preceding any election, or for such other period as required by law, *shall be entitled to vote in the election.*" Utah Const. art. IV, § 2 (emphasis added).[27] Utah law unequivocally acknowledges that the right to vote is fundamental to our democracy and our representative form of government. *Rothfels v. Southworth*, 11 Utah 2d 169, 176, 356 P.2d 612, 617 (1960).[28] In fact, it is said to be "more precious in a free country" than any other right. *Gallivan*, 2002 UT 89, ¶ 24 (quoting *Reynolds*, 377 U.S. at 560). If the right "of having a voice in the election of those who

[27] The Court notes that neither party presented any arguments regarding the plain meaning of this clause, historical evidence regarding the drafting or adoption of this clause or discussed any particular test to be applied.

[28] "The right to vote and to actively participate in its processes is among the most precious of the privileges for which our democratic form of government was established. The history of the struggle of freedom-loving men to obtain and to maintain such rights is so well known that it is not necessary to dwell thereon. But we re-affirm the desirability and the importance, not only of permitting citizens to vote but of encouraging them to do so." *Rothfels v. Southworth*, 11 Utah 2d 169, 176, 356 P.2d 612, 617 (1960).

make the laws under which, as good citizens, we must live," is undermined, "[o]ther rights, even the most basic, are illusory. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges that right." *Id.*

Defendants argue that the Right to Vote Clause deals solely with voter qualifications, implying that it only applies when voter qualifications are at issue. While this clause includes qualifications required to exercise the right, the right to vote is nonetheless expressly guaranteed.

Defendants also assert that this clause guarantees only the right to physically cast a vote. Defendants cite no authority to support such a limited interpretation of this specific clause. To the contrary, when interpreting constitutional provisions, the Utah Supreme Court has stated that individual constitutional provisions

> cannot properly be regarded as something isolated and absolute but must be considered in the light of its background and the purpose it was designed to serve; and in relation to other fundamental rights of citizens set forth in the entire Constitution which are essential to the proper functioning of our democratic from of government. One of the principal merits of our system of law and justice is that it does not function by casting reason aside and clinging slavishly to a literal application of one single provision of law to the exclusion of all others. Its policy is rather to follow the path of reason in order to avoid arbitrary and unjust results and to give recognition in the highest possible degree to all of the rights assured by all of the Constitutional provisions.

Shields v. Toronto, 16 Utah 2d 61, 63, 395 P.2d 829, 830 (1964) (interpreting Article VI, Section 7 of the Utah Constitution in reference to the right to vote).[29] In interpreting this provision, the Court should consider the entire Utah Constitution and its purpose, including the Free Elections Clause, the Equal Protection Clause, the Free Speech and Association Clauses and the long line

[29] Notably, the *Shields* Court recognized the historical and "continuing expansion of the right of suffrage in this country." *Shields v. Toronto*, 16 Utah 2d 61, 66 n. 12, 395 P.2d 829, 833 n. 12 (1964). While discussing the right to vote in the context of voting "freely for the candidate of one's choice," the Court stated that voting "is of the essence of a democratic society, and any restrictions on that right strike at the essence of a representative government." *Id.* Every citizen should have a "right to a vote free of arbitrary impairment by state action." *Id.*

of cases generally discussing the "right to vote." The plane language of the Right to Vote clause guarantees the right. But, read in light of the entire Utah Constitution, the right to vote clearly guarantees more than the physical right to cast a ballot.

Utah law has recognized that the right to vote must be "meaningful." *Shields*, 395 P.2d at 832-33 (explaining "[t]he foundation and structure which give [our democratic system of government] life depend upon participation of the citizenry in all aspects of its operation."). The right must not be "unnecessarily abridged" or "diluted." *Gallivan*, 2002 UT 89, ¶ 72 (stating "'[w]eighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable.'" (quoting *Reynolds*, 377 U.S. at 565-66, 84 S.Ct.). And the right to vote "cannot be abridged, impaired, or taken away, even by an act of the Legislature." *Earl v. Lewis*, 28 Utah 116, 77 P. 235, 237-38 (Utah 1904). The goal of an election "is to ascertain the popular will, and not to thwart it," and "aid" in securing "a fair expression at the polls." *Id.*[30]

Here, Plaintiffs allege that the Legislature drew the 2021 Congressional Map in a way to render Plaintiffs' votes meaningless. While they still can engage in the act of voting, Plaintiffs' votes no longer have any effect. Specifically, Plaintiffs allege that the 2021 Congressional Plan "achieves this extreme partisan advantage for Republicans primarily by cracking Utah's large and concentrated population of non-Republican voters, centered in Salt Lake County, and dividing them between all four of Utah's congressional districts to eliminate the strength of their

[30] There is only one Utah case specifically addressing the Right to Vote Clause. *See Dodge v. Evans*, 716 P.2d 270, 273 (Utah 1985). In *Dodge*, a prison inmate challenged a law requiring him to vote in the county in which he resided prior to incarceration rather than in the county in which he was incarcerated. Plaintiff alleged that his right to vote under the Right to Vote Clause was in effect denied. *Id.* at 272-73. In analyzing that claim, the Utah Supreme Court stated, "Dodge made no contention that his right to vote was improperly burdened, conditioned or diluted." *Id.* at 273. The implication is that a claim under the right to vote clause may include an allegation that the right was "improperly burdened, conditioned or diluted."

voting power." (Compl. ¶ 207.) The result is that the 2021 Congressional Plan "draw[s] district lines to predetermine winners and losers." (Compl. ¶ 306.) Their disfavored vote is meaningless, diluted, impaired and infringed due to the intentional partisan gerrymandering. (*Id.* ¶ 304-06.) In addition, because the election outcomes are now predetermined for the next ten years, the true public will cannot be ascertained and is effectively distorted. (*Id.* ¶ 305-09.) Plaintiffs also allege that this impairment serves no legitimate public interest.[31] (*Id.*) Assuming these facts in the Complaint to be true, the Court concludes that Plaintiffs have properly stated a claim under the Right to Vote Clause.

Defendants' Motion to Dismiss Count Four is therefore DENIED.

IV. Plaintiffs Fail to State a Claim Under Count Five the "Unauthorized Repeal of Proposition 4."

Finally, Defendants assert that the fifth claim should be dismissed because the Legislature's amendment or repeal of Proposition 4 does not violate the Inherent Political Powers and Initiative Clauses of Utah Constitution. The Court agrees.

Plaintiffs' fifth claim alleges that when the Legislature replaced the citizen-enacted Proposition 4 with SB 200, the Legislature infringed on the people's inherent political powers and initiative rights under the Utah Constitution. (Compl. ¶¶ 315-17). The Initiative Clause of the Utah Constitution states, in relevant part: "The legal voters of the state of Utah, in the numbers, under the conditions, in the manner, and within the time provided by statute, may: (A) initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, as provided by statute." Utah Const. art. VI, § 1(2)(a)(i)(A). The Inherent Political Powers Clause provides that "All political power is inherent

[31] The Court notes that neither party has addressed the appropriate standard to be applied in this case, i.e., strict scrutiny or rational basis, for Plaintiffs' Right to Vote claim. However, reviewing Plaintiffs' Complaint, the Court concludes that Plaintiff has sufficiently pled a claim under either standard.

in the people; and all free governments are founded on their authority for their equal protection and benefit, and they have the right to alter or reform their government as the public welfare may require." Utah Const. art. I, § 2. Plaintiffs argue that the Legislature violated these clauses by passing SB 200, effectively repealing Proposition 4, which had been put in place via citizen initiative.

The Utah Supreme Court has explained that "[u]nder [Article I, Section 2], upon which all our government is built, the people have the inherent authority to allocate governmental power in the bodies they establish by law." *Carter v. Lehi City*, 2012 UT 2, ¶ 21, 269 P.3d 141. Under this authority, "the people of Utah divided their political power," vesting

> "The Legislative power of the State" in two bodies: (a) "the Legislature of the State of Utah," and (b) "the people of the State of Utah as provided in Subsection (2)." [Utah Const.] art. VI, § 1(1). On its face, article VI recognizes a single, undifferentiated "legislative power," vested both in the people and in the legislature. Nothing in the text or structure of article VI suggests any difference in the power vested simultaneously in the "Legislature" and "the people." *The initiative power of the people is thus parallel and coextensive with the power of the legislature*. This interpretation is reinforced by the history of the direct-democracy movement, by constitutional debates in states with constitutional provisions substantially similar to Utah's article VI, and by early judicial interpretations of those provisions.

Id. ¶ 22 (emphasis added). In further explaining this shared legislative power, the Utah Supreme Court has stated, "[t]he power of the legislature and the power of the people to legislate through initiative and referenda are coequal, coextensive, and concurrent and share equal dignity." *Gallivan v. Walker*, 2002 UT 89, ¶ 23, 54 P.3d 1069.

The Utah Constitution and Utah law unequivocally recognizes the importance of its citizens' right to initiate legislation to alter or reform their government. Utah Const. art. I, § 2; *Gallivan*, 2002 UT 89, ¶ 23; *Utahns For Better Dental Health-Davis, Inc. v. Davis Cnty. Clerk*, 2007 UT 97, ¶ 10. This is clear. The Constitution, however, does not restrict or limit, in any way, the Legislature's ability to amend or repeal citizen-initiated laws after they become effective.

Through their coequal power, both the Legislature and the people can enact, amend, and repeal legislation. The people can repeal legislation enacted by the Legislature through their referendum power, with some limitation. *See* Utah Const. art. VI, § (2)(a)(1)(B). The Utah Constitution, caselaw, and historical practice, however, shows that the Legislature can amend and repeal legislation enacted by citizen initiative, without limitation.

When we interpret the Utah Constitution, the starting point is the text itself. *Univ. of Utah v. Shurtleff*, 2006 UT 51, ¶ 19, 144 P.3d 1109 (internal quotation marks omitted). In evaluating legislative authority, the provisions in the Utah Constitution are construed as "limitations, rather than grants of power." *Parkinson v. Watson*, 291 P.2d 400, 405 (Utah 1955); *Shurtleff*, 2006 UT 51, ¶ 18 ("The Utah Constitution is not one of grant, but one of limitation."). Article VI of the Utah Constitution vests legislative authority in both the Legislature and the people. *See* Utah Const. art. VI, § 1(1). Notably, the text of article VI broadly confers legislative authority on the Legislature without any express limitation on the Legislature's ability to pass or repeal laws. *See id.* art. VI, § 1(a).

In contrast, the ability of the people to enact or repeal legislation, however, is specifically limited by the text of the Constitution.[32] *See id.* art. VI, § 1(b) (stating that "Legislative power" is "vested in … the people of the State of Utah as provided in Subsection (2)"). In fact, subsection 2 of article VI explicitly restricts the people's referendum power—or the ability to repeal laws

[32] The citizens' right to legislate through the initiative process is also limited by the plain language of the Utah Constitution. *Gallivan v. Walker*, 2002 UT 89, ¶ 172, 54 P.3d 1069, 1118. Article VI, section (2)(a)(i)(A) states: "The legal voters of the State of Utah, in the numbers, *under the conditions, in the manner, and within the time provided by statute*, may initiate any desired legislation and cause it to be submitted to the people for adoption upon a majority vote of those voting on the legislation, *as provided by statute*." Utah Const. art. VI, § 2(a)(i)(A). Notably, it is the Legislature that establishes the statutory requirements to initiate, submit and vote on any citizen initiative. *See Sevier Power Co., LLC v. Bd. of Sevier Cty. Comm'rs*, 2008 UT 72, ¶ 10, 196 P.3d 583.

enacted by the Legislature—to laws that were passed with less than a 2/3 majority vote by the Legislature. *See id.* art. VI, § 2(a)(1)(B).

Given the absence of anything in the Utah Constitution that restricts the Legislature's ability to repeal laws enacted via initiative, there is a clear implication that the Legislature has broad authority to enact and repeal laws, including those enacted by citizen initiatives. Reading the Utah Constitution to limit the Legislature's authority to amend or repeal laws originally enacted via citizen initiative would require the Court to read something into the Constitution that is simply not there.[33] The Court declines to do so.

Moreover, Utah law also clearly indicates that the Legislature has power to amend and repeal laws that are passed via citizen initiative.[34] In explaining that the legislative powers of the Legislature and the people are coequal or "parallel," the Utah Supreme Court approvingly quoted the Oregon Supreme Court, which stated that "'[l]aws proposed and enacted by the people under the initiative . . . are subject to the same constitutional limitations as other statutes, and may be amended or repealed by the Legislature at will.'" *Carter*, 2012 UT 2, ¶ 27 (quoting *Kadderly v.*

[33] The Court further notes that Plaintiffs have not provided any facts from the historical record to suggest that such a restriction was intended. Rather, the historical practice and the caselaw indicate that such a restriction was not intended. In contrast to the Utah Constitution, the constitutions of ten other states expressly restrict their respective legislatures' authority to amend or repeal the statutes/law enacted from a successful citizen initiative. *See* Alaska (Alaska Const. art. XI, § 6); Arizona (Ariz. Const. art. IV, pt. 1, § 1(6)(B)-(C)); Arkansas (Ark. Const. art. V, § 1); California (Cal. Const. art. II, § 10); Michigan (Mich. Const. art. II, § 9; art. XII, § 2); Nebraska (Neb. Const. art. III, § 2); Nevada (Nev. Const. art. XIX, §§ 1-2); North Dakota (N.D. Const. art. III, § 8); Washington (Wash. Const. art. II, § 1); and Wyoming (Wyo. Const. art. III, § 52). Given the lack of any textual limitation, the history of the Legislature repealing citizen initiatives, and examples of other state constitutions that do contain express limits on their respective legislature's ability to make changes to citizen-initiated laws, it would clearly be improper for the Court to read such a limitation into Utah's Constitution.

[34] Utah law also specifically authorizes the Legislature to amend citizen-initiated or approved laws. Under Utah Code Ann. Section 20A-7-212(3)(b), "[t]he Legislature may amend any initiative approved by the people at any legislative session" and Subsection 20A-7-311(5)(b) provides that "[t]he Legislature may amend any laws approved by the people at any legislative session after the people approve the law." The Court agrees with Defendants that adopting Plaintiffs' argument *could* create certain practical challenges to the maintenance of the Utah Code in that the Legislature would be precluded from correcting typographical errors and making any changes, substantive or otherwise. Other than the authority provided in the above-cited statutes, there is no other process or procedure to manage changes to citizen-initiated laws.

City of Portland, 44 Or. 118, 74 P. 710, 720 (1903). Thus, the Utah Supreme Court has seemingly recognized that the Legislature may repeal initiative-enacted law.

Likewise, the Legislature's amendment or effective repeal of Proposition 4 / Title 20A, Chapter 19, Utah Independent Redistricting Commissions Standards Act is in line with historical practice. In 2018, Governor Herbert called a special session of the Utah Legislature to address citizen initiative Proposition 2, the Utah Medical Cannabis Act, the day before it was set to go into effect. *Grant v. Herbert*, 2019 UT 42, ¶ 5, 449 P.3d 122. The Legislature heavily amended the statute, changing many key aspects of the law. *Id.* In response, voters attempted to place the amended statute on the ballot through referendum but were not able to do so because the amendment had passed by a two-thirds vote in the Legislature, making it exempt from referendum. *Id.* ¶ 7. The Utah Supreme Court ultimately upheld Governor Herbert's decision to call the special legislative session which amended Proposition 2. *Id.* ¶¶ 21-24.

In view of the foregoing, including the text of the Utah Constitution, statutory language, the caselaw, and historical practice, the Legislature's exercise of its coequal legislative authority to repeal citizen initiatives does not violate the Citizen Initiative or Inherent Powers Clauses of the Utah Constitution. Therefore, even accepting the factual allegations as true, the Legislature did not act unconstitutionally by either substantially amending or effectively repealing Proposition 4. Plaintiffs' Fifth cause of action, therefore, does not state a valid claim for relief under Utah law. Accordingly, the Court GRANTS Defendants' Motion to Dismiss with respect to Count Five in the Complaint.

CONCLUSION

For the reasons stated above:

(1) The Court DENIES Defendants' Motion to Dismiss Plaintiffs' Complaint for lack of subject matter jurisdiction.

(2) The Court DENIES Defendants' Motion to Dismiss certain Defendants Utah Legislative Redistricting Committee, Senator Scott Sandall, Representative Brad Wilson, and Senator J. Stuart Adams.

(3) The Court DENIES Defendants' Motion to Dismiss Count One (Free Elections Clause), Count Two (Equal Protection Rights), Count Three (Free Speech and Association Rights), and Count Four (Affirmative Right to Vote) of Plaintiffs' Complaint.

(4) The Court GRANTS Defendants' Motion as to Plaintiffs' Count Five. Therefore, Count Five, "Unauthorized Repeal of Proposition 4 in Violation of Utah Constitution's Citizen Lawmaking Authority to Alter or Reform Government" is DISMISSED, with prejudice.

DATED November 22, 2022.

BY THE COURT:

Dianna M. Gibson

DIANNA M. GIBSON
DISTRICT JUDGE

STATE OF UTAH
3RD DISTRICT COURT
SALT LAKE CITY

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 220901712 by the method and on the date specified.

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11/22/2022 /s/ KAYLA DRAKE

Date: _____ _____

Signature

Republican Party of New Mexico v. Oliver

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

July 5, 2023

NO. S-1-SC-39481

MICHELLE LUJAN GRISHAM in her official capacity as Governor of the New Mexico, HOWIE MORALES, in his official capacity as New Mexico Lieutenant Governor and President of New Mexico Senate, MIMI STEWART, in her official capacity as President Pro Tempore of the New Mexico Senate, and JAVIER MARTINEZ, in his official capacity as Speaker of the New Mexico House of Representatives,

Petitioners,

v.

HON. FRED VAN SOELEN, District Court Judge, Fifth Judicial District Court,

Respondent,

and

REPUBLICAN PARTY OF NEW MEXICO, DAVID GALLEGOS, TIMOTHY JENNINGS, DINAH VARGAS, MANUEL GONZALES JR., BOBBY and DEE ANN KIMBRO, and PEARL GARCIA,

Real Parties in Interest,

and

MAGGIE TOULOUSE OLIVER,

Defendant-Real Party in Interest.

ORDER

WHEREAS, this matter initially came on for consideration by the Court upon *verified petition for writ of superintending control and request for stay* and responses thereto;

WHEREAS, this Court granted the request for stay in D-506-CV-2022-00041 on October 14, 2022, and ordered the parties to file briefs on the issues presented in the *verified petition for writ of superintending control*;

WHEREAS, this Court heard arguments in this matter on January 9, 2023, and thereafter ordered the parties to file supplemental briefs addressing the issue of whether the New Mexico Constitution provides greater protection than the United States Constitution against partisan gerrymandering;

WHEREAS, this matter now comes before the Court upon the parties' supplemental briefs and motion to substitute public officer and amend caption;

WHEREAS, the Court having considered the foregoing and being sufficiently advised, Chief Justice C. Shannon Bacon, Justice Michael E. Vigil, Justice David K. Thomson, Justice Julie J. Vargas, and Justice Briana H. Zamora concurring;

NOW, THEREFORE, IT IS ORDERED that the motion to substitute is GRANTED, and Javier Martinez shall be substituted for Brian Egolf as Speaker of the House;

IT IS FURTHER ORDERED that the caption on any further pleadings filed in this proceeding, if any, shall conform to the caption of this order;

IT IS FURTHER ORDERED that the *verified petition for writ of superintending control* is GRANTED with respect to Petitioners' request that this Court provide the district court guidance for resolving a partisan gerrymandering claim;

IT IS FURTHER ORDERED that the stay in D-506-CV-2022-00041 is hereby VACATED, and the district court shall take all actions necessary to resolve this matter **no later than October 1, 2023**;

IT IS FURTHER ORDERED that as a threshold matter, the district court shall conduct a standing analysis for all parties;

IT IS FURTHER ORDERED that in resolving this matter, the district court shall act in accordance with and apply the following holdings and standards as determined herein:

1. A partisan gerrymandering claim is justiciable under Article II, Section 18 of the New Mexico Constitution;

2. A partisan gerrymandering claim under the New Mexico Constitution is subject to the three-part test articulated by Justice Kagan in her dissent in *Rucho v. Common Cause*, 139 S.Ct. 2484, 2516 (2019);

3. Clearly, a district drawn without taking partisan interests into account would not present a partisan gerrymander. *Cf.* N.M. Const. art. II, §§ 2, 3, 4. However, as with partisan gerrymandering under the Fourteenth Amendment, some degree of partisan gerrymandering is

permissible under Article II, Section 18 of the New Mexico Constitution. *Accord Rucho*, 139 S.Ct. at 2497. At this stage in the proceedings, it is unnecessary to determine the precise degree that is permissible so long as the degree is not egregious in intent and effect;

4. Intermediate scrutiny is the proper level of scrutiny for adjudication of a partisan gerrymandering claim under Article II, Section 18 of the New Mexico Constitution. *See Breen v. Carlsbad Municipal Schools*, 2005-NMSC-028, ¶¶ 11-15, 30-32, 138 N.M. 331, 120 P.3d 413;

5. Under one-person, one-vote jurisprudence, some mathematical deviation from an ideal district population may be permissible as "practicable." *Cf. Harris v. Ariz. Indep. Redistricting Comm'n*, 578 U.S. 253, 258-59 (2016) (quoting *Reynolds v. Sims*, 377 U.S. 533, 579 (1964)) ("The Constitution . . . does not demand mathematical perfection. In determining what is 'practicable,' we have recognized that the Constitution permits deviation when it is justified by 'legitimate considerations incident to the effectuation of a rational state policy.'");

6. In the context of a partisan gerrymandering claim, a reasonable degree of partisan gerrymandering—taking into account the inherently political nature of redistricting—is likewise permissible under Article II, Section 18 and the Fourteenth Amendment;

7. In evaluating the degree of partisan gerrymandering in this case, if any, the district court shall consider and address evidence comparing the relevant congressional district's voter registration percentage/data, regarding the individual plaintiffs' party affiliation under the challenged congressional maps, as well as the same source of data under the prior maps. The district court shall also consider any other evidence relevant to the district court's application of the test referenced in paragraph 2 of this order.

IT IS FURTHER ORDERED that a writ of superintending control shall issue contemporaneously with this order; and

IT IS FURTHER ORDERED that an opinion in this matter shall follow.

IT IS SO ORDERED.

WITNESS, the Honorable C. Shannon Bacon, Chief Justice of the Supreme Court of the State of New Mexico, and the seal of said Court this 5th day of July, 2023.

Elizabeth A. Garcia, Clerk of Court
Supreme Court of New Mexico

By _____
Chief Deputy Clerk of Court

I CERTIFY AND ATTEST:
A true copy was served on all parties
or their counsel of record on date filed.
Lynette Somera Cárdenas
Chief Deputy Clerk of the Supreme Court
of the State of New Mexico

An American Dictionary of English Language 1848 Definitions Excerpts

This revised edition contains ALL THE WORDS IN THE QUARTO EDITION, and also an arrangement of SYNONYMS under the leading words—a new and important feature, and not found in any other work.

AN AMERICAN

DICTIONARY

OF THE

ENGLISH LANGUAGE;

EXHIBITING

THE ORIGIN, ORTHOGRAPHY, PRONUNCIATION, AND DEFINITIONS OF WORDS.

BY NOAH WEBSTER, LL.D.

ABRIDGED FROM THE QUARTO EDITION OF THE AUTHOR.

TO WHICH ARE ADDED A

SYNOPSIS OF WORDS

DIFFERENTLY PRONOUNCED BY DIFFERENT ORTHOËPISTS;

AND

WALKER'S KEY

TO THE

CLASSICAL PRONUNCIATION OF GREEK, LATIN, AND SCRIPTURE PROPER NAMES.

Revised and Enlarged,

BY CHAUNCEY A. GOODRICH,

PROFESSOR IN YALE COLLEGE.

WITH THE ADDITION OF A VOCABULARY OF

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figure by which a thing is granted with a view to obtain an advantage.

EP-I-ZEUXIS, *n.* [Gr.] A figure, in *rhetoric*, in which a word is repeated with vehemence, as, *You, you*, Antony.

EP-I-ZŌAN, *n.* } [Gr. *επι* and ζωον.] Terms applied to a
EP-I-ZŌA, *n. pl.* } class of animals, usually vermiform, which live parasitically on other animals; opposed to the *entozoa*.—*Dana*.

EP-I-ZO-OTIC, *a.* [Gr. *επι* and ζωον.] 1. Pertaining to the animals called *epizoans*.—2. In *geology*, an epithet formerly given to such mountains as contain fossil remains. 3. Denoting a disease among animals corresponding to epidemic among men.—*Buchanan*.

EP-I-ZOO-TY, *n.* A murrain or pestilence among irrational animals.

*E PLURIBUS UNUM. [L.] One composed of many; the motto of the United States, consisting of many states confederated.

*EPOCH, } *n.* [L. *epocha.*] 1. A fixed point of time, from
EPOCHA, } which succeeding years are numbered; a point *from* which computation of years begins. 2. Any fixed time or period; the period when any thing begins, or is remarkably prevalent.—SYN. Time; period; era; date; age.

*EPODE, *n.* [Gr. *επωδη.*] In *lyric poetry*, the third or last part of the ode; that which follows the strophe and antistrophe. [The word is now used as the name of any little verse or verses that follow one or more great ones.]

EP-ODIC, *a.* Pertaining to or resembling an epode.

EP-O-PEE', *n.* [Gr. *επος* and ποιεω.] An epic poem. *More properly*, the history, action, or fable, which makes the subject of an epic poem.

EPOS, *n.* [Gr. *επος.*] An epic poem, or its fable or subject.

§*PROU-VETTE' (ā-proo-vet'), *n.* In *gunnery*, a machine for proving the strength of gunpowder.

EPSOM-SALT, *n.* The sulphate of magnesia, a cathartic.

EPU-LA-RY, *a.* [L. *epularis.*] Pertaining to a feast or banquet.—*Bailey*.

EP-U-LATION, *n.* [L. *epulatio.*] A feasting or feast.

EPU-LOSE, *a.* [L. *epulum.*] Feasting to excess.

EP-U-LOSI-TY, *n.* A feasting to excess.

EP-U-LOTIC, *a.* [Gr. *επουλωτικα.*] Healing; cicatrizing.

EP-U-LOTIC, *n.* A medicament or application which tends to dry, cicatrize, and heal wounds or ulcers, to repress fungous flesh, and dispose the parts to recover soundness.

EP-U-RATION, *n.* A purifying. [*Bad.*]

E-QUA-BILI-TY, *n.* 1. Equality in motion; continued equality, at all times, in velocity or movement; uniformity. 2. *Figuratively*, continued equality; evenness or uniformity, as of mind or temper.

†QUA-BLE, *a.* [L. *æquabilis.*] 1. Equal and uniform at all times, as motion. 2. Even; smooth; having a uniform surface or form.

†QUA-BLE-NESS, *n.* State of being equable.

†QUA-BLY, *adv.* With an equal or uniform motion; with continued uniformity; evenly.

†QUAL, *a.* [L. *æqualis.*] 1. Having the same magnitude or dimensions; being of the same bulk or extent. 2. Having the same value. 3. Having the same qualities or condition; as, of *equal* density. 4. Having the same degree; as of rapidity. 5. Even; uniform; not variable; as temper. 6. Being in just proportion. 7. Impartial; neutral; not biased. 8. Indifferent; of the same interest or concern. 9. Just; equitable; giving the same or similar rights or advantages. 10. Being on the same terms; enjoying the same or similar benefits. 11. Adequate; having competent power, ability, or means.—SYN. Even; equable; uniform; adequate; proportionate; commensurate; fair; just; equitable.

†QUAL, *n.* One not inferior or superior to another; having the same or a similar age, rank, station, office, talents, strength, &c.

†QUAL, *v. t.* 1. To make equal; to make one thing of the same quantity, dimensions, or quality as another. 2. To raise to the same state, rank, or estimation with another; to become equal to. 3. To be equal to. 4. To make equivalent to; to recompense fully; to answer in full proportion. 5. To be of like excellence or beauty.

†QUALED, *pp.* Made equal.

†QUAL-ING, *ppr.* Making equal.

E-QUAL'I-TY (e-quol'e-te), *n.* [L. *æqualitas.*] 1. An agreement of things in dimensions, quantity, or quality; likeness; similarity in regard to two things compared. 2. The same degree of dignity or claims. 3. Evenness; uniformity; sameness in state or continued course, as of temper. 4. Evenness; plainness; uniformity, as of a road.

E-QUAL-I-ZA'TION, *n.* The act of equalizing, or state of being equalized.

†QUAL-IZE, *v. t.* To make equal.

†QUAL-IZED, *pp.* Made equal; reduced to equality.

†QUAL-IZ-ING, *ppr.* Making equal.

†QUAL-LY, *adv.* 1. In the same degree with another; alike. 2. In equal shares or proportions. 3. Impartially; with equal justice. [*Equally* should not be followed by *as* but by *with*.]

†QUAL-NESS, *n.* 1. Equality; a state of being equal. 2 Evenness; uniformity.

E-QUAN'GU-LAR (e-quang'gu-lar), *a.* [L. *æquus* and *angulus.*] Consisting of equal angles; equiangular.

E-QUA-NIMI-TY, *n.* [L. *æquanimitas.*] 1. Evenness of mind; that calm temper or firmness of mind which is not easily elated or depressed.

E-QUAN'I-MOUS, *a.* Of an even, composed frame of mind; of a steady temper, not easily elated or depressed.

†QUANT, *n.* In the *Ptolemaic system of astronomy*, an imaginary circle, used for regulating and adjusting certain motions of the planets.

E-QUA'TION (e-kwā'shun), *n.* [L. *æquatio.*] 1. *Literally*, a making equal, or an equal division.—2. In *algebra*, a proposition asserting the equality of two quantities, and expressed by the sign = between them; or an expression of the same quantity in two dissimilar terms, but of equal value, as 3*s.* = 36*d.*—3. In *astronomy*, *equation of time* is the interval by which apparent time differs from mean time.

E-QUA'TOR, *n.* [L.] In *astronomy* and *geography*, a great circle of the sphere, equally distant from the two poles of the world, or having the same poles as the world.

E-QUA-TO'RI-AL, *a.* Pertaining to the equator.

E-QUA-TO'RI-AL, *n.* An astronomical instrument with a telescope, whose motion is on an axis parallel to the axis of the earth, so that when a celestial object is once within the field of view of the telescope, it continues constantly, while above the horizon, in the field.—*D. Olmsted*.

E-QUA-TO'RI-AL-LY, *adv.* So as to have the motions of an equatorial.

*EQUE-RY (ē'kwe-ry), } *n.* [Fr. *ecuyer.*] 1. An officer of
E-QUER'RY (e-kwer'y), } princes or nobles, who has the care of their horses. 2. A large stable or lodge for horses.

E-QUESTRI-AN, *a.* [L. *equester.*] 1. Pertaining to horses or horsemanship; performed with horses. 2. Being on horseback, as a lady. 3. Skilled in horsemanship. 4. Representing a person on horseback, as a statue. 5. Celebrated by horse-races, as games. 6. Belonging to knights; as, the *equestrian* order.

E-QUI-AN'GU-LAR, *a.* [L. *æquus* and *angulus.*] In *geometry*, consisting of, or having equal angles.

E-QUI-BAL'ANCE, *n.* [L. *æquus* and *bilanx.*] Equal weight.

E-QUI-BAL'ANCE, *v. t.* To have equal weight with something.

E-QUI-BAL'ANCED (e-que-bal'anst), *pp.* Giving equal weight.

E-QUI-BAL'ANC-ING, *ppr.* Having equal weight.

E-QUI-CRU'RAL, *a.* [L. *æquus* and *crus.*] 1. Having legs of equal length. 2. Having equal legs, but longer than the base; isosceles, as a triangle.

E-QUI-CRURE, *a.* The same as *equicrural*.

E-QUI-DIF'FER-ENT, *a.* Having equal differences; arithmetically proportional.

E-QUI-DISTANCE, *n.* Equal distance.—*Hall*.

E-QUI-DIS'TANT, *n.* Equal distance or remoteness.

E-QUI-DISTANT, *a.* [L. *æquus* and *distans.*] Being at an equal distance from some point or thing.

E-QUI-DIS'TANT-LY, *adv.* At the same or an equal distance.

E'QUI-FORM, *a.* Having the same form.—*Humble*.

E-QUI-FORMI-TY, *n.* [L. *æquus* and *forma.*] Uniform equality.—*Brown*.

E-QUI-LATER-AL, *a.* [L. *æquus* and *lateralis.*] Having all the sides equal.

E-QUI-LATER-AL, *n.* A side exactly corresponding to others.—*Herbert*.

