

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

DAVID WHITNEY,

Petitioner.

* IN THE
* COURT OF APPEALS
* OF MARYLAND
* September Term, 2021
* Misc. No. 24

* * * * *

MOTION TO DISMISS PETITION

The petition filed by David Whitney in Misc. No. 24 attempts to mount a challenge to a district that, according to its description in the petition, can only be part of the congressional district plan enacted into law by the General Assembly during the 2021 First Special Session, *see* 2021 Md. Laws special sess. ch. 32. No district meeting that description is found in the State legislative plan that is the subject of this Court’s Order of January 28, 2022, *see In the Matter of 2022 Legislative Districting of the State*, Misc. No. 21, Sept. Term 2021, Order (Md. Jan. 28, 2022). Because this Court lacks original jurisdiction to hear a challenge to congressional redistricting, the petition should be dismissed.

STATEMENT OF FACTS

Article III, § 5 of the Maryland Constitution vests this Court with “original jurisdiction to review the legislative districting of the State.” Md. Const. art. III, § 5. On January 27, 2022, the General Assembly passed the Legislative Districting Plan of 2022 (the “2022 Plan”), *see* S.J. Res. 2, 2022 Sess., which constituted the “plan

setting forth the boundaries of the legislative districts for the election of members of the Senate and the House of Delegates” contemplated by Article III, § 5. On January 28, 2022, this Court promulgated “procedures to govern all actions brought under Article III, § 5, challenging the validity of the 2022 legislative districting plan.” Jan. 28, 2022 Order, at 1. Consistent with the provisions of Article III, § 5, this Court ordered that “[a]ny registered voter of the State who contends that the 2022 legislative districting plan, or any part thereof, is invalid shall file a petition, on or before Thursday, February 10, 2022 at 4:30 p.m., with the Clerk of this Court.” *Id.*

Mr. Whitney alleges that he lives on the Western shore of the Chesapeake Bay, but that the district in which he lives “sweeps . . . across the Bay Bridge to the entire Eastern Shore.” Pet. at 1. He claims that his district violates Article III, § 4’s requirements that “legislative district[s] . . . consist of adjoining territory” and “be compact in form,” because “nearly 4 1/2 miles of open water separates the Western branch of this proposed unconstitutional district and the Eastern shore portion of this proposed district.” *Id.* Petitioner asks this Court to reject the plan adopted by the General Assembly and order that the plan proposed by the Governor be implemented in its stead. *Id.* at 2.

ARGUMENT

I. STANDARD OF REVIEW

The provisions of Article III, § 5 circumscribe this Court’s jurisdiction and ability to grant relief. The subject matter of the Court’s jurisdiction is limited to review of “the legislative districting of the State,” in this instance accomplished through “the plan adopted by the General Assembly” in its most recent session, which was “the regular session of the General Assembly in the second year following [the 2020 decennial] census[.]” *Id.* Article III, § 5 authorizes the Court to grant relief only “if it finds that the districting of the State is not consistent with requirements of either the Constitution of the United States of America, or the Constitution of Maryland.” *Id.* Therefore, if from the face of the petition the Court can determine that its allegations, even if assumed to be true, do not address “the legislative districting of the State,” *id.*, then the Court should dismiss the petition for lack of subject matter jurisdiction. The petition is further subject to dismissal if its allegations, assumed to be true, fail to show that the legislative districting established by the adopted plan “is not consistent with requirements of either the Constitution of the United States of America, or the Constitution of Maryland.”

II. PETITIONER’S CHALLENGE TO THE CONGRESSIONAL PLAN ADOPTED BY THE GENERAL ASSEMBLY SHOULD BE DISMISSED FOR LACK OF JURISDICTION.

The petition should be dismissed because the Court lacks original jurisdiction to hear it.

Mr. Whitney attempts to challenge a district within which he resides, one that, according to him, starts “on the Western Shore of the Chesapeake Bay” in Anne Arundel County and extends “across the Bay Bridge to the entire Eastern Shore.” Pet. at 1. But no district in the 2022 Legislative Districting Plan matches this description. See Md. Gen. Assembly, *Legislative Redistricting Commission Final Recommended Legislative Map* (Jan. 7, 2022) (showing that no legislative district extends from the Western shore of the Chesapeake Bay to encompass all or part of the Eastern shore).¹ Instead Mr. Whitney’s petition appears to be describing District 1 of the *congressional* redistricting plan adopted by the General Assembly at its First Special Session of 2021. See 2021 Md. Laws special sess. ch. 32; Md. Gen. Assembly Legislative Redistricting Advisory Comm’n, *LRAC Final Recommended*

¹ The LRAC’s final “legislative map” is available at <https://mgaleg.maryland.gov/Other/Redistricting/LRACFINAL-LEGISLATIVE/LRAC-FINAL-RECOMMENDED%E2%80%9393LEGISLATIVE.pdf> (last visited Feb. 15, 2022). The LRAC’s legislative map was introduced in the General Assembly concurrently as S.J. 0002 and H.J. 0002 at its 2022 Session, and was passed without amendment.

Congressional Map (Nov. 23, 2021) (showing that District 1 encompasses portions of Anne Arundel County as well as the Eastern Shore in its entirety).²

This Court’s January 28, 2022 Order was promulgated pursuant to Article III, § 5 of the Constitution, which confers upon this Court “original jurisdiction to review the legislative districting of the State.” Md. Const. art. III, § 5; *see* Jan. 28, 2022 Order at 1. Otherwise, this Court is not a court of general jurisdiction of the State; rather, “[t]he circuit courts” have “full common-law and equity powers and jurisdiction in all civil and criminal cases within [each respective] county, . . . except where by law jurisdiction has been limited or conferred exclusively upon another tribunal.” Md. Code Ann., Cts. & Jud. Proc. § 1-501. Because neither the Constitution nor any statute gives this Court original jurisdiction over challenges to congressional redistricting plans, this Court lacks jurisdiction to hear Mr. Whitney’s challenge to the congressional plan adopted by the General Assembly.

² The LRAC’s final “congressional map” is available at <https://mgaleg.maryland.gov/Other/Redistricting/Final/webpage-final.pdf> (last visited Feb. 15, 2022). The LRAC’s congressional map was introduced in the General Assembly concurrently as H.B. 0001 and S.B. 0001 at its First Special Session of 2021, and was passed without amendment.

CONCLUSION

For the foregoing reasons, the motion to dismiss should be granted.

Respectfully submitted,

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February 15, 2022

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CERTIFICATE OF SERVICE

I certify that, on this 15th day of February, 2022, a copy of the foregoing was filed electronically by the MDEC system and served by first-class mail on all parties entitled to service:

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/s/ Steven M. Sullivan

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