

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Stephen M. Shapiro, et al.

Plaintiffs,

vs.

David J. McManus, Jr., et al.,

Defendants.

Case No. 13-cv-3233

Three-Judge Court

JOINT STIPULATIONS

Pursuant to this Court's October 13, 2016 minute order, the parties file these Joint Stipulations of Fact and Law. The facts in these joint stipulations and exhibits attached hereto are intended to be received into evidence in lieu of further proof or testimony. The parties reserve their rights to contest the relevance of any stipulation or exhibit.

GLOSSARY OF TERMS

1. The "Governor" means former Maryland Governor Martin O'Malley.
2. The "Plan" means the map established by Senate Bill 1, which the Governor signed into law on October 20, 2011, and codifies the boundaries of Maryland's eight congressional districts today in effect.
3. The "GRAC" means the Governor's Redistricting Advisory Committee established by the Governor in July 2011.
4. The "District" means Maryland's Sixth Congressional District.
5. The "State" means Maryland.
6. The "Census" means the decennial United States Census mandated by Article I, Section 2 of the United States Constitution. As used in these stipulations, the "Census" additionally refers to the statement prepared by the President of the United

States pursuant to 2 U.S.C. § 2a showing the number of persons in each state and the number of representatives to which the state is entitled.

THE SIXTH DISTRICT BEFORE THE PLAN

7. The following individuals won election as United States Representative for the District between January 1943 and January 1993:

- a. David J. Lewis, a Democrat, served 1911 through 1917;
- b. Frederick N. Zihlman, a Republican, served 1917 through 1931;
- c. David J. Lewis, a Democrat, served 1931 through 1939;
- d. William D. Byron, a Democrat, served 1939 through 1941;
- e. Katharine Byron, a Democrat, served 1941 through 1943;
- f. J. Glenn Beall, a Republican, served 1943 through 1953;
- g. DeWitt S. Hyde, a Republican, served 1953 through 1959;
- h. John R. Foley, a Democrat, served 1959 through 1961;
- i. Charles McCurdy Mathias, Jr., a Republican served 1961 through 1969;
- j. J. Glenn Beall, Jr., a Republican, served 1969 through 1971;
- k. Goodloe E. Byron, a Democrat, served 1971 through October 1978;
- l. Beverly Barton Butcher Byron, a Democrat, served 1979 through 1993.

8. Republican Roscoe G. Bartlett challenged Beverly Barton Butcher Byron as United States Representative for the District in 1982, losing by a 49% margin. Bartlett won election as United States Representative for the District 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%).

9. The District's total adjusted 2010 Census population was 731,715. *See* Exhibit 1.

10. There were 208,024 Republican and 159,715 Democrat registered eligible voters in the District on October 17, 2010. On that date, Republicans comprised 46.68% and Democrats comprised 35.84% of registered eligible voters in the District. *See Exhibit 2.*

11. There were 182,775 Republican and 144,398 Democrat registered eligible voters in the District on October 15, 2002. On that date, Republicans comprised 48.39% and Democrats comprised 38.23% of registered eligible voters in the District. *See ibid.*

12. There were 182,431 Republican and 156,841 Democrat registered eligible voters in the District on October 13, 2000. On that date, Republicans comprised 46.46% and Democrats comprised 39.94% of registered eligible voters in the District. *See ibid.*

13. There were 133,773 Republican and 135,818 Democrat registered eligible voters in the District on August 13, 1990. On that date, Republicans comprised 45.36% and Democrats comprised 46.05% of registered eligible voters in the District. *See ibid.*

14. There were 122,762 Republican and 121,918 Democrat registered eligible voters in the District on February 3, 1992. On that date, Republicans comprised 46.19% and Democrats comprised 45.87% of registered eligible voters in the District. *See ibid.*

THE DRAFTING OF THE PLAN

15. The Maryland State Board of Elections is responsible under Maryland law for administering federal elections under the Plan. It is the primary source of aggregated address-level voter registration data, address-level voter history, and official election results in Maryland. The Board keeps voter registration, voter history, and elections data that is available to the public. Certain files are available upon application and payment of a fee and others are available freely on the website.

16. The United States House of Representatives consists of 435 members apportioned among the States according to population after each decennial census. After the 2000 Census, Maryland was entitled to 8 representatives. After the 2010 Census, Maryland was entitled again to 8 representatives.