E-QUI-LI'BRATE, *v. t.* [L. *æquus* and *libro.*] To balance equally two scales, sides, or ends; to keep even with equal weight on each side.

E-QUI-LI'BRA-TED, *pp.* Balanced equally on both sides or ends.

E-QUI-LI'BRA-TING, *ppr.* Balancing equally on both sides or ends.

E-QUI-LI-BRA'TION, *n.* Equipoise; the act of keeping the balance even, or the state of being equally balanced.

E-QUI-LIBRI-OUS, *a.* Equally poised.

E-QUI-LIBRI-OUS-LY, *adv.* In equal poise.

E-QUILT-BRIST, *n.* One who keeps his balance in unnatural positions and hazardous movements; a balancer.—*Encyc. Am*.

E-QUI-LIBRI-TY, *n.* [L. *æquilibritas.*] The state of being equally balanced; equal balance on both sides; equilibrium.—*Gregory*.

E-QUI-LIBRI-UM, *n.* [L.] 1. Equipoise; equality of weight or force; a state of rest produced by the mutual counteraction of two or more forces. 2. A just poise or balance in respect to an object, so that it remains firm; as, to preserve the *equilibrium* of the body. 3. Equal balancing of the mind between motives or reasons.—In *equilibrio*, in a state of equilibrium.

E-QUI-MUL'TI-PLE, *a.* [L. *æquus* and *multiplico.*] A term applied to quantities multiplied by the same number.

FRANKING, *ppr.* or *a.* Exempting from postage.
FRANKING, *n.* The act of exempting from postage.
FRANKISH, *a.* Relating to the Franks.—*Verstegan.*
† **FRANKLIN**, *n.* An English freeholder.—*Spenser.*
FRANKLIN-ITE, *n.* A mineral containing iron, zinc, and manganese, named from Dr. Franklin.
FRANKLY, *adv.* 1. Without reserve, constraint, or disguise. 2. Without hesitation. *Luke*, vii., 42.—SYN. Openly; ingenuously; plainly; unreservedly; undisguisedly; sincerely; candidly; artlessly; freely; readily; unhesitatingly; liberally; willingly.
FRANKNESS, *n.* 1. Plainness of speech; candor; freedom in communication; openness; ingenuousness. 2. Fairness; freedom from art or craft. 3. Liberality; bounteousness; [*little used.*]
FRANTIC, *a.* [L. *phreneticus.*] 1. Mad; raving; furious; outrageous; raging; desperate; wild and disorderly; distracted. 2. Characterized by violence, fury, and disorder; noisy; mad; wild; irregular; turbulent.
FRANTIC-LY, } *adv.* Madly; distractedly; outrageously.
FRANTIC-AL-LY, }
FRANTIC-NESS, *n.* Madness; fury of passion; distraction.
FRAP, *v. t.* In *seamen's language*, to draw together by ropes crossing each other, with a view to secure and strengthen.
FRAPPED (frapt), *pp.* Crossed and drawn together.
FRAPTING, *ppr.* Crossing and drawing together.
FRA-TERNAL, *a.* [Fr. *fraternel*; L. *fraternus.*] Brotherly; pertaining to brethren; becoming brothers.
FRA-TERNAL-LY, *adv.* In a brotherly manner.
FRA-TERNITY, *n.* [L. *fraternitas.*] 1. The state or quality of a brother; brotherhood. 2. A body of men associated for their common interest, business, or pleasure; a company; a brotherhood; a society. 3. Men of the same class, profession, occupation, or character.
FRAT-ER-NI-ZATION, *n.* The act of associating and holding fellowship as brethren.—*Burke.*
FRA-TERNIZE, *v. i.* To associate or hold fellowship, as brothers, or as men of like occupation or disposition.
FRATER-NIZ-ER, *n.* One who fraternizes.—*Burke.*
FRATRI-CIDAL, *a.* Pertaining to fratricide.
* **FRATRI-CIDE**, *n.* [L. *fratricidium.*] 1. The crime of murdering a brother. 2. One who murders a brother.
FRAUD, *n.* [L. *fraus.*] Artifice by which the right or interest of another is injured.—SYN. Deceit; guile; subtlety; craft; wile; sham; strife; circumvention; stratagem; deception; trick; imposition; cheat.
FRAUDFUL, *a.* 1. Deceitful in making bargains; trickish; treacherous. 2. Containing fraud or deceit.
FRAUDFUL-LY, *adv.* Deceitfully; with intention to deceive, and gain an undue advantage; trickishly; treacherously; by stratagem.
FRAUDLESS, *a.* Free from fraud.
FRAUDLESS-LY, *adv.* In a fraudless manner.
FRAUDLESS-NESS, *n.* State of being fraudless.
FRAUDU-LENCE, } *n.* Deceitfulness; trickishness in mak-
FRAUDU-LEN-CY, } ing bargains, or in social concerns.
FRAUDU-LENT, *a.* 1. Practicing deceit in making contracts. 2. Containing fraud; founded on fraud; proceeding from fraud. 3. Obtained or performed by artifice; as, *fraudulent* conquest. *Milton.*—SYN. Deceitful; fraudful; guileful; crafty; trickish; wily; cunning; subtle; deceiving; cheating; deceptive; insidious; treacherous; dishonest; designing; untair; knavish.
FRAUDU-LENT-LY, *adv.* By fraud; by deceit; by artifice or imposition.
FRAUGHT (frawt), *a.* [D. *vragt*; G. *fracht.*] 1. Laden; loaded; charged; freighted, as a vessel; [*poetic.*] 2. Filled; stored; full; as, *fraught* with disappointment.
† **FRAUGHT**, *n.* A freight; a cargo.—*Dryden.*
† **FRAUGHT**, *v. t.* To load; to fill; to crowd.—*Shak.*
† **FRAUGHTAGE**, *n.* Loading; cargo.—*Shak.*
FRAY, *n.* [Fr. *fracas.*] 1. A broil, quarrel, or violent riot, that puts men in fear; an affray. 2. A combat; a battle; a fight; also, a single combat or duel. 3. A contest; contention; altercation; feud. 4. A rub; a fret or chafe in cloth; a place injured by rubbing.
† **FRAY**, *v. t.* To fright; to terrify.—*Spenser.*
FRAY, *v. t.* [Fr. *frayer.*] 1. To rub; to fret, as cloth, by wearing. 2. To rub; as, to *fray* away flies.—*Butler.*
FRAYED, *pp.* Frightened; rubbed; worn.
FRAYING, *ppr.* Frightening; terrifying; rubbing.
FRAYING, *n.* Peel of a deer's horn.—*Ben Jonson.*
FREAK, *n.* [Ice. *freka.*] 1. *Literally*, a sudden starting, or change of place. 2. A sudden, causeless change or turn of the mind; a capricious prank.—SYN. Whim; fancy; caprice; frolic; sport.
FREAK, *v. t.* To variegate; to checker.
FREAKED (freekt), *pp.* Variegated; checkered.
FREAKING, *ppr.* Variegating.
FREAKISH, *a.* Apt to change the mind suddenly; whimsical; capricious.—*L'Estrange.*
FREAKISH-LY, *adv.* Capriciously; with sudden change of mind, without cause.
FREAKISH-NESS, *n.* Capriciousness; whimsicalness.
FRECKLE (frek'l), *n.* 1. A spot of a yellowish color in the skin. 2. Any small spot or discoloration.
FRECKLE, *v. t.* or *i.* To give or acquire freckles.—*Smart.*
FRECKLE-FACED (frek'l-faste), *a.* Having a face full of freckles.
FRECKLED (frek'ld), *a.* 1. Spotted; having small, yellowish spots on the skin or surface. 2. Spotted, as a cowslip.—*Shak.*
FRECKLED-NESS, *n.* The state of being freckled.
FRECKLY, *a.* Full of freckles; sprinkled with spots.
FRED, Sax. *frith*, Dan. *fred*, Sw. *frid*, G. *friede*, D. *vrede*, peace: as in *Frederic*, dominion of peace, or rich in peace; *Winfred*, victorious peace; *Fredsole*, a seat of peace, *i. e.*, a sanctuary.
FREE, *a.* [Sax. *frig*, *freoh.*] 1. Being at liberty; not being under necessity or restraint, physical or moral.—2. In government, not enslaved; not in a state of vassalage or dependence; subject only to fixed laws, made by consent. 3. Instituted by a free people; not arbitrary or despotic, as government. 4. Not imprisoned, confined, or under arrest. 5. Unconstrained; unrestrained; not under compulsion or control. 6. Not chemically combined; at liberty to escape; as, *free* carbonic acid gas. 7. Permitted; allowed; open; not appropriated; as, a privilege *free* to all. 8. Not obstructed, as a course or current. 9. Licentious; unrestrained; as, *free* remarks. 10. Open; candid; frank; ingenuous; unreserved; as, a *free* talk. 11. Liberal in expenses; not parsimonious; generous; munificent; bountiful. 12. Gratuitous; not gained by importunity or purchase, as a gift. 13. Clear of crime or offense; guiltless; innocent.—*Dryden.* 14. Not having feeling or sufferings; clear; exempt; with *from*; as, *free from* envy. 15. Not encumbered with. 16. Open to all; without restriction or without expense, as a school. 17. Invested with franchises; enjoying certain immunities; with *of*. 18. Possessing without vassalage or slavish conditions.—*Dryden.* 19. Liberated from the government or control of parents, or of a guardian or master. 20. Ready; eager, not dull; acting without spurring or whipping, as a horse. 21. Genteel; charming; [*not in use.*]
FREE, *v. t.* 1. To remove from a thing any encumbrance or obstruction; to disengage from; to rid; to strip; to clear. 2. To set at liberty; to rescue or release from slavery, captivity, or confinement; to deliver; to loose. 3. To disentangle; to disengage. 4. To exempt. 5. To manumit; to release from bondage; to set free; to liberate; to affranchise. 6. To clear from water, as a ship by pumping. 7. To release from obligation or duty.—*To free from*, or *free of*, is to rid of, by removing in any manner.
FREE-AGEN-CY, *n.* The state of acting freely, or without necessity or constraint of the will.
FREE-BENCH, *n.* A widow's dower in a copyhold.
FREE-BORN, *a.* Born free; not in vassalage; inheriting liberty.
FREE-CHAP-EL, *n.* In *England*, a chapel founded by the king, and not subject to the jurisdiction of the ordinary.
FREE-CITY, } *n.* A name given to certain cities, prin-
FREE-TOWN, } cipally of Germany, which were really small republics, directly connected with the German Empire, and hence often called imperial cities. They were once numerous, but are now reduced to four, viz.: Frankfort, Hamburgh, Lubeck, and Bremen; to which was also added Cracow, in Poland.—*Encyc. Am.*
FREE-COST, *n.* Without expense; freedom from charges.—*South.*
FREE-DENIZEN (-den'e-zn), *n.* A citizen.—*Jackson.*
FREE-DENIZEN, *v. t.* [*free* and *denizen.*] To make free.—*Bp. Hall.*
FREE-FISHERY, *n.* A royal franchise or exclusive privilege of fishing in a public river.
† **FREE-FOOTED**, *a.* Not restrained in marching.
FREE-HEARTED (-hart'ed), *a.* [*See* HEART.] 1. Open; frank; unreserved. 2. Liberal; charitable; generous.
FREE-HEARTED-LY, *adv.* In a free-hearted manner.
FREE-HEARTED-NESS, *n.* Frankness; openness of heart; liberality.—*Burnet.*
FREE-LIVER, *n.* One who eats and drinks abundantly.
FREE-LIVING, *n.* Full gratification of the appetite.
FREE-MARTIN, *n.* One of the twins of a cow, apparently a female, but imperfect in some parts, and generally barren, produced when the other twin is a male.
FREE-PORT, *n.* A name given to certain ports on the Continent of Europe, as Genoa, Leghorn, &c., where ships of all nations may load and unload free of duty; but if the articles imported are carried into the adjoining country, they pay the ordinary duties at the gates or barriers. *Dict. de l'Acad.*—In *the West Indies*, a *free-port* is one where goods of *all* kinds may be landed from foreign ships, on payment of the ordinary duties.
FREE-SCHOOL, *n.* 1. A school supported by funds, &c., in which pupils are taught without paying for tuition. 2. A school open to admit pupils without restriction.

FRŌZ'EN (frō'zn), *pp.* or *a.* [from *freeze.*] 1. Congealed by cold. 2. Cold: frosty: chill. 3. Chill or cold in affection. 4. Void of natural heat or vigor.

† **FRŌZ'EN-NESS**, *n.* State of being frozen.—*Bp. Gauden.*

F. R. S. Fellow of the Royal Society.

† **FRUBBISH**, for *furbish.*

FRU'CTED, *a.* [L. *fructus.*] In *heraldry*, bearing fruit.

FRUC-TESCENCE, *n.* [L. *fructus.*] In *botany*, the precise time when the fruit of a plant arrives at maturity, and its seeds are dispersed; the fruiting season.

FRUC-TIFER-OUS, *a.* [L. *fructus* and *fero.*] Bearing or producing fruit.

FRUC-TIFI-CA'TION, *n.* 1. The act of fructifying, or rendering productive of fruit: fecundation.—2. In *botany*, the temporary part of a plant appropriated to generation.

FRUC'TI-FIED (fruk'te-fide), *pp.* Rendered fruitful or productive.

FRUC'TIFY, *v. t.* [Low L. *fructifico*; Fr. *fructifier.*] To make fruitful; to render productive; to fertilize.

FRUC'TIFY, *v. i.* To bear fruit.—*Hooker.* [*Unusual.*]

FRUC'TIFY-ING, *ppr.* or *a.* Rendering fruitful or productive: fertilizing.

† **FRUC-TU-A'TION**, *n.* Produce; fruit.—*Pownall.*

FRUC'TU-OUS, *a.* [Fr. *fructueux.*] Fruitful; fertile; also, impregnating with fertility.—*Philips.*

FRUC'TU-OUS-LY, *adv.* Fruitfully.

FRUC'TU-OUS-NESS, *n.* Fruitfulness.

† **FRUC'TURE** (fruk'tyur), *n.* Use; fruition; enjoyment.

FRU'GAL, *a.* [L. *frugalis*; Fr., Sp. *frugal.*] Economical in the use or appropriation of money, goods, or provisions of any kind; saving unnecessary expense; sparing; not profuse, prodigal, or lavish.

FRU-GAL'I-TY, *n.* 1. Prudent economy; good husbandry or housewifery; a sparing use or appropriation of money or commodities; a judicious use of any thing to be expended. 2. A prudent and sparing use or appropriation of any thing.

FRU'GAL-LY, *adv.* With economy; with good management: in a saving manner.

FRUGGIN, *n.* [Fr. *fourgon.*] An oven fork; the pole with which the ashes in the oven are stirred.

FRU-GIFER-OUS, *a.* [L. *frugifer.*] Producing fruit or corn.

FRU-GIVO-ROUS, *a.* [L. *fruges* and *voro.*] Feeding on fruits, seeds, or corn, as birds.

FRUIT (frūte), *n.* [Fr. *fruit*; It. *frutto.*] 1. In a *general sense*, whatever the earth produces for the nourishment of animals, or for clothing or profit. 2. The produce of a tree or other plant; the last production for the propagation or multiplication of its kind; the seed of plants, or the part that contains the seeds.—3. In *botany*, the seed of a plant, or the seed with the pericarp. 4. Production; that which is produced. 5. The produce of animals; offspring; young. 6. Effect or consequence, as of one's labor. 7. Advantage; profit; good derived. 8. Production, effect, or consequence; [*in a bad sense*;] as, the *fruit* of evil habits.

FRUIT, *v. i.* To produce fruit.—*Chesterfield.*

FRUIT-BEAR-ER, *n.* That which produces fruit.

FRUIT-BEAR-ING, *a.* Producing fruit; having the quality of bearing fruit.—*Mortimer.*

FRUIT-BUD, *n.* The bud that produces fruit.—*De Cand.*

FRUIT-GROVE, *n.* A grove or close plantation of fruit-trees.

FRUIT-LOFT, *n.* A place for the preservation of fruit.

FRUIT-TIME, *n.* The time for gathering fruit.

FRUIT-TREE, *n.* A tree cultivated for its fruit.

FRUITAGE (frūtaje), *n.* [Fr.] Fruit collectively; various fruits.—*Milton.*

FRUITER-ER, *n.* One who deals in fruit.

FRUITER-Y, *n.* [Fr. *fruiterie.*] 1. Fruit collectively taken. 2. A fruit-loft; a repository for fruit.

FRUITFUL, *a.* 1. Very productive; producing fruit in abundance. 2. Bearing children; not barren. 3. Abounding in any thing. 4. Productive of any thing. 5. Producing in abundance; generating.—SYN. Prolific; fertile; rich; plenteous; abundant; plentiful.

FRUITFUL-LY, *adv.* 1. In such a manner as to be prolific. 2. Plenteously; abundantly.—*Shak.*

FRUITFUL-NESS, *n.* 1. The quality of producing fruit in abundance; productiveness; fertility. 2. Fecundity; the quality of being prolific, or producing many young. 3. Productiveness of the intellect. 4. Exuberant abundance.

FRUITING, *ppr.* or *a.* Producing fruit; pertaining to fruit.

FRUITING, *n.* The bearing of fruit.

FRU-ITION (fru-ish'un), *n.* [L. *fruor.*] Use, accompanied with pleasure, corporeal or intellectual; enjoyment; gratification; the pleasure derived from use or possession.

FRUI-TIVE, *a.* Enjoying.—*Boyle.*

FRUITLESS, *a.* 1. Not bearing fruit; destitute of fruit. 2. Productive of no advantage or good effect. 3. Having no offspring. *Shak.*—SYN. Barren; unprofitable; abortive; ineffectual; vain; idle; profitless; useless.

FRUITLESS-LY, *adv.* Without any valuable effect; idly; vainly; unprofitably.

FRUITLESS-NESS, *n.* The quality of being vain or unprofitable.

FRUITY, *a.* Like fruit; having the qualities of fruit.

FRU-MEN-TA'CEOUS (fru-men-tā'shus), *a.* [L. *frumentaceus.*] 1. Made of wheat or like grain. 2. Resembling wheat.

FRU-MEN-TA'RI-OUS, *a.* [L. *frumentarius.*] Pertaining to wheat or grain.

FRU-MEN-TA'TION, *n.* [L. *frumentatio.*] Among the *Romans*, a largess of grain bestowed on the people.

FRU'MEN-TY, *n.* [L. *frumentum.*] Food made of wheat boiled in milk.

FRUMP, *n.* 1. A joke, jeer, or flout; [*obs.*] *Bp. Hall.*—2. In *modern colloquial usage*, a cross-tempered, old-fashioned female.—*Smart.*

† **FRUMP**, *v. t.* To insult.—*Beaumont and Fletcher.*

† **FRUMPER**, *n.* A mocker; a scoffer.—*Cotgrave.*

FRUMPISH, *a.* Old-fashioned; ill-natured.—*Smart.* [*Coll.*]

† **FRUSH**, *v. t.* [Fr. *froisser.*] To bruise; to crush.

FRUSH, *n.* [G. *frosch.*] 1. In *farriery*, a sort of tender horn that grows in the middle of the sole of a horse's foot; the same as *frog.* 2. A discharge of a fetid or ichorous matter from the frog of a horse's foot; also called *thrush.*—*Smart.*

FRUSTRA-BLE, *a.* That may be frustrated.

FRUS-TRA'NE-OUS, *a.* Vain; useless; unprofitable.—*South.* [*Little used.*]

FRUSTRATE, *v. t.* [L. *frustro.*] 1. To defeat; to disappoint; to balk; to bring to nothing. 2. To disappoint; to foil. 3. To make null; to nullify; to render of no effect.

FRUSTRATE, *part. a.* Vain; ineffectual; useless; unprofitable; null; void; of no effect.—*Dryden.*

FRUSTRA-TED, *pp.* Defeated; disappointed; rendered vain or null.

FRUSTRA-TING, *ppr.* Defeating; disappointing; making vain or of no effect.

FRUS-TRA'TION, *n.* The act of frustrating; disappointment; defeat.—*South.*

FRUSTRA-TIVE, *a.* Tending to defeat; fallacious.

FRUSTRA-TO-RY, *a.* That makes void; that vacates or renders null.—*Ayliffe.*

FRUSTUM, *n.* [L.] In *geometry*, the part of a solid next the base, formed by cutting off the top; or, the part of any solid, as of a cone, pyramid, &c., between two planes.

FRU-TES'CENT, *a.* [L. *fruter.*] In *botany*, from herbaceous becoming shrubby.—*Martyn.*

FRU'TEX, *n.* [L.] In *botany*, a shrub.

FRU'TI-CANT, *a.* Full of shoots.—*Evelyn.*

FRU'TI-CŌSE, } *a.* [L. *fruticosus.*] Shrub-like; branching
FRU'TI-COUS, } like a shrub.

FRU-TI'CU-LŌSE, *a.* Branching like a small shrub.

FRY, *v. t.* [L. *frigo.*] To dress with fat by heating or roasting in a pan over a fire; to cook in a frying-pan.

FRY, *v. i.* 1. To be heated and agitated, as meat in a frying-pan; to suffer the action of fire or extreme heat. 2. To ferment, as in the stomach. 3. To be agitated; to boil.

FRY, *n.* [Fr. *frai.*] 1. A swarm or crowd of little fish. 2. A dish of any thing fried. 3. A kind of sieve; [*not American use.*]

FRYING, *ppr.* Dressing in a frying-pan; heating; agitating.

FRYING-PAN, *n.* A pan with a long handle, used for frying meat and vegetables.

† **FUB**, *n.* A plump young person.—*Smart.*

FUB, *v. t.* To put off; to delay; to cheat.—*Shak.* *See* FOB.

FUBBY, *a.* Plump; chubby.—*Nichols.*

FU'CATE, } *a.* [L. *fucatus.*] Painted; disguised with paint;
FU'CA-TED, } also, disguised with false show.

FU'COID, *n.* Fossil sea-weed.—*Hitchcock.* *See* FUCUS.

FU'COID, *a.* Resembling sea-weed.

FU-COI'DAL, *a.* Containing fucoids.

FU'CUS, *n.* [L.] 1. A paint; a dye: also, false show. 2. *pl.* FUCI, in *botany*, a genus of *algæ*, or sea-weeds; the sea-wrack, &c.

FUDDER *of lead.* *See* FOTHER and FODDER.

FUDDLE, *v. t.* To make drunk; to intoxicate.

FUDDLE, *v. i.* To drink to excess.—*L'Estrange.*

FUDDLED, *pp.* Drunk; intoxicated.

FUDDLER, *n.* A drunkard.—*Barter.*

FUDDLING, *ppr.* Intoxicating; drinking to excess.

FUDGE, *n.* A made-up story; stuff; nonsense; an exclamation of contempt.—*Goldsmith.*

FU'EL, *n.* [Fr. *feu*; Sp. *fuego.*] 1. Any matter which serves as aliment to fire; that which feeds fire; combustible matter. 2. Any thing that serves to feed or increase flame, heat, or excitement.

FU'EL, *v. t.* 1. To feed with combustible matter. 2. To store with fuel or firing.—*Wotton.*

FU'ELED, *pp.* Fed with combustible matter; stored with firing.

FU'EL-ER, *n.* He or that which supplies fuel.

FU'EL-ING, *ppr.* Feeding with fuel; supplying with fuel.

JUNKET, *v. i.* 1. To feast in secret; to make an entertainment by stealth.—*Swift.* 2. To feast.—*South.*

JU'NO, *n.* [L.] 1. In *mythology*, the sister and wife of Jupiter, reputed to preside over marriage, and protect married women.—2. In *astronomy*, one of the small planets or asteroids between the orbits of Mars and Jupiter.

JUNTA, *n.* [Sp.] A grand Spanish council of state.—*Brande.*

JUNTO, *n.* [Sp. *junta*; It. *giunto.*] A cabal; a meeting or collection of men combined for secret deliberation and intrigue for party purposes; a faction.

JU'PI-TER, *n.* [L.] 1. The supreme deity among the *Greeks* and *Romans*. 2. One of the superior planets, remarkable for its brightness.

JUP-PON', *n.* [Fr. *jupon.*] A short, close coat.

JU'RAT, *n.* [Fr.] In *England*, a magistrate in some corporations; an alderman, or an assistant to a bailiff.

JU'RA-TO-RY, *a.* [Fr. *juratoire.*] Comprising an oath. [*Rare.*]

JU'RE DI-VI'NO. [L.] By divine right.

JU-RID'IC-AL, *a.* [L. *juridicus.*] 1. Acting in the distribution of justice; pertaining to a judge. 2. Used in courts of law or tribunals of justice.

JU-RID'IC-AL-LY, *adv.* According to forms of law, or proceedings in tribunals of justice; with legal authority.

JU'RIS-CON'SULT, *n.* [L. *juris consultus.*] A man learned in the law; a counselor at law; a master of Roman jurisprudence.

JU-RIS-DIC'TION, *n.* [Fr.; L. *jurisdictio.*] 1. The legal power or authority of doing justice in cases of complaint; the power of executing the laws and distributing justice. 2. Power of governing or legislating. 3. The power or right of exercising authority. 4. The limit within which power may be exercised.

JU-RIS-DIC'TION-AL, *a.* Pertaining to jurisdiction.

JU-RIS-DIC'TIVE, *a.* Having jurisdiction.—*Milton.*

JU-RIS-PRU'DENCE, *n.* [Fr.; L. *jurisprudentia.*] The science of law; the knowledge of the laws, customs, and rights of men in a state or community, necessary for the due administration of justice.

JU-RIS-PRU'DENT, *a.* Understanding law.—*West.*

JU-RIS-PRU-DEN'TIAL, *a.* Pertaining to jurisprudence.

JU'RIST, *n.* [Fr. *juriste.*] 1. A man who professes the science of law; one versed in the law, or, *more particularly*, in the civil law; a civilian. 2. One versed in the law of nations, or who writes on the subject.

JU'ROR, *n.* [L. *jurator.*] One who serves on a jury.

JU'RY, *n.* [Fr. *juré.*] A number of freeholders, selected in the manner prescribed by law, impanneled and sworn to inquire into and try any matter of fact, and to declare the truth on the evidence given them in the case.—*Juries* are of two kinds, *grand* and *petty* or *petit*. The office of the former is to present for trial persons supposed to be guilty of an offense; that of the latter is to try causes, both civil and criminal. In addition to these, there are *juries of inquest*, which are summoned occasionally in cases of sudden or violent death, to examine into the cause.

JU'RY-MAST, *n.* A mast erected in a ship, to supply the place of one carried away in a tempest or an engagement, &c.

JU'RY-MAN, *n.* One who is impanneled on a jury, or who serves as a juror.

JUS GEN'TI-UM (-she-um). [L.] The law of nations.

JUST, *a.* [Fr. *juste*; L. *justus.*] 1. Regular; orderly; due; suitable; as, *just* array.—*Addison.* 2. Exactly proportioned; proper; as, *just* distance.—*Shak.* 3. Full; complete to the common standard; as, *just* stature.—*Bacon.* 4. Full; true; [*a sense allied to the preceding, or the same*;] as, to come to a *just* battle. *Knolles.*—5. In a *moral sense*, upright; honest; having principles of rectitude; or conforming exactly to the laws, and to principles of rectitude in social conduct; equitable in the distribution of justice. —6. In an *evangelical sense*, righteous; religious; influenced by a regard to the laws of God. 7. Conformed to rules of justice; doing equal justice; fair; as, *just* weights. 8. Conformed to truth; exact; proper; accurate; as, a *just* idea or remark. 9. True; founded in truth and fact, as a charge. 10. Innocent; blameless; without guilt. 11. Equitable; due; merited; as, a *just* sentence. 12. True to promises; faithful. 13. Impartial; allowing what is due; giving fair representation of character, merit, or demerit.

JUST, *adv.* 1. Close or closely; near or nearly, in place. 2. Near or nearly, in time; almost. 3. Exactly; nicely; accurately; as, *just* alike. 4. Merely; barely; exactly; as, *just* enough. 5. Narrowly.

JUST, *n.* [Fr. *joute*, now *joute*; Sp. *justa.*] A mock encounter on horseback; a combat for sport or for exercise, in which the combatants pushed with lances and swords, man to man, in mock fight; a tilt; one of the exercises at tournaments.

JUST, *v. i.* [Fr. *jouter*; Sp. *justar.*] 1. To engage in mock fight on horseback. 2. To push; to drive; to justle.

JUSTE' MIL-IEU' (zhust mil-yu'). In *French politics*, a party which claim to hold the *exact middle point* between the old monarchical and the recent republican principles.

JUS'TICE, *n.* [Fr.; Sp. *justicia*; L. *justitia.*] 1. The virtue which consists in giving to every one what is his due; practical conformity to the laws and to principles of rectitude in the dealings of men with each other; honesty; integrity in commerce or mutual intercourse. 2. Impartiality; equal distribution of right in expressing opinions; fair representation of facts respecting merit or demerit. 3. Equity; agreeableness to right. 4. Vindictive retribution; merited punishment. 5. Right; application of equity.—6. [Low L. *justiciarius.*] A person commissioned to hold courts, or to try and decide controversies and administer justice to individuals.

JUS'TICE, *v. t.* To administer justice.—*Bacon.* [*Rare.*]

JUS'TICE-A-BLE, *a.* Liable to account in a court of justice.—*Hayward.* [*Little used.*]

† **JUS'TI-CER**, *n.* An administrator of justice.—*Bp. Hall.*

JUS'TICE-SHIP, *n.* The office or dignity of a justice.

JUS-TI'CIA-BLE, *a.* Proper to be examined in courts of justice.

JUS-TI'CIA-RY, } *n.* [L. *justiciarius.*] 1. An administrator
JUS-TI'CIAR, } of justice. 2. A chief justice. 3. One who boasts of the justice of his own act; [*not used.*]

JUS'TI-FI-A-BLE, *a.* That may be proved to be just; that may be vindicated on principles of law, reason, rectitude, or propriety.—SYN. Defensible; vindicable; warrantable; excusable.

JUS'TI-FI-A-BLE-NESS, *n.* The quality of being justifiable, rectitude; possibility of being vindicated.

JUS'TI-FI-A-BLY, *adv.* In a manner that admits of vindication or justification; rightly.

JUST-I-FI-CA'TION, *n.* [Fr.] 1. The act of justifying; a showing to be just or conformable to law, rectitude, or propriety; vindication; defense. 2. Absolution. *Shak.*—3. In *law*, the showing of a sufficient reason in court why a defendant did what he is called to answer.—4. In *theology*, remission of sin and absolution from guilt and punishment.

JUST'I-FI-CA-TIVE, *a.* Justifying; that has power to justify.

JUST'I-FI-CA'TOR, *n.* One who justifies. [*Little used.*]

JUST-IF'I-CA-TO-RY, *a.* Vindicatory; defensory.—*Johnson.*

JUS'TI-FI-ER, *n.* 1. One who justifies; one who vindicates, supports, or defends. 2. He who pardons and absolves from guilt and punishment.

JUS'TI-FY, *v. t.* [Fr. *justifier.*] 1. To prove or show to be just, or conformable to law, right, justice, propriety, or duty; to vindicate as right.—2. In *theology*, to pardon and clear from guilt. 3. To cause another to appear comparatively righteous, or less guilty than one's self. 4. To judge rightly of. 5. To accept as just and treat with favor. —SYN. To defend; maintain; excuse; exculpate; absolve.

JUS'TI-FY, *v. i.* In *printing*, to agree; to suit; to conform exactly; to form an even surface or true line with something else.

JUS'TI-FY-ING, *ppr.* 1. Making or proving to be just.—2. *a.* In *theology*, that has the quality of absolving from guilt; as, *justifying* faith.

JUS'TLE (jus'sl), *v. i.* [*See* JOSTLE.] To run against; to encounter; to strike against; to clash.

JUS'TLE (jus'sl), *v. t.* To push; to drive; to force by rushing against.

JUS'TLED, *pp.* Pushed; forced, by driving against.

JUS'TLING, *n.* Shock; the act of rushing against each other.

JUST'LY, *adv.* 1. In conformity to law, justice, or propriety; by right. 2. According to truth and facts. 3. Honestly; fairly; with integrity. 4. Properly; accurately; exactly.

JUST'NESS, *n.* Conformity to some standard of correctness or propriety; as, the *justness* of proportions, of a description, of a claim.—SYN. Accuracy; exactness; correctness; propriety; fitness; reasonableness; equity; uprightness; justice.

JUT, *v. i.* [a different spelling of *jet.*] To shoot forward to project beyond the main body.

JUT, *n.* A shooting forward; a projection.

JUT'-WIN-DOW, *n.* A window that projects from the line of a building.

