

IN THE MATTER OF  
2022 LEGISLATIVE  
DISTRICTING OF THE STATE

\* IN THE  
\*  
\* COURT OF APPEALS  
\*  
\* OF MARYLAND  
\*  
\* MISC. NO. 27  
\*  
\* SEPTEMBER TERM, 2021

### EXCEPTION TO THE REPORT OF THE SPECIAL MAGISTRATE

In his report, the Special Magistrate has fundamentally misstated, misconstrued, or misunderstood the claims and arguments I made, both in my petition and during the hearing on the merits, and the legal basis for them. Thus, it is necessary for me to file these exceptions to correct his report. I hereby respectfully request that this Court disregard his erroneous recommendation to deny my petition and instead grant the relief I requested in my petition.

### PETITION SUMMARY

As I summarized it during the hearing, my petition simply asks this Court to do again in 2022 what it did in 2002 and for the same reasons. In 2002, this Court determined that District 38B, which crossed county boundaries, failed to give due regard to political subdivisions. This Court also provided relief to a petitioner who complained that District 27A failed to give due regard to political subdivisions by eliminating county boundary crossings and drawing District 27A entirely within Calvert County.

In 2022, the General Assembly violated Article III, Section 4 of the Maryland when, for no reason, it disregarded the county boundary between Washington and Frederick counties to draw District 2A as a two-member district that crossed the boundary between those counties. The population of Washington County can support at least two single member districts entirely within its borders. Justice demands that the legislative districts be drawn accordingly: e.g., District 2A can be split evenly into two single-member districts, only one of which crosses county boundaries; and that post-hoc justifications for an illegally drawn two-member district based on population equalization be dismissed.

Additionally, I argue in my petition that population adjustments based on the “No Population Without Representation Act” are unconstitutional because they conflict with the “due regard” provision in Article III, Section 4, when such adjustments affect legislative districts that are drawn to cross county boundaries. Those adjustments should be eliminated and the intrusion of Senate District 1 into Washington County and Senate District 2 into Frederick County reduced or eliminated as a result.

#### ERRORS IN THE REPORT OF THE SPECIAL MAGISTRATE

**The Report does not correctly state my complaint.** The Report (p. 15 ¶ 3) says “His complaint is that part of it [District 2A] was moved to Frederick County.” The Report then goes on to discuss how population changes made it

necessary to include a part of Senate District 2 in Frederick County. Even if it is true that Senate District 2 has to cross county boundaries, that fact and subsequent discussion along those lines is irrelevant to the substance of my complaint, which is that the General Assembly failed to give due regard to political subdivisions as required by Article III, Section 4 when it drew a two-member district (2022 LRAC District 2A) that crossed county boundaries for no reason (c.f. nos. 4, 13, 14, and 16 in my petition).

**The Report makes a material misstatement of fact about Delegate districts in Washington County.** The Report (p. 16, ¶ 2) says “Mr. Wilson contends that it is possible to create two single-member Delegate districts entirely within Washington County, as was done in 2012. He appears to recognize that the configuration chosen this time was the result of applying the No Representation Without Population Act ....” These statements are false and misleading when taken together. In 2012, Washington County was represented by four Delegates and there were three single-member districts entirely within Washington County, not two, because Senate District 2 was entirely within Washington County, and my belief is that the population adjustments required by the Act were performed in 2012 after the decision in *Fletcher* and again in 2022.

Whether adjusted population data required by the Act is used or not, Washington County will continue to be represented by at least four delegates

under any possibly constitutionally valid plan and has sufficient population to guarantee that at least two single-member districts can be drawn entirely within Senate District 2 and that is true whether that Senate district lies entirely within Washington County or not. Washington County will also have one or two Delegates who also represent a neighboring county.

**The Report grossly mischaracterizes the nature of my complaint and the relevance of the 14<sup>th</sup> Amendment to it.** The Report (p. 17, ¶ 1) says “The underlying thrust of Mr. Wilson’s complaint is his aversion to multi-member House Districts, which he believes violates the due process clause of the 14th Amendment.” All of this is completely wrong.

While it is true as this Court observed in 2002 that “Western Maryland districts have traditionally been single member districts,” the “underlying thrust” of my complaint has been stated numerous times by now: the General Assembly must follow Article III, Section 4, when it draws a legislative district. That means it must give due regard to political subdivisions, which it unquestionably failed to do when it drew the two-member District 2A across county boundaries for no reason. By failing to follow the Maryland Constitution when it drew the district I live in, the General Assembly violated the equal protection clause of the 14<sup>th</sup> Amendment. Nowhere have I claimed that multimember districts are per se illegal or unconstitutional under the Maryland Constitution or the Constitution of the

United States, nor is any such claim necessary or required for me to prevail in this matter.

