

**IN THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY, MARYLAND**

KATHRYN SZELIGA, et al., * IN THE
Plaintiffs, * CIRCUIT COURT
v. * FOR
LINDA LAMONE, et al., * ANNE ARUNDEL COUNTY
Defendants. * CASE NO.: C-02-CV-21-001816
* * * * * * * * * * * * * * * *
NEIL PARROTT, et al., * IN THE
Plaintiffs, * CIRCUIT COURT
v. * FOR
LINDA LAMONE, et al., * ANNE ARUNDEL COUNTY
Defendants. * CASE NO.: C-02-CV-21-001773
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PARROTT PLAINTIFFS’ PROPOSED FINDINGS OF FACT

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Plaintiffs 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 (“1773 Plaintiffs”) hereby submit the following Proposed Findings of Fact.

The 1773 Plaintiffs expressly incorporate herein by reference relevant portions, identified below, of the proposed findings of fact filed today by the plaintiffs in *Szeliga v. Lamone*, No. C-02-CV-21-001816 (“1816 Plaintiffs”).

I. General Findings

[The 1773 Plaintiffs anticipate that the facts in this section will be established by stipulation, judicial notice of public records, admissions in the defendants' answers, or the testimony of Neil Parrott.]

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

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

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

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

5. Plaintiff Ronald Shapiro is a citizen of Maryland, is registered to vote as a Republican, and resides in the Second Congressional District of the challenged Plan.

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

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

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

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

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

11. Plaintiff Dr. Antonio Campbell is a citizen of Maryland, is registered to vote as a Republican, and resides in the Seventh Congressional District of the challenged Plan.

12. Plaintiff Sallie Taylor is a citizen of Maryland, is registered to vote as a Republican, and resides in the Eighth Congressional District of the new Plan.

13. The 1773 Plaintiffs hereby incorporate by reference the proposed findings of fact filed by the 1816 Plaintiffs concerning individual and jurisdictional facts pertaining to each plaintiff.

14. Defendant Linda Lamone is sued in her official capacity as Election Administrator for the Maryland State Board of Elections. Defendant Lamone is Maryland's chief election official and is responsible for the conduct of elections within the State.

15. Defendant William G. Voelp is sued in his official capacity as Chair of the Maryland State Board of Elections. As Chair of the State Board, Defendant Voelp is responsible

for supervising the conduct of elections in the State.

II. Maryland's History of Extreme Partisan Gerrymanders

[The 1773 Plaintiffs anticipate that the facts in this section will be established by stipulation, judicial notice of public records, admissions in the defendants' answers, or the testimony of Neil Parrott.]

16. Maryland's last two congressional redistricting cycles have involved extreme partisan gerrymandering.

A. Maryland's 2011 Partisan Gerrymander

17. Maryland's 2011 redistricting plan was the subject of numerous lawsuits alleging extreme partisan gerrymandering.

18. The 2011 plan was the subject of much abuse both in court decisions and in public commentary. A federal district judge doubted that it could provide "fair and effective representation for all citizens." *Benisek v. Mack*, 11 F. Supp. 3d 516, 526 (D. Md.) (quoting *Reynolds v. Sims*, 377 U.S. 533, 565-68 (1964)), *aff'd*, 584 F. App'x 140 (4th Cir. 2014), *rev'd sub nom. Shapiro v. McManus*, 577 U.S. 39 (2015). Another described the district as a "Rorschach-like eyesore." *Fletcher v. Lamone*, 831 F. Supp. 2d 887, 906 (D. Md. 2011) (Titus, J., concurring), *summarily aff'd*, 567 U.S. 930 (2012). An appellate judge of the Court of Appeals for the Fourth Circuit famously described that district as "a broken-winged pterodactyl, lying prostrate across the center of the state." *Id.* at 902 n.5 (opinion of Niemeyer, J.). A *Washington Post* article from 2014 concluded that, when it came to congressional districts, "Maryland and North Carolina are essentially tied for the honor of most-gerrymandered state."¹

¹ Christopher Ingraham, *America's most gerrymandered congressional districts*, WASH. POST (May 15, 2014) (available at

19. After years of protracted litigation, a three-judge panel found that the state of Maryland had engaged in partisan gerrymandering in crafting its 2011 congressional redistricting plan. *Benisek v. Lamone*, 348 F. Supp. 3d 493, 517 (D. Md. 2018), *vacated on other grounds sub nom. Rucho v. Common Cause*, 139 S. Ct. 2484 (2019). The panel explained that the record showed that “[t]he State specifically targeted voters in the Sixth Congressional District who were registered as Republicans and who had historically voted for Republican candidates” and that the State “specifically intended to diminish the value of those targeted citizens’ votes.” *Benisek*, 348 F. Supp. 3d at 498. The United States Supreme Court, however, subsequently determined that federal courts did not have jurisdiction over claims of partisan gerrymandering. *Rucho*, 139 S. Ct. at 2507, 2508.

20. The 2011 districts were put to a vote and approved by referendum. Although the vague wording on the ballot did little to describe the districts to voters, it survived a subsequent legal challenge. It read, in its entirety:

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 Law²

21. In response to the subsequent bipartisan public outcry over Maryland’s 2011 congressional districts, Maryland Governor Larry Hogan signed an executive order on August 6,

<https://www.washingtonpost.com/news/wonk/wp/2014/05/15/americas-most-gerrymandered-congressional-districts/>).

² Available at

https://elections.maryland.gov/elections/2012/ballot_question_language.html.

2015, which created the Maryland Redistricting Reform Commission.³ Governor Hogan’s stated goal in creating the commission was to “put Maryland’s redistricting process on a new path toward transparency, fair representation, and election integrity.”

22. The Commission was comprised of seven members: three Republicans, three Democrats, and one not affiliated with any political party. After several months of soliciting input from citizens and legislators across the State, the Commission recommended, among other things, that districting criteria 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 charged with reapportioning the state’s districts every ten years after the decennial census.⁴

B. Maryland’s 2021 Partisan Gerrymander

23. Following the 2020 census, Maryland was again apportioned eight members to the House of Representatives, requiring it to draw new congressional districts of equal population.⁵

24. Based on the recommendation from the bipartisan Redistricting Reform Commission Report, Governor Hogan issued an executive order on January 12, 2021, establishing the Maryland Citizens Redistricting Commission (“MCRC”) for the purposes of redrawing the state’s congressional districting map. The MCRC was comprised of nine Maryland registered voter citizens—three Republicans, three Democrats, and three registered with neither party.