JUT'TING, *ppr.* or *a.* Shooting out; projecting.

JUT'TING-LY, *adv.* In a projecting manner.

† **JUT'TY**, *v. i.* To jut.—*Shak.*

JUT'TY, *n.* A projection in a building; also, a pier or mole.

JU'VE-NAL, *n.* A sportive name for a youth.—*Shak.*

JU-VE-NES'CENT, *a.* Becoming young.—*Lamb.*

JU-VE-NES'CENCE, *a.* A growing young.

JU'VE-NILE, *a.* [L. *juvenilis.*] 1. Young; youthful; as, *juvenile* years or age. 2. Pertaining or suited to youth; as, *juvenile* sports.

JU'VE-NILE-NESS, } *n.* 1. Youthfulness; youthful age. 2.
JU-VE-NIL'I-TY, } Light and careless manner; the manners or customs of youth.

MOD'ER-Ā-TING, *ppr.* Reducing in violence or excess; allaying; tempering; becoming more mild; presiding.

MOD-ER-Ā'TION, *n.* [L. *moderatio.*] 1. The state of being moderate, or of keeping a due mean between extremes or excess of violence. 2. Restraint of violent passions or indulgence of appetite. 3. Calmness of mind. 4. Frugality in expenses.—SYN. Temperance; forbearance; equanimity; sobriety.

MOD-E-RĀ'TO, [It.] In *music*, denoting movement between andante and allegro.

MOD'ER-Ā-TOR, *n.* 1. He or that which moderates or restrains. 2. The person who presides over a meeting or assembly of people to preserve order, and regulate the proceedings.—3. In the *English universities*, one who superintends the exercises and disputations in philosophy, and the examinations for the degree of B. A.—*Cam. Cal.*

MOD-ER-Ā'TOR-SHIP, *n.* The office of a moderator.

MOD'ERN, *a.* [Fr. *moderne*; It., Sp. *moderno.*] 1. Pertaining to the present time, or time not long past; not ancient or remote in past time. 2. Common; mean; vulgar; [*obs.*]—SYN. Late; recent; fresh; new.

MOD'ERN, *n.* A person of modern times; opposed to an *ancient*. *The moderns* are those of modern nations, or of nations which arose out of the ruins of the empires of Greece and Rome, the people of which are called the ancients.—*Smart.*

MOD'ERN-ISM, *n.* Modern practice; something recently formed, particularly in writing.—*Swift.*

MOD'ERN-IST, *n.* One who admires the moderns.

MOD'ERN-IZE, *v. t.* To render modern; to adapt ancient compositions to modern persons or things, or, rather, to adapt the ancient style or idiom to modern style and taste.

MOD'ERN-IZED, *pp.* or *a.* Rendered conformable to modern usage or style.

MOD'ERN-IZ-ER, *n.* He who renders modern.

MOD'ERN-IZ-ING, *ppr.* Rendering modern.

† **MOD'ERN-LY**, *adv.* In modern times.—*Milton.*

MOD'ERN-NESS, *n.* The quality of being modern; recentness; novelty.

MOD'EST, *a.* [Fr. *modeste*; L. *modestus.*] 1. *Properly*, restrained by a sense of propriety; hence, not forward or bold; not presumptuous or arrogant; not boastful. 2. Not loose; not lewd. 3. Moderate; not excessive or extreme; not extravagant; as, a *modest* computation. *Addison.*—SYN. Reserved; unobtrusive; diffident; bashful; coy; shy; decent; becoming; chaste; virtuous.

MOD'EST-LY, *adv.* 1. Not boldly; not arrogantly or presumptuously; with due respect. 2. Not loosely or wantonly; decently. 3. Not excessively; not extravagantly.

MOD'ESTY, *n.* [L. *modestia.*] 1. That lowly temper which accompanies a moderate estimate of one's own worth and importance. 2. *Modesty*, as an act or series of acts, consists in humble, unobtrusive deportment. 3. Moderation; decency. *Shak.*—4. In *females*, modesty has the like character as in males; but the word is used also as synonymous with chastity, or purity of manners.

MOD'EST-Y-PIECE, *n.* A narrow lace worn by females over the bosom.—*Addison.*

MOD'I-CUM, *n.* [L.] A little; a small quantity.—*Dryden.*

MOD'I-FI-A-BLE, *a.* That may be modified or diversified by various forms and differences.—*Locke.*

MOD'I-FI-CATE, *v. t.* To qualify.—*Pearson.*

MOD-I-FI-CĀ'TION, *n.* 1. The act of modifying, or giving to any thing new forms, or differences of external qualities or modes. 2. Particular form or manner.

MOD'I-FIED, *pp.* or *a.* 1. Changed in form or external qualities; varied; diversified. 2. Moderated; tempered; qualified in exceptionable parts.

MOD'I-FI-ER, *n.* He or that which modifies.

MOD'I-FY, *v. t.* [Fr. *modifier*; L. *modificor.*] 1. To change the form or external qualities of a thing; to shape; to give a new form of being to. 2. To vary; to give a new form to any thing. 3. To moderate; to quality; to reduce in extent or degree.

MOD'I-FY, *v. t.* To extenuate.—*L'Estrange.*

MOD'I-FY-ING, *ppr.* or *a.* Changing the external qualities; giving a new form to; moderating.

MO-DIL'LION (mo-dil'yun), *n.* [It. *modiglione*; Fr. *modillon.*] In *architecture*, a projecting bracket under the corona of the Ionic, Corinthian, and Composite columns.

MO-DI-O-LAR, *a.* Shaped like a bushel in measure.—*Smart.*

MŌ'DISH, *a.* According to the mode or customary manner; fashionable.—*Dryden.*

MŌ'DISH-LY, *adv.* Fashionably; in the customary mode.—*Locke.*

MŌ'DISH-NESS, *n.* 1. The state of being fashionable. 2. Affectation of the fashion.—*Johnson.*

MOD'U-LĀTE, *v. t.* [L. *modulor.*] 1. To form sound to a certain key, or to a certain proportion. 2. To vary or inflect sound in a natural, customary, or musical manner.

MOD'U-LA-TED, *pp.* or *a.* Formed to a certain key; varied; inflected.

MOD'U-LĀ-TING, *ppr.* Forming to a certain proportion; varying; inflecting.

MOD-U-LĀ'TION, *n.* [L. *modulatio*; Fr. *modulation.*] 1. The act of forming any thing to a certain proportion. 2. The act of inflecting or varying the voice in reading or speaking; a rising or falling of the voice.—3. In *music*, the diversified and proper change of the key or mode in conducting the melody.—In a *narrower sense*, it is the transition from one key to another.—*Encyc. Am.* 4. Sound modulated; melody.

MOD'U-LĀ-TOR, *n.* He or that which modulates.

MOD'ULE, *n.* [Fr.; L. *modulus.*] 1. A model or representation.—2. In *architecture*, a certain measure or size, taken at pleasure, for regulating the proportion of columns and the symmetry or disposition of the whole building. Usually, the semi-diameter of the lower part of the shaft of the column, sometimes the diameter, is taken as the *module*.

MOD'ULE, *v. t.* To model; to shape; to modulate. [*Rare.*]

MOD'U-LUS, *n.* [L.] In *analysis*, the constant coefficient or multiplier in a function of a variable quantity, by means of which the function is accommodated to a particular system or base; as, the *modulus* of a system of logarithms.—*Brande.*

MŌ'DUS, *n.* [L.] A compensation for tithes; an equivalent given to a parson or vicar, by the owners of land, in lieu of tithes.

MŌ'DUS OP-E-RAN'DI, [L.] Manner of operating.

MOD'WALL, *n.* A bird that destroys bees.—*Smart.*

MŌE, *n.* A distorted mouth. Also, as a *verb*, to make mouths.—*Shak. See* MOW.

† **MŌE**, *a.* or *adv.* More.—*Hooker.*

MŌ-SO-GOTHIC, *a.* Belonging to the Mœso-Goths, a branch of the Goths who settled in Mœsia. The Bible was translated into their language by Ulphilas.—*P. Cyc.*

MO-GUL', *n.* The name of a prince or emperor of the nation in Asia called *Moguls*, or *Monguls*.

MŌ'HAIR, *n.* [G. *mohr*; Fr. *moire.*] The hair of a kind of goat in Turkey, fine and soft as silk. It is wrought into camlets and other expensive stuffs.

MŌ'HAIR-SHELL, *n.* In *conchology*, a peculiar species of *voluta*, whose surface resembles mohair.

MO-HAM'MED-AN, *a.* Pertaining to Mohammed or Mahomet.

MO-HAM'MED-AN, *n.* A follower of Mohammed, the founder of the religion of Arabia and Persia.

MO-HAM'MED-ISM, **MO-HAM'MED-AN-ISM**, } *n.* The religion, or doctrines and precepts of Mohammed, contained in the Koran.

MO-HAM'MED-IZE, **MO-HAM'MED-AN-IZE**, } *v. t.* To make conformable to the principles, or modes and rites of Mohammed.

MŌ'HAWK, **MŌ'HOCK**, } *n.* [from the name of an Indian tribe.] The appellation given to certain ruffians who infested the streets of London.

MŌ'HUR, *n.* A British Indian gold coin, value fifteen rupees.—*Malcom.*

MOI'DORE, *n.* A gold coin of Portugal, valued at $6, or £1, 7*s.* sterling.

MOI'E-TY, *n.* [Fr. *moitié.*] The half; one of two equal parts.—*Addison.*

MOIL, *v. t.* [Fr. *mouiller.*] 1. To daub; to make dirty; [*little used.*] 2. To weary.—*Chapman.*

MOIL, *v. i.* [L. *molior.*] To labor; to toil; to work with painful efforts.—*Dryden.*

† **MOIL**, *n.* [Sax. *mal.*] A spot.

MOINEAU (moy'no), *n.* A small flat bastion raised in front of an intended fortification, to defend it against attacks from small arms.—*Brande.*

MOIST, *a.* [Fr. *moite*, for *moiste.*] 1. Moderately wet; damp; as, a *moist* atmosphere or air. 2. Containing water or other liquid in a perceptible degree.

† **MOIST**, as a *verb*, is obsolete.

MOIST'-EYED (-ide), *a.* Having moist eyes.—*Coleridge.*

MOIST'EN (mois'n), *v. t.* To make damp; to wet in a small degree.—*Bacon.*

MOIST'ENED (mois'nd), *pp.* Made wet in a small degree.

MOIST'EN-ER (mois'ner), *n.* He or that which moistens.

MOIST'EN-ING (mois'n-ing), *ppr.* Wetting moderately.

MOIST'FUL, *a.* Full of moisture.—*Drayton.*

MOIST'NESS, *n.* Dampness; a small degree of wetness; humidity.—*Addison.*

MOIS'TURE (mois'tyur), *n.* [Fr. *moiteur.*] 1. A moderate degree of wetness; humidity. 2. A small quantity of any liquid.

MOIS'TURE-LESS, *a.* Destitute of moisture.

† **MOIS'TY**, *a.* Drizzling.

† **MŌKES** *of a net*, the meshes.—*Ainsworth.*

† **MŌ'KY**, *a.* [W. *mwg.*] Muggy; dark; murky.

MŌ'LAR, **MŌ'LAR-Y**, } *a.* [L. *molaris.*] Having power to grind; grinding.—*Bacon.*

MŌ'LAR, *n.* A grinding tooth or grinder.

MO-LASSE', *n.* [L. *mollis.*] A soft, tertiary sandstone; applied to a rock occurring in Switzerland.—*Lyell.*

or name, as a particular thing; to designate in words, so as to distinguish a thing from every other.

SPECI-FY-ING, *ppr.* Naming or designating particularly.

SPECI-MEN, *n.* [L.] A sample; a part or small portion of any thing intended to exhibit the kind and quality of the whole, or of something not exhibited.

SPE'CIOUS (spē'shus), *a.* [Fr. *specieux*; It. *specioso*; Sp. *sapicioso*; L. *speciosus.*] 1. Pleasing to the view. 2. Apparently right; superficially fair, just, or correct; appearing well at first view.—SYN. Showy; plausible; ostensible; colorable; feasible.

SPE'CIOUS-LY (spē'shus-le), *adv.* With a fair appearance; with show of right.

SPE'CIOUS-NESS (spē'shus-nes), *n.* The state or quality of being specious.—*Ash.*

SPECK, *n.* [Sax. *specca.*] 1. A small place in any thing that is discolored. 2. A very small thing.—SYN. Spot; stain; flaw; blemish.

SPECK, *v. t.* To spot; to stain in spots or drops.

SPECK'LE, *n.* A little spot in any thing of a different substance or color from that of the thing itself.

SPECK'LE, *v. t.* To mark with small spots of a different color; used chiefly in the participle passive.

SPECK'LED, *pp.* or *a.* Marked with specks; variegated with spots of a different color from the ground or surface of the object.—*Speckled bird*, a term applied to one who differs so much from the company he is in as to be an object of suspicion or distrust.

SPECK'LED-NESS, *n.* The state of being speckled.

SPECK'LING, *ppr.* Marking with small spots.

SPECKT, } *n.* A woodpecker. *See* SPECHT.
SPEIGHT, }

SPEC'TA-CLE (spek'ta-kl), *n.* [Fr.; L. *spectaculum.*] 1. Something exhibited to view; *usually*, something presented to view as extraordinary; as, a public *spectacle*. 2. Any thing seen; as, a dreadful *spectacle*.—3. *Spectacles*, in the plural, an optical instrument consisting of two lenses set in a light frame, and used to assist or correct some defect in the organs of vision.—4. *Figuratively*, something that aids the intellectual sight.—SYN. Show; sight; exhibition; representation; pageant.

SPEC'TA-CLED, *a.* Furnished with spectacles.—*Shak.*

SPEC-TACU-LAR, *a.* Pertaining to shows.—*Hickes.*

SPEC-TA'TION, *n.* [L. *spectatio.*] Regard; respect. [*Little used.*]

SPEC-TA'TOR, *n.* [L.; Fr. *spectateur*; It. *spettatore.*] 1. One who looks on; one who sees or beholds. 2. One personally present.—SYN. Looker-on; beholder; observer; witness.

SPEC-TA-TO'RI-AL, *a.* Pertaining to the spectator.

SPEC-TA'TOR-SHIP, *n.* The act of beholding.—*Shak.* 2. The office or quality of a spectator.—*Addison.*

SPEC-TA'TRESS, } *n.* [L. *spectatrix.*] A female beholder
SPEC-TA'TRIX, } or looker-on.

SPEC'TER } (spek'tur), *n.* [Fr. *spectre*; L. *spectrum.*] 1. An
SPEC'TRE } apparition; the appearance of a person who is dead; a ghost; a phantom. 2. Something made preternaturally visible.

SPEC'TER-PEO-PLED } (-pee-pld), *a.* Peopled with ghosts.
SPEC'TRE-PEO-PLED } —*Bowring.*

SPEC'TRAL, *a.* Pertaining to a spectre; ghostly.—*Maunder.*

SPEC'TRUM, *n.* [L.] 1. A visible form; an image of something seen, continuing after the eyes are closed.—*Darwin.* 2. The elongated figure of the seven prismatic colors, formed in a dark chamber, by admitting a beam of the sun's light through an opening in the window-shutter, and letting it fall on a prism.—*Olmsted.*

SPECU-LAR, *a.* [L. *specularis.*] 1. Having the qualities of a speculum or mirror; having a smooth, reflecting surface. 2. Assisting sight; [*obs.*] 3. Affording view.—*Specular iron*, an ore of iron occurring frequently in crystals of a brilliant metallic lustre; the peroxyd of iron; also called *oligist iron* or *rhombohedral iron ore.*—*Dana.*

SPECU-LATE, *v. i.* [L. *specular*; Fr. *specular*; It. *speculare.*] 1. To meditate; to contemplate; to consider a subject by turning it in the mind and viewing it in its different aspects and relations.—2. In *commerce*, to purchase land, goods, stock, or other things, with the expectation of selling the articles at a profit.

† SPECU-LATE, *v. t.* To consider attentively.

SPECU-LA-TING, *ppr.* or *a.* 1. Meditating. 2. Purchasing with the expectation of an advance in price.

SPECU-LATION, *n.* 1. Examination by the eye; view; [*little used.*] 2. Mental view of any thing in its various aspects and relations; contemplation; intellectual examination. 3. Train of thoughts formed by meditation. 4. Mental scheme; theory; views of a subject not verified by fact or practice. 5. Power of sight; [*obs.*]—6. In *commerce*, the act or practice of buying stocks or goods, &c., in expectation of a rise of price and of selling them at an advance.

SPECU-LA-TIST, *n.* One who speculates or forms theories; a speculator.—*Milner.*

SPECU-LA-TIVE, *a.* [Fr. *speculatif*; It. *speculativo.*] 1. Given to speculation; contemplative. 2. Formed by speculation; theoretical; ideal; not verified by fact, experiment, or practice. 3. Pertaining to view. 4. Pertaining to speculation in land, stocks, goods, &c.

SPECU-LA-TIVE-LY, *adv.* 1. In contemplation; with meditation. 2. Ideally; theoretically; in theory only, not in practice. 3. In the way of speculation in land, goods, &c.

SPECU-LA-TIVE-NESS, *n.* The state of being speculative, or of consisting in speculation only.

SPECU-LA-TOR, *n.* 1. One who speculates or forms theories. 2. An observer; a contemplator. 3. A spy; a watcher.—4. In *commerce*, one who buys goods, land, or other things, with the expectation of a rise of price, and of deriving profit from such advance.

SPECU-LA-TO-RY, *a.* 1. Exercising speculation.—*Johnson.* 2. Intended or adapted for viewing or espying.—*Warton.*

SPECU-LUM, *n.* [L.] 1. A mirror or looking-glass. 2. A mirror employed in optical instruments, in which the refracting surface is formed of a metallic alloy.—3. In *surgery*, an instrument for dilating and keeping open certain parts of the body.

SPED, *pret.* and *pp.* of *speed.*

SPEECH, *n.* [Sax. *spec.*] 1. The faculty of uttering articulate sounds or words, as in human beings; the faculty of expressing thoughts by words or articulate sounds. 2. Language; words as expressing ideas. 3. A particular language, as distinct from others. 4. That which is spoken; words uttered in connection and expressing thoughts. 5. Talk; mention; common saying. 6. Formal discourse in public; oration; address; harangue. 7. Any declaration of thoughts.

SPEECH, *v. i.* To make a speech; to harangue. [*Rare.*]

SPEECH'-MAK-ER, *n.* One who makes speeches; one who speaks much in a public assembly.

SPEECHT-FIED, *pp.* Harangued.

SPEECHT-FY, *v. i.* To make a speech; to harangue. The noun, *speechification*, is sometimes used, but, like *speechify*, rather as a term of sport or derision.

SPEECHT-FY-ING, *ppr.* Haranguing.

SPEECHING, *n.* The act of making a speech.—*Moore.*

SPEECHLESS, *a.* 1. Destitute or deprived of the faculty of speech. 2. Not speaking for a time.—SYN. Dumb; silent; mute.

SPEECHLESS-NESS, *n.* The state of being speechless; muteness.—*Bacon.*

SPEED, *v. i.*; pret. and pp. *sped, speeded.* [Sax. *spedian, spædan*; D. *spoedan.*] 1. To make haste; to move with celerity. 2. To have success; to prosper; to succeed, that is, to advance in one's enterprise. 3. To have any condition, good or ill; to fare.

SPEED, *v. t.* 1. To send away in haste. 2. To put in quick motion. 3. To hasten to a conclusion; to execute; to dispatch. 4. To assist; to help forward; to hasten. 5. To prosper; to cause to succeed. 6. To furnish in haste. 7. To kill; to ruin; to destroy.—SYN. To dispatch; hasten; accelerate; hurry.

SPEED, *n.* 1. Rapidity of motion; [*applied to animals.*] 2. Rapidity of execution or performance. 3. Rapid race. 4. Success; prosperity in an undertaking; favorable issue, that is, advance to the desired end.—SYN. Swiftness; celerity; quickness; haste; dispatch; expedition; hurry; acceleration.

SPEED'FUL, *a.* 1. Serviceable; useful.—*Wicliffe*; [*obs.*] 2. Full of speed; hasty.

SPEED'I-LY, *adv.* Quickly; with haste, in a short time.

SPEED'I-NESS, *n.* The quality of being speedy; quickness; celerity; haste; dispatch.

SPEED'WELL, *n.* An herb of the genus *veronica*, one species of which has been much recommended in Sweden and Germany as a substitute for tea.—*Loudon.*

SPEEDY, *a.* 1. Quick; swift; nimble; hasty; rapid in motion. 2. Quick in performance; not dilatory or slow

SPEER, *v. t.* *See* SPERE.

† SPEET, *v. t.* [D. *speeten.*] To stab.

SPEIGHT (spāte), *n.* A woodpecker. [*Not in use, or local.*]

SPEISS, *n.* The mineral copper nickel, consisting of nickel and arsenic.—*Ure.*

SPELK, *n.* [Sax. *spelc.*] A splinter; a small stick or rod used in thatching.—*Grose.* [*Local.*]

SPELL, *n.* [Sax. *spel* or *spell*, a story.] 1. A story; a tale.—*Chaucer*; [*obs.*] 2. A charm consisting of some words of occult power.—3. Among *seamen*, a turn of work; relief; turn of duty; as, take a *spell* at the pump.—4. In *New England*, a short time; a little time; the continuance of any kind of weather; [*used among seamen; not elegant.*] 5. A turn of gratuitous labor, sometimes accompanied with presents; [*New England.*]

SPELL, *v. t.*; pret. and pp. *spelled* or *spelt.* [Sax. *spellian, spelligan.*] 1. To tell or name the letters of a word, with a proper division of syllables. 2. To write or print with the proper letters; to form words by correct orthography.

speak and *say* have not.—*To tell off*, is to count or divide. *Walter Scott.*—SYN. To communicate; impart; reveal: disclose; inform; acquaint; report; repeat; rehearse; recite.

TELL, *v. i.* 1. To give an account; to make report. 2. To take or produce effect; as, every shot *tells*; every expression *tells.*—*To tell of*, or *to tell on*, [*vulgar.*] to inform.

TELL'-TALE, *a.* Telling tales; babbling.—*Shak.*

TELL'-TALE, *n.* [*tell* and *tale.*] 1. One who officiously communicates information of the private concerns of individuals. 2. A movable piece of ivory or lead on a chamber organ, that gives notice when the wind is exhausted. —3. In *seamanship*, a small piece of wood traversing in a groove across the front of the poop deck, and which, by communicating with a small barrel on the axis of the steering wheel, indicates the position or situation of the helm.—*Mar. Dict.*

TELL'ER, *n.* 1. One who tells, relates, or communicates the knowledge of something. 2. One who numbers.—3. In the *Exchequer of England* there are four officers, called *tellers*, whose business is to receive all moneys due to the crown; anciently written *tallier*. 4. An officer of a bank, who receives and pays money on checks.

TELL'ER-SHIP, *n.* The office or employment of a teller.

TEL-LI'NA, *n.* A genus of bivalve mollusks, having shells rather thin and delicate.

TELL'ING, *ppr.* Uttering; relating; disclosing; counting.

† **TEL'LI-NITE**, *n.* A fossil bivalve shell of the genus *tellina.*

TEL'LU-RAL, *a.* [L. *tellus.*] Pertaining to the earth.

TEL'LU-RATE, *n.* A compound of telluric acid and a base.

TEL'LU-RET-ED, *a.* *Tellureted* hydrogen is hydrogen combined with tellurium in a gaseous form.—*Ure.*

TEL-LŪ'RIC, *a.* [L. *tellus*, the earth.] Pertaining to the earth, or proceeding from the earth.

TEL-LŪ'RIC ACID, *n* An acid composed of one equivalent of tellurium and three of oxygen.

TEL-LŪ'RI-ON, *n.* An instrument for showing the operation of the causes which produce the succession of day and night and the changes of the seasons.—*Francis.*

TEL'LU-RITE, *n.* A compound of tellurous acid and a base.

TEL-LŪ'RI-UM, *n.* A metal discovered by Miller in 1782, combined with gold and silver in the ores. It is a brittle metal, of a tin-white color, easily fusible, and nearly as heavy as zinc.

TEL'LU-ROUS ACID, *n.* An acid composed of one equivalent of tellurium and three of oxygen.

TEM-E-RĀ'RI-OUS, *a.* [Fr. *temeraire*; L. *temerarius.*] 1. Rash; headstrong; despising danger. 2. Careless; heedless; done at random.

TEM-E-RĀ'RI-OUS-LY, *adv.* Rashly; with excess of boldness.—*Swift.*

TE-MER'I-TY, *n.* [L. *temeritas.*] 1. Unreasonable contempt of danger. 2. Extreme boldness. *Cowley.*—SYN. Rashness; precipitancy; heedlessness.

TEM'IN, *n.* A money of account in Algiers, equivalent to 29 aspers, about 3 cents, or 1½*d.* sterling.—*Edin. Encyc.*

TEM'PER, *v. t.* [L. *tempero*; It. *temperare*; Sp. *templar*; Fr. *tremper.*] 1. To mix so that one part qualifies the other; to bring to a moderate state. 2. To compound; to form by mixture; to qualify, as by an ingredient. 3. To unite in due proportion; to render symmetrical; to adjust, as parts to each other. 4. To accommodate; to modify. 5. To reduce any violence or excess; as, to *temper* the passions. 6. To form to a proper degree of hardness. 7. To govern; [*a Latinism*; *obs.*]—8. In *music*, to modify or amend a false or imperfect concord by transferring to it a part of the beauty of a perfect one, that is, by dividing the tones.—SYN. To soften; mollify; assuage; soothe; calm.

TEM'PER, *n.* 1. Due mixture of different qualities; or the state of any compound substance which results from the mixture of various ingredients. 2. Constitution of body. 3. The state or constitution of the mind, particularly with regard to the passions and affections. 4. Calmness of mind; moderation. 5. Heat of mind or passion; irritation. 6. The state of a metal, particularly as to its hardness. 7. Middle course; mean or medium. *Swift.*—8. In *sugar-works*, white lime or other substance stirred into a clarifier filled with cane-juice, to neutralize the superabundant acid. *Edwards, W. Indies.*—SYN. Disposition; temperament; frame; humor; mood.

TEM'PER-A-MENT, *n.* [Fr.; L. *temperamentum.*] 1. Constitution; state with respect to the predominance of any quality. 2. Medium; due mixture of different qualities. —3. In *music*, *temperament* is an operation which, by means of a slight alteration in the intervals, causes the difference between two contiguous sounds to disappear, and makes each of them appear identical with the other.

TEM-PER-A-MENTAL, *a.* Constitutional.—*Brown.* [*Rare.*]

TEM'PER-ANCE, *n.* [Fr.; L. *temperantia.*] 1. Moderation; sobriety; *particularly*, habitual moderation in regard to the indulgence of the natural appetites and passions; restrained or moderate indulgence. 2. Patience; calmness; sedateness; moderation of passion; [*unusual.*]

TEM'PER-ATE, *a.* [L. *temperatus.*] 1. Moderate; not excessive. 2. Moderate in the indulgence of the appetites and passions. 3. Not marked with passion; not violent. 4. Proceeding from temperance. 5. Free from ardent passion.—*Temperate zone*, in *geography*, the name of those parts of the earth between the tropics and the polar circles, not as cold as the frigid zones, nor as hot as the torrid zone.—SYN. Abstruent; abstemious; sober; calm; cool; sedate.

TEM'PER-ATE-LY, *adv.* 1. Moderately; without excess or extravagance. 2. Calmly; without violence of passion. 3. With moderate force.

TEM'PER-ATE-NESS, *n.* 1. Moderation; freedom from excess. 2. Calmness; coolness of mind.

TEM'PER-A-TIVE, *a.* Having the power or quality of tempering.

TEM'PER-A-TURE, *n.* [Fr.; L. *temperatura.*] 1. In *physics*, the state of a body with regard to heat or cold, as indicated by the thermometer; or the degree of free caloric which a body possesses when compared with other bodies. 2. Constitution; state; degree of any quality. 3. Moderation; freedom from immoderate passions; [*obs.*]

TEM'PERED, *pp.* or *a.* 1. Duly mixed or modified; reduced to a proper state; softened; allayed; hardened. 2 Adjusted by musical temperament. 3. *a.* Disposed.

TEM'PER-ING, *ppr.* Mixing and qualifying; qualifying by mixture; softening; mollifying; hardening.

TEM'PEST, *n.* [Fr. *tempête*; L. *tempestas*; Sp. *tempestad*; It. *tempesta.*] 1. An extensive current of wind, rushing with great velocity and violence, and commonly attended with rain, hail, or snow; a storm of extreme violence.—We usually apply the word to a violent storm of considerable duration; but we say, also, of a tornado, it blew a *tempest*. The currents of wind are named, according to their respective degrees of force or rapidity, a *breeze*, a *gale*, a *storm*, a *tempest*, a *hurricane*; but *gale* is also used as synonymous with *storm*, and *storm* with *tempest*. *Gust* is usually applied to a sudden blast of short duration. 2. A violent tumult or commotion. 3. Perturbation; violent agitation.

TEM'PEST, *v. t.* To disturb as by a tempest.—*Milton.* [*Little used.*]

TEM'PEST, *v. i.* [Fr. *tempester*; It. *tempestare.*] 1. To storm. —*Sandys.* 2. To pour a tempest on.—*Ben Jonson.*

TEM'PEST-BEAT-EN, *a.* [*tempest* and *beat.*] Beaten or shattered with storms.—*Dryden.*

TEM'PEST-TOST, *a.* Tossed about by tempests.

TEM-PESTIVE, *a.* Seasonable.

† **TEM-PEST-IVI-TY**, *n.* [L. *tempestivus.*] Seasonableness.

TEM-PEST'U-OUS (tem-pest'yu-us), *a.* [Sp. *tempestuoso*; It. *tempestoso*; Fr. *tempétueux.*] 1. Very stormy; turbulent; rough with wind. 2. Blowing with violence.

TEM-PEST'U-OUS-LY, *adv.* With great violence of wind or great commotion; turbulently.—*Milton.*

TEM-PEST'U-OUS-NESS, *n.* Storminess; the state of being tempestuous or disturbed by violent winds.

TEM'PLAR, *n.* [from the *Temple*, a house near the Thames, which originally belonged to the knights Templars. The latter took their denomination from an apartment of the palace of Baldwin II. in Jerusalem, near the temple.] 1. A student of the law. *Pope.*—2. *Templars*, *knights of the Temple*, a religious military order, first established at Jerusalem in favor of pilgrims traveling to the Holy Land.

TEM'PLATE, *n.* *See* TEMPLET.

TEM'PLE (tem'pl), *n.* [Fr.; L. *templum*; It. *tempio*; Sp. *templo.*] 1. A public edifice erected in honor of some deity. That erected by Solomon, in Jerusalem, for the worship of God, is often called, by way of eminence, the *temple*. 2. A church; an edifice erected among Christians as a place of public worship. 3. A place in which the Divine presence specially resides; the Church, as a collective body. *Eph.* ii.—4. In *England*, the *Temple* consists of two inns of court, thus called because anciently the dwellings of the knights Templars.

TEM'PLE, *n.* [L. *tempus*, *tempora.*] 1. *Literally*, the fall of the head; the part where the head slopes from the top.—2. In *anatomy*, the anterior and lateral part of the head, where the skull is covered by the temporal muscles.

TEM'PLE, *v. t.* To build a temple for; to appropriate a temple to.—*Feltham.* [*Little used.*]

TEM'PLED, *a.* Furnished with a temple; inclosed in a temple.

TEM'PLET, *n.* 1. In *masonry*, a mold used by bricklayers and masons in cutting or setting out their work. 2. A mold used by mill-wrights for shaping the teeth of wheels. 3. A short piece of timber under a girder or other beam. *Brande.*

TEM'PO, *n.* [It.] In *music*, time.—*Brande.*

TEM'PO-RAL, *a.* [Fr. *temporel*; L. *temporalis.*] 1. Pertaining to this life, or this world, or the body only; secular

VIR-MILION (vur-mil'yun), *n.* [properly *vermilion.*] A red color.—*Roscommon.*

* **VIR'TU**, *n.* [It.] A love of the fine arts; a taste for curiosities.—*Chesterfield.*

VIR'TU-AL (virt'yu-al), *a.* [Fr. *virtuel.*] 1. Potential; having the power of acting or of invisible efficacy without the material or sensible part. 2. Being in essence or effect, not in fact.—*Virtual focus*, in *optics*, the point from which rays, having been rendered divergent by reflection or refraction, appear to issue.—*Virtual velocity*, in *mechanics*, the velocity which a body in equilibrium would actually acquire during the first instant of its motion in case of the equilibrium being disturbed.—*Brande.*

VIR-TU-AL'I-TY, *n.* Efficacy.—*Brown.*

VIR'TU-AL-LY, *adv.* In efficacy or effect only; by means of some virtue or influence, or the instrumentality of something else.

