

**IN THE MATTER OF THE 2022
LEGISLATIVE DISTRICTING OF
THE STATE OF MARYLAND**

*** IN THE
* COURT OF APPEALS
* OF MARYLAND
* MISC. NOS. 21, 24, 25, 26, and
27
* SEPTEMBER TERM, 2021**

**INTERIM SCHEDULING ORDER NO. 1
OF SPECIAL MAGISTRATE**

PREFACE

WHEREAS, on January 27, 2022, the General Assembly of Maryland enacted Senate Joint Resolution 22, which constitutes the Legislative Redistricting Plan of 2022. Under Article III, Section 5 of the Maryland Constitution, the Court of Appeals of Maryland has original jurisdiction, upon petition by any registered voter, to review that Legislative Redistricting Plan and may grant appropriate relief if it finds that the redistricting of the State is not consistent with requirements of the Constitution of the United States or the Constitution of Maryland.

WHEREAS, on January 28, 2022, on motion of the Attorney General of Maryland in Misc. No. 21, the Court of Appeals issued an Order, which was amended on February 3, 2022, that promulgated certain procedures to govern all actions brought under Article III, Section 5 challenging the validity of the Redistricting Plan. That Order directed that any petitions challenging the validity of the Plan be filed by 4:30 p.m. on February 10, 2022, and that the State's responses to any such petitions and any alternative plans be filed

by 4:30 p.m. on February 15, 2022. The Order also appointed the undersigned as a Special Magistrate of the Court and directed that he conduct a virtual scheduling conference on Thursday, February 17, 2022, commencing at 10:00 a.m.

WHEREAS, four petitions purporting to challenge the validity of the Plan, or parts thereof, were filed in this Court on or before the deadline set in the Court’s Order: Misc. No. 24, by David Whitney; Misc. No. 25, by Mark Fisher, Nicholas Kipke, and Katherine Szeliga; Misc. No. 26, by Brenda Thiam, Wayne Hartman, and Patricia Shoemaker; and Misc. No. 27, by Seth Wilson. On February 15, 2022, the Attorney General filed motions to dismiss all four petitions.

WHEREAS, in furtherance of the Court’s Order, a remote hearing was conducted yesterday, on February 17, 2022. All parties were present (remotely) in person or through counsel. The Attorney General was represented by Steven M. Sullivan, Esq. and Andrea Trento, Esq. Mr. Whitney (Misc. No. 24) and Mr. Wilson (Misc. No. 27) were self-represented. The parties in Misc. No. 25 were represented by Strider L. Dickson, Esq. and Brenton H. J. Conrad, Esq., and the parties in Misc. No. 26 were represented by David K. Bowersox, Esq. No objections were made to the format of the meeting or the manner in which it was conducted.

MISC. NO. 24

Mr. Whitney alleged in his Petition (Misc. No. 24) that he lives on the Broadneck Peninsula on the Western Shore of the Chesapeake Bay and that the “legislative district” he lives in extends across the Chesapeake Bay to include territory on the Eastern Shore. The Attorney General has asserted in his motion to dismiss that no legislative district crosses the Chesapeake Bay and that Mr. Whitney must be referring to a Congressional

district and not a General Assembly district. When questioned about that, Mr. Whitney insisted that the district he is complaining about is, indeed, a General Assembly district. In light of that insistence, Mr. Whitney was directed to amend his petition immediately to state, with specificity, which General Assembly district he is challenging, and he has done so. This morning, a new petition (still labeled Misc. No. 24) was filed.

The new petition is completely rewritten to challenge General Assembly districts 33 and 30A and complain as well about Districts 21, 23, 25, and 26. It bears no relationship whatever to the complaint made in the original petition. The Attorney General has not yet responded (or had much of a chance to respond) to the new petition.

Because time is critical, the Special Magistrate will deal with the other issues in this Order and will supplement it when the Attorney General's response is received.

DISCOVERY

The Attorney General and counsel in Misc. Nos. 25 and 26, who are also counsel in the pending Congressional district litigation, agreed that, to the extent possible, they would be using the same experts in both cases. The Attorney General indicated that a great deal of the information that the petitioners may want is currently available online but that certain information they may want from legislative files, in his view, is privileged and therefore unavailable. The attorneys agreed to attempt in good faith to resolve any disputes over discovery to the end of being able to make a good faith exchange of discovery by March 11, 2022, and, to the extent that Mr. Wilson and Mr. Whitney become involved in any discovery disputes, they also must act in good faith to resolve them. **To encourage and support that effort, the Special Magistrate hereby directs that a good faith exchange of all discovery occur on Friday, March 11, 2022 unless the Special Magistrate is informed in writing no later than Tuesday, March 8, 2022 of an inability to achieve that objective, in which event, a remote hearing on any outstanding issues will be held on Thursday, March 10, 2022, commencing at 10:00 a.m.**

EXCHANGE OF PROPOSED FINDINGS AND HEARING

On the assumption that the foregoing schedule is substantially met, an exchange of proposed findings of fact shall occur on March 22, 2022, and a hearing on the merits will be scheduled to commence on March 23, 2022 and extend, if necessary, through March 25, 2022. The Special Magistrate intends to file his Report with the Court of Appeals on April 5, 2022.

/s/ Alan M. Wilner
Alan M. Wilner
Special Magistrate

Filed: February 18, 2022

/s/ Suzanne C. Johnson
Suzanne C. Johnson
Clerk
Court of Appeals of Maryland

Pursuant to Maryland Uniform Electronic Legal
Materials Act
(§§ 10-1601 et seq. of the State Government Article) this document is authentic.



Suzanne C. Johnson, Clerk