17. The Maryland State Department of Planning produced adjusted Census population data to comply with the No Representation Without Population Act of 2010. That data was made available as a Report of Maryland Precinct Population Data and required a correction. The GRAC had access to this report. A true and accurate copy of the report is marked with the Bates-number range MCM001135 to MCM001389 in documents exchanged by the parties. The parties stipulate that the matters of fact asserted, stated, or depicted in MCM001135 to MCM001389 are true and correct.

18. The Governor established the GRAC by executive order in July 2011. 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.

19. The Governor appointed Jeanne D. Hitchcock to serve as chair of the GRAC. Hitchcock at the time served as Appointments Secretary in the Office of the Governor and had previously served as Deputy Mayor of Baltimore when the Governor served as Mayor.

20. The Governor additionally appointed to the GRAC: Democratic Delegate and Speaker of the House Michael E. Busch; Democratic Senator and President of the Senate Thomas V. Mike Miller, Jr.; Richard Stewart, a private business owner who had chaired the Governor's 2010 re-election campaign in Prince George's County; and former Delegate James. J. King, a Republican from Anne Arundel County. Linda C. Janey served on the GRAC's staff.

21. The foregoing list of GRAC members is exclusive; there were no other members of the GRAC.

22. 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. True and accurate copies of the transcripts of these hearings are marked with the Bates-number range MCM000001 to MCM000704 in documents exchanged by the parties. True and accurate copies of written testimony submitted to the GRAC on the subject of congressional redistricting are marked with the Bates-number range MCM000705 to MCM000906 in documents exchanged by the parties.

23. The GRAC solicited submissions of alternative plans for congressional redistricting prepared by third parties for its consideration. True and accurate copies of the third party plan submissions retained by the Department of Planning for publication on its website are marked with the Bates-number range MCM000907 to MCM001134 in documents exchanged by the parties. The GRAC had access to these plans.

24. The Department of Planning prepared a Briefing Book and provided it to the members of the GRAC. A true and accurate copy of this Briefing Book is marked with the Bates-number range MCM001392 to MCM001824.

25. The GRAC had access to information contained in a spreadsheet of the addresses of the 2010 Maryland Congressional representatives maintained by the Department of Planning. A true and accurate copy of the spreadsheet is marked with the Bates-number MCM001391 in documents exchanged by the parties.

26. The GRAC and the Department of Planning solicited and accepted public comment. True and accurate copies of comments on the proposed Congressional plan between October 4 and October 11, 2011 via e-mail and web comment form in the form prepared by the Department of Planning are marked with the Bates-number range MCM002436 to MCM002853 in documents exchanged by the parties. True and accurate copies of e-mails as maintained by the Department of Planning in hard copy are marked

with the Bates-number range MCM002243 to MCM002435 in documents exchanged by the parties. True and accurate copies of letters received regarding the GRAC plan and maintained by the Department of Planning are marked with the Bates-number range MCM002854 to MCM002870 in documents exchanged by the parties.

27. The GRAC was exempt by law from the Maryland Open Meetings Act.

28. The GRAC prepared a draft plan using a computer software program called Maptitude for Redistricting Version 6.0. According to a 2010 promotional brochure produced by the program's publisher, Caliper Corporation, Maptitude for Redistricting allowed users to, among other things, "[c]reate districts using any level of geography," "[s]elect any number of summary data fields and compute totals and percents," "[a]dd political data and election results," and "[u]pdate historic election results to new political boundaries." See Exhibit 3.

29. The State Board of Elections maintains voter and voting data including address-level voter registration data, including by party affiliation; and address-level voter-history data. The State Board of Elections also makes publicly available votes cast during early voting, on election day, and by absentee or provisional ballot at various levels of aggregation. This information was available to the GRAC.

30. Data described in the immediately prior paragraph, including data reflecting Maryland citizens' political party affiliations and voting histories, can be used to determine how the outcome of historical elections would have changed in the District if the proposed plan had been in place in prior years, including in 2010.

31. One widely understood 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 the District.

32. The GRAC completed its proposed map on October 4, 2011. The four Democrats on the GRAC voted in favor of the proposal. The sole Republican, former Delegate King, voted against it. The GRAC prepared a PowerPoint presentation to accompany its recommended plan, it is attached as Exhibit 6.

ENACTMENT OF THE PLAN

33. The governor announced on October 15, 2011 that he would submit to the legislature a map that was, for purposes of this litigation, substantially the same as the map proposed by the GRAC. The changes made to the proposed plan by the Governor or his staff are depicted in Exhibit 4.