**The conclusion of the Report is both factually incorrect and incompatible with precedent established by this Court.** The Report (p. 18, ¶ 2) concludes “There is no legal impediment to including multi-member districts, even when the district or part of it includes residents of another county, at least when that becomes necessary to assure population equality.” With respect to population equality only, within 2022 LRAC Senate District 2, the General Assembly could have drawn a two-member district entirely within Washington County without crossing a county boundary and drawn a single-member district that crossed the county boundary into Frederick County. Drawing a two-member District 2A to cross county boundaries was not necessary to assure population equality.

The statement that “there is no legal impediment to including multi-member districts” ignores the precedent established by this Court in 2012 that “we have deemed the validity of multi-member district system justiciable.” Article III, Section 4, may not textually prohibit any of the configurations listed in Section 3, but that does not mean the General Assembly is free to disregard Section 4 and all laws everywhere when it draws a district, or that its available choices cannot ever

possibly be constrained by the breadth of all law and the totality of the circumstances.

This Court would not accept a two-member district that snaked a narrow path through a county in a zig-zag pattern, nor would it accept a two-member district composed of a collection of disconnected polka dots, based on the post-hoc justification that the size of the two-member district was necessary to achieve population equalization and no other consideration mattered. Likewise, this Court must reject a two-member district drawn with complete disregard for political subdivisions and dismiss the post-hoc justification that the size of the district is necessary for population equalization and therefore the Court should ignore the fact that it was illegally drawn in the first place.

One of the consequences of *Reynolds v. Sims* is that legislative districts have covered ever-expanding areas in parts of the state where population density is relatively low, to the detriment of the people who live in these areas and the local governments which serve them. These expanding territories put constraints on the General Assembly. While my petition focuses on the lack of due regard given to the political subdivisions between counties, I do not think it should be lost on this Court that multi-member districts also group together multiple municipalities in such areas. Unnecessarily grouping together multiple municipalities within one legislative district also fails to give due regard to

political subdivisions and therefore should also be considered a violation of Article III, Section 4.

***Fletcher v. Lamone* is not relevant to my petition.** The Report incorrectly says “A claim similar to Mr. Wilson’s was made and rejected by the Supreme Court in *Fletcher v. Lamone*.” I acknowledged the ruling in that case and its limited applicability in claim number 17 in my petition. The plaintiffs in *Fletcher* claimed Maryland’s No Representation Without Population Act violated various federal laws. I claim in number 19 in my petition that the Act violates Article III, Section 4, of the Maryland Constitution when it is applied to districts that cross county lines. *Fletcher* is completely silent on the subject of violations of the Maryland Constitution. The arguments in *Fletcher* are not similar at all to those in my petition.

As I posited during the hearing, more relevant is *Calvin v. Jefferson Cnty. Bd. of Comm'rs*, 172 F. Supp. 3d 1292, 1324 (N.D. Fla. 2016). In that case, the court held that the Equal Protection Clause barred Jefferson County from including prisoners from the Jefferson Correctional Institution, a state prison, in its redistricting population count. However, in that case it also reasoned (emphasis in the original):

In particular, the situation would be quite different if we were dealing with a *state* legislative district, because state prisoners are obviously affected by the policies put in place at the state level. When Mr. Boyd received letters from JCI inmates, he put those letters aside because

there was nothing he could do for them in his capacity as a County Commissioner. The same would not be true of the state senator and representative whose territory includes JCI.

Even more relevant is the opinion of this Court in 2002:

The Washington County portion of Subdistrict 3B includes prisoners incarcerated in State prison institutions. The State's prison facilities in this area were divided between Districts 3B and 2B. Because these prisoners do not vote in elections, it is appropriate to include prisons within subdivision crossings where possible. The inclusion of the non — voting prison population within the crossing minimizes the number of voters who are affected by the crossing, and therefore minimizes any potentially adverse consequences that the crossing may create.

Neither the General Assembly in its drafting and passing the Act nor the Governor in signing it provided the due regard to political subdivisions required by Article III, Section 4, where such adjustments affect districts that cross county boundaries. At the very least, the population adjustments should accordingly be removed from all counties in Districts 1 and 2 and Districts 1 and 2 should be drawn to intrude less into Washington and Frederick Counties, respectively.

#### CONCLUSION

In its 2012 decision, this Court held that “because Article III, § 5 provides for any eligible citizen to have his constitutional rights vindicated in court, a single constitutionally unjustified border crossing is relevant to whether the challenged plan either complies, or conflicts, with the due regard requirement.”