† **VIR'TU-ATE**, *v. t.* To make efficacious.—*Harvey.*

VIR'TUE (vurt'yu), *n.* [Fr. *vertu*; It. *virtu*; Sp. *vertud*; L. *virtus.*] 1. Strength; that substance or quality of physical bodies by which they act and produce effects on other bodies. 2. Bravery; valor. This was the predominant signification of *virtus* among the Romans. [*Nearly obs.*] 3. Moral goodness; the practice of moral duties and the abstaining from vice, or a conformity of life and conversation to the moral law. 4. A particular moral excellence. 5. Acting power; something efficacious. 6. Secret agency; efficacy without visible or material action. 7. Excellence; or that which constitutes value and merit. 8. One of the orders of the celestial hierarchy.—*Milton.* 9. Efficacy; power.—*Addison.* 10. Legal efficacy or power; authority.—*In virtue*, in consequence; by the efficacy or authority.

VIR'TUE-LESS, *a.* 1. Destitute of virtue. 2. Destitute of efficacy or operating qualities.—*Fairfax.*

VIR-TU-ŌSO, *n.* [It.] A man skilled in the fine arts, particularly in music, or a man skilled in antiquities, curiosities, and the like.

VIR-TU-ŌSO-SHIP, *n.* The pursuits of a virtuoso.

VIR'TU-OUS (vurt'yu-us), *a.* 1. Morally good; acting in conformity to the moral law. 2. Being in conformity to the moral or divine law. 3. Chaste; [*applied to women.*] 4. Efficacious by inherent qualities; [*obs.*] 5. Having great or powerful properties; [*obs.*] 6. Having medicinal qualities; [*obs.*]

VIR'TU-OUS-LY, *adv.* In a virtuous manner; in conformity with the moral law or with duty.—*Addison.*

VIR'TU-OUS-NESS, *n.* The state of being virtuous.

VIR'U-LENCE, } *n.* 1. That quality of a thing which ren-
VIR'U-LEN-CY, } ders it extremely active in doing injury; acrimony; malignancy. 2. Acrimony of temper; extreme bitterness or malignity.

VIR'U-LENT, *a.* [L. *virulentus.*] 1. Extremely active in doing injury; very poisonous or venomous. 2. Very bitter in enmity; malignant.

VIR'U-LENT-ED, *a.* Filled with poison.—*Feltham.*

VIR'U-LENT-LY, *adv.* With malignant activity; with bitter spite or severity.

VI'RUS, *n.* [L.] Active or contagious matter of an ulcer, pustule, &c.; poison.

VIS, *n.* [L.] Force; power; as, *vis viæ*, the vital power. The term, however, is used chiefly in mechanics.

VIS'AGE, *n.* [Fr.; It. *visaggio.*] The face; the countenance or look of a person, or of other animals; [*chiefly applied to human beings.*]

VIS'AGED, *a.* Having a visage or countenance.—*Milton.*

VIS'-A-VIS' (viz'a-ve'), *n.* [Fr. opposite, face to face.] A carriage in which two persons sit face to face.

VIS'CE-RA, *n.*; *pl.* of Viscus. [L.] The bowels; the contents of the abdomen, thorax, and cranium.

VIS'CE-RAL, *a.* [L. *viscera.*] 1. Pertaining to the viscera. 2. Feeling; having sensibility; [*unusual.*]

VIS'CER-ATE, *v. t.* To exenterate; to embowel; to deprive of the entrails or viscera.

VIS'CID, *a.* [L. *viscidus.*] Glutinous; sticky; tenacious; not readily separating.

VIS-CID'I-TY, *n.* 1. Glutinousness; tenacity; stickiness. 2. Glutinous concretion.—*Fiseur.*

VIS-CŌS'I-TY, } *n.* Glutinousness; tenacity; viscidity;
VIS'COUS-NESS, } that quality of soft substances which makes them adhere so as not to be easily parted.

VIS'COUNT (vī'kount), *n.* [L. *vice-comes*; Fr. *vicomte.*] 1. An officer who formerly supplied the place of the count or earl; the sheriff of the county; [*England.*] 2. A degree or title of nobility next in rank below an earl; [*Eng.*] a peeress of the fourth order.—*Johnson.*

VIS'COUNT-ESS (vī'kount-es), *n.* The lady of a viscount;

VIS'COUNT-SHIP (vī'kount-ship), } *n.* The quality and of-
VIS'COUNT-Y (vī'kount-e), } fice of a viscount.

VIS'COUS, *a.* [Fr. *visqueux*; from L. *viscus.*] Glutinous; clammy; sticky; adhesive; tenacious.

VIS'CUS, *n.*; *pl.* Viscera. [L.] An entrail; one of the contents of the cranium, thorax, or abdomen.

VISE, *n.* [Fr. *vis.*] *See* Vice.

Vi-sé' (vee-zā'). [Fr.] *Literally*, seen; an indorsement made by the police-officers in large towns of France, Belgium, &c., on the back of a passport, denoting that it has been examined, and that the person who bears it is permitted to proceed on his journey. Hence, travelers speak of getting their passports *visaed.*

VISH'NU, *n.* In the *Hindoo mythology*, the name of one of the chief deities of the trimurti or triad: the preserver.

VIS-I-BIL'I-TY, *n.* [Fr. *visibilité.*] 1. The state or quality of being perceivable to the eye. 2. The state of being discoverable or apparent; conspicuousness.

VIS'I-BLE, *a.* [Fr.; L. *visibilis.*] 1. Perceivable by the eye; that can be seen. 2. Discovered to the eye.—3. *Visible church, see* Church, *n.*, No. 2.—*Visible horizon, see* Horizon, No. 1. Open to observation; easy to be discerned; as, his designs now became *visible.*—Syn. Apparent; obvious; manifest; clear; distinct; evident; plain; discernible; conspicuous; notorious.

VIS'I-BLE-NESS, *n.* State or quality of being visible; visibility.

VIS'I-BLY, *adv.* In a manner perceptible to the eye.

VIS'I-GOTH, *n.* The name of the western Goths, or that branch of the Gothic tribes which settled in Dacia, as distinguished from the Ostrogoths, or eastern Goths, who had their seats in Pontus.—*Encyc. Am.*

VIS-I-GOTH'IC, *a.* Pertaining to the Visigoths.

VIS IN-ER'TIÆ, *n.* [L.] 1. The resistance of matter to a commencement of motion when at rest, and also to a cessation or change of motion when moving.—*Vis inertiæ* and *inertia* are not strictly synonymous. The former implies the *resistance* given, while the latter implies the *property* by which it is given. Gravitation is exactly proportioned to *inertia.* 2. Inertness; inactivity.

VI'SION (vizh'un), *n.* [Fr.; L. *visio.* 1. The act of seeing external objects; actual sight. 2. The faculty of seeing; sight. 3. Something imagined to be seen, though not real; an apparition; a phantom; a spectre.—4. In *Scripture*, a revelation from God. 5. Something imaginary; the production of fancy. 6. Any thing which is the object of sight.

VI'SION-AL, *a.* Pertaining to a vision.—*Waterland.*

VI'SION-A-RI-NESS (vizh'un-a-re-nes), *n.* The quality of being visionary.

VI'SION-A-RY (vizh'un-a-re), *a.* [Fr. *visionnaire.*] 1. Affected by phantoms; disposed to receive impressions on the imagination. 2. Imaginary; fantastical; existing in imagination only; not real; having no solid foundation.

VI'SION-A-RY, *n.* 1. One whose imagination is disordered. 2. One who forms impracticable schemes; one who is confident of success in a project which others perceive to be idle and fanciful; an enthusiast.—[*Visionist*, in a like sense, is not used.]

VI'SION-LESS (vizh'un-les), *a.* Destitute of visions.

VI'SIT, *v. t.* [L. *visito*; Fr. *visiter*; It. *visitare.*] 1. To go or come to see; to attend. 2. To go or come to see for inspection, examination, correction of abuses, &c. 3. To salute with a present. 4. To go to and to use.—5. In scripture *affairs*, to enter on board a vessel for the purpose of ascertaining her character without searching her.—6. *To visit* in the *Scriptures*, denotes to bestow good or evil, according to the tenor of the passage; as, to visit in mercy or in wrath.

VI'SIT, *v. i.* To keep up the interchange of civilities and salutations; to practice going to see others.

VI'SIT, *n.* 1. The act of going to see another or of calling at his house; a waiting on. 2. The act of going to see. 3. A going to see or attending on. 4. The act of going to view or inspect.

VI'SIT-A-BLE, *a.* Liable or subject to be visited.

VI'SIT-ANT, *n.* One who goes or comes to see another; one who is a guest in the house of a friend; a visitor.

VIS-IT-Ā'TION, *n.* [Fr.; L. *visito.*] 1. The act of visiting. 2. Object of visit; [*unusual.*]—3. In *law*, the act of a superior or superintending officer, who visits a corporation, college, church, or other house, to examine into the manner in which it is conducted.—4. In *Scripture*, and in a *religious sense*, the sending of afflictions and distresses on men to punish them for their sins, or to prove them. 5. Communication of Divine love; exhibition of Divine goodness and mercy. *Hooker.*—6. In *naval affairs*, the act of a naval commander who visits or enters on board of a vessel belonging to another nation, for the purpose of ascertaining her character and object, but without claiming or exercising a right of searching the vessel. 7. A church festival in honor of the visit of the Virgin Mary to Elizabeth, celebrated on the second of July.—*Brande.*

VIS-I-TA-TŌ'RI-AL, *a.* Belonging to a judicial visitor or superintendent. *See* Visitorial.

VI'SIT-ED, *pp.* Waited on; attended; inspected; subjected to suffering; favored with relief or mercy.

VI'SIT-ING, *ppr.* 1. Going or coming to see; attending on;

Greedy for eating; ravenous; very hungry. 2. Rapacious; eager to devour. 3. Ready to swallow up.

VO-RA'CIOUS-LY, *adv.* With greedy appetite; ravenously.

VO-RA'CIOUS-NESS, *n.* Greediness of appetite; ravenousness; eagerness to devour; rapaciousness.

VO-RAC'I-TY, *n.* Greediness of appetite; voraciousness.

VO-RA'GIN-OUS, *a.* [L. *voraginosus.*] Full of gulfs.—*Scott.*

VOR'TEX, *n.*; *pl.* VORTICES or VORTEXES. [L.] 1. A whirlpool; a whirling or circular motion of water, forming a kind of cavity in the center of the circle. 2. A whirling of the air; a whirlwind. *Cyc.*—3. In the *Cartesian system*, a collection of particles of matter forming an ether or fluid, endowed with a rapid rotary motion around an axis.—*Brande.*

VOR'TI-CAL, *a.* Whirling; turning.—*Newton.*

VOR'TI-CEL, *n.* The name of certain wheel-animalcules, which, by the rapid rotary motion of the organs round the mouth, create a vortex in the water, and obtain their food.—*Kirby.*

VŌ'TA-RESS, *n.* A female devoted to any service, worship, or state of life.—*Cleaveland.*

VŌ'TA-RIST, *n.* One devoted or given up to any person or thing, to any service, worship, or pursuit.

VŌ'TA-RY, *a.* [from L. *votus.*] Devoted; promised; consecrated by a vow or promise; consequent on a vow.

VŌ'TA-RY, *n.* One devoted, consecrated, or engaged by a vow or promise; hence, *more generally*, one devoted, given, or addicted to some particular service, worship, study, or state of life.

VŌTE, *n.* [It., Sp. *voto*; L. *votum.*] 1. Suffrage; the expression of a wish, desire, will, preference, or choice, either *viva voce* or by ballot, &c., in regard to any measure proposed, in which the person voting has an interest in common with others. 2. That by which will or preference is expressed in elections, or in deciding propositions; a ballot; a ticket, &c.; as, a written *vote*. 3. Expression of will by a majority; legal decision by some expression of the minds of a number. 4. United voice in public prayer.

VŌTE, *v. i.* To express or signify the mind, will, or preference, either *viva voce* or by ballot, &c., in electing men to office, or in passing laws, regulations, and the like, or in deciding on any proposition in which one has an interest with others.

VŌTE, *v. t.* 1. To choose by suffrage; to elect by some expression of will. 2. To enact or establish by vote or some expression of will. 3. To grant by vote or expression of will.

VŌ'TED, *pp.* Expressed by vote or suffrage.

VŌ'TER, *n.* One who has a legal right to vote or give his suffrage.

VŌ'TING, *ppr.* Expressing the mind, will, or preference in election, or in determining questions proposed.

VŌ'TING, *n.* The act of expressing the mind, will, or preference by vote or suffrage.

VŌ'TIVE, *a.* [Fr. *votif*; L. *votivus.*] Given by vow; devoted.—A *votive medal* is one struck in grateful commemoration of some auspicious event; a *votive offering* is a tablet, picture, &c., dedicated in consequence of the vow of a worshiper.

VŌ'TIVE-LY, *adv.* By vow.

VOUCH, *v. t.* [Norm. *voucher*; L. *voco.*] 1. To call upon solemnly to witness. 2. To maintain by affirmations; as, to *vouch* the truth of a declaration. 3. To establish proof; as, this *vouches* it to be worthy of the apostle. *Locke.*—4. In *law*, to call into court to warrant and defend, or to make good a warranty of title.—SYN. To obtest; declare; affirm; attest; warrant; confirm; asseverate; aver; protest; assure.

VOUCH, *v. i.* To bear witness; to give testimony or full attestation.

VOUCH, *n.* Warrant; attestation.—*Shak.*

VOUCHED (vouchť), *pp.* Called to witness; affirmed or fully attested; called into court to make good a warranty.

VOUCH-EE', *n.* In *law*, the person who is vouched or called into court to support or make good his warranty of title in the process of common recovery.

VOUCH'ER, *n.* 1. One who gives witness or full attestation to any thing.—2. In *law*, the act of calling in a person to make good his warranty of title. 3. A book, paper, or document which serves to vouch the truth of accounts, or to confirm and establish facts of any kind.

VOUCH'ER, } *n.* In *law*, the tenant in a writ of right; one
VOUCH-OR', } who calls in another to establish his warranty of title.

VOUCH'ING, *ppr.* Calling to witness; attesting by affirmation; calling in to maintain warranty of title.

VOUCH-SĀFE', *v. t.* [*vouch* and *safe.*] 1. To permit to be done without danger. 2. To condescend to grant.

VOUCH-SĀFE', *v. i.* To condescend; to deign; to yield.

VOUCH-SĀFED' (-sāft'), *pp.* Granted in condescension.

VOUCH-SĀFE'MENT, *n.* Grant in condescension.

VOUCH-SĀFING, *ppr.* Condescending to grant; deigning.

VOUSSOIR (voo-swar'), *n.* [Fr.] A wedge-like stone forming part of an arch.—*Gwilt.*

VOW, *n.* [Fr. *veu*; It. *voto*; L. *votum.*] 1. A solemn promise made to God, or by a pagan to his deity. 2. A solemn promise.

VOW, *v. t.* [Fr. *vouer*; L. *voveo.*] 1. To give, consecrate, or dedicate to God by a solemn promise. 2. To devote.

VOW, *v. i.* To make vows or solemn promises.

VOW'-FEL-LŌW, *n.* One bound by the same vow. [Rare.]

VOWED (vowd), *pp.* Solemnly promised to God; given or consecrated by solemn promise.

VOW'EL, *n.* [L. *vocalis*; Fr. *voyelle*; It. *vocale.*] 1. In *grammar*, a simple sound; a sound uttered by simply opening the mouth or organs, as the sound of *a*, *e*, *i*. 2. The letter or character which represents a simple sound.

VOW'EL, *a.* Pertaining to a vowel; vocal.

VOW'EL-ED, *a.* Furnished with vowels.

VOW'ER, *n.* One who makes a vow.

VOWING, *ppr.* Making a vow.

VOX, *n.* [L.] A voice.—*Vox populi*, the voice of the people.—*Vox Dei*, the voice of God.

VOY'AGE, *n.* [Fr., from *voie*: Eng. *way*; Sax. *weg, wæg.*] 1. A passing by sea or water from one place, port, or country to another, especially a passing or journey by water to a distant place or country. 2. The practice of traveling.—*Bacon*; [*obs.*]

VOY'AGE, *v. i.* To sail or pass by water.—*Pope.*

VOY'AGE, *v. t.* To travel; to pass over.—*Milton.*

VOY'A-GER, *n.* One who sails or passes by sea or water.

VOYA-GEUR (vwä'ya-zhur'), *n.* [Fr.] *Literally*, a traveler: the Canadian name of a class of men employed by the Fur Companies, &c., in transporting goods by the rivers and across the land, to and from the remote stations in the Northwest.

VOY'OL, *n.* Among *seamen*, a large rope sometimes used in weighing the anchor; also written *viol.*—*Totten.*

VUL'CAN, *n.* [L. *Vulcanus.*] In *mythology*, the god who presided over the working of metals. The husband of Venus.

VUL-CĀ'NI-AN, *a.* Pertaining to Vulcan, or to work in iron, &c.—As an epithet, in *geology*, the same as *Plutonian*, which see.—*Smart.*

VUL'CAN-IST, *n.* *See* VOLCANIST.

VUL-CĀ'NO, *n.* *See* VOLCANO.

VUL'GAR, *a.* [Fr. *vulgaire*; It. *vulgare*; L. *vulgaris.*] 1. Pertaining to the common, unlettered people. 2. Used or practiced by common people. 3. Vernacular; national. 4. Common; used by all classes of people. 5. Public. 6. Mean; rustic; rude; low; unrefined. 7. Consisting of common persons.—*Vulgar fraction*, in *arithmetic*, a fraction written with a numerator and denominator, as ½.

VUL'GAR, *n.* The common people.

VUL'GAR-ISM, *n.* 1. Grossness of manners; vulgarity. [*rare.*] 2. A vulgar phrase or expression.

VUL-GAR'I-TY, } *n.* 1. Mean condition in life; the state
VUL'GAR-NESS, } of the lower classes of society. 2. Grossness or clownishness of manners or language.

VUL'GAR-IZE, *v. t.* To make vulgar.—*Foster.*

VUL'GAR-IZED, *pp.* Made vulgar.

VUL'GAR-IZ-ING, *ppr.* Rendering vulgar.

VUL'GAR-LY, *adv.* 1. Commonly; in the ordinary manner among the common people. 2. Meanly; rudely; clownishly.

VUL'GATE, *n.* A very ancient Latin version of the Scriptures, and the only one which the Roman Catholic Church admits to be authentic.

VUL'GATE, *a.* Pertaining to the old Latin version of the Scriptures.

VUL-NER-A-BIL'I-TY, *n.* The state of being vulnerable.

VUL'NER-A-BLE, *a.* [Fr.; L. *vulnero.*] 1. That may be wounded; susceptible of wounds or external injuries. 2. Liable to injury; subject to be affected injuriously.

VUL'NER-A-RY, *a.* [Fr. *vulneraire*; L. *vulnerarius.*] Useful in healing wounds; adapted to the cure of external injuries.

VUL'NER-A-RY, *n.* Any plant, drug, or composition useful in the cure of wounds.

† VUL'NER-ĀTE, *v. t.* [L. *vulnero.*] To wound; to hurt.

† VUL-NER-Ā'TION, *n.* The act of wounding.—*Pearson.*

VUL'PINE, *a.* [L. *vulpinus.*] Pertaining to the fox; cunning; crafty; artful.

VUL'PIN-ITE, *n.* [from *Vulpino.*] A variety of anhydrous containing some silica, and presenting a grayish white color and high lustre.—*Dana.*

VUL'TURE, *n.* [L. *vultur.*] An accipitrine bird of the genus *vultur*. Vultures have a large and strong beak, the nostrils pierced transversely to its base, the head and neck without feathers or caruncles, and a collar of long feathers or down at the root of the neck. Proper *vultures* have hitherto been found only on the eastern continent.—*Cuvier.*

VUL'TUR-INE, *a.* [L. *vulturinus.*] Belonging to the vulture; having the qualities of the vulture; resembling the vulture; rapacious.

VUL'TUR-ISH, *a.* Like a vulture.

VUL'TUR-OUS, *a.* Like a vulture; rapacious.

VYING, *ppr.* Competing; emulating.

† *See Synopsis.* Ā, Ē, Ī, &c., *long.*—A, E, I, &c., *short.*—FÂR, FALL, WHAT;—PRĒY;—MARINE, BIRD;—MOVE, BOOK.

Baumgart v. Wendelberger

2002 WL 34127471
Only the Westlaw citation is currently available.
United States District Court,
E.D. Wisconsin.

James R. BAUMGART, Roger M. Breske, Brian T. Burke, Charles J. Chvala, Russell S. Decker, Jon Erpenbach, Gary R. George, Richard Grobschmidt, Dave Hansen, Robert Jauch, Mark Meyer, Rodney Moen, Gwendolynne S. Moore, Kimberly Plache, Fred A. Risser, Judy Robson, Kevin W. Shibilski, Robert D. Wirch, Spencer Black, James E. Kreuser, Gregory B. Huber, each individually and as members of the Wisconsin State Senate, Intervenor–Plaintiffs,

v.

Jeralyn WENDELBERGER, chairperson of the Wisconsin Elections Board, and each of its members in his or her official capacity, John P. Savage, David Halbrooks, R.J. Johnson, Brenda Lewison, Steven V. Ponto, John C. Schober, Christine Wiseman and Kevin J. Kennedy, its executive director, Defendants,

and

Scott R. JENSEN, in his capacity as the Speaker of the Wisconsin Assembly, and Mary E. Panzer, in her capacity as the Minority Leader of the Wisconsin Senate, Intervenor–Defendants.

Scott R. JENSEN, in his capacity as the Speaker of the Wisconsin Assembly, Mary E. Panzer, in her capacity as the Minority Leader of the Wisconsin Senate, Plaintiffs,

v.

Jeralyn WENDELBERGER, chairperson of the Wisconsin Elections Board, and each of its members in his or her official capacity, John P. Savage, David Halbrooks, R.J. Johnson, Brenda Lewison, Steven V. Ponto, John C. Schober. Christine Wiseman, Kevin J. Kennedy, its executive director, Defendants,

and

James R. BAUMGART, Roger M. Breske, Brian T. Burke, Charles J. Chvala, Russell S. Decker, Jon Erpenbach, Gary R. George, Richard Grobschmidt, Dave Hansen, Robert Jauch, Mark Meyer, Rodney Moen, Gwendolynne S. Moore, Kimberly Plache, Fred A. Risser, Judy Robson, Kevin W. Shibilski, Robert D. Wirch, Spencer Black, James E. Kreuser, Gregory B. Huber, each individually and as members of the Wisconsin State Senate, Intervenor–Defendants.

No. 01–C–0121, 02–C–0366.
|
May 30, 2002.

Attorneys and Law Firms

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James E. Bartzen, Michael P. May, Sarah A. Zylstra, Boardman Suhr Curry & Field, Madison, WI, Randall L. Nash, O'Neil Cannon & Hollman, Milwaukee, WI, for Intervenor–Plaintiffs.

Before EASTERBROOK, Circuit Judge, STADTMUELLER, Chief District Judge, and CLEVERT, District Judge.

AMENDED MEMORANDUM OPINION AND ORDER

PER CURIAM.

***1** These consolidated actions challenge the constitutionality of the current apportionment of Wisconsin Assembly and Senate districts and seek declaratory,

injunctive and other relief under the Constitution and laws of the United States, including the Fourteenth Amendment, the Fifteenth Amendment, § 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973 and 42 U.S.C. § 1983, as well as the laws and Constitution of the State of Wisconsin.[1] Both sets of plaintiffs ask the court to declare that the existing apportionment of the Wisconsin Senate and Assembly is unconstitutional and invalid. Moreover, they seek an order enjoining the eight members of the Wisconsin Elections Board from taking any actions related to elections under the existing apportionment plan, and an order redistricting the State of Wisconsin into 99 Assembly and 33 Senate Districts. As a consequence, the parties urge the court to adopt a reapportionment plan and maps that they have proffered as a remedy for the malapportionment following the 2000 decennial census.

1 The complaint also sought reapportionment of Wisconsin's congressional districts, as the 2000 census resulted in Wisconsin losing one of its nine seats in congress. However, during the pendency of this case, the Wisconsin Legislature passed, and Governor Scott McCallum signed, a bill reapportioning the congressional districts, and the congressional portion of this case became moot on April 11, 2002 (the day on which the trial in the state legislative portion of this case began).

Chief Judge Joel M. Flaum of the Court of Appeals for the Seventh Circuit convened this panel and authorized it to hear both actions, pursuant to 28 U.S.C. § 2284, when the Wisconsin legislature failed to enact a plan of reapportionment. As a consequence, a trial on the merits was conducted on April 11 and April 12, 2002. For the reasons that follow, the court finds the existing Wisconsin Assembly and Senate districts violative of the "one person, one vote" standard articulated by *Reynolds v. Sims,* 377 U.S. 533, 555, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964), and will implement a reapportionment plan to remedy the defects in those districts.

PROCEDURAL HISTORY

These actions were initiated with the filing of a complaint on February 1, 2001, by a group of Wisconsin voters naming the Wisconsin Elections Board and its members as defendants. Those voters alleged that Wisconsin's federal congressional districts violated the "one-person, one vote" principle articulated in art. I, sec. 2 of the United States Constitution.[2] Two groups of state legislators then filed motions to intervene. The first, the Baumgart intervenors, represent the Democratic members of the Wisconsin Senate, while the second, the Jensen intervenors, represent the Republican leaders of the State Senate and State Assembly. The motions to intervene were granted in November 2001. Subsequently, several other groups and individuals filed motions to intervene. The motions of Senators Gwendolynne Moore and Gary George were granted, and the motions of the African–American Coalition for Empowerment, Citizens for Competitive Elections, and Wisconsin Manufacturers and Commerce Association were denied. However, they were named amicus curiae.

2 Case No. 01–C–0121 was randomly assigned to Senior District Judge John W. Reynolds. Pursuant to 28 U.S.C. § 2284, Chief Judge Flaum named Circuit Judge Frank H. Easterbrook and Chief District Judge J.P. Stadtmueller to a three-judge panel to hear the case. The case was subsequently reassigned, pursuant to General L.R. 3.1, to District Judge C.N. Clevert.

***2** On April 12, 2002, to remedy a possible jurisdictional defect, the Jensen intervenors filed a separate complaint (the "Jensen action") against the members of the Elections Board reasserting the state apportionment issues raised in the earlier case. The new filing, Case No. 02–C–0366, was assigned to Judge Clevert as a related case. Later that day, Chief Judge Flaum appointed Judges Easterbrook and Stadtmueller to the panel hearing the second case. The two cases were then consolidated, and the Baumgart intervenors intervened in the second action (02–C–0366).

BACKGROUND

The United States Census Bureau released its final 2000 census data on March 8, 2001, showing that Wisconsin's total population is 5,463,675. Dividing this population into ninety-nine equipopulous state assembly districts and thirty-three equipopulous senate districts would yield Assembly districts containing 54,179 persons and state senate districts containing 162,536 persons. However, populations in the existing state Senate and Assembly districts vary substantially from these numbers. For example, Senate District 6 deviates more than 22 percent from the perfect senate district numeric population, and Assembly District 18 deviates more than 26 percent from the perfect assembly district numeric population. All parties agree that as drawn, Wisconsin Senate and Assembly districts are unconstitutional.

DISCUSSION

The reapportionment of state legislative districts requires the balancing of several disparate goals. These are summarized below.

"The Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State." *Reynolds v. Sims,* 377 U.S. 533, 568, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964). With respect to reapportionment, population equality is the "most elemental requirement of the Equal Protection Clause." *Connor v. Fitch,* 431 U.S. 407, 409, 97 S.Ct. 1828, 52 L.Ed.2d 465 (1977). *See also Chapman v. Meier,* 420 U.S. 1, 22, 95 S.Ct. 751, 42 L.Ed.2d 766 (1975). However, the Supreme Court has not pronounced a threshold for a constitutionally acceptable level of deviation from absolute population equality. The three-judge panel that redistricted the State of Wisconsin in 1982 stated that population deviations should be of the *"de minimis"* variety, which it defined as below 2 percent. *AFL–CIO v. Elections Bd.,* 543 F.Supp. 630, 634 (E.D.Wis.1982).[3] The 1992 reapportionment panel noted that because the 1990 decennial census contained errors and was out of date by the time of trial, the court not need fall for the "fallacy of delusive exactness" in fashioning a plan, and that "below one percent [deviation in voting power] there are no legally or politically relevant degrees of perfection." *Prosser v. Elections Bd.,* 793 F.Supp. 859, 865–66 (W.D.Wis.1992).[4]

3 In contrast, Congressional redistricting may create a much more rigorous standard for "de minimis" population deviations. *See Vieth v. Pennsylvania,* No. 1:CV–01–2439, 2002 U.S. Dist. LEXIS 6188 at *15 (M.D. Penn. April 8, 2002) (finding plan creating Congressional districts unconstitutional because the most- and least-populous districts differed in population by nineteen persons.)

4 The *Prosser* Court noted that the parties refer to both the maximum deviation, which is the difference in population between the least and the most populous district divided by the mean population of all districts, as well as the average by which the districts deviate from the average population.

***3** Although population equality is the primary goal while constructing legislative districts, it is not the only one. In the context of Congressional redistricting plans, the Supreme Court has observed that "court-ordered districts are held to higher standards of population equality than legislative ones," but that "slight deviations are allowed" if supported by "historically significant state policy or unique features." *Abrams v. Johnson,* 521 U.S. 74, 98, 117 S.Ct. 1925, 138 L.Ed.2d 285 (1997) (internal citations omitted).

Historically, federal courts have accepted some deviation from perfect population equality to comply with "traditional" redistricting criteria. These criteria include retaining previous occupants in new legislative districts, known as "core retention," *see Karcher,* 462 U.S. 725, 740, 103 S.Ct. 2653, 77 L.Ed.2d 133 (1983); avoiding split municipalities, *see id.;* drawing districts that are as contiguous and compact as possible, *see id.;* respecting the requirements of the Voting Rights Act, 42 U.S.C. § 1973; maintaining traditional communities of interest, *see AFL–CIO,* 543 F.Supp. at 636; and avoiding the creation of partisan advantage, *see Prosser,* 793 F.Supp. at 867 (noting that "[j]udges should not select a plan that seeks partisan advantage"). Avoiding unnecessary pairing of incumbents, a criterion discussed by the Supreme Court in *Karcher,* 462 U.S. at 740, was expressly rejected by the 1982 Wisconsin reapportionment panel, *see AFL–CIO,* 543 F.Supp. at 638 (stating that the panel did not consider incumbent residency in drafting its plan).

Courts in Wisconsin have accepted some deviation from perfect population equality in view of two special considerations. The first involves senate elections. In Wisconsin, state senators have four year terms. State senators from even-numbered districts run for office in years corresponding to the presidential election cycle, and state senators from odd-numbered districts are elected during midterm elections. Thus, in midterm legislative election years such as 2002, if voters are shifted from odd to even senate districts, they will face a two-year delay in voting for state senators. Delays of this nature are referred to as "disenfranchisement." *See Prosser,* 793 F.Supp. at 866.

The second consideration is the avoidance of ward boundary splits and, where possible, municipal boundary splits. Article IV, section 4 of the Wisconsin Constitution provides that assembly districts are "to be bounded by county, precinct, town or ward lines, to consist of contiguous territory and be in as compact form as practicable." At one time this language was interpreted as prohibiting the creation of

Assembly districts that crossed county lines. Indeed, in 1964 the Wisconsin Supreme Court declined to divide any counties when reapportioning the state, thereby creating a maximum population deviation of 76.2%. *See Wisconsin ex rel. Reynolds v. Zimmerman,* 23 Wis.2d 606, 623 (1964). Although avoiding the division of counties is no longer an inviolable principle, respect for the prerogatives of the Wisconsin Constitution dictate that wards and municipalities be kept whole where possible. This is in accord with the decisions of two earlier Wisconsin three judge panels. The 1982 and 1992 reapportionment panels did not divide any wards in their respective reapportionment plans, and the 1992 panel rejected a proposed plan that achieved 0% population deviation by splitting wards. *See Prosser,* 793 F.Supp. at 866.