34. On October 17, 2011, the Senate President introduced Senate Bill 1 on behalf of the governor at a special legislative session. The same day, the Senate Committee on Reapportionment and Redistricting and the House Rules Committee held a joint hearing on Senate Bill 1 and voted to approve the bill. An audiofile of these proceedings is attached as Exhibit 19. After adopting technical amendments immaterial to this litigation, the Senate passed the bill on October 18, 2011, and sent it to the House of Delegates, which, after adopting additional technical amendments immaterial to this litigation, passed the bill on October 19, 2011. The Senate subsequently concurred in the House's technical amendments, and the Governor signed Senate Bill 1 into law on October 20, 2011. The Congressional District Map established by Senate Bill 1 is attached as Exhibit 5.

35. Jeanne Hitchcock briefed the House and Senate Democratic Caucuses about the proposed plan on October 3, 2011. *See* Exhibit 6.

36. No Republican Senator or Delegate voted for Senate Bill 1 in committee or on the floor in recorded roll call votes.

37. One Democratic Senator, Sen. C. Anthony Muse, and five Democratic Delegates, Tiffany Alston, Aisha Braveboy, Alfred C. Carr Jr., Ana Sol Gutierrez, and Luiz

Simmons, voted against the Plan. All other Democratic Senators and Delegates voted in favor of the Plan.

38. A true and accurate copy of the legislative history of SB1 through SB6 of the 2011 Special Session of the Maryland General Assembly is available on the website of the General Assembly at www.mgaleg.maryland.gov (perma.cc/P2VD-6TQW). A true and accurate copy of documents from the bill files of SB1 through SB6 maintained by the Department of Legislative Services that do not appear on the Maryland General Assembly website are marked with Bates-number range MCM002871 to MCM002960 in documents exchanged by the parties.

39. Statewide referendum Question 5 on the 2012 ballot asked voters whether they were “for” or “against” the Maryland law “[e]stablish[ing] the boundaries for the State’s eight United States Congressional Districts based on recent census figures, as required by the United States Constitution.” There were 1,549,511 votes (64.1%) “for” the law and 869,568 votes (35.9%) “against” the law. Only two counties had more votes against than in favor of Question 5: Carroll (37,161 for and 42,459 against) and Garrett (5,423 for and 6,193 against). The results are available at perma.cc/NY6M-CALN.

PUBLIC STATEMENTS BY OFFICIALS CONCERNING THE PLAN

40. More than one month before the Plan was introduced in the legislature, Democratic Senator Richard Madaleno made the following statements in a series of taped interviews on September 13, 2011:

- a. “What you see going on elsewhere is clearly in other states that are Republican controlled they are drawing maps to try to take out Democrats, so I think there is pressure on saying look, if they are playing that game elsewhere, then in states like Maryland where democrats control we’ve got to do the opposite.” *See* Exhibit 7.

- b. “This is a conflict between, what you could say, the heart and the mind of the Democratic party. The heart is ‘Frank Kratovil had that seat [the 1st District] before, Frank Kratovil won before, he made hard votes on behalf of Barack Obama, we should find a way to reward our friend Frank Kratovil.’ The head is telling you, ‘Look, western Maryland, a new district focused toward western Maryland is one that you could actually pick up easier...’ Do you reach out and help your good old friend Frank Kratovil, or do you go for where, in fact, you probably have a better chance at a pick up.” *See ibid.*
- c. “If you go with a competitive western Maryland district, the way that works is clearly that district comes further into Montgomery county, substantially into Montgomery county.” *See Exhibit 8.*
- d. “I think trying to achieve both makes it a little more difficult for everyone trying to draw the maps. But you’re dealing with—one of the things that’s interesting is—you’re dealing with people like a Mike Miller or some of the staff of the legislature who have done this several cycles, so it’s not like they are a bunch of people experimenting for the first time on how to do this.” *See Exhibit 9.*

41. Donna Edwards, Democratic representative from the Fourth District, stated on October 11, 2011 in reference to the Plan: “I have been one of the strongest proponents as a Democrat of drawing a seventh district for Democrats. But we can accomplish that in a different way. . . . Where I have a real disagreement is in making superior the political interests to the minority voting rights interests.” *See Exhibit 10.*

42. Democratic Senator C. Anthony Muse stated on the Maryland Senate Floor on October 18, 2011 (*see Exhibit 11*):

- a. “[L]et’s just be frank. As it stands, this plan dilutes minorities, minority power and parcels out minority populations—voters—to other very different communities in order to strengthen the chances of a Democrat being elected.”
- b. “Yes, the party walks away with maybe seven seats, but what do our minority populations walk away with?”
- c. “I cannot support this map. It may well live up to the letter of the law, but surely not the spirit of the law nor the spirit of the democratic process. I think minorities lose with this map. Yes, the party gains. But honestly I believe the people, not the party, are the losers.”