There being no remaining legitimate basis in the Report of the Special Magistrate for recommending this Court deny my petition, and for all reasons I presented in my petition and during the hearing on its merits, this Court should affirm my petition and grant all relief I requested therein.

Respectfully submitted,

/s/ Seth Wilson

Seth Wilson

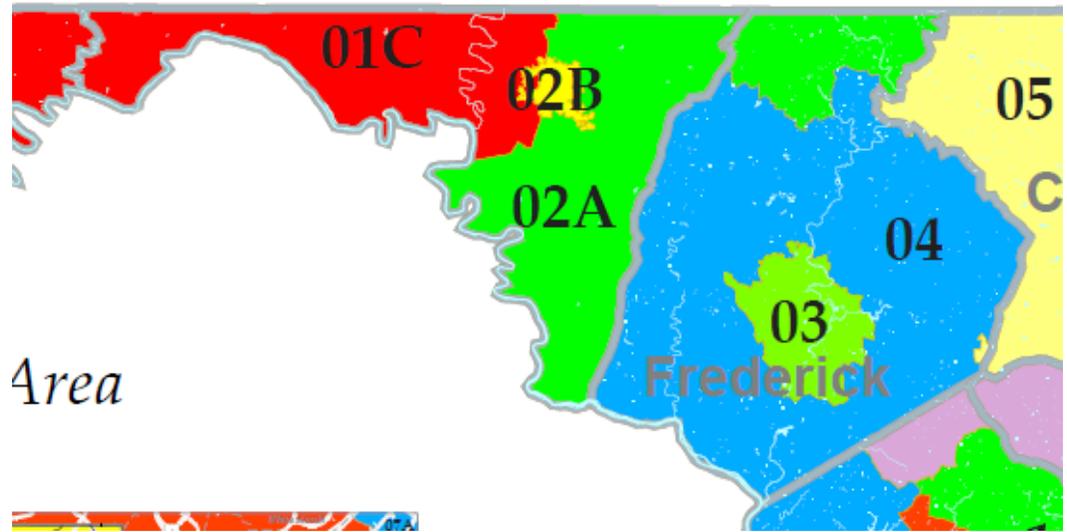


Figure 1: LRAC 2022 Districts 2B (Hagerstown) and 2A (Washington and Frederick Counties)

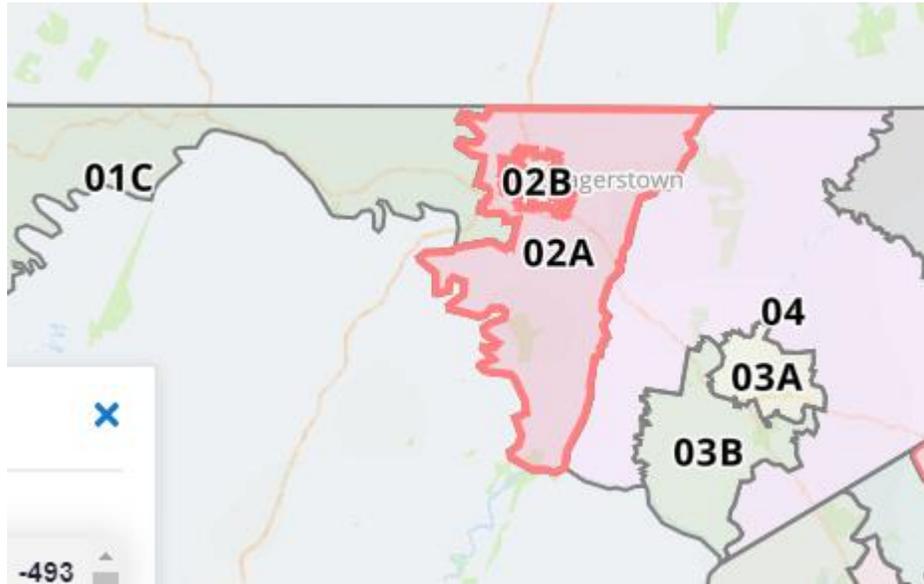


Figure 2: 2012 Districts 2A (Washington County) and 2B (Hagerstown)