***4** With these considerations in mind, we turn to the plans submitted in these cases. A total of sixteen plans were submitted to the court. The Jensen intervenors filed nine plans (variations on a theme with different standards of population equality), the Baumgart intervenors three, while Senator George, the African American Coalition for Empowerment, Citizens for Competitive Elections, and Wisconsin Manufacturers and Commerce each filed one. Of the multiple plans submitted by the Jensen and Baumgart intervenors, the court considered only two for each group, JP1 Alternate A (Alt A) and JP1 Alternate C (Alt C) for the Jensen intervenors, and Leg Dem B and Leg Dem C for the Baumgart intervenors.

The two Jensen intervenor plans—Alt A and Alt C—have the lowest levels of population deviation of any of the filed plans, with maximum deviations of .97 and 1.00%, respectively. Moreover, they have the highest levels of core retention, lowest levels of disenfranchisement, and highest levels of compactness of any of the plans submitted.

On the other hand, the partisan origins of the Jensen plans are evident. First, they pair a substantial number of Democratic incumbents, while several Republican incumbent pairs are pairs in name only, with one of each retiring or running for another office. Second, it appears that the Jensen Assembly plans are designed to move a number of incumbent Democrats into strongly Republican districts and either pack Democrats into as few districts as possible or divide them among strong Republican districts. On the Senate side, the Jensen plans include questionable splits on the county level in districts with Democrat incumbents, and appear to have been designed to ensure Republican control of the Senate.

The Baumgart plans are riddled with their own partisan marks. Leg Dem B and Leg Dem C divide the City of Madison into six districts radiating out from the Capitol in pizza slice fashion. The Leg Dem plans have higher levels of population deviation, lower levels of core retention, higher levels of disenfranchisement, and lower levels of compactness than the Alt A and Alt C plans, in part because they renumber the Senate districts in Milwaukee County (again for presumed partisan advantage).

Senator George's plan is identical to Leg Dem C in all but the southeastern corner of the state. His plan contains a substantial level of absolute population deviation (2.67% in his amended plan), and disenfranchises more voters than any of the above plans, also due to renumbering districts in Milwaukee County.

At trial, the parties pursued two issues vigorously: what effect, if any, does § 2 of the Voting Rights Act have on creation of legislative districts in Milwaukee, and how the court should determine the relative partisan fairness of the reapportionment plans filed in this case (with each side claiming that their plan struck the proper balance of partisan fairness).

The Voting Rights Act issues are the result of demographic changes that occurred in Milwaukee County since redistricting in 1992. The 1992 redistricting panel created five African–American majority-minority districts and one African–American minority influence district, along with one Latino majority-minority district. Over the subsequent decade, demographic trends resulted in the African–American influence district becoming a majority-minority district. Those same demographic trends resulted in at least one district having a greater than 80% African–American population.

***5** Under the Supreme Court's ruling in *Thornburg v. Gingles,* 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986), extended to single-member districts in *Growe v. Emison,* 507 U.S. 25, 40–41, 113 S.Ct. 1075, 122 L.Ed.2d 388 (1993), three things must be present to warrant the consideration of race as the primary basis for drawing districts: first, the minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district"; second, the minority group must be "politically cohesive"; and third, the majority must "vote[ ] sufficiently as a bloc to enable it ... to defeat the minority's preferred candidate." 478 U.S. at 50–51.

The parties agree that the African–American community in the City of Milwaukee is large enough and compact enough to constitute a majority in several districts, and the parties share the view that African–Americans generally vote for Democrats. However, they disagree as to whether block voting occurs in the City of Milwaukee, and if so, what remedy should be applied.

The Jensen and Baumgart intervenors argued mutually contradictory positions with respect to whether § 2 of the Voting Rights Act should be considered in this case. The Jensen intervenors alleged that there was no evidence of block voting by whites in the City of Milwaukee, which, if correct would negate any justification under *Growe* for reliance upon race in constructing voting districts. However, the Jensen intervenors' expert, Bernard Grofman, testified by affidavit that the only way to respect communities of interest in Milwaukee is to draw district lines that create six African–American majority-minority districts, and avoid "packing" African–American votes. Indeed, the Jensen plans appear to have relied upon race as the basis for creating districts in the City of Milwaukee: a simple inspection of the Jensen plans of Milwaukee and the plans showing Milwaukee's minority population leads to the conclusion that the Jensen plans were crafted to chop the areas of Milwaukee with the highest African American populations and to balance those areas with areas of greater white population from outer sections of the City of Milwaukee.

In contrast, the Baumgart intervenors presented expert testimony that all of the *Gingles* criteria were present in Wisconsin in general and the City of Milwaukee in particular, but that the Jensen plans divided the African–American population too thinly and would result in the inability of African–Americans to elect candidates of choice. The Baumgart intervenors' expert noted that a minority district requires an African–American voting age population of at least 60% to guarantee the election of candidates of choice, and that only their plans satisfied this criterion. Somewhat counterintuitively, the Baumgart intervenors' expert asserted that the court must reject the Jensen plans for failure initially to satisfy the *Gingles* factors (even though he urged the court to find that the Baumgart plans are consistent with *Gingles*).

***6** At the final hearing the parties debated the relative partisan impact of their plans. The Jensen intervenors contended that their plans were fair, using a "base-race" analysis, and resulted in "competitive" districts. The Baumgart intervenors in turn submitted that the Jensen plans were flawed because they packed the Democrats into a lesser number of districts and that the Jensen plans give the Republicans a five-seat majority in an even election.

Analysis reveals that the "base-race" method used by the Jensen intervenors is only as reliable as the elections chosen, and may be biased if special factors are present in the base-races used for the estimate. *See Prosser,* 793 F.Supp. at 868 (noting that the ground for using base-races was destroyed on cross examination, as the races chosen "were riven by special factors"). The three base-races relied upon by Jensen's expert were saturated with special factors: the 1998 gubernatorial election, paired three-time incumbent Tommy Thompson (possibly the most popular governor in Wisconsin's history) against political newcomer Ed Garvey; the 1996 secretary of state election, paired Doug LaFollette (a distant relative of Progressive icon "Fighting Bob" La Follette and former Governor Phillip La Follette) against Linda Cross; and the 2000 presidential election, perhaps the closest in this state's history. Moreover, the base-race analysis was determined merely by averaging the vote percentages for each candidate in all of the districts without considering differences in population between the districts, thus biasing the analysis in favor of underpopulated districts.

The Baumgart intervenors' method for analyzing political fairness was more sophisticated than the base-race method and is correct in the results found, namely, that even if the Democrats win a bare majority of votes, they will take less than 50% of the total number of seats in the Assembly. The problem with using this finding as the basis for a plan is that it does not take into account the difference between popular and legislative majorities, and the fact that, practically, there is no way to draw plans which use the traditional criteria and completely avoid this result. Theoretically, it would be possible to draw lines for Assembly districts that would assure that the party with the popular majority holds every seat in the Assembly. *See Prosser,* 793 F.Supp. at 864. However, Wisconsin Democrats tend to be found in high concentrations in certain areas of the state, and the only way to assure that the number of seats in the Assembly corresponds roughly to the percentage of votes cast would be at-large election of the entire Assembly, which neither side has advocated and would likely violate the Voting Rights Act.

Having found various unredeemable flaws in the various plans submitted by the parties, the court was forced to draft one of its own. As was done in 1992, a draft version of the plan was submitted to the parties for comment and analysis.

The parties were allowed five days to analyze the draft and to comment to the court.

***7** The court undertook its redistricting endeavor in the most neutral way it could conceive—by taking the 1992 reapportionment plan as a template and adjusting it for population deviations. The process began with district adjustments in the southeastern corner of the state. That area was chosen for two reasons. First, Milwaukee County has experienced the state's greatest population loss over the past decade, while the region immediately to its west has experienced the greatest population growth. Thus, the greatest population deviation in the state lies within this area. Second, the parties devoted much of their trial time to discussing how their plans would affect Milwaukee County.[5]

5 The population shifts in the area necessitated the elimination of one assembly district in Milwaukee County and the creation of one assembly district in the high-growth area west of the county.

When making the necessary changes to the boundaries of the existing districts, the court was guided by the neutral principles of maintaining municipal boundaries and uniting communities of interest. There was also an attempt to keep population deviation between districts as low as possible while respecting these principles.

As part of its efforts, the court had to decide whether to renumber the assembly districts in southeastern Wisconsin to accommodate the migration of one entire district out of Milwaukee County. And there was an attempt to create physically compact senate districts and maintain communities of interest when making this decision.

Obviously, the process involved some subjective choices. For example, the court had to decide *which* communities to exclude from overpopulated districts and to include in underpopulated districts. Where possible, the court relied on affidavits supplied by the parties describing the natural communities of interest to direct these subjective choices. (Senator George's submissions provided particular guidance within Milwaukee County in this regard.)

Adherence to these criteria resulted in a plan containing five African–American majority assembly districts, one Latino majority assembly district, and one African–American "influence" assembly district. The racial and cultural minority populations in these districts appear sufficient to permit African–Americans and Latinos to elect candidates of choice. Hence, it was unnecessary to decide whether racially polarized voting occurs in southeastern Wisconsin (thereby necessitating the conscious creation of majority-minority districts pursuant to the Voting Rights Act).

The court's plan embodies a maximum population deviation of 1.48%, which is lower than the population deviation of the best of the Baumgart intervenors' plans and slightly higher than the population deviations of the Jensen intervenors' plans, and within the de minimis 2% threshold set by the *AFL–CIO* court. Presumably, because of the methodology used, the court's plan meets or exceeds the submissions of the parties and amici with respect to most traditional apportionment criteria. The average level of core retention is 76.7%, versus 73.9% for the Jensen plans and 74% for the Baumgart plans. The court plan splits 50 municipalities, as compared to 51 for the Jensen plans and 78 for the Baumgart plans. The number of voters disenfranchised with respect to Senate elections is 171,613, versus 206,428 for the Jensen plans and 303,606 for the Baumgart plans. District compactness levels are also higher than those for the Jensen and Baumgart plans, using the smallest circle and perimeter to area measures.[6] Finally, the court plan respects traditional communities of interest in the City of Milwaukee.

6 The court's plan is also superior to all plans submitted by amici with respect to the traditional redistricting criteria.

***8** Now, therefore,

IT IS ORDERED that the Wisconsin State legislative districts described in Chapter 4 of the Wisconsin Statutes (1999–2000) are declared unconstitutional.

IT IS FURTHER ORDERED that all elections to be held in the Wisconsin State legislative districts as described in Chapter 4 of the Wisconsin Statutes (1999–2000) are enjoined.

IT IS FURTHER ORDERED that the 99 Wisconsin State assembly districts described below are organized into 33 senate districts as follows:

I. SENATE DISTRICTS

First senate district: The combination of the 1st, 2nd and 3rd assembly districts.

Second senate district: The combination of the 4th, 5th, and 6th assembly districts.

Third senate district: The combination of the 7th, 8th, and 9th assembly districts.

Fourth senate district: The combination of the 10th, 11th, and 12th assembly districts.

Fifth senate district: The combination of the 13th, 14th, and 15th assembly districts.

Sixth senate district: The combination of the 16th, 17th, and 18th assembly districts.

Seventh senate district: The combination of the 19th, 20th, and 21st assembly districts.

Eighth senate district: The combination of the 22nd, 23rd, and 24th assembly districts.

Ninth senate district: The combination of the 25th, 26th, and 27th assembly districts.

Tenth senate district: The combination of the 28th, 29th, and 30th assembly districts.

Eleventh senate district: The combination of the 31st, 32nd, and 33rd assembly districts.

Twelfth senate district: The combination of the 34th, 35th, and 36th assembly districts.

Thirteenth senate district: The combination of the 37th, 38th, and 39th assembly districts.

Fourteenth senate district: The combination of the 40th, 41st, and 42nd assembly districts.

Fifteenth senate district: The combination of the 43rd, 44th, and 45th assembly districts.

Sixteenth senate district: The combination of the 46th, 47th, and 48th assembly districts.

Seventeenth senate district: The combination of the 49th, 50th, and 51st assembly districts.

Eighteenth senate district: The combination of the 52nd, 53rd, and 54th assembly districts.

Nineteenth senate district: The combination of the 55th, 56th, and 57th assembly districts.

Twentieth senate district: The combination of the 58th, 59th, and 60th assembly districts.

Twenty–First senate district: The combination of the 61st, 62nd, and 63rd assembly districts.

Twenty–Second senate district: The combination of the 64th, 65th, and 66th assembly districts.

Twenty–Third senate district: The combination of the 67th, 68th, and 69th assembly districts.

Twenty–Fourth senate district: The combination of the 70th, 71st, and 72nd assembly districts.

Twenty–Fifth senate district: The combination of the 73rd, 74th, and 75th assembly districts.

Twenty–Sixth senate district: The combination of the 76th, 77th, and 78th assembly districts.

Twenty–Seventh senate district: The combination of the 79th, 80th, and 81st assembly districts.

***9** Twenty–Eighth senate district: The combination of the 82nd, 83rd, and 84th assembly districts.

Twenty–Ninth senate district: The combination of the 85th, 86th, and 87th assembly districts.

Thirtieth senate district: The combination of the 88th, 89th, and 90th assembly districts.

Thirty–First senate district: The combination of the 91st, 92nd, and 93rd assembly districts.

Thirty–Second senate district: The combination of the 94th, 95th, and 96th assembly districts.

Thirty–Third senate district: The combination of the 97th, 98th, and 99th assembly districts.

II. ASSEMBLY DISTRICTS

First assembly district. All of the following territory constitutes the first assembly district:

(1) Whole county. Door County.

(2) Brown County. That part of Brown County consisting of the towns of Green Bay, Humboldt, and Scott.

(3) Kewaunee County. That part of Kewaunee County consisting of all of the following:

(a) The towns of Ahnapee, Carlton, Casco, Lincoln, Luxemburg, Montpelier, Pierce, Red River, and West Kewaunee.

(b) The villages of Casco and Luxemburg.

(c) The cities of Algoma and Kewaunee.

Second assembly district. All of the following territory constitutes the 2nd assembly district:

(1) Brown County. That part of Brown County consisting of all of the following:

(a) The towns of Bellevue, Eaton, Glenmore, Ledgeview, New Denmark, Rockland, and Wrights town.

(b) The villages of Denmark and Wrights town.

(2) Kewaunee County. That part of Kewaunee County consisting of the town of Franklin.

(3) Manitowoc County. That part of Manitowoc County consisting of all of the following:

(a) The towns of Cooperstown, Franklin, Gibson, Kossuth, Maple Grove, Mishicot, Two Creeks, and Two Rivers.

(b) The villages of Francis Creek, Kellnersville, Maribel, and Mishicot.

(c) The city of Two Rivers.

Third assembly district. All of the following territory constitutes the 3rd assembly district:

(1) Brown County. That part of Brown County consisting of the towns of Holland and Morrison.

(2) Calumet County. That part of Calumet County consisting of all of the following:

(a) The towns of Brillion, Chilton, Harrison, Stockbridge, and Woodville.

(b) The villages of Sherwood and Stock bridge.

(c) The cities of Brillion and Chilton.

(d) That part of the city of Appleton located in the county.

(e) That part of the city of Menasha located in the county.

(3) Outagamie County. That part of Outagamie County consisting of all of the following:

(a) The town of Buchanan.

(b) The villages of Combined Locks and Kimberly.

(c) That part of the village of Little Chute comprising wards 5, 6, 7, and 11.

(4) Winnebago County. That part of Winnebago County consisting of that part of the city of Appleton comprising wards 41 and 49.

Fourth assembly district. All of the following territory in Brown County constitutes the 4th assembly district:

***10** (1) The village of Allouez.

(2) That part of the village of Ashwaubenon comprising wards 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, and 12.

(3) The city of De Pere.

(4) That part of the city of Green Bay comprising ward 46.

Fifth assembly district. All of the following territory constitutes the 5th assembly district:

(1) Brown County. That part of Brown County consisting of all of the following:

(a) The towns of Hobart and Lawrence.

(b) That part of the village of Ashwaubenon comprising ward 9.

(c) That part of the city of Green Bay comprising wards 47, 48, and 49.

(2) Outagamie County. That part of Outagamie County consisting of all of the following:

(a) The towns of Black Creek, Cicero, Freedom, Kaukauna, Oneida, Osborn, Seymour, and Vandenbroek.

(b) The villages of Black Creek and Nichols.

(c) That part of the village of Little Chute comprising wards 1, 2, 4, 8, 9, 10, and 12.

(d) That part of the village of Howard located in the county.

(e) The cities of Kaukauna and Seymour.

(3) Shawano County. That part of Shawano County consisting of the town of Maple Grove.

Sixth assembly district. All of the following territory constitutes the 6th assembly district:

(1) Oconto County. That part of Oconto County consisting of all of the following:

(a) The towns of Abrams, Bagley, Brazeau, Breed, Gillett, How, Maple Valley, Morgan, Oconto Falls, Spruce, and Underhill.

(b) The village of Suring.

(c) The cities of Gillett and Oconto Falls.

(2) Outagamie County. That part of Outagamie County consisting of all of the following:

(a) The towns of Bovina, Deer Creek, Ellington, Liberty, Maine, and Maple Creek.

(b) The villages of Bear Creek and Shiocton.

(3) Shawano County. That part of Shawano County consisting of all of the following:

(a) The towns of Angelica, Belle Plaine, Grant, Green Valley, Hartland, Herman, Lessor, Morris, Navarino, Pella, Richmond, Seneca, Washington, Waukechon, and Wescott.

(b) The villages of Bonduel, Bowler, Cecil, and Gresham.

(c) The city of Shawano.

(4) Waupaca County. That part of Waupaca County consisting of all of the following:

(a) The town of Matteson.

(b) The village of Embarrass.

Seventh assembly district. All of the following territory in Milwaukee County constitutes the 7th assembly district:

(1) That part of the city of Greenfield comprising wards 1, 2, 3, 4, 5, 8, 13, 14, 15, 16, 17, 18, 19, 20, and 21.

(2) That part of the city of Milwaukee comprising wards 184, 185, 186, 187, 188, 189, 190, 193, 194, 195, 196, 197, 198, 199, and 231.

Eighth assembly district. All of the following territory in Milwaukee County constitutes the 8th assembly district: that part of the city of Milwaukee comprising wards 63, 64, 132, 133, 134, 135, 139, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 291, 292, and 293.

Ninth assembly district. All of the following territory in Milwaukee County constitutes the 9th assembly district: that part of the city of Milwaukee comprising wards 136, 137, 138, 140, 141, 142, 143, 144, 145, 146, 182, 183, 200, 217, 218, 219, 220, 221, 242, 243, 244, 245, 246, 247, 248, 294, 295, and 296.

***11** Tenth assembly district. All of the following territory in Milwaukee County constitutes the 10th assembly district:

(1) That part of the city of Glendale comprising wards 1, 6, and 12.

(2) That part of the city of Milwaukee comprising wards 1, 2, 3, 11, 13, 16, 17, 19, 41, 48, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 157, 161, 164, 165, 166, 176, 177, and 178.

Eleventh assembly district. All of the following territory in Milwaukee County constitutes the 11th assembly district: that part of the city of Milwaukee comprising wards 4, 5, 6, 7, 8, 9, 10, 12, 14, 15, 18, 20, 21, 22, 23, 26, 27, 28, 78, 79, 80, 115, 156, 158, 159, 160, 162, and 163.

Twelfth assembly district. All of the following territory constitutes the 12th assembly district:

(1) Milwaukee County. That part of Milwaukee County consisting of all of the following:

(a) That part of the city of Milwaukee comprising wards 24, 25, 74, 75, 76, 77, 83, 148, 149, 151, 152, 153, 154, 155, 264, 266, 267, 268, 269, 270, 271, 272, and 273.

(b) That part of the city of Wauwatosa comprising wards 23 and 24.

(2) Waukesha County. That part of Waukesha County consisting of that part of the city of Milwaukee comprising ward 274.

Thirteenth assembly district. All of the following territory in Milwaukee County constitutes the 13th assembly district:

(1) The village of West Milwaukee.

(2) That part of the city of Milwaukee comprising wards 37, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 282, 283, 284, 285, 288, and 289.

(3) That part of the city of Wauwatosa comprising wards 1, 2, 3, 4, 7, 10, 11, 12, 13, 14, and 15.

Fourteenth assembly district. All of the following territory constitutes the 14th assembly district:

(1) Milwaukee County. That part of Milwaukee County consisting of all of the following:

(a) That part of the city of Milwaukee comprising wards 286 and 287.

(b) That part of the city of Wauwatosa comprising wards 5, 6, 8, 9, 16, 17, 18, 19, 20, 21, and 22.

(c) That part of the city of West Allis comprising wards 16, 17, 18, 28, 30, and 32.

(2) Waukesha County. That part of Waukesha County consisting of all of the following:

(a) The village of Elm Grove.

(b) That part of the city of Brookfield comprising wards 1, 2, 3, 7, 9, 15, 23, and 24.

Fifteenth assembly district. All of the following territory in Milwaukee County constitutes the 15th assembly district:

(1) That part of the city of Milwaukee comprising wards 191 and 192.

(2) That part of the city of West Allis comprising wards 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 31, and 33.

Sixteenth assembly district. All of the following territory in Milwaukee County constitutes the 16th assembly district: that part of the city of Milwaukee comprising wards 60, 61, 62, 65, 66, 70, 71, 72, 73, 105, 106, 107, 108, 109, 110, 111, 112, 174, 175, 179, 180, 297, 298, 299, 311, 312, 313, and 314.

***12** Seventeenth assembly district. All of the following territory in Milwaukee County constitutes the 17th assembly district: that part of the city of Milwaukee comprising wards 29, 30, 31, 32, 33, 34, 35, 36, 81, 82, 84, 113, 114, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 127, 128, 167, 168, 169, 170, and 171.

Eighteenth assembly district. All of the following territory in Milwaukee County constitutes the 18th assembly district: that part of the city of Milwaukee comprising wards 67, 68, 69, 126, 129, 130, 131, 172, 173, 181, 275, 276, 277, 278, 279, 280, 281, 290, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, and 310.

Nineteenth assembly district. All of the following territory in Milwaukee County constitutes the 19th assembly district: that part of the city of Milwaukee comprising wards 39, 42, 43, 44, 45, 46, 47, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 235, 236, 237, 238, 239, 240, 241, 251, 252, and 255.

Twentieth assembly district. All of the following territory in Milwaukee County constitutes the 20th assembly district:

(1) The cities of Cudahy and St. Francis.

(2) That part of the city of Milwaukee comprising wards 216, 222, 223, 224, 225, 226, 227, 228, 230, 233, 234, 249, 250, 253, 254, 256, and 257.

Twenty-first assembly district. All of the following territory in Milwaukee County constitutes the 21st assembly district:

(1) The cities of Oak Creek and South Milwaukee.

(2) That part of the city of Milwaukee comprising wards 229 and 232.

Twenty-second assembly district. All of the following territory in Milwaukee County constitutes the 22nd assembly district:

(1) The villages of Fox Point, River Hills, Shorewood, and Whitefish Bay.

(2) That part of the city of Glendale comprising wards 2, 3, 4, 5, 7, 8, 9, 10, and 11.

(3) That part of the city of Milwaukee comprising wards 38, 40, 147, and 150.

Twenty-third assembly district. All of the following territory constitutes the 23rd assembly district:

(1) Milwaukee County. That part of Milwaukee County consisting of all of the following:

(a) The village of Brown Deer.

(b) That part of the village of Bayside located in the county.

(c) That part of the city of Milwaukee comprising wards 258, 259, 260, 261, 262, 263, and 265.

(2) Ozaukee County. That part of Ozaukee County consisting of all of the following:

(a) The village of Thiensville.

(b) That part of the village of Bayside located in the county.

(c) That part of the city of Mequon comprising wards 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, and 21.

(3) Washington County. That part of Washington County consisting of that part of the city of Milwaukee comprising ward 262.

Twenty-fourth assembly district. All of the following territory constitutes the 24th assembly district:

(1) Washington County. That part of Washington County consisting of all of the following:

(a) The town of Germantown.

***13** (b) That part of the town of Richfield comprising wards 6, 7, 8, 11, 12, and 13.

(c) The village of Germantown.

(2) Waukesha County. That part of Waukesha County consisting of all of the following:

(a) The village of Butler.

(b) That part of the village of Menomonee Falls comprising wards 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 28, and 29.

Twenty-fifth assembly district. All of the following territory constitutes the 25th assembly district:

(1) Calumet County. That part of Calumet County consisting of all of the following:

(a) The town of Rantoul.

(b) The villages of Hilbert and Potter.

(2) Manitowoc County. That part of Manitowoc County consisting of all of the following:

(a) The towns of Cato, Centerville, Eaton, Liberty, Manitowoc, Manitowoc Rapids, Meeme, Newton, and Rockland.

(b) The villages of Cleveland, Reedsville, St. Nazianz, Valders, and Whitelaw.

(c) The city of Manitowoc.

Twenty-sixth assembly district. All of the following territory in Sheboygan County constitutes the 26th assembly district:

(1) That part of the town of Sheboygan comprising ward 2.

(2) The village of Kohler.

(3) The city of Sheboygan.

(4) That part of the city of Sheboygan Falls comprising ward 10.

Twenty-seventh assembly district. All of the following territory constitutes the 27th assembly district:

(1) Calumet County. That part of Calumet County consisting of all of the following:

(a) The towns of Brothertown, Charlestown, and New Holstein.

(b) The city of New Holstein.

(c) That part of the city of Kiel located in the county.

(2) Fond du Lac County. That part of Fond du Lac County consisting of all of the following:

(a) The towns of Calumet, Forest, and Marshfield.

(b) The villages of Mount Calvary and St. Cloud.

(3) Manitowoc County. That part of Manitowoc County consisting of all of the following:

(a) The town of Schleswig.

(b) That part of the city of Kiel located in the county.

(4) Sheboygan County. That part of Sheboygan County consisting of all of the following:

(a) The towns of Greenbush, Herman, Mosel, Plymouth, Rhine, Russell, and Sheboygan Falls.

(b) That part of the town of Sheboygan comprising wards 1, 3, 4, 5, 6, and 7.

(c) The villages of Elkhart Lake, Glenbeulah, and Howards Grove.

(d) The city of Plymouth.

(e) That part of the city of Sheboygan Falls comprising wards 1, 2, 3, 4, 5, 6, 7, 8, and 9.

Twenty-eighth assembly district. All of the following territory constitutes the 28th assembly district:

(1) Burnett County. That part of Burnett County consisting of all of the following:

(a) The towns of Anderson, Daniels, Dewey, Grantsburg, La Follette, Lincoln, Meenon, Roosevelt, Siren, Trade Lake, West Marshland, and Wood River.

(b) The villages of Grantsburg, Siren, and Webster.

(2) Polk County. That part of Polk County consisting of all of the following:

***14** (a) The towns of Alden, Apple River, Balsam Lake, Black Brook, Bone Lake, Clam Falls, Clayton, Clear Lake, Eureka, Farmington, Garfield, Georgetown, Laketown, Lincoln, Lorain, Luck, Milltown, Osceola, St. Croix Falls, Sterling, and West Sweden.

(b) The villages of Balsam Lake, Centuria, Clayton, Clear Lake, Dresser, Frederic, Luck, Milltown, and Osceola.

(c) The cities of Amery and St. Croix Falls.

(3) St. Croix County. That part of St. Croix County consisting of all of the following:

(a) That part of the town of Somerset comprising wards 1, 3, 4, and 5.

(b) The village of Somerset.

Twenty-ninth assembly district. All of the following territory constitutes the 29th assembly district:

(1) Dunn County. That part of Dunn County consisting of all of the following:

(a) The towns of Lucas, Menomonie, and Stanton.

(b) The village of Knapp.

(c) The city of Menomonie.

(2) Pierce County. That part of Pierce County consisting of all of the following:

(a) The towns of Gilman and Spring Lake.

(b) The village of Elmwood.

(c) That part of the village of Spring Valley located in the county.

(3) St. Croix County. That part of St. Croix County consisting of all of the following:

(a) The towns of Baldwin, Cady, Cylon, Eau Galle, Emerald, Erin Prairie, Forest, Glenwood, Hammond, Kinnickinnic, Pleasant Valley, Richmond, Rush River, Springfield, Stanton, Star Prairie, and Warren.

(b) The villages of Baldwin, Deer Park, Hammond, Roberts, Star Prairie, Wilson, and Woodville.

(c) That part of the village of Spring Valley located in the county.

(d) The cities of Glenwood City and New Richmond.

Thirtieth assembly district. All of the following territory constitutes the 30th assembly district:

(1) Pierce County. That part of Pierce County consisting of all of the following:

(a) The towns of Clifton, Diamond Bluff, Oak Grove, River Falls, Trenton, and Trimbelle.

(b) The village of Ellsworth.

(c) The city of Prescott.

(d) That part of the city of River Falls located in the county.

(2) St. Croix County. That part of St. Croix County consisting of all of the following:

(a) The towns of Hudson, St. Joseph, and Troy.

(b) That part of the town of Somerset comprising ward 2.

(c) The village of North Hudson.

(d) The city of Hudson.

(e) That part of the city of River Falls located in the county.

Thirty-first assembly district. All of the following territory constitutes the 31st assembly district:

(1) Jefferson County. That part of Jefferson County consisting of all of the following:

(a) The towns of Cold Spring, Concord, Farmington, Hebron, Palmyra, and Sullivan.

(b) The villages of Johnson Creek, Palmyra, and Sullivan.

(2) Walworth County. That part of Walworth County consisting of all of the following:

(a) The towns of Lafayette, La Grange, Spring Prairie, Sugar Creek, and Troy.

(b) The city of Elkhorn.

***15** (3) Waukesha County. That part of Waukesha County consisting of all of the following:

(a) The towns of Eagle, Ottawa, and Summit.

(b) The villages of Dousman, Eagle, and Oconomowoc Lake.

(c) hat part of the city of Oconomowoc comprising wards 7, 8, 9, 10, 11, 12, and 13.

Thirty-second assembly district. All of the following territory constitutes the 32nd assembly district:

(1) Kenosha County. That part of Kenosha County consisting of the town of Wheat land.

(2) Walworth County. That part of Walworth County consisting of all of the following:

(a) The towns of Bloomfield, Darien, Delavan, Geneva, Linn, Lyons, Sharon, and Walworth.

(b) The villages of Darien, Fontana–on–Geneva Lake, Sharon, Walworth, and Williams Bay.

(c) That part of the village of Genoa City located in the county.

(d) The cities of Delavan and Lake Geneva.

Thirty-third assembly district. All of the following territory in Waukesha County constitutes the 33rd assembly district:

(1) The towns of Delafield and Geneses.

(2) That part of the town of Mukwonago comprising wards 1, 2, 4, 5, 6, 7, 8, 9, and 10.

(3) That part of the town of Waukesha comprising wards 3, 7, and 8.

(4) The villages of Chenequa, Hartland, Nashotah, North Prairie, and Wales.

(5) The city of Delafield.

(6) That part of the city of Pewaukee comprising ward 7.

(7) That part of the city of Waukesha comprising wards 8, 10, 11, 12, 13, 14, and 15.

Thirty-fourth assembly district. All of the following territory constitutes the 34th assembly district:

(1) Whole county. Vilas County.

(2) Oneida County. That part of Oneida County consisting of all of the following:

(a) The towns of Crescent, Enterprise, Hazelhurst, Lake Tomahawk, Minocqua, Monico, Newbold, Pelican, Piehl, Pine Lake, Schoepke, Stella, Sugar Camp, Three Lakes, and Woodruff.

(b) The city of Rhinelander.

Thirty-fifth assembly district. All of the following territory constitutes the 35th assembly district:

(1) Whole county. Lincoln County.

(2) Langlade County. That part of Langlade County consisting of all of the following:

(a) The towns of Ackley, Ainsworth, Antigo, Elcho, Neva, Norwood, Parrish, Peck, Rolling, Summit, Upham, and Vilas.

(b) The city of Antigo.

(3) Marathon County. That part of Marathon County consisting of all of the following:

(a) The towns of Halsey, Hamburg, Harrison, and Hewitt.

(b) The village of Athens.

(4) Oneida County. That part of Oneida County consisting of the towns of Cassian, Little Rice, Lynne, Nokomis, and Woodboro.

Thirty-sixth assembly district. All of the following territory constitutes the 36th assembly district:

(1) Whole counties. Florence County, Forest County, and Menominee County.

(2) Langlade County. That part of Langlade County consisting of all of the following:

(a) The towns of Evergreen, Langlade, Polar, Price, and Wolf River.

***16** (b) The village of White Lake.

(3) Marathon County. That part of Marathon County consisting of all of the following:

(a) The town of Elderon.

(b) The village of Elderon.

(c) That part of the village of Birnamwood located in the county.

(4) Marinette County. That part of Marinette County consisting of all of the following:

(a) The towns of Amberg, Athelstane, Beecher, Dunbar, Goodman, Lake, Middle Inlet, Niagara, Pembine, Porterfield, Silver Cliff, Stephenson, Wagner, and Wausaukee.

(b) The villages of Crivitz and Wausaukee.

(c) The city of Niagara.

(5) Oconto County. That part of Oconto County consisting of the towns of Doty, Lakewood, Mountain, Riverview, and Townsend.

(6) Shawano County. That part of Shawano County consisting of all of the following:

(a) The towns of Almon, Aniwa, Bartelme, Birnamwood, Hutchins, Red Springs, and Wittenberg.

(b) The villages of Mattoon and Wittenberg.

(c) That part of the village of Birnamwood located in the county.

Thirty-seventh assembly district. All of the following territory constitutes the 37th assembly district:

(1) Dane County. That part of Dane County consisting of all of the following:

(a) The towns of Albion, Christiana, and Deerfield.

(b) The villages of Deerfield and Rochdale.

(c) That part of the village of Cambridge located in the county.

(2) Jefferson County. That part of Jefferson County consisting of all of the following:

(a) The towns of Aztalan, Jefferson, Koshkonong, Lake Mills, Milford, Oakland, Sumner, Waterloo, and Watertown.

(b) That part of the town of Ixonia comprising wards 1, 3, and 4.

(c) That part of the village of Cambridge located in the county.

(d) The cities of Fort Atkinson, Jefferson, Lake Mills, and Waterloo.

Thirty-eighth assembly district. All of the following territory constitutes the 38th assembly district:

(1) Columbia County. That part of Columbia County consisting of that part of the city of Columbus located in the county.

(2) Dodge County. That part of Dodge County consisting of all of the following:

(a) The towns of Ashippun, Clyman, Elba, Emmet, Hustisford, Lebanon, Lowell, Portland, and Shields.

(b) The villages of Clyman, Hustisford, Lowell, and Reeseville.

(c) That part of the city of Watertown located in the county.

(d) Dodge County. That part of Dodge County consisting of that part of the city of Columbus located in the county.

(3) Jefferson County. That part of Jefferson County consisting of all of the following:

(a) That part of the town of Ixonia comprising ward 2.

(b) That part of the city of Watertown located in the county.

(4) Waukesha County. That part of Waukesha County consisting of all of the following:

(a) The town of Oconomowoc.

(b) The village of Lac La Belle.

(c) That part of the city of Oconomowoc comprising wards 1, 2, 3, 4, 5, and 6.

Thirty-ninth assembly district. All of the following territory constitutes the 39th assembly district:

***17** (1) Columbia County. That part of Columbia County consisting of that part of the village of Randolph located in the county.

(2) Dodge County. That part of Dodge County consisting of all of the following:

(a) The towns of Beaver Dam, Burnett, Calamus, Chester, Fox Lake, Herman, Hubbard, Leroy, Lomira, Oak Grove, Rubicon, Trenton, Westford, and Williams town.

(b) The villages of Brownsville, Iron Ridge, Kekoskee, Lomira, and Neosho.

(c) That part of the village of Randolph located in the county.

(d) The cities of Beaver Dam, Fox Lake, Horicon, Juneau, and Maxville.

Fortieth assembly district. All of the following territory constitutes the 40th assembly district:

(1) Outagamie County. That part of Outagamie County consisting of all of the following:

(a) The town of Hottonia.

(b) The village of Hortonville.

(c) That part of the city of New London located in the county.

(2) Shawano County. That part of Shawano County consisting of that part of the city of Marion located in the county.

(3) Waupaca County. That part of Waupaca County consisting of all of the following:

(a) The towns of Bear Creek, Caledonia, Dayton, Dupont, Farmington, Harrison, Helvetia, Iola, Larrabee, Lebanon, Lind, Little Wolf, Mukwa, Royalton, St. Lawrence, Scandinavia, Union, Waupaca, Weyauwega, and Wyoming.

(b) The villages of Big Falls, Iola, Ogdensburg, and Scandinavia.

(c) The cities of Clintonville, Manawa, Waupaca, and Weyauwega.

(d) That part of the city of Marion located in the county.

(e) That part of the city of New London located in the county.

Forty-first assembly district. All of the following territory constitutes the 41st assembly district:

(1) Whole county. Green Lake County.

(2) Fond du Lac County. That part of Fond du Lac County consisting of all of the following:

(a) The towns of Alto, Metomen, and Ripon.

(b) The villages of Brandon and Fair water.

(c) The city of Ripon.

(3) Marquette County. That part of Marquette County consisting of all of the following:

(a) The towns of Crystal Lake, Mecan, Neshkoro, and Newton.

(b) The village of Neshkoro.

(4) Waupaca County. That part of Waupaca County consisting of all of the following:

(a) The town of Fremont.

(b) The village of Fremont.

(5) Waushara County. That part of Waushara County consisting of all of the following:

(a) The towns of Aurora, Bloomfield, Coloma, Dakota, Leon, Marion, Mount Morris, Poysippi, Richford, Saxeville, Springwater, Warren, and Wautoma.

(b) The villages of Coloma, Lohrville, Redgranite, and Wild Rose.

(c) The city of Wautoma.

(d) That part of the city of Berlin located in the county.

Forty-second assembly district. All of the following territory constitutes the 42nd assembly district:

(1) Adams County. That part of Adams County consisting of all of the following:

(a) The towns of Dell Prairie and New Haven.

***18** (b) That part of the city of Wisconsin Dells located in the county.

(2) Columbia County. That part of Columbia County consisting of all of the following:

(a) The towns of Caledonia, Fort Winnebago, Lewiston, Marcellon, Newport, and Wyocena.

(b) The villages of Pardeeville and Wyocena.

(c) The city of Portage.

(d) That part of the city of Wisconsin Dells located in the county.

(3) Marquette County. That part of Marquette County consisting of all of the following:

(a) The towns of Buffalo, Douglas, Harris, Montello, Moundville, Oxford, Packwaukee, Shields, and Westfield.

(b) The villages of Endeavor and Oxford.

(c) The city of Montello.

(4) Sauk County. That part of Sauk County consisting of all of the following:

(a) The towns of Baraboo, Delton, Fairfield, and Greenfield.

(b) The villages of Lake Delton and West Baraboo.

(c) The city of Baraboo.

(d) That part of the city of Wisconsin Dells located in the county.

Forty-third assembly district. All of the following territory constitutes the 43rd assembly district:

(1) Dane County. That part of Dane County consisting of that part of the city of Edgerton located in the county.

(2) Jefferson County. That part of Jefferson County consisting of that part of the city of Whitewater located in the county.

(3) Rock County. That part of Rock County consisting of all of the following:

(a) The towns of Avon, Beloit, Center, Fulton, Janesville, Lima, Milton, Newark, Plymouth, Porter, Rock, and Spring Valley.

(b) The villages of Footville and Orfordville.

(c) The city of Milton.

(d) That part of the city of Edgerton located in the county.

(4) Walworth County. That part of Walworth County consisting of all of the following:

(a) The town of Whitewater.

(b) That part of the city of Whitewater located in the county.

Forty-fourth assembly district. All of the following territory in Rock County constitutes the 44th assembly district: that part of the city of Janesville comprising wards 1, 2, 3, 4, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25.

Forty-fifth assembly district. All of the following territory constitutes the 45th assembly district:

(1) Rock County. That part of Rock County consisting of all of the following:

(a) The towns of Bradford, Clinton, Harmony, Johnstown, La Prairie, and Turtle.

(b) The village of Clinton.

(c) The city of Beloit.

(d) That part of the city of Janesville comprising wards 5, 6, and 12.

(2) Walworth County. That part of Walworth County consisting of the town of Richmond.

Forty-sixth assembly district. All of the following territory in Dane County constitutes the 46th assembly district:

(1) The towns of Cottage Grove, Dunkirk, Pleasant Springs, Rutland, and Sun Prairie.

(2) That part of the town of Dunn comprising wards 1 and 7.

(3) The village of Cottage Grove.

(4) That part of the village of Oregon comprising wards 2, 3, and 4.

***19** (5) The cities of Stoughton and Sun Prairie.

Forty-seventh assembly district. All of the following territory constitutes the 47th assembly district:

(1) Columbia County. That part of Columbia County consisting of all of the following:

(a) The towns of Arlington, Columbus, Courtland, Dekorra, Fountain Prairie, Hampden, Leeds, Lodi, Lowville, Otsego, Pacific, Randolph, Scott, Springvale, and West Point.

(b) The villages of Arlington, Cambria, Doylestown, Fall River, Friesland, Poynette, and Rio.

(c) The city of Lodi.

(2) Dane County. That part of Dane County consisting of all of the following:

(a) The towns of Bristol, Dane, Mazomanie, Medina, Roxbury, Vienna, Windsor, and York.

(b) The villages of Dane, DeForest, and Marshall.

(3) Sauk County. That part of Sauk County consisting of all of the following:

(a) The town of Merrimac.

(b) The village of Merrimac.

Forty-eighth assembly district. All of the following territory in Dane County constitutes the 48th assembly district:

(1) The town of Blooming Grove.

(2) That part of the town of Dunn comprising wards 2, 3, 4, 5, and 6.

(3) The village of McFarland.

(4) The city of Monona.

(5) That part of the city of Madison comprising wards 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 33, 55, and 56.

Forty-ninth assembly district. All of the following territory constitutes the 49th assembly district:

(1) Whole county. Grant County.

(2) Iowa County. That part of Iowa County consisting of all of the following:

(a) That part of the village of Livingston located in the county.

(b) That part of the village of Montfort located in the county.

(c) That part of the village of Muscoda located in the county.

(3) Lafayette County. That part of Lafayette County consisting of all of the following:

(a) The town of Benton.

(b) The village of Benton.

(c) That part of the village of Hazel Green located in the county.

(d) That part of the city of Cuba City located in the county.

(4) Richland County. That part of Richland County consisting of all of the following:

(a) The towns of Dayton, Eagle, Orion, and Richwood.

(b) The village of Boaz.

Fiftieth assembly district. All of the following territory constitutes the 50th assembly district:

(1) Whole county. Juneau County.

(2) Monroe County. That part of Monroe County consisting of all of the following:

(a) The towns of Clifton and Glendale.

(b) The village of Kendall.

(3) Richland County. That part of Richland County consisting of all of the following:

(a) The towns of Marshall, Richland, Rockbridge, Westford, and Willow.

(b) That part of the village of Cazenovia located in the county.

(c) The city of Richland Center.

(4) Sauk County. That part of Sauk County consisting of all of the following:

(a) The towns of Dellona, Excelsior, Freedom, Ironton, La Valle, Reedsburg, Washington, Westfield, Winfield, and Woodland.

***20** (b) The villages of Ironton, La Valle, Lime Ridge, Loganville, North Freedom, and Rock Springs.

(c) That part of the village of Cazenovia located in the county.

(d) The city of Reedsburg.

Fifty-first assembly district. All of the following territory constitutes the 51st assembly district:

(1) Iowa County. That part of Iowa County consisting of all of the following:

(a) The towns of Arena, Brigham, Clyde, Dodgeville, Eden, Highland, Linden, Mifflin, Mineral Point, Moscow, Pulaski, Ridgeway, Waldwick, and Wyoming.

(b) The villages of Arena, Avoca, Barneveld, Cobb, Highland, Hollandale, Linden, Rewey, and Ridge way.

(c) That part of the village of Blanchardville located in the county.

(d) The cities of Dodgeville and Mineral Point.

(2) Lafayette County. That part of Lafayette County consisting of all of the following:

(a) The towns of Argyle, Belmont, Blanchard, Darlington, Elk Grove, Fayette, Gratiot, Kendall, Lamont, Monticello, New Diggings, Seymour, Shullsburg, White Oak Springs, Willow Springs, and Wiota.

(b) The villages of Argyle, Belmont, and Gratiot.

(c) That part of the village of Blanchardville located in the county.

(d) The cities of Darlington and Shullsburg.

(3) Richland County. That part of Richland County consisting of all of the following:

(a) The towns of Buena Vista and Ithaca.

(b) The village of Lone Rock.

(4) Sauk County. That part of Sauk County consisting of all of the following:

(a) The towns of Bear Creek, Franklin, Honey Creek, Prairie du Sac, Spring Green, Sumpter, and Troy.

(b) The villages of Plain, Prairie du Sac, Sauk City, and Spring Green.

Fifty-second assembly district. All of the following territory in Fond du Lac County constitutes the 52nd assembly district:

(1) The towns of Eldorado, Friendship, and Taycheedah.

(2) The village of North Fond du Lac.

(3) The city of Fond du Lac.

Fifty-third assembly district. All of the following territory constitutes the 53rd assembly district:

(1) Dodge County. That part of Dodge County consisting of that part of the city of Waupun located in the county.

(2) Fond du Lac County. That part of Fond du Lac County consisting of all of the following:

(a) The towns of Byron, Empire, Fond du Lac, Lamartine, Oakfield, Rosendale, Springvale, and Waupun.

(b) The villages of Oakfield and Rosendale.

(c) That part of the city of Waupun located in the county.

(3) Winnebago County. That part of Winnebago County consisting of all of the following:

(a) The towns of Algoma, Black Wolf, Nekimi, Nepeuskun, Omro, Oshkosh, Rushford, and Utica.

(b) The city of Omro.

(c) That part of the city of Oshkosh comprising wards 3, 4, 5, 6, 7, and 9.

Fifty-fourth assembly district. All of the following territory in Winnebago County constitutes the 54th assembly district: that part of the city of Oshkosh comprising wards 1, 2, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, and 33.

***21** Fifty-fifth assembly district. All of the following territory in Winnebago County constitutes the 55th assembly district:

(1) That part of the town of Menasha comprising wards 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13.

(2) The city of Neenah.

(3) That part of the city of Appleton comprising wards 38 and 39.

(4) That part of the city of Menasha located in the county.

Fifty-sixth assembly district. All of the following territory constitutes the 56th assembly district:

(1) Outagamie County. That part of Outagamie County consisting of all of the following:

(a) The towns of Center, Dale, Grand Chute, and Greenville.

(b) That part of the city of Appleton comprising wards 30, 31, and 32.

(2) Winnebago County. That part of Winnebago County consisting of all of the following:

(a) The towns of Clayton, Neenah, Poygan, Vinland, Winchester, Winneconne, and Wolf River.

(b) That part of the town of Menasha comprising wards 1 and 2.

(c) The village of Winneconne.

Fifty-seventh assembly district. All of the following territory in Outagamie County constitutes the 57th assembly district:

(1) That part of the village of Little Chute comprising ward 3.

(2) That part of the city of Appleton comprising wards 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 36, and 37.

Fifty-eighth assembly district. All of the following territory in Washington County constitutes the 58th assembly district:

(1) The towns of Addison, Jackson, and West Bend.

(2) That part of the town of Hartford comprising ward 5.

(3) That part of the town of Polk comprising wards 1, 2, 3, 4, 6, and 7.

(4) That part of the town of Trenton comprising wards 3 and 4.

(5) The villages of Jackson and Slinger.

(6) The city of West Bend.

Fifty-ninth assembly district. All of the following territory constitutes the 59th assembly district:

(1) Dodge County. That part of Dodge County consisting of all of the following:

(a) The town of Theresa.

(b) The village of Theresa.

(2) Fond du Lac County. That part of Fond du Lac County consisting of all of the following:

(a) The towns of Ashford, Auburn, Eden, and Osceola.

(b) The villages of Campbellsport and Eden.

(3) Ozaukee County. That part of Ozaukee County consisting of all of the following:

(a) The towns of Belgium and Fredonia.

(b) That part of the town of Saukville comprising ward 1.

(c) The villages of Belgium and Fredonia.

(4) Sheboygan County. That part of Sheboygan County consisting of all of the following:

(a) The towns of Holland, Lima, Lyndon, Mitchell, Scott, Sherman, and Wilson.

(b) The villages of Adell, Cascade, Cedar Grove, Oostburg, Random Lake, and Waldo.

(5) Washington County. That part of Washington County consisting of all of the following:

(a) The towns of Barton, Farmington, Kewaskum, and Wayne.

***22** (b) The village of Kewaskum.

Sixtieth assembly district. All of the following territory constitutes the 60th assembly district:

(1) Ozaukee County. That part of Ozaukee County consisting of all of the following:

(a) The towns of Cedarburg, Grafton, and Port Washington.

(b) That part of the town of Saukville comprising wards 2, 3, 4, 5, and 6.

(c) The villages of Grafton and Sackville.

(d) That part of the village of Newburg located in the county.

(e) The cities of Cedarburg and Port Washington.

(f) That part of the city of Mequon comprising ward 2.

(2) Washington County. That part of Washington County consisting of all of the following:

(a) That part of the town of Trenton comprising wards 1, 2, 5, 6, and 7.

(b) That part of the village of Newburg located in the county.

Sixty-first assembly district. All of the following territory in Racine County constitutes the 61st assembly district:

(1) That part of the town of Mount Pleasant comprising ward 22.

(2) The villages of North Bay and Wind Point.

(3) That part of the city of Racine comprising wards 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 27, 33, and 34.

Sixty-second assembly district. All of the following territory in Racine County constitutes the 62nd assembly district:

(1) That part of the town of Mount Pleasant comprising wards 1, 2, 3, 4, 5, 7, 10, 11, 12, 14, 16, 17, 18, 19, 20, 21, and 23.

(2) The villages of Elmwood Park and Sturtevant.

(3) That part of the city of Racine comprising wards 8, 21, 23, 24, 25, 26, 28, 29, 30, 31, and 32.

Sixty-third assembly district. All of the following territory in Racine County constitutes the 63rd assembly district:

(1) The towns of Caledonia, Dover, Norway, Raymond, Rochester, and Yorkville.

(2) That part of the town of Mount Pleasant comprising wards 6, 8, 9, 13, and 15.

(3) The villages of Rochester and Union Grove.

Sixty-fourth assembly district. All of the following territory in Kenosha County constitutes the 64th assembly district:

(1) That part of the town of Somers comprising ward 8.

(2) That part of the city of Kenosha comprising wards 1, 2, 3, 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20, 21, 22, 29, 31, and 32.

Sixty-fifth assembly district. All of the following territory in Kenosha County constitutes the 65th assembly district:

(1) That part of the town of Bristol comprising ward 6.

(2) The village of Pleasant Prairie.

(3) That part of the city of Kenosha comprising wards 5, 6, 16, 17, 18, 23, 24, 25, 26, 27, 28, 30, 33, and 34.

Sixty-sixth assembly district. All of the following territory constitutes the 66th assembly district:

(1) Kenosha County. That part of Kenosha County consisting of all of the following:

(a) The towns of Brighton, Paris, Randall, and Salem.

(b) That part of the town of Bristol comprising wards 1, 2, 3, 4, 5, 7, and 8.

***23** (c) That part of the town of Somers comprising wards 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, and 12.

(d) The villages of Paddock Lake, Silver Lake, and Twin Lakes.

(e) That part of the village of Genoa City located in the county.

(2) Racine County. That part of Racine County consisting of all of the following:

(a) The town of Burlington.

(b) That part of the city of Burlington located in the county.

(3) Walworth County. That part of Walworth County consisting of that part of the city of Burlington located in the county.

Sixty-seventh assembly district. All of the following territory constitutes the 67th assembly district:

(1) Barron County. That part of Barron County consisting of all of the following:

(a) The towns of Dallas, Dovre, and Sioux Creek.

(b) The village of Dallas.

(c) That part of the village of New Auburn located in the county.

(2) Chippewa County. That part of Chippewa County consisting of all of the following:

(a) The towns of Anson, Arthur, Auburn, Birch Creek, Bloomer, Cleveland, Colburn, Cooks Valley, Eagle Point, Estella, Goetz, Howard, Lake Holcombe, Ruby, Sampson, Tilden, and Woodmohr.

(b) The village of Cadott.

(c) That part of the village of New Auburn located in the county.

(d) The cities of Bloomer, Chippewa Falls, and Cornell.

(3) Dunn County. That part of Dunn County consisting of all of the following:

(a) The towns of Colfax, Elk Mound, Grant, Hay River, New Haven, Otter Creek, Red Cedar, Sand Creek, Sheridan, Sherman, Spring Brook, Tainter, Tiffany, and Wilson.

(b) The villages of Boyceville, Colfax, Downing, Elk Mound, Ridgeland, and Wheeler.

Sixty-eighth assembly district. All of the following territory constitutes the 68th assembly district:

(1) Chippewa County. That part of Chippewa County consisting of all of the following:

(a) The towns of Hallie, Lafayette, and Wheaton.

(b) That part of the city of Eau Claire located in the county.

(2) Eau Claire County. That part of Eau Claire County consisting of all of the following:

(a) The towns of Lincoln, Ludington, Seymour, and Union.

(b) That part of the town of Washington comprising wards 9 and 13.

(c) The village of Fall Creek.

(d) That part of the city of Altoona comprising wards 8, 12, and 13.

(e) That part of the city of Eau Claire comprising wards 1, 7, 8, 9, 10, 11, 12, 13, 14, 19, 22, 23, 29, 34, 35, 36, and 37.

Sixty-ninth assembly district. All of the following territory constitutes the 69th assembly district:

(1) Chippewa County. That part of Chippewa County consisting of all of the following:

(a) The towns of Delmar, Edson, and Sigel.

(b) The village of Boyd.

(c) The city of Stanley.

(2) Clark County. That part of Clark County consisting of all of the following:

(a) The towns of Beaver, Butler, Colby, Eaton, Foster, Fremont, Grant, Green Grove, Hendren, Hewett, Hixon, Hoard, Longwood, Loyal, Lynn, Mayville, Mead, Mentor, Pine Valley, Reseburg, Seif, Sherman, Sherwood, Thorp, Unity, Warner, Washburn, Weston, Withee, Worden, and York.

***24** (b) The villages of Curtiss, Granton, and Withee.

(c) That part of the village of Dorchester located in the county.

(d) That part of the village of Unity located in the county.

(e) The cities of Greenwood, Loyal, Neillsville, Owen, and Thorp.

(f) That part of the city of Abbotsford located in the county.

(g) That part of the city of Colby located in the county.

(3) Eau Claire County. That part of Eau Claire County consisting of the town of Wilson.

(4) Marathon County. That part of Marathon County consisting of all of the following:

(a) The towns of Brighton, Cleveland, Eau Pleine, Frankfort, Hull, McMillan, Spencer, and Wien.

(b) The villages of Edgar, Fenwood, Spencer, and Stratford.

(c) That part of the village of Dorchester located in the county.

(d) That part of the village of Unity located in the county.

(e) That part of the city of Abbotsford located in the county.

(f) That part of the city of Colby located in the county.

(5) Taylor County. That part of Taylor County consisting of the town of Taft.

(6) Wood County. That part of Wood County consisting of the town of Lincoln.

Seventieth assembly district. All of the following territory constitutes the 70th assembly district:

(1) Marathon County. That part of Marathon County consisting of that part of the city of Marshfield located in the county.

(2) Portage County. That part of Portage County consisting of all of the following:

(a) The towns of Carson, Dewey, Eau Pleine, Hull, Linwood, and Sharon.

(b) That part of the town of Grant comprising ward 3.

(c) That part of the town of Plover comprising wards 1 and 4.

(d) The village of Junction City.

(e) That part of the village of Milladore located in the county.

(3) Wood County. That part of Wood County consisting of all of the following:

(a) The towns of Arpin, Auburndale, Cameron, Cary, Cranmoor, Dexter, Hansen, Hiles, Marshfield, Milladore, Port Edwards, Remington, Richfield, Rock, Rudolph, Seneca, Sherry, Sigel, and Wood.

(b) The villages of Arpin, Auburndale, Hewitt, Rudolph, and Vesper.

(c) That part of the village of Milladore located in the county.

(d) The cities of Nekoosa and Pittsville.

(e) That part of the city of Marshfield located in the county.

Seventy-first assembly district. All of the following territory constitutes the 71st assembly district:

(1) Portage County. That part of Portage County consisting of all of the following:

(a) The towns of Almond, Amherst, Belmont, Buena Vista, Lanark, New Hope, Pine Grove, and Stockton.

(b) That part of the town of Plover comprising wards 2 and 3.

(c) The villages of Almond, Amherst, Amherst Junction, Nelsonville, Park Ridge, Plover, and Whiting.

(d) The city of Stevens Point.

(2) Waushara County. That part of Waushara County consisting of all of the following:

(a) The towns of Deerfield, Hancock, Oasis, Plainfield, and Rose.

***25** (b) The villages of Hancock and Plainfield.

Seventy-second assembly district. All of the following territory constitutes the 72nd assembly district:

(1) Adams County. That part of Adams County consisting of all of the following:

(a) The towns of Adams, Big Flats, Colburn, Easton, Jackson, Leola, Lincoln, Monroe, New Chester, Preston, Quincy, Richfield, Rome, Springville, and Strongs Prairie.

(b) The village of Friendship.

(c) The city of Adams.

(2) Marquette County. That part of Marquette County consisting of all of the following:

(a) The town of Springfield.

(b) The village of Westfield.

(3) Portage County. That part of Portage County consisting of that part of the town of Grant comprising wards 1 and 2.

(4) Wood County. That part of Wood County consisting of all of the following:

(a) The towns of Grand Rapids and Saratoga.

(b) The villages of Biron and Port Edwards.

(c) The city of Wisconsin Rapids.

Seventy-third assembly district. All of the following territory constitutes the 73rd assembly district:

(1) Whole county. Douglas County.

(2) Burnett County. That part of Burnett County consisting of the towns of Blaine, Jackson, Oakland, Rusk, Sand Lake, Scott, Swiss, Union, and Webb Lake.

(3) Washburn County. That part of Washburn County consisting of all of the following:

(a) The towns of Bass Lake, Brooklyn, Casey, Chicog, Crystal, Evergreen, Frog Creek, Gull Lake, Minong, Springbrook, Stinnett, and Trego.

(b) The village of Mining.

Seventy-fourth assembly district. All of the following territory constitutes the 74th assembly district:

(1) Whole counties. Ashland County, Bayfield County, and Iron County.

(2) Sawyer County. That part of Sawyer County consisting of all of the following:

(a) The towns of Bass Lake, Couderay, Edgewater, Hayward, Hunter, Lenroot, Ojibwa, Radisson, Round Lake, Sand Lake, Spider Lake, and Winter.

(b) The villages of Couderay, Radisson, and Winter.

(c) The city of Hayward.

Seventy-fifth assembly district. All of the following territory constitutes the 75th assembly district:

(1) Barron County. That part of Barron County consisting of all of the following:

(a) The towns of Almena, Arland, Barron, Bear Lake, Cedar Lake, Chetek, Clinton, Crystal Lake, Cumberland, Doyle, Lakeland, Maple Grove, Maple Plain, Oak Grove, Prairie Farm, Prairie Lake, Rice Lake, Stanfold, Stanley, Sumner, Turtle Lake, and Vance Creek.

(b) The villages of Almena, Cameron, Haugen, and Prairie Farm.

(c) That part of the village of Turtle Lake located in the county.

(d) The cities of Barron, Chetek, Cumberland, and Rice Lake.

(2) Polk County. That part of Polk County consisting of all of the following:

(a) The towns of Beaver, Johnstown, and McKinley.

(b) That part of the village of Turtle Lake located in the county.

(3) Washburn County. That part of Washburn County consisting of all of the following:

***26** (a) The towns of Barronett, Bashaw, Beaver Brook, Birchwood, Long Lake, Madge, Sarona, Spooner, and Stone Lake.

(b) The village of Birchwood.

(c) The cities of Shell Lake and Spooner.

Seventy-sixth assembly district. All of the following territory in Dane County constitutes the 76th assembly district:

(1) That part of the town of Madison comprising wards 2, 3, 4, and 6.

(2) That part of the city of Fitchburg comprising wards 1, 2, 3, 4, and 6.

(3) That part of the city of Madison comprising wards 48, 50, 58, 59, 60, 65, 66, 67, 68, 69, 72, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, and 94.

Seventy-seventh assembly district. All of the following territory in Dane County constitutes the 77th assembly district:

(1) The village of Shorewood Hills.

(2) That part of the city of Madison comprising wards 45, 46, 47, 61, 62, 63, 64, 70, 71, 73, 74, 75, 76, 77, 78, 79, 80, 81, 95, 96, and 97.

(3) That part of the city of Middleton comprising wards 2, 3, and 4.

Seventy-eighth assembly district. All of the following territory in Dane County constitutes the 78th assembly district:

(1) That part of the town of Madison comprising wards 1, 5, 7, 8, 9, 10, and 11.

(2) The village of Maple Bluff.

(3) That part of the city of Madison comprising wards 14, 15, 21, 31, 32, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 49, 51, 52, 53, 54, and 57.

Seventy-ninth assembly district. All of the following territory in Dane County constitutes the 79th assembly district:

(1) The towns of Blue Mounds, Cross Plains, Middleton, Springdale, Vermont, and Verona.

(2) The villages of Blue Mounds and Mount Horeb.

(3) The city of Verona.

(4) That part of the city of Fitchburg comprising wards 5, 7, 8, 9, 10, 11, and 12.

(5) That part of the city of Madison comprising wards 82, 83, 98, and 99.

(6) That part of the city of Middleton comprising wards 1, 5, 6, 7, and 9.

Eightieth assembly district. All of the following territory constitutes the 80th assembly district:

(1) Whole county. Green County.

(2) Dane County. That part of Dane County consisting of all of the following:

(a) The towns of Montrose, Oregon, Perry, and Primrose.

(b) That part of the village of Oregon comprising wards 1, 5, 6, 7, and 8.

(c) That part of the village of Belleville located in the county.

(d) That part of the village of Brooklyn located in the county.

(3) Lafayette County. That part of Lafayette County consisting of all of the following:

(a) The town of Wayne.

(b) The village of South Wayne.

(4) Rock County. That part of Rock County consisting of all of the following:

(a) The towns of Magnolia and Union.

(b) The city of Evansville.

Eighty-first assembly district. All of the following territory in Dane County constitutes the 81st assembly district:

(1) The towns of Berry, Black Earth, Burke, Springfield, and Westport.

(2) The villages of Black Earth, Cross Plains, Mazomanie, and Waunakee.

***27** (3) That part of the city of Madison comprising wards 9, 16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, and 30.

(4) That part of the city of Middleton comprising ward 8.

Eighty-second assembly district. All of the following territory in Milwaukee County constitutes the 82nd assembly district:

(1) The village of Greendale.

(2) The city of Franklin.

(3) That part of the city of Greenfield comprising wards 6, 7, 9, 10, 11, and 12.

Eighty-third assembly district. All of the following territory constitutes the 83rd assembly district:

(1) Racine County. That part of Racine County consisting of all of the following:

(a) The town of Waterford.

(b) The village of Waterford.

(2) Walworth County. That part of Walworth County consisting of all of the following:

(a) The town of East Troy.

(b) The village of East Troy.

(c) That part of the village of Mukwonago located in the county.

(3) Waukesha County. That part of Waukesha County consisting of all of the following:

(a) The town of Vernon.

(b) That part of the town of Mukwonago comprising ward 3.

(c) The village of Big Bend.

(d) That part of the village of Mukwonago located in the county.

(e) The city of Muskego.

Eighty-fourth assembly district. All of the following territory constitutes the 84th assembly district:

(1) Milwaukee County. That part of Milwaukee County consisting of the village of Hales Corners.

(2) Waukesha County. That part of Waukesha County consisting of all of the following:

(a) That part of the town of Waukesha comprising wards 6, 9, 10, 11, and 12.

(b) The city of New Berlin.

(c) That part of the city of Waukesha comprising wards 25 and 26.

Eighty-fifth assembly district. All of the following territory constitutes the 85th assembly district:

(1) Marathon County. That part of Marathon County consisting of all of the following:

(a) The towns of Berlin, Easton, Maine, Norrie, Plover, Texas, and Wausau.

(b) The village of Brokaw.

(c) That part of the village of Rothschild comprising wards 1, 2, 3, and 4.

(d) The cities of Schofield and Wausau.

(2) Shawano County. That part of Shawano County consisting of the villages of Aniwa and Eland.

Eighty-sixth assembly district. All of the following territory constitutes the 86th assembly district:

(1) Marathon County. That part of Marathon County consisting of all of the following:

(a) The towns of Bergen, Bevent, Cassel, Day, Emmet, Franzen, Green Valley, Guenther, Knowlton, Kronenwetter, Marathon, Mosinee, Reid, Rib Falls, Rib Mountain, Rietbrock, Ringle, Stettin, and Weston.

(b) The villages of Hatley, Marathon City, and Weston.

(c) That part of the village of Rothschild comprising wards 5 and 6.

(d) The city of Mosinee.

(2) Portage County. That part of Portage County consisting of all of the following:

(a) The town of Alban.

(b) The village of Rosholt.

***28** (3) Shawano County. That part of Shawano County consisting of all of the following:

(a) The towns of Fairbanks and Germania.

(b) The village of Tiverton.

Eighty-seventh assembly district. All of the following territory constitutes the 87th assembly district:

(1) Whole counties. Price County and Rusk County.

(2) Marathon County. That part of Marathon County consisting of the towns of Bern, Holton, and Johnson.

(3) Sawyer County. That part of Sawyer County consisting of all of the following:

(a) The towns of Draper, Meadowbrook, Meteor, and Weirgor.

(b) The village of Exeland.

(4) Taylor County. That part of Taylor County consisting of all of the following:

(a) The towns of Aurora, Browning, Chelsea, Cleveland, Deer Creek, Ford, Goodrich, Greenwood, Grover, Hammel, Holway, Jump River, Little Black, McKinley, Maplehurst, Medford, Molitor, Pershing, Rib Lake, Roosevelt, and Westboro.

(b) The villages of Gilman, Lublin, Rib Lake, and Stetsonville.

(c) The city of Medford.

Eighty-eighth assembly district. All of the following territory in Brown County constitutes the 88th assembly district: that part of the city of Green Bay comprising wards 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, and 36.

Eighty-ninth assembly district. All of the following territory constitutes the 89th assembly district:

(1) Brown County. That part of Brown County consisting of all of the following:

(a) The town of Pittsfield.

(b) That part of the town of Suamico comprising wards 1, 2, 3, 4, 5, 6, 8, 9, and 10.

(c) That part of the village of Pulaski located in the county.

(2) Marinette County. That part of Marinette County consisting of all of the following:

(a) The towns of Beaver, Grover, Peshtigo, and Pound.

(b) The villages of Coleman and Pound.

(c) The cities of Marinette and Peshtigo.

(3) Oconto County. That part of Oconto County consisting of all of the following:

(a) The towns of Chase, Lena, Little River, Little Suamico, Oconto, Pensaukee, and Stiles.

(b) The village of Lena.

(c) That part of the village of Pulaski located in the county.

(d) The city of Conto.

(4) Shawano County. That part of Shawano County consisting of that part of the village of Pulaski located in the county.

Ninetieth assembly district. All of the following territory in Brown County constitutes the 90th assembly district:

(1) That part of the town of Suamico comprising ward 7.

(2) That part of the village of Howard located in the county.

(3) That part of the city of Green Bay comprising wards 25, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, and 45.

Ninety-first assembly district. All of the following territory constitutes the 91st assembly district:

(1) Whole counties. Buffalo County and Trempealeau County.

(2) Jackson County. That part of Jackson County consisting of all of the following:

***29** (a) The town of Springfield.

(b) The village of Taylor.

(3) Pepin County. That part of Pepin County consisting of all of the following:

(a) The towns of Durand, Frankfort, Pepin, Stockholm, Waterville, and Waubeek.

(b) The villages of Pepin and Stockholm.

(c) The city of Durand.

(4) Pierce County. That part of Pierce County consisting of all of the following:

(a) The towns of Ellsworth, El Paso, Hartland, Isabelle, Maiden Rock, Martell, Salem, and Union.

(b) The villages of Bay City, Maiden Rock, and Plum City.

Ninety-second assembly district. All of the following territory constitutes the 92nd assembly district:

(1) Clark County. That part of Clark County consisting of the towns of Dewhurst and Levis.

(2) Eau Claire County. That part of Eau Claire County consisting of all of the following:

(a) The towns of Bridge Creek and Fairchild.

(b) The village of Fairchild.

(c) The city of Augusta.

(3) Jackson County. That part of Jackson County consisting of all of the following:

(a) The towns of Adams, Albion, Alma, Bear Bluff, Brockway, City Point, Cleveland, Curran, Franklin, Garden Valley, Garfield, Hixton, Irving, Knapp, Komensky, Manchester, Melrose, Millston, North Bend, and North field.

(b) The villages of Alma Center, Hixton, Melrose, and Merrill an.

(c) The city of Black River Falls.

(4) Monroe County. That part of Monroe County consisting of all of the following:

(a) The towns of Adrian, Angelo, Byron, Grant, Greenfield, Lafayette, La Grange, Lincoln, Little Falls, New Lyme, Oakdale, Scott, Sparta, and Tomah.

(b) The villages of Oakdale, Warrens, and Wyeville.

(c) The cities of Sparta and Tomah.

Ninety-third assembly district. All of the following territory constitutes the 93rd assembly district:

(1) Dunn County. That part of Dunn County consisting of the towns of Dunn, Eau Galle, Peru, Rock Creek, and Weston.

(2) Eau Claire County. That part of Eau Claire County consisting of all of the following:

(a) The towns of Brunswick, Clear Creek, Drammen, Otter Creek, and Pleasant Valley.

(b) That part of the town of Washington comprising wards 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, and 12.

(c) That part of the city of Altoona comprising wards 1, 2, 3, 4, 5, 6, 7, 9, 10, and 11.

(d) That part of the city of Eau Claire comprising wards 2, 3, 4, 5, 6, 15, 17, 18, 20, 21, 25, 26, 27, 28, 30, 31, 32, 33, 38, and 39.

(3) Pepin County. That part of Pepin County consisting of the towns of Albany and Lima.

(4) Pierce County. That part of Pierce County consisting of the town of Rock Elm.

Ninety-fourth assembly district. All of the following territory constitutes the 94th assembly district:

(1) La Crosse County. That part of La Crosse County consisting of all of the following:

(a) The towns of Bangor, Barre, Burns, Campbell, Farmington, Greenfield, Hamilton, Holland, Medary, Onalaska, and Washington.

***30** (b) That part of the town of Shelby comprising wards 2 and 3.

(c) The villages of Bangor, Holmen, and West Salem.

(d) That part of the village of Rockland located in the county.

(e) The city of Onalaska.

(2) Monroe County. That part of Monroe County consisting of all of the following:

(a) The towns of Leon and Portland.

(b) The village of Melvin.

(c) That part of the village of Rockland located in the county.

Ninety-fifth assembly district. All of the following territory in La Crosse County constitutes the 95th assembly district:

(1) That part of the town of Shelby comprising wards 1, 4, 5, and 6.

(2) The city of La Crosse.

Ninety-sixth assembly district. All of the following territory constitutes the 96th assembly district:

(1) Whole counties. Crawford County and Vernon County.

(2) Monroe County. That part of Monroe County consisting of all of the following:

(a) The towns of Jefferson, Ridgeville, Sheldon, Wellington, Wells, and Wilton.

(b) The villages of Cashton, Norwalk, and Wilton.

(3) Richland County. That part of Richland County consisting of all of the following:

(a) The towns of Akan, Bloom, Forest, Henrietta, and Sylvan.

(b) The village of Yuba.

(c) That part of the village of Viola located in the county.

Ninety-seventh assembly district. All of the following territory in Waukesha County constitutes the 97th assembly district:

(1) That part of the town of Waukesha comprising wards 1, 2, 4, and 5.

(2) That part of the city of Waukesha comprising wards 1, 2, 3, 4, 5, 6, 7, 9, 16, 17, 18, 19, 20, 21, 22, 23, 24, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38.

Ninety-eighth assembly district. All of the following territory in Waukesha County constitutes the 98th assembly district:

(1) The town of Brookfield.

(2) That part of the town of Lisbon comprising wards 4, 5, 6, and 7.

(3) The village of Pewaukee.

(4) That part of the village of Sussex comprising ward 12.

(5) That part of the city of Brookfield comprising wards 4, 5, 6, 8, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, and 22.

(6) That part of the city of Pewaukee comprising wards 1, 2, 3, 4, 5, 6, 8, 9, and 10.

Ninety-ninth assembly district. All of the following territory constitutes the 99th assembly district:

(1) Dodge County. That part of Dodge County consisting of that part of the city of Hartford located in the county.

(2) Washington County. That part of Washington County consisting of all of the following:

(a) The town of Erin.

(b) That part of the town of Hartford comprising wards 1, 2, 3, 4, and 6.

(c) That part of the town of Polk comprising ward 5.

(d) That part of the town of Richfield comprising wards 1, 2, 3, 4, 5, 9, and 10.

(e) That part of the city of Hartford located in the county.

(3) Waukesha County. That part of Waukesha County consisting of all of the following:

***31** (a) The town of Merton.

(b) That part of the town of Lisbon comprising wards 1, 2, 3, 8, 9, 10, 11, and 12.

(c) The villages of Lannon and Merton.

(d) That part of the village of Menominee Falls comprising wards 18, 24, 25, 26, and 27.

(e) That part of the village of Sussex comprising wards 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11.

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District Court of Colorado.

Plaintiffs: Rita AVALOS, Lori Fox, Dan Friesen, Ann Knollman, Rick Swain and Tony Young
Plaintiffs–in–Intervention: Bob BEAUPREZ, Steve Miller, Sue Mitchell, Cheri Ofner, Paul Schauer and Scott Tipton; Dan Grossman; City and County of Denver and Mayor Wellington Webb; Michael Hancock, Margaret Atencio and Monica Bauer; Doug Dean, Lola Spradley, Keith King, Rob Fairbank, William Sinclair, John Andrews, Mark Hillman and Marilyn Musgrave; Jerald Groswold; Denis Berckefeldt; William C. Velasquez Institute; Robert Schaffer; Joseph Stengel; Mark Udall; Latin American Research and Service Agency, Rufina Hernandez–Prewitt, Arnold Salazar; Governor Bill Owens; Scott McInnis; William Temby and Jeffrey Crank
Defendants: Donetta DAVIDSON, et al.

No. 01 CV 2897.
|
Jan. 25, 2002.

DECISION

COUGHLIN, J.

***1** THIS MATTER comes before the Court on the Amended Complaint of Plaintiffs. In the Amended Complaint the Plaintiffs have two claims for relief. First, Plaintiffs request that pursuant to C.R.S. § 13–51–101 *et seq.* and C.R.C.P. 57 the Court declare the present congressional districts of the state of Colorado as set forth in C.R.S. § 2–1–101 be declared unconstitutional as a violation of the one-man one-vote principle. Plaintiffs also in the first claim for relief request an injunction against the Secretary of State enjoining the Secretary of State from conducting the congressional election of November 2002 pursuant to the present congressional districts in Colorado.

Second, Plaintiffs request that if the Colorado General Assembly fails to pass a redistricting plan which is approved by the Governor of Colorado, that this Court on January 25, 2002 adopt a redistricting plan which complies with the United States Constitution as applied in the case of *Growe v. Emison,* 507 U.S. 25 (1993).

Numerous parties have intervened, including the Governor of the state of Colorado, Bill Owens; Mayor Wellington Webb, Mayor of the City and County of Denver; the house minority leader, Dan Grossman; various United States congressional representatives from the state of Colorado; and numerous other parties. The hearing was conducted starting December 17, 2001 and lasted for seven days. Written closing arguments were received from all the parties on or before January 4, 2002.

This Court is very much aware that redistricting after a census is the responsibility of the state legislature with the approval of the governor of Colorado. 2 U.S.C. § 2(c) (1979); Colo. Const. Art. V, § 44 (1973). The legislature failed to approve a redistricting plan and submit the plan for approval to Governor Owens in the general session that began in January 2001. Again, in the fall of 2001 at a special legislative session, the legislature failed to approve a redistricting plan and submit it for the Governor's approval.

This Court has waited until this date to announce this decision with the hope that the General Assembly in the general legislative session of January 2002 would have adopted a plan for redistricting and have that plan approved by Governor Owens. But once again, the legislature has failed to adopt a redistricting plan and submit that plan for approval to Governor Owens. Since there has been a failure of the legislative branch and the Governor to adopt a constitutionally acceptable redistricting plan for the state of Colorado in a timely fashion, this Court must now act and establish a constitutional redistricting plan for Colorado. *White v. Weiser,* 412 U.S. 783, 93 S.Ct. 2348, 37 L.Ed.2d 335 (1973).

Redistricting is necessary because the 2000 census showed the population of Colorado from 1990 to 2000 has grown slightly over 1,000,000. Because of the unparalleled growth, Colorado is now entitled to a seventh seat in the U.S. House of Representatives.

***2** In adopting a redistricting plan for the congressional districts in the state of Colorado this Court was fortunate to have the guidance of the decision by United States District Court Judge Sherman Finesilver in the case of *Carstens v. Lamm,* 543 F.Supp. 68 (Colo.1982). In *Carstens, id.,* Judge Finesilver set forth both the constitutional and non-constitutional criteria that this Court must follow in adopting a redistricting plan.

The constitutional criteria that this Court is bound to apply is population equity which provides that "as nearly as practicable one man's vote in a congressional election is to be worth as much as another." *Wesberry v. Sanders,* 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964).

The second constitutional criteria that this Court must apply is avoiding diluting minority voting strength. As stated in *Carstens,* this means "in our view, a redistricting plan which satisfies this criteria should not fracture a natural racial or ethnic community or otherwise dilute minority voting strength." *Carstens* at p. 82.

In addition to the constitutional criteria, the *Carstens* court adopted non-constitutional criteria to be followed. These non-constitutional criteria are compactness and contiguity, preservation of county and municipal boundaries whenever possible, and preservation of community of interest. These constitutional and non-constitutional criteria, and only these criteria, are what this Court is bound to follow in selecting a constitutional redistricting plan for the state of Colorado.

The constitutional criteria are, for the most part, self-explanatory. The Court, therefore, will spend some time discussing the non-constitutional criteria. The first and least significant of the non-constitutional criteria are compactness and continuity. Contiguity means "no part of one district should be completely separated from any other part of the district." *Carstens,* p. 88. In Colorado with a large land mass in sparsely populated areas, it is next to impossible to have each district compact.

The next non-constitutional criteria is the preservation of political subdivisions when possible. *Carstens, supra,* goes on to establish the principle that in sparsely populated areas county government is the provider of services and, therefore, in those areas county government lines should be respected if possible. In urban areas that are densely populated, municipal boundaries are of more importance than county lines and should be respected because people look to their city for services. In selecting a redistricting plan the Court has attempted, where possible, to apply this criteria.

The last non-constitutional criteria is more difficult to define and apply. The last non-constitutional requirement is protection of community of interest. *Carstens* defines "community of interest" as follows:

> For our purposes, community of interest represents distinct units which share common concerns with respect to one or more identifiable features such as geography, demography, ethnicity, culture, social economic status or trade.
>
> ***3** *Carstens,* p. 91

In discussing the seven congressional districts adopted by this Decision the Court will attempt to identify the community of interest in each district. However, it must be kept in mind when a congressional district must consist of 614,000 people, approximately, it is impossible to draw a district in which every person in the district shares all the same community of interest with every other person in the district. The Court may only use its best judgment in drawing a district where the people in the district, for the most part, share common concerns.

In drawing the redistricting plan as set forth in Exhibit 1, which is attached and made part of this Order, the Court only applied the criteria set forth in *Carstens.* It is not appropriate for this Court in redistricting the congressional districts in the state of Colorado and adding a seventh congressional district to consider whether a particular political party will prevail in any one of the seven districts. Nor should the issue of protecting an incumbent representative be a factor in the Court's decision.

In addition to Exhibit 1, the Court has attached and made part of this Order Exhibit 2, the population and ethnic breakdown of each district as required by this Order. Also attached and made part of this Order is Exhibit 3, the Plan Components Report of the redistributing plan accepted by the Court.

With these principles in mind, the Court has adopted the redistricting map submitted by the Plaintiffs and labeled "Amendment to Republican Leadership." At trial this redistricting plan was Plaintiffs' Exhibit 22. The Court will discuss the seven congressional districts as set forth in the map labeled "Amendment to Republican Leadership."

Below the Court will explain the seven districts and why the Court concluded that the districts, as drawn in the map "Amendment to Republican Leadership" meets the constitutional and non-constitutional criteria stated in *Carstens.*

Congressional District One

District One as contained in the Amendment to Republican Leadership map consists of all of the City and County of Denver, approximately 60,000 from Arapahoe County and an insignificant amount from Jefferson County. The total population of the district, as it is now constituted, is 614,465 people, which meets the constitutional requirement of equal population for each district.

District One is made up of 29.99% Hispanics, 10.44% African–Americans for a total minority population of 40.43%. District One as presently constituted has a Hispanic percentage of 33.38% voting age population. District One as set forth by the Court has a slightly less Hispanic population, but not sufficiently decreased to be considered a dilution of Hispanic voting strength.

The decrease of 3.39% in Hispanic voting strength may not be considered a dilution of minority voting block. An increase or decrease of 3% or 4% was not considered significant in *Carstens* (*see Carstens,* p. 86).[1]

1 If it is determined that reducing the Hispanic population in Congressional District One from 33.38% to 29.99% is significant, the situation may be easily changed. A revision could consist of putting Cherry Hills with a 2000 census population of 5,998 in Congressional District Six and add approximately 6,000 in District Six to Congressional District One.
These 6,000 people from Congressional District Six would come from the area described as follows: the north boundary being the Denver City limits; the west boundary being Lowell Boulevard; the east boundary would be Federal Boulevard; and proceed south to Belleview.

***4** District One meets all the criteria of *Carstens:* (1) The population will be equal to other districts, or approximately so; (2) the voting blocks of minorities will not be diluted; (3) the district is extremely compact and contiguous; (4) the political boundaries of the City and County of Denver are kept intact; and (5) a significant and identifiable community interest of the people of the City and County of Denver and a portion of its suburbs are kept intact.

There is a recognizable community of interest consisting of the City and County of Denver. First, it is the capitol of the state of Colorado and the seat of the state government. Second, the City and County of Denver is a unified school district. Certainly not all of the residents of the City and County of Denver send their children to the Denver public schools. However, every property owner in the City and County of Denver pays property tax which supports Denver public schools.

The City and County of Denver is unique from its suburbs in the Denver metropolitan area. The taxpayers of the City and County of Denver support medical care for the indigent. Denver owns DIA, the largest transportation hub west of the Mississippi and the main airport for the entire state of Colorado and the western United States. Taking together all the factors, it is imperative that the City and County of Denver have one representative that will speak for the interests of the City and County of Denver in a clear, undivided voice.

Congressional District Two

Congressional District Two consists of part of Adams County, part of Boulder County, Clear Creek County, Eagle County, Gilpin County, Grand County, Jefferson County, Summit County, and part of Weld County. The total number of people in District Two is 614,465, which certainly meets the constitutional requirement of equal population for each district.

Hispanics make up 14.74% of the voting age population of District Two. This is more than the 13.67% of the present District Two, and therefore, there is no dilution of minority voting strength.

District Two as shown in the map labeled Plaintiffs' Amendment to Republican Leadership is a compact and contiguous district. Unfortunately, some municipal and county boundaries are necessarily violated. However, it is clear to see that there is a strong community of interest among the voters of Congressional District Two.

A very significant issue in District Two is the federal facility at Rocky Flats. This facility was involved in United States' effort in building nuclear weapons and, unfortunately, a great deal of radioactive waste still remains at Rocky Flats. To deal with this situation the towns of Superior, Boulder, Broomfield, Westminster, Arvada, and Boulder County have joined in what is called the Rocky Flats Coalition of Local

Governments. All the members of the Coalition, to some degree, are contained in District Two as set forth by the order. In addition, those communities involved in the Northwest Parkway Project and the Improvements to U.S. 36 contained in congressional District Two—all these things show there is an extremely strong community of interest that the people of Congressional District Two share.

Congressional District Three

***5** Congressional District Three consists of the following 30 counties: Alamosa, Archuleta, Conejos, Costilla, Custer, Delta, Delores, Garfield, Gunnison, Hinsdale, Huerfano, Jackson, La Plata, Las Animas, Mesa, Mineral, Moffat, Montezuma, Montrose, Ontario, Otero, Ouray, Pitkin, Pueblo, Rio Blanco, Rio Grande, Routt, Saguasche, San Juan, and San Miguel. The population of District Three is 614,467 and therefore meets the equal population criteria.

Unfortunately, because District Three is sparsely populated, it is a very spread-out and non-compact district. However, of the 30 counties in District Three, there is only one county that is split, that being Otero County. In following the *Carstens* criteria in rural areas it is extremely important to keep intact, if possible, the boundaries of rural counties since people look to counties for their governmental services.

District Three consists of 21.47% Hispanic as compared to 18.94% Hispanic of the present Congressional District Three. There is no dilution of Hispanic voting strength. In *Carstens* it was extremely important that the San Luis Valley be in the same district as the City of Pueblo and the County of Pueblo. There is a great ethnic and cultural connection between the San Luis Valley and all of Pueblo.

District Three contains an extremely large portion of land owned by the federal government. For this reason it is imperative that District Three have congressional representatives who can interact with the federal government on behalf of the people of District Three as it relates to their use of these federal lands. In addition, the western portions of District Three contain extremely important water sheds. As testified at trial, for the western portions of District Three, and the San Luis Valley, water is a "religion". In keeping District Three as constituted in the Amendment to Republican Leadership map, the community interest of water protection is recognized.

District Three, in addition to putting the San Luis Valley in the same district as all of Pueblo County, also puts the county of Las Animas and a portion of Otero County with Pueblo County. This permits the strong Hispanic community of interest to be united. There is much that connects the town of Trinidad in Las Animas County, the town of La Junta in Otero County, and the City of Pueblo. All of this community of interest is recognized in Congressional District Three.

In the past Eagle, Summit and Grand Counties have been part of the Western Mountain District. These three counties are placed with Congressional District Two. There is a logical connection with these counties and Congressional District Two. These three counties contain a great deal of ski areas that are visited by the people in the front range cities. In addition, I–70 is the connection between the Denver suburbs and the ski areas in Eagle, Summit, and to a lesser degree Grand County. I–70 through Clear Creek, Summit, and Eagle Counties is extremely congested. Any improvements of this necessary highway in large part come from federal aid. For this reason, among others, it appears wise to have the counties burdened by the heavy I–70 traffic to be in the same congressional district.

Congressional District Four

***6** Congressional District Four is a district which recognizes the agricultural community of interest of the eastern plains. This community of interest was recognized in *Carstens*. The population of Congressional District Four is 614,466. The equal population criteria is met.

District Four consists of the following 18 counties: Baca, Bent, Boulder (part), Cheyenne, Crowley, Kiowa, Kit Carson, Larimer, Lincoln, Logan, Morgan, Otero (part), Phillips, Prowers, Sedgwick, Washington, Weld (part), and Yuma. County political boundaries, for the most part, are respected in District Four. Both Larimer and Weld Counties are included in Congressional District Four. Colorado State University is located at Fort Collins in Larimer County. This university serves the agricultural interests of the eastern plains in various ways.

The town of Greeley in Weld County has, historically, had an agricultural bent. Con–Ag, formerly known as Monfort, is an extremely large cattle processing company that has a large presence in Greeley. In addition, Greeley contains various markets for agricultural products.

Testimony has established that Larimer County and Weld County have much in common. A number of people work in Larimer County and live in Weld County and vice versa. For

the last 20 years Larimer and Weld Counties have been joined in the same congressional district. It is extremely important in recognizing community of interest to put the people of Weld and Larimer Counties together in the Fourth Congressional District.

Congressional District Five

Congressional District Five consists of 614,467 people. The counties comprising the District Five are: Chaffee, El Paso, Fremont, Lake, Park (part), and Teller. It is important to note that all of El Paso County is in Congressional District Five. El Paso County has five military facilities. Those facilities are the Air Force Academy, the NORAD facility at Cheyenne Mountain, Peterson Air Force Base, Schriever Air Force Base, and Fort Carson. Fort Carson is the largest employer in El Paso County.

In addition to the five military facilities found in El Paso County, military retirees make up a large segment of the El Paso population. There are over 23,000 military retirees in El Paso County.

It is clear when you take into consideration the military and their dependents at these five military facilities along with the large number of military retirees in El Paso County, that there exists a large segment of the people of El Paso County with community interest revolving around the military. For this reason it is imperative that El Paso County not be split.

In addition, El Paso County is the second-largest county in the state of Colorado and, like the City and County of Denver, should not be divided. The City of Colorado Springs is the second largest city in the state of Colorado and should not be divided. Congressional District Five as established by the Court does not dilute any minority voting strength. The present Congressional District Five has 9.27% Hispanic and the new Congressional District Five would be 11.13% Hispanic.

***7** Except for Park County, all county boundaries are kept intact. Likewise, the major cities in Congressional District Five are intact.

Congressional District Six

Congressional District Six contains 614,466 people and therefore meets the equal population criteria. The district is made up of a large portion of Arapahoe County, all of Douglas County, all of Elbert County, a large portion of Jefferson County, and a portion of Park County.

Congressional District Six is, in large part, a suburban bedroom district. It can be argued that Elbert County is largely rural and agricultural. However, Elbert County was at one time the fastest growing county in Colorado and is quickly changing from rural and agricultural to suburban. Congressional District Six is very compact and, for the most part, respects county and city boundaries.

The Court was very interested in keeping the City of Aurora, the third largest city in Colorado, in one congressional district. Unfortunately, this was not possible. That portion of Aurora which is contained in Arapahoe County is in District Six, and that portion of Aurora which lies within Adams County is in District Seven. Presently the City of Aurora is in three or more congressional districts. The plan adopted by the Court keeps Aurora as intact as possible.

Congressional District Seven

Congressional District Seven consists of parts of Adams County, Arapahoe County, and Jefferson County. The population is 614,465 and meets the equal population criteria. The Court admits that District Seven is an extremely cut-up district. The reason District Seven is so cut up is that it surrounds the City and County of Denver on the west, the north and the east. When Denver annexed a part of Adams County for the purpose of building DIA, the boundaries of the City and County of Denver became very irregular. Since District Seven goes around the City its boundaries are also very irregular.

District Seven is the new congressional district in Colorado. It is therefore impossible to compare the minority population in District Seven to any existing District Seven. Hispanics make up 19.62% of the new District Seven and African–Americans make up 6.18% of the new congressional district. Minorities will therefore comprise better than 25% of the new congressional district and be a substantial voice in the new district.

Congressional district seven should be a "competitive" district. Such a prediction, however, is risky because the district has 121,500 independent voters who have the strength to elect a candidate by a large margin.

The Court has concluded the new district would benefit from what should be a competitive race. The foreseen closeness of

the race will hopefully generate much interest of the voters of the new district. No candidate will enjoy the advantages of incumbency.

General Comments Regarding Adoption of Plaintiffs' Amendment to Republican Leadership Map

As stated in the beginning, this Court has attempted to follow the criteria set out in *Carstens.* Whether a particular political party or candidate will prevail in a district was not a factor utilized by the Court. However, the Court may not ignore political consequences of adopting a redistricting plan. The final product, no matter what criteria is used, results in a map that profoundly affects Colorado politics for the next ten years.

***8** The case of *Balderas v. Texas* (E.D.Tex. November 14, 2001), speaks to this political reality.

> Finally, we check our plan against the test of general partisan outcome, comparing the number of districts leaning in favor of each party based on prior election results against the percentage breakdown statewide of votes cast for each party in congressional races. This is a traditional last check upon the rationality of any congressional redistricting plan, widely relied-upon by political scientists to test plans, if only in an approximating manner.

See also Good v. Austin, 800 F.Supp. 557 (E.D. Mich. and W.D. Mich.1992).

As of November 14, 2001, Colorado had 1,007,249 registered Republicans (36%), 932,058 unaffiliated voters (34%); and 838,629 registered Democrats (30%). The redistricting plan chosen by the Court will most likely result in four Republicans being elected to Congress, two Democrats being elected, and the congressional district being a toss-up.

This result mirrors, to some degree, the voter registration in Colorado.

Because of the somewhat rigid requirement of equal population, no redistricting plan can be perfect. The Court acknowledges flaws in the redistricting plan adopted by this Court. Some have already been mentioned. Overall it would be better if Congressional District Three was more compact. However, to recognize the strong community interest among the Hispanic population of Pueblo, Huerfano and Las Animas Counties and the City of La Junta, Congressional District Three extends a considerable distance east. In balancing compactness with community interest of the large Hispanic population, the Court chose to recognize the community interest of the Hispanic population in southern Colorado.

Jefferson County is one of the largest counties in Colorado. Four people from Jefferson County are included in Congressional District One; 53,882 people from Jefferson County are included in District Two; and 327,744 people from Jefferson County are included in District Seven. The small number of people in District One is not significant. Preferably it would be best for all of Jefferson County to be one congressional district. To recognize the strong community interest of the people around Rocky Flats it was necessary for a portion of Jefferson County to be included in Congressional District Two.

There certainly can be an argument that the eastern portions of Adams and Arapahoe Counties are rural. These areas, however, are part of a tremendous growth in the Denver metropolitan area and are in the process of changing to urban areas. In addition, it would not be wise to put the City of Aurora, which is growing at the rate of 2% per year and spreading out in all directions, in the congressional district which includes the Arkansas River. The water needs of those in the Arkansas Valley and the City of Aurora are certainly in conflict, and it is necessary that each community have its own congressional representation.

***9** The Court will now briefly discuss the various maps submitted by the Plaintiffs and various Intervenors. Some of the Court's comments about a particular map should be considered as comments about other maps which have the same characteristic. Space does not permit the Court to discuss every proposal made at trial. The comments below hopefully discuss many of the points raised at trial.

Plaintiffs' Map

The Court rejects the map advocated by Plaintiffs for many reasons. The first reason is that Plaintiffs have chosen to split the City and County of Denver. Plaintiffs argue that since the *Carstens, supra* decision in 1982, the community of interest of the City and County of Denver as being one congressional district has changed. The Court disagrees.

Today as in 1982 Denver has a large Hispanic population. That fact has not changed. But there are other facts which make it even more imperative that Denver not be split. Since 1982 Denver has built and is now operating Denver International Airport. Because of the operation of DIA

there are natural conflicts between Denver and communities surrounding DIA and communities that are affected by flights in and out of DIA. Denver must have a strong and unified voice speaking in behalf of the City and its airport.

Recently Broomfield became a city and county. Before that time Denver was the only city and county in the state of Colorado. Denver has one school district. Denver School District No. 1 is more unified now than it was in 1982, when the city was divided on the issue of busing. Now the entire city is behind the school district, and even if a property owner does not send his or her children to the Denver public schools, every property owner supports the school district through payment of property taxes.

Denver is even more of a cultural center now than in 1982. The Denver Center for the Performing Arts is an award-winning arts center. In addition to the arts, Denver is a major league sports city. Since 1982 a new major league baseball stadium has been built, a revised arena for professional basketball has been completed, and most recently a new stadium for Denver's beloved Broncos was built. All these factors and others dictate that Denver remain whole and have a single, unified voice in Congress that has no other divided interest.

Plaintiffs' avocation to split Denver is for partisan reasons. As mentioned above, this Court cannot consider partisan criteria in deciding how to redistrict the state of Colorado. Denver, Boulder and the city of Pueblo are the three Democratic strongholds. Certainly Plaintiffs would like to "mine" as many Democratic votes from the City and County of Denver. That is not this Court's responsibility.

Plaintiffs argue it is necessary to split Denver so a Hispanic has a chance to be elected to the U.S. Congress. The political history of Denver establishes that Plaintiffs are in error. Numerous minorities have been elected to office in city-wide races. Some examples are Mayor Webb, Mayor Pena, and City Auditor Don Mares. In partisan races minorities have fared well. Norm Early was elected District Attorney in a partisan D.A. race. Joe Rogers won a contested primary for the position of Lieutenant Governor.

***10** If one is interested in electing a minority to office, it would be a mistake to separate Denver and divide the Hispanic minority from the Afro–American minority. Together these two minorities have been extremely successful in electing a minority to office in Denver.

In addition to splitting Denver, Plaintiffs' map has numerous other problems. Plaintiffs have approximately 140,000 people from Jefferson County in the mountainous District Three. Jefferson County would be the largest county in Plaintiffs' proposed District Three. It is true that the present District Three has a very small population from Jefferson and Douglas County, but not anywhere near 140,000 people. The 140,000 people in Jefferson County, including the city of Golden, have no community of interest with the people on the western slope. The 140,000 people in Jefferson County are water users. The people in the rest of District Three live in areas that produce water. Very little connects people in Jefferson County to the rest of District Three.

Another flaw in the Plaintiffs' proposed map is the dividing of El Paso County and dividing the second largest city in the state of Colorado, Colorado Springs. Plaintiffs ignore the mandate of *Carstens* to honor city and county boundaries when at all possible.

In dividing El Paso County Plaintiffs have divided the five military bases in El Paso County. Plaintiffs argue the Court should look to the interests of people and not military bases. The military personnel, their dependents, and the military retirees living in El Paso County are people who have an interest in protecting their livelihood.

In general, Plaintiffs have cleverly proposed a map which gets as many votes as possible from the three Democratic strongholds and in doing so ignores the criteria of *Carstens*.