43. Democratic Senator Jamie Raskin stated on the Maryland Senate Floor on October 18, 2011 (*see* Exhibit 11):

- a. “[T]his is not a Maryland problem with redistricting and gerrymandering. It’s an American problem. All across America, people are complaining about extremely spliced and diced, curvy, swervy districts, where elected officials choose voters before voters choose elected officials. That’s the system we’ve got in 50 states today, in the United States. And it’s a process where we dress up partisan and political ambition on both sides of the aisle in high principal, but we can all tell what’s really going on.”
- b. “To my distinguished colleagues on the other side of the aisle, the disappointment that they feel today is shared by Democrats in North Carolina, a state won by President Obama in 2008, which just had districts redrawn, ten majority Republican, three majority Democrat, with all the Democrats packed in there. In Ohio, a state that was won by President Obama in 2008, 12 majority Republican Districts have been drawn, four

majority Democratic districts have been drawn. So they've gone way beyond anything that's been seen here. The basic problem is that we are trying to build a whole range in multiplicity of interests and factors into these single member districts, and we now have the convenience of computer technology to be able to accomplish very strange looking figures on the map."

44. Democratic Delegate Emmett C. Burns, Jr., stated on the House floor that he supported the Plan because it meant "more Democrats in the House of Representatives." *See Exhibit 12.*

45. Democratic Speaker Michael Busch said of the Plan, "I think you will have a very competitive 6th District when you didn't have that in the past." *See Exhibit 13.*

46. Democratic Delegate Curt Anderson described the October 3, 2011, briefing given by GRAC Chair Jeanne Hitchcock about the redrawn District: "It reminded me of a weather woman standing in front of the map saying, 'Here comes a cold front,' and in this case the cold front is going to be hitting Roscoe Bartlett pretty hard." *See Exhibit 13.*

47. Democratic Delegate Curt Anderson stated in an interview on October 17, 2011: "What we're doing is we are trying to get more, in terms of – currently we have two Republican districts and six Democratic Congressional districts and we're going to try to move that down to seven and one, with the additional Congressional district coming more out of Montgomery county and going into western Maryland that would give the Democrats more." *See Exhibit 14.*

48. Democratic Senator Jamie Raskin explained of the redistricting process on November 7, 2011: "Democrats control the redistricting process in Maryland" and with the Plan "hoped to pick up a seventh House seat through redistricting." *See Exhibit 15.*

49. House Speaker Michael Busch made the following statement regarding the District: “I think the numbers will show that it makes it pretty competitive, but I think the fact of the matter, that’s reflective of the population growth in that area and the change that you see in voting behavior.” *See* Exhibit 16.

50. Senate President Thomas V. Mike Miller made the following statements about the GRAC (*see* Exhibit 17):

- a. “We recognized that Congressman Sarbanes lived in Baltimore County, but wanted to continue to represent the capital city Annapolis, and that was challenging.”
- b. “We recognized the fact that Congressman Ruppertsberger, for example, is on the Intelligence Committee.” “We tried to be sure that he represented both Aberdeen and Fort Meade, which was kind of challenging.”
- c. “We recognized that Congressman Hoyer lives in St. Mary’s County and wants to represent Pax River, but also wanted to represent his alma mater, College Park, and that was challenging.”
- d. “If you are in public office, you don’t want to give up a single precinct.”

51. In a letter to the Governor dated October 20, 2011, Attorney General Douglas Gansler stated: “As indicated by those who participated in developing and adopting the redistricting plan, including the Redistricting Commission, the Governor, and the General Assembly, the boundaries of the newly adopted Congressional districts reflect a number of considerations, including a preference for joining communities of interest, keeping residents in their current districts, recognizing growth patterns, protecting incumbents, and partisan consideration.” *See* Exhibit 18.

THE SIXTH DISTRICT AFTER THE PLAN

52. The Plan created eight congressional districts that were equal in population according to the adjusted 2010 Census data. The first seven of Maryland's congressional districts had an adjusted population of 721,529, and the Eighth District had an adjusted population of 721,528.

53. There were 145,620 Republican and 192,820 Democrat registered eligible voters in the District on October 21, 2012. On that date, Republicans comprised 33.32% and Democrats comprised 44.11% of registered eligible voters in the District. Exhibit 19.

54. Democrat John Delaney defeated Roscoe Bartlett in the election for representative to the United States Congress for the District in 2012 by a 20.9% margin.