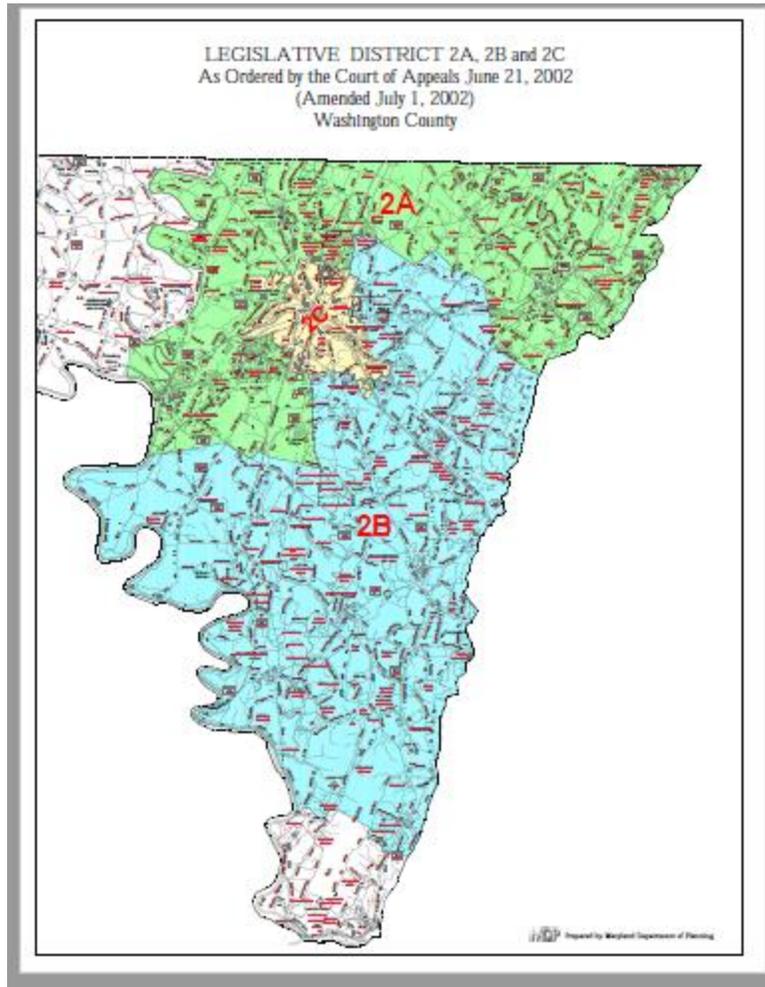


Figure 3: 2002 Districts 2A and 2C (Washington County) and 2B (Hagerstown)

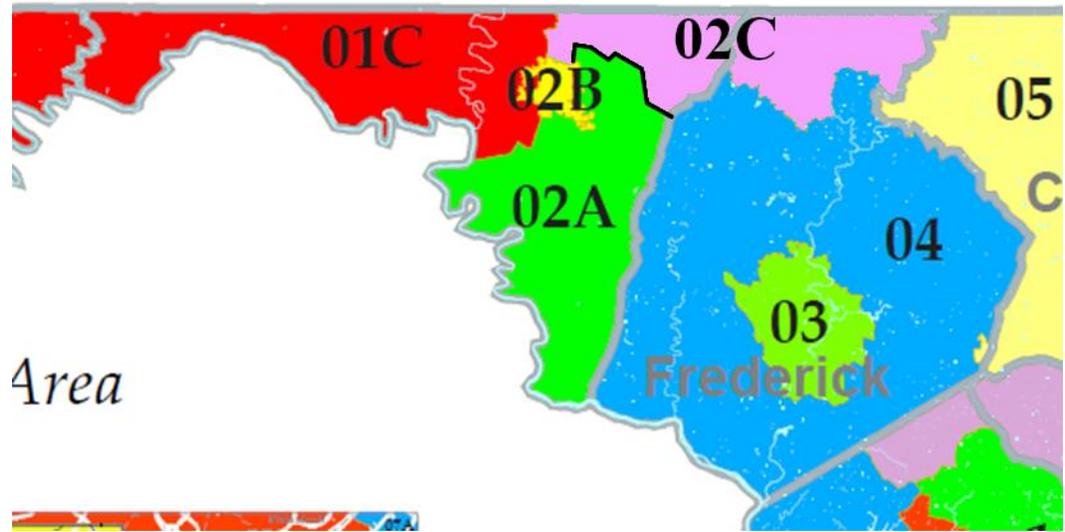


Figure 4: Illustration of the requested relief (approximate, based on 2022 LRAC Senate District 2 and the dividing line between 2002 Districts 2A and 2B) Districts 2A (Washington County), 2B (Hagerstown), and 2C (Washington and Frederick Counties)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8<sup>th</sup> day of April, 2022, a copy of this Exception was filed and served electronically by the MDEC system. A copy of the foregoing was also sent to the parties in Misc. Nos. 24, 25, and 26 by electronic mail.

/s/ Seth Wilson

Seth Wilson