Congressman McInnis' Map

Congressman Scott McInnis has submitted a proposed map for Congressional District Three only. Congressman McInnis does not propose a map that would divide the entire state of Colorado into seven congressional districts as the Court must do. This Court cannot draw a map for one congressional district in a vacuum, but must consider the necessary seven congressional districts for the entire state.

One obvious flaw in Congressman McInnis' proposed District Three is the dividing of the City of Pueblo from the San Luis Valley. *Carstens,* and testimony before this Court, have established that there is a clear, strong ethnic and cultural tie between the San Luis Valley and the city of Pueblo.

Representative Fairbank's Map and Amendment Thereto

Representative Fairbank of the Colorado State House of Representatives has submitted a proposal which has been marked at trial as Beauprez Exhibit 1. Representative King amended the map of Representative Fairbank. The map as amended was not marked as an exhibit. The Court first will address Beauprez Exhibit 1.

Beauprez Exhibit 1 proposes a Congressional District Five consisting of all of Pueblo County and a portion of El Paso County. This district does not include Teller County, which from all testimony has a great deal of community interest and ties to the city of Colorado Springs.

***11** Beauprez Exhibit 1 puts all of Pueblo County with a good portion of El Paso County. This Court has strong views that there does not exist a community of interest between El Paso County and Pueblo County. It is true that the city of Pueblo and the city of Colorado Springs are close together and are bound together by I–25. It is also true that certain media markets are shared by Colorado Springs and Pueblo. That ends all community of interest between Pueblo and Colorado Springs. They are two unique and very different cities.

Colorado Springs and all of El Paso County is well known for its conservative leaning. Christian-based organizations find their home in Colorado Springs or El Paso County. El Paso County always votes in a very conservative way. El Paso County, in addition to the military interest that has already been discussed, enjoys a high tech industry.

The city of Pueblo, and all of Pueblo County, has a strong and vital ethnic diversity. Perhaps the strongest ethnic community is the Hispanic community. However, other ethnic communities are strong in the city of Pueblo. It is true that the city of Pueblo is no longer the industrial giant it was 20 years ago. The economy has become more diverse and is striving to become stronger. But in general the people of Pueblo County and the city of Pueblo have very little in common with their neighbors to the north in Colorado Springs and El Paso County.

Beauprez Exhibit 1 also puts Boulder County with Larimer County. This divides Larimer County and Weld County. Testimony has clearly established there is a strong community of interests between Larimer County and Weld County. Representative King's amendment to the Fairbanks' map does put Larimer County and Weld County together, but other than that it has no redeeming value.

Tate and Denver Map

The map proposed by Senator Tate and supported by Mayor Webb has the flaw of splitting El Paso County and Colorado Springs. Another flaw is placing a portion of El Paso County with all of Pueblo County.

Berckefeldt No. 1

Certainly Berckefeldt No. 1 has some redeeming value. The problems are that Berckefeldt No. 1 divides the community interests of the eastern plains and also divides the community of interests of the western slope and the mountainous western region. Berckefeldt No. 1 in District Three has 34 counties. Certainly Colorado has had in the past large congressional districts because of sparse population. But there does not seem to be a valid reason for the large third congressional district in the configuration as proposed.

District Five as proposed in Bercefeldt No. 1 puts Aurora and Colorado Springs with the rural areas of Cheyenne County, Kit Carson County, Yuma County, Phillips County, Sedgewick County, Washington County and Morgan County. The second and third largest city should not be tied together with a rural community.

Republican Leadership Map and Republican Leadership Map as Amended by the Republicans

***12** The Republican Leadership Map has much to recommend the Court's acceptance of the map. The Republican Leadership Map correctly follows the dictates of *Carstens*. For various reasons the Court has selected the amendment by the Plaintiffs to the Republican Leadership Map instead of the Republican Leadership Map.

First of all, the Republican Leadership Map does put the city of Pueblo with the San Luis Valley. However, the Republican Leadership Map does not put all of Pueblo County with the San Luis Valley. The counties of Huerfano and Las Animas, with the city of Trinidad, are separated from Pueblo. The Court finds there has been a long-standing community of interests between all of Pueblo County, Huerfano County, Trinidad and Las Animas County.

The Republican Leadership map has the advantage of keeping Aurora all in one congressional district. However, the Court is of the view that it makes more sense to put in one congressional district, Congressional District Six, most of Jefferson County, all of Douglas County, all of

Elbert County and Arapahoe County. These three counties, Jefferson, Douglas and Arapahoe, all share a great deal of community interest. Douglas County is the fastest growing county in the state of Colorado and therefore suffers from numerous problems. For this reason it is best to keep Douglas County in one congressional district.

A big difference between the Republican Leadership Map and the Amendment to the Republican Leadership Map is having Summit, Eagle, and Grand Counties in Congressional District Two in the Amendment to the Republican District Map. At first glance it seems that Summit, Eagle and Grand Counties should be with the rest of western Colorado. However, on closer consideration there is much to merit having those three counties together with Boulder and the area around metropolitan Denver. One of the enormous problems facing these three mountain counties is the tremendous traffic on I–70. Because of the ski areas, that portion of I–70 that serves the three mountain counties has a tremendous amount of traffic and faces numerous challenges. It is a traffic pattern far different than the rest of western Colorado. Any improvements that are needed to I–70 will have to come, in large part, through federal funds. For that reason it is advisable that these three mountain counties have one congressional voice, different than the voice of the remaining portions of western Colorado.

The growth in Summit, Eagle, and Grand Counties mirrors the Denver metro area more than the Western Slope. This growth will continue. Growth is another reason to have these three mountain counties in Congressional District Two.

The Republican Leadership Map and the map as amended by the Republican Leadership (Dean Exhibit 13), not surprisingly, favors electing Republicans to congress. The two maps do not reflect the party registration in Colorado. As mentioned above, registered Republicans outnumber Democrats, but not to the degree as would be suggested by the Republican's proposed maps. *Balderas v. Texas,* 610 CV 158, slip op. at 8 (E.D.Tex., November 14, 2001)

***13** The amended or alternate House Leadership Map (Dean Exhibit 13) also contains the problem of splitting El Paso County. The second largest county should not be divided when such a division is unnecessary.

Hernandez Map

The Hernandez Map has the fatal flaw of splitting the City and County of Denver. In addition, it has what the Court considers to be the flaw of splitting El Paso County and putting portions of El Paso County with Pueblo. Lastly, the eastern plains are divided unnecessarily.

Conclusion

The Court is aware that there was one objection to the Court admitting Plaintiffs' Amendment to the Republican Leadership Map and Amendment to the Republican Leadership Map prepared by the Republican party. Both maps were introduced and evidence presented on both maps. All parties had their opportunity to comment on the Plaintiffs' Amendment to the Republican Leadership Map and the Amendment that was prepared by the Republican party. It should be noted that in *Carstens* the court prepared its own map and no party in that case had an opportunity for comment on the final map accepted by the court.

The above findings of fact and conclusions of law shall be the written judgment required by C.R.C.P. 58.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the current congressional district plan set forth in C.R.S. § 2–1–101 is unconstitutional.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Secretary of State of the State of Colorado, Donetta Davidson, is enjoined from conducting the November 2002 congressional district election pursuant to the present C.R.S. § 202–1–101.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the congressional election process and the congressional primary and general election for the state of Colorado in 2002 and thereafter be conducted in and from the congressional district established in this opinion as set forth in Exhibit 1.

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Tyler Division.

Simon BALDERAS, et al.

v.

State Of TEXAS, et al.

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Before HIGGINBOTHAM, Circuit Judge, HANNAH and WARD, District Judges.

Opinion

PER CURIAM.

***1** This phase of the redistricting case involves the Texas congressional districts following the 2000 census. After a period of deferral to the State of Texas as mandated in *Growe v. Emison*[1] and the failure of the State to produce a congressional redistricting plan, we are left with the "unwelcome obligation of performing in the legislature's stead."[2] We will describe the course of this litigation and explain the process by which we drew the congressional redistricting plan which we order.[3]

1 507 U.S. 25, 113 S.Ct. 1075, 122 L.Ed.2d 388 (1993).

2 *Connor v. Finch,* 431 U.S. 407, 415, 97 S.Ct. 1828, 52 L.Ed.2d 465 (1977).

3 The Congressional Districts imposed by this court's Final Judgment shall bear the number 1151C, which is the next number available for public plans within the Texas Legislative Council's RedAppl 2001 computer program.

I

Voters and various officeholders filed multiple lawsuits in state and federal court challenging the districting of Texas' congressional seats and both houses of the state legislature based on the 2000 census.[4] The federal cases were consolidated into the earliest-filed federal action, *Balderas v. Texas,* No. 6:01–CV–158, before this three-judge court.[5] Pursuant to the Supreme Court's direction in *Growe,* on July 23, 2001 we deferred proceedings in federal court until October 1, 2001. We directed that the trial of any challenge to any state-adopted plan for congressional districts, or of any dispute over an appropriate plan to be adopted if the State adopted no plan, would begin on October 15, 2001. Any trials of the disputes over the districts for the state Senate and House would follow in that order. The record in each trial would rest on the trials which preceded it as well as its own. We prescribed the usual pre-trial tasks. All this was to reduce, if not avoid, any delay in the electoral process and to follow the specific command of the Supreme Court in *Growe.*

4 *Balderas v. Texas,* Civil No. 6:01–CV–158 (E.D.Tex.); *Mayfield v. Texas,* Civil No. 6:01–CV–218 (E.D.Tex.); *Manley v. Texas,* Civil No. 6:01–CV–231 (E.D.Tex.); *Del Rio v. Perry,* No. GN–003665 (353rd Dist. Ct., Travis County, Tex.); *Cotera v. Perry,* No. GN–101660 (353rd Dist. Ct., Travis County, Tex.); *Connolly v. Perry,* No. GN–102250 (98th Dist. Ct., Travis County, Tex.); *Associated Republicans of Texas v. Cuellar,* No.2001–26894 (281st Dist. Ct., Harris County, Tex.); *Rivas v. Cuellar,* No.2001–33760 (152nd Dist. Ct., Harris County, Tex.).

5 Other three-judge courts had dismissed prior suits filed prematurely.

On September 12, 2001, the Texas Supreme Court determined that the Travis County trial court had dominant jurisdiction among the state cases to hear the various plaintiffs' redistricting claims and held that a state trial court in Travis County must decide the districting dispute. The Travis County

court commenced trial on September 17, 2001. It heard testimony and arguments from all the parties, concluding trial on September 28, 2001.

On October 1, 2001, at the request of the state trial judge, we extended the deadline for the filing of any congressional redistricting plan to October 3, 2001. On October 3, the state trial court issued a plan, known as 1065C. No provision was made in our October 1 order for the filing of any new plan, although the state trial judge advised that he might modify the plan on or before October 10, 2001. The schedule we had provided did not contemplate major changes in the state court plan filed on October 3. On October 10, 2001, the state court nonetheless issued a new plan, known as 1089C. We immediately delayed the start of any federal trial for one week to October 22 at the request of the parties who pointed to the need for additional time given the substantial differences between the two plans of the state court. On October 19, 2001, however, the Texas Supreme Court vacated the trial court's October 10, 2001 judgment based on a violation of the parties' state constitutional rights and remanded the case to the state trial court .[6] The Texas Supreme Court also concluded that 1065C, the first plan of the state trial court, was not the baseline plan for this court to use, because 1065C was never adopted as a final judgment by the state trial court. The Texas Supreme Court acknowledged that the end result of the state processes left the federal courts with no choice but to proceed without the benefit of a state plan.[7]

6 *Perry v. Del Rio,* No. 01–0988, 2001 WL 1285081, at *9 (Tex. Oct.19, 2001).

7 *I d.*

***2** As forecasted by the Texas Supreme Court, we proceeded to trial in Austin, Texas on October 22, 2001, without a state baseline plan in place. This court heard testimony and took evidence on congressional redistricting plans between October 22 and November 1, concluding with final argument on November 2. The parties filed post-trial briefs on November 7, 2001. After reviewing the evidence and the parties' submissions, we now turn to our decision implementing a plan for the redistricting of the Texas congressional districts based on the 2000 census.

II

Federal courts have a limited role in crafting a congressional redistricting plan where the State has failed to implement a plan. The limits are not to be found in the traces of the unconstitutional plan being replaced. "Although a court must defer to legislative judgments on reapportionment as much as possible, it is forbidden to do so when the legislative plan would not meet the special standards of population equality and racial fairness that are applicable to court-ordered plans."[8] Rather, the court must draw a redistricting plan according to "neutral districting factors," including, *inter alia,* compactness, contiguity, and respecting county and municipal boundaries.[9] The 1991 plan as modified in 1996 is conceded by all parties to be unconstitutional, made so by changes in population disclosed by the decennial census, if not also for other reasons. In our effort to steer the required neutral course through this political sea, we have been assisted by the many distinguished political scientists who have testified in this case.

8 *Upham v. Seamon,* 456 U.S. 37, 39, 102 S.Ct. 1518, 71 L.Ed.2d 725 (1982) (per curiam).

9 *See Abrams v. Johnson,* 521 U.S. 74, 88, 98, 117 S.Ct. 1925, 138 L.Ed.2d 285 (1997); *Miller v. Johnson,* 515 U.S. 900, 916, 115 S.Ct. 2475, 132 L.Ed.2d 762 (1995).

Dr. John Alford, Rice University professor of political science, detailed in his trial testimony a process drawing upon principles of district line-drawing that stand politically neutral. We found that process, substantially parallel to our preliminary thinking and that of other courts, to be the most appropriate for our judicial task.

Our decisional process accepted the reality that, as with so many decisional processes, the sequence of decisions is critical. Starting with a blank map of Texas, we first drew in the existing Voting–Rights–Act–protected majority-minority districts. We were persuaded that the next step had to be to locate Districts 31 and 32, the two new Congressional seats allotted to Texas following the 2000 census. As observed by Dr. Alford, the most natural and neutral locator is to place them where the population growth that produced the new additional districts has occurred.[10] It is self-evident that this locator is, across cases, neutral down to the immediate area, if not in the ultimate, precise fit on the ground. Here the new districts' precise landing was virtually dictated by step 1. When we sent the two new districts to the areas of greatest population growth, Dallas County and Harris County, the districts necessarily landed in the northern half of these counties, and, in the case of District 31, continuing

over to Williamson County. Their landing was directed by the location of the protected majority-minority districts in southern Dallas and Harris Counties, which could not be disrupted. Use of this neutral guide was further supported by the circumstance that the Texas legislature has previously located new districts in the areas of greatest population growth.[11]

10 We are not the first court to see the wisdom of this choice. *See, e.g., Johnson v. Miller,* 922 F.Supp. 1556, 1563 (S.D.Ga.1995) (discussing the decision to place Georgia's additional congressional district in high population growth area near Atlanta), *aff'd sub nom., Abrams v. Johnson,* 521 U.S. 74, 117 S.Ct. 1925, 138 L.Ed.2d 285 (1997).

11 *See Bush v. Vera,* 517 U.S. 952, 1003, 116 S.Ct. 1941, 135 L.Ed.2d 248 (1996) (Stevens, J., dissenting) ("Because Texas' growth was concentrated in south Texas and the cities of Dallas and Houston, the state legislature concluded that the new congressional districts should be carved out of existing districts in those areas.").

***3** With a large part of the Texas map thus drawn, we looked to general historic locations of districts in the state, such as the districts in the Panhandle and the northeast corner of the state, the north central districts of the Red River area,[12] through the metropolitan districts and the central plains. We then drew in the remaining districts throughout the state, emphasizing compactness, while observing the contiguity requirement.[13] We struggled to follow local political boundaries that historically have defined communities-county and city lines.[14] In the vernacular, "splits" of counties and cities in our drawing had to be a product of our neutral standards and the demands of population equality. We eschewed an effort to treat old lines as an independent locator, an effort that, in any event, would be frustrated by the population changes in the last decade. Nonetheless, the districts fell to their long-held areas, a natural result of the process we have described, much the same as the map drawn at our request by the State using Dr. Alford's neutral approach.

12 *Cf. Johnson,* 922 F.Supp. at 1565 (discussing Georgia's tradition of having four "corner districts" in its congressional plans).

13 *See Good v. Austin,* 800 F.Supp. 557, 563 (E.D. Mich. & W.D. Mich.1992) ("In addition to serving as a check on gerrymandering compactness 'facilitates political organization, electoral campaigning, and constituent representation.' " (quoting *Marcher v. Daggett,* 462 U.S. 725, 756, 103 S.Ct. 2653, 77 L.Ed.2d 133 (1983) (Stevens, J., concurring))).

14 *See Karcher,* 462 U.S. at 758 (Stevens, J., concurring) ("Subdivision boundaries tend to remain stable over time. Residents of political units such as townships, cities, and counties often develop a community of interest, particularly when the subdivision plays an important role in the provision of governmental services. In addition, legislative districts that do not cross subdivision boundaries are administratively convenient and less likely to confuse the voters." (footnote omitted)). two districts, we also strove for compactness and contiguity. Doing so did much to end most of the below-the-surface "ripples" of the 1991 plan and the myriad of submissions before us. For example, the patently irrational shapes of Districts 5 and 6 under the 1991 plan, widely-cited as the most extreme but successful gerrymandering in the country, are no more.

As we have explained, in our efforts to avoid splitting counties and cities, and in particular "double splits," or simultaneously moving populations in and out of a county between

As a check against the outcome of our neutral principles, we asked if the resulting plan was avoidably detrimental to Members of Congress of either party holding unique, major leadership posts. We looked at three Democrats and three Republicans, consensus members of this limited group, each with substantial leadership positions in the Congress. It was plain that these Members were not harmed in their reelection prospects by this plan and that, indeed, no incumbent was paired with another incumbent or significantly harmed by the plan. We thus considered no change in our map in response to this inquiry. Doubtlessly some may see any such weighting as an incumbency factor since congressional leadership so directly correlates with seniority. This view is not without force. Nonetheless, three circumstances must also be considered. First, this correlation is no longer so complete. Second, it does not here offer purchase to one political party over another. And, finally, it reflects a traditional state interest in the power of its congressional delegation distinct from partisan affiliation.

Finally, we checked our plan against the test of general partisan outcome, comparing the number of districts leaning in favor of each party based on prior election results against the percentage breakdown statewide of votes cast for each party in congressional races. This is a traditional last check upon the rationality of any congressional redistricting plan,[15] widely relied-upon by political scientists to test plans, if

only in an approximating manner. We found that the plan is likely to produce a congressional delegation roughly proportional to the party voting breakdown across the state. It must be understood that any plan necessarily begins with a Democratic bias due to the preservation of protected majority-minority districts, all of which contain a high percentage of Democratic voters.

15 *See, e.g., Good,* 800 F.Supp. at 566–67 (using partisan fairness to assess plan drawn according to neutral principles).

III

***4** Various parties urged us to create both African–American and Latino minority districts. These districts are not required by law, as discussed in more detail below, but could be created by the State so long as race was not a predominant reason for doing so. Whether to do so is, however, a quintessentially legislative decision, implicating important policy concerns.[16] We did not avoid creating such a district. At the same time, we did not depart from our neutral factors to draw any district not required by law. To do so would render our effort to keep our thumb off the political scale an illusion.[17]

16 *See Wyche v. Madison Parish Police Jury,* 635 F.2d 1151, 1160 (5th Cir. Unit A Feb.1981).

17 *Cf. Abrams,* 521 U.S. at 88.

IV

Finally, to state directly what is implicit in all that we have said: political gerrymandering, a purely partisan exercise, is inappropriate for a federal court drawing a congressional redistricting map.[18] Even at the hands of a legislative body, political gerrymandering is much a bloodfeud, in which revenge is exacted by the majority against its rival. We have left it to the political arena, as we must and wisely should. We do so because our role is limited and not because we see gerrymandering as other than what it is: an abuse of power that, at its core, evinces a fundamental distrust of voters, serving the self-interest of the political parties at the expense of the public good.

18 *See Hunt v. Cromartie,* 526 U.S. 541, 551, 119 S.Ct. 1545, 143 L.Ed.2d 731 (1999); *see generally Davis v. Bandemer,* 478 U.S. 109, 117 n. 6, 106 S.Ct. 2797, 92 L.Ed.2d 85 (1986) (plurality opinion of White, J.); *cf. Wyche v. Madison Parish Police Jury,* 769 F.2d 265, 268 (5th Cir.1985) ("Many factors, such as the protection of incumbents, that are appropriate in the legislative development of an apportionment plan have no place in a plan formulated by the courts.").

V

The parties presented competing plans for redistricting the Congressional seats. We have passed by the approach by which these plans were created in favor of the approach we have described, which we found to be mandated by our position as a federal court engaging in our "delicate task with limited legislative guidance."[19]

19 *Abrams,* 521 U.S. at 101.

Several parties raise Voting Rights Act arguments in support of their preferred plans. In drawing our plan, we have endeavored to ensure that the plan complies with the goals of sections 2[20] and 5[21] of the Voting Rights Act.[22]

20 42 U.S.C. § 1973.

21 42 U.S.C. § 1973c.

22 *See Abrams,* 521 U.S. at 90, 96.

Our plan works no retrogression. We have maintained intact the existing districts, and, to the extent the boundaries have changed, as we "zeroed out" the plan, the minority populations have been either enhanced or not diminished in any meaningful way (*i.e.,* by mere fractions of percentages). Thus, although the minority populations in Districts 15, 16, and 30 represent a slightly smaller, but still overwhelming, percentage of the total populations of those districts as compared with the baseline 1991 plan as modified in 1996, we find that these changes do not result in "a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise."[23]

23 *Beer v. United States,* 425 U.S. 130, 141, 96 S.Ct. 1357, 47 L.Ed.2d 629 (1976); *see also Abrams,* 521 U.S. at 95; *Reno v. Bossier Parish Sch. Bd.,* 520 U.S. 471, 478, 117 S.Ct. 1491, 137 L.Ed.2d 730 (1997).

The Balderas plaintiffs argue that the congressional plan must contain seven Latino registration majority districts, within nine Latino voting age majority districts, to avoid a section 2 violation. The Martinez interveners specifically argue for

a Latino opportunity district in Dallas County to maintain compliance with section 2. Many parties, including the Texas Coalition of Black Democrats, argue for an African–American opportunity district, generally labeled District 25, in Fort Bend and Harris Counties.

***5** The Latino and African–American plaintiffs thus present competing positions, reflecting a political reality that they are competitors in the political process.[24] This competition finds expression in an absence of cohesive voting between Latinos and African–Americans at the point in which it is meaningfully measured, the Democratic primaries.

24 Several political scientists alluded to this political reality in their testimony.

We find that the plaintiffs have failed to prove that vote dilution will occur in violation of section 2 of the Voting Rights Act in the absence of seven Latino citizenship majority congressional districts or an African–American opportunity district, proposed District 25, in Fort Bend and Harris Counties. The evidence did not persuade us that either Latino or African–American voting age populations are sufficiently numerous to form voting age population majorities in effective districts.[25] The plaintiffs have also not proved that Latinos and African–Americans vote cohesively as required by *Thornburg v. Gingles*[26] so as to constitute a majority in a single-member district.[27]

25 *See Valdespino v. Alamo Heights Indep. Sch. Dist.,* 168 F.3d 848, 852–53 (5th Cir.1999).

26 478 U.S. 30, 50–51, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986).

27 *See Valdespino,* 168 F.3d at 852–53.

Looking first to the proposed African–American opportunity district, the Texas Coalition of Black Democrats has conceded that the evidence showed that African–Americans would not be an absolute majority of citizen voting age population in the proposed District 25. Again, the plaintiffs were unable to prove cohesive voting between Latinos and African–Americans sufficient to compel the drawing of a district in Fort Bend and Harris Counties.[28] The overwhelming evidence found to be persuasive was to the contrary.

28 *See Growe,* 507 U.S. at 41.

The matter of creating such a permissive district is one for the legislature.[29] As we have explained, such an effort would require that we abandon our quest for neutrality in favor of a raw political choice. We offer no opinion as to the wisdom of an appropriate body doing so. Such arranging of voting presents a large and complex decision with profound social and political consequences. The Congress has by its enactment of voting rights laws constrained the political process and given the courts a role-to the extent of those constraints. We have no warrant to impose our vision of "proper" restraints upon the political process beyond the constraints imposed by the Constitution or the Voting Rights Act. The Supreme Court put it succinctly in *Growe,* stating that, where there has been no showing establishing the "three *Gingles* prerequisites," then under section 2 of the Voting Rights Act "there neither has been a wrong nor can be a remedy."[30] A month later, the Court stated even more directly that, "[o]f course, the federal courts may not order the creation of majority-minority districts unless necessary to remedy a violation of federal law."[31]

29 *See Johnson,* 922 F.Supp. at 1567 ("Since political considerations pervade the redistricting task, the Court feels that any permanent footprint left on Georgia's political landscape ... should be left to those elected to make such decisions.").

30 507 U.S. at 41.

31 *Voinovich v. Quilter,* 507 U.S. 146, 156, 113 S.Ct. 1149, 122 L.Ed.2d 500 (1993).

In sum, these arguments so ably presented by Morris Overstreet, African–American attorney and former state official and candidate for elective office, and others are directed to the wrong forum, however much we may personally admire the arguments. It bears mention that our plan has hardly left a bleak terrain. In District 25 of our plan, the combined African–American and Latino voting age population increased to a 52.3 majority. In the practical world, this percentage will dominate the Democratic primary in a district that has consistently elected a Democratic congressman. This is, then, in a real sense, a minority district produced by our process that enhances the elective prospects of a minority, albeit not wholly the district sought.

***6** As for the proposed Latino opportunity districts, the evidence shows that the Latino population is not sufficiently compact or numerous to support another, effective majority Latino citizenship district in Texas, in Dallas County or

in South Texas.[32] We find that, under the totality of the circumstances, the failure to create seven such districts will not prevent full and equal Latino participation in the political process. It bears mention that our insistence upon compactness has increased the Latino force in District 24, a result supported by Congresswoman Eddie Bernice Johnson in her testimony at trial.

32 *See Growe,* 507 U.S. at 39–40; *Gingles,* 478 U.S. at 50–51; *NAACP v. Fordice,* 252 F.3d 361, 365–67 (5th Cir.2001).

The Valdez–Cox plaintiffs also urge that Webb and Hidalgo Counties be left whole. We heard powerful arguments from the witness stand and counsel in opposition to a splitting of Hidalgo County in South Texas, and our neutral standards stood against such a county split. That standard was ultimately overriden as to Hidalgo County by the mandate of population equality under the principle of one-man, one-vote, and the existence of surrounding protected majority-minority districts. It is an ugly fact that the law's insistence on absolute population equality in court-drawn plans has the perverse effect of splitting counties and cities, when a tolerance of greater deviation would not demand such undesirable divisions. The split here of Hidalgo County is a fit example.[33] Webb County was not caught in this squeeze and remains wholly intact in District 23.

33 We endeavored to and did respect the municipal boundaries of McAllen, a major population center of Hidalgo County.

VI

There being no reason for delay, we direct entry of final judgment in this case pursuant to Federal Rule of Civil Procedure 54(b).

So **ordered.**

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Quo Warranto Letter to Attorney General

LAW FORWARD

Law Forward Inc.
222 West Washington Avenue, Suite 250
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July 25, 2023

VIA EMAIL & HAND DELIVERY

Attorney General Josh Kaul
Wisconsin Department of Justice
17 West Main St.
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kauljl@doj.state.wi.us

Re: Request for* Quo Warranto *Action Regarding Individuals Holding Odd-Numbered Senate Districts That Are Not Up for Election in 2024 Despite Being Unconstitutionally Gerrymandered

Attorney General Kaul,

Wisconsin law protects the citizens of our state from those who occupy a public office to which they are not lawfully entitled. That law applies even to those who occupy such an office through no fault of their own. Our statutes authorize a *quo warranto* action "[w]hen any person shall usurp, intrude into, or unlawfully hold or exercise any public office" within the state of Wisconsin. Wis. Stat. § 784.04(1). Such a lawsuit may be brought in the name of the state by the Attorney General, or, when the Attorney General declines to act, by a private person on personal complaint. Wis. Stat. § 784.04(1)–(2).

We write today to highlight a situation within the scope of the *quo warranto* statutes and to ask you to either take action or promptly decline to act so that we may proceed in the name of the state. As you know, to meet the requirements of our state and federal constitutions, each decade our state legislative districts are reapportioned in light of the newest U.S. Census data and other legal criteria. This decade, when the Governor and the Legislature were unable to reach agreement on new state legislative districts, the Wisconsin Supreme Court adjudicated the concomitant impasse litigation and imposed maps. *Johnson v. Wis. Elections Comm'n*, 2022 WI 19, 401 Wis. 2d 198, 972 N.W.2d 559. Those maps were the basis for the 2022 partisan elections, and they establish the districts that our current state legislators represent. The maps that define those state legislative districts embody an extreme partisan gerrymander and other legal infirmities that render them a gross violation of the Wisconsin Constitution.

We intend to vindicate our view that the current state legislative districts are unconstitutional through imminent litigation. In doing so, we will seek new, constitutional state legislative districts to be in place for Wisconsin's 2024 partisan elections and beyond. But while that remedy would promptly redress the state constitutional infirmities in every district of the Assembly, it would provide a prompt remedy for only those even-numbered State Senate districts which will have elections in 2024. Yet no legislator has the right to complete a term of office that was unconstitutionally obtained. It follows that those members of the State Senate who hold seats representing odd-numbered districts, and who therefore are not scheduled to face election until 2026, should face a corresponding *quo warranto* claim to remove them from their seats and require them to seek election under the new, constitutional state legislative district maps as part of Wisconsin's 2024 partisan elections.

LAW FORWARD

Law Forward Inc.
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We respectfully ask that you bring a *quo warranto* action against the current State Senators who represent odd-numbered districts. Our clients are individual voters, not partisan groups, parties, or operatives. Moreover, the Senators subject to this *quo warranto* action comprise a bipartisan group; it includes Senators André Jacque (R-Dist. 1), Tim Carpenter (D-Dist. 3), Rob Hutton (R-Dist. 5), Chris Larson (D-Dist. 7), Devin LeMahieu (R-Dist. 9), Stephen Nass (R-Dist. 11), John Jagler (R-Dist. 13), Mark Spreitzer (D-Dist. 15), Howard Marklein (R-Dist. 17), Rachael Cabral-Guevara (R-Dist. 19), Van Wanggaard (R-Dist. 21), Jesse James (R-Dist. 23), Romaine Quinn (R-Dist. 25), Dianne Hesselbein (D-Dist. 27), Cory Tomczyk (R-Dist. 29), Jeff Smith (D-Dist. 31), and Chris Kapenga (R-Dist. 33). The list was not created on a partisan basis but arises solely from the unconstitutional state legislative district maps themselves.

Wisconsinites have suffered under one of the most extreme partisan gerrymanders in our nation's history for more than a decade. The gerrymander has distorted the functionality of our state government and broken the fundamental feedback mechanism between constituents and their elected leaders that makes representative democracy work. The constitutional violations that the gerrymander both embodies and perpetuates are severe, longstanding, and widespread. They meet the test the U.S. Supreme Court has established for ordering special elections. *North Carolina v. Covington*, 581 U.S. 486, 488 (2017).

Please let us know no later than Tuesday, August 1, 2023, whether you are willing to bring this *quo warranto* action in conjunction with our legal challenge to the constitutionality of Wisconsin's gerrymandered state legislative districts. If you do not indicate your willingness to proceed, we will employ the express statutory option available to our clients to step in and litigate directly in the name of the state.

Thank you in advance for your prompt attention to this matter.

Sincerely,

Daniel S. Lenz
Staff Counsel
Law Forward, Inc.

CC: Jeffrey A. Mandell and Douglas M. Poland, Stafford Rosenbaum, LLP
Mark P. Gaber and Annabelle E. Harless, Campaign Legal Center, Inc.
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Quo Warranto Response Letter from Attorney General

STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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July 31, 2023

VIA E-MAIL (dlenz@lawforward.org)

Mr. Daniel S. Lenz
Law Forward, Inc.
222 West Washington Avenue, Suite 250
Madison, WI 53703

Dear Mr. Lenz:

I am writing in response to your July 25, 2023, letter to Attorney General Josh Kaul regarding a request to file a quo warranto action "in conjunction with [your] legal challenge to the constitutionality of Wisconsin's gerrymandered state legislative districts." The Wisconsin Department of Justice (DOJ) anticipates that it may undertake legal representation in connection with the expected redistricting litigation, and DOJ will not be bringing a quo warranto action at this time.

Thank you for contacting us.

Sincerely,

Lara Sutherlin
Administrator
Division of Legal Services