55. Representative Delaney won re-election in 2014 with a 1.5% margin of the popular vote over his Republican challenger.

56. Representative Delaney won re-election in 2016 with, according to unofficial election results with some provisional and absentee ballots counted, a 14.4% margin of the popular vote over his Republican challenger.

EXHIBITS

57. Exhibit 1 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 1 are true and correct.

58. Exhibit 2 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, at various dates between 1990 and 2010. The parties stipulate that the matters of fact asserted, stated, or depicted in Exhibit 2 are true and correct.

59. Exhibit 3 is a true and correct copy of Caliper Corporation's 2010 promotional material for Maptitude for Redistricting. The parties stipulate that the exhibit is authentic.

60. Exhibit 4 depicts the changes made by the Governor to the map proposed by the GRAC on October 4, 2011. The parties stipulate that the matters of fact asserted, stated, or depicted in Exhibit 4 are true and correct.

61. Exhibit 5 depicts Maryland's eight congressional districts under the Plan. The parties stipulate that the matters of fact asserted, stated, or depicted in Exhibit 5 are true and correct.

62. Exhibit 6 is a true and correct copy of a PowerPoint presentation prepared by the GRAC to accompany its recommended plan. The parties stipulate that the presentation is authentic.

63. Exhibit 7 is a video depicting a September 13, 2011 interview with Senator Richard Madaleno. The parties stipulate that the video is authentic but make no stipulation as to the text preceding the video. The parties further stipulate that, as of the date of the filing of these stipulations, the video is available online at www.youtube.com/watch?v=by_mclsHZv8.

64. Exhibit 8 is a video depicting a September 13, 2011 interview with Senator Richard Madaleno. The parties stipulate that the video is authentic but make no stipulation as to the text preceding the video. The parties further stipulate that, as of the date of the filing of these stipulations, the video is available online at www.youtube.com/watch?v=7bTNNn6zLj8.

65. Exhibit 9 is a video depicting a September 13, 2011 interview with Senator Richard Madaleno. The parties stipulate that the video is authentic but make no stipulation as to the text preceding the video. The parties further stipulate that, as of the date of the filing of these stipulations, the video is available online at www.youtube.com/watch?v=ddqQcOKzAT0.

66. Exhibit 10 is a true and correct copy of the article titled “Donna Edwards, Montgomery officials line up against redistricting map,” written by Ben Pershing and Aaron C. Davis and published on October 11, 2011 in the *Washington Post*. The parties stipulate that the article is authentic.

67. Exhibit 11 is a true and correct audio recording of the Maryland State Senate floor proceeding held on October 18, 2011 audio file. The parties stipulate that the recording is authentic.

68. Exhibit 12 is a true and correct copy of the article titled “O’Malley’s map easily wins House approval,” written by Annie Linskey and John Fritze and published on October 19, 2016 in the *Baltimore Sun*. The parties stipulate that the article is authentic.

69. Exhibit 13 is a true and correct copy of the article titled “Redistricting panel targets Rep. Bartlett,” written by Annie Linskey and published on October 3, 2011 in the *Baltimore Sun*. The parties stipulate that the article is authentic.

70. Exhibit 14 is a video depicting an October 19, 2011 interview with Delegate Curt Anderson. The parties stipulate that the video is authentic and that, as of the date of the filing of these stipulations, the video is available online at www.youtube.com/watch?v=xPVKdKSgm9I.

71. Exhibit 15 is a true and correct copy of the opinion article titled “Fair representation for all,” written by Jamie Raskin and Rob Richie and published on November 7, 2011 in the *Baltimore Sun*. The parties stipulate that the article is authentic.

72. Exhibit 16 is a true and correct copy of the article titled “Redistricting proposal would mean big changes for Western Maryland,” written by Brian Witte and published on October 3, 2011 by the Associated Press. The parties stipulate that the article is authentic.

73. Exhibit 17 is a true and correct copy of the article titled “GOP, others find faults with proposed map,” written by Annie Linskey and John Fritze and published on October 13, 2011 in the *Baltimore Sun*. The parties stipulate that the article is authentic.

74. Exhibit 18 is a true and correct copy of an October 20, 2011 letter from Maryland Attorney General Douglas Gansler to the Governor. The parties stipulate that the letter is authentic.

75. Exhibit 19 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 19 are true and correct.

76. Exhibit 20 is the audio recording of the October 17, 2011 Joint Hearing of the Senate Committee on Reapportionment and Redistricting and the House Rules Committee on Senate Bill 1. The parties stipulate that the recording is authentic.

Approved as to form and content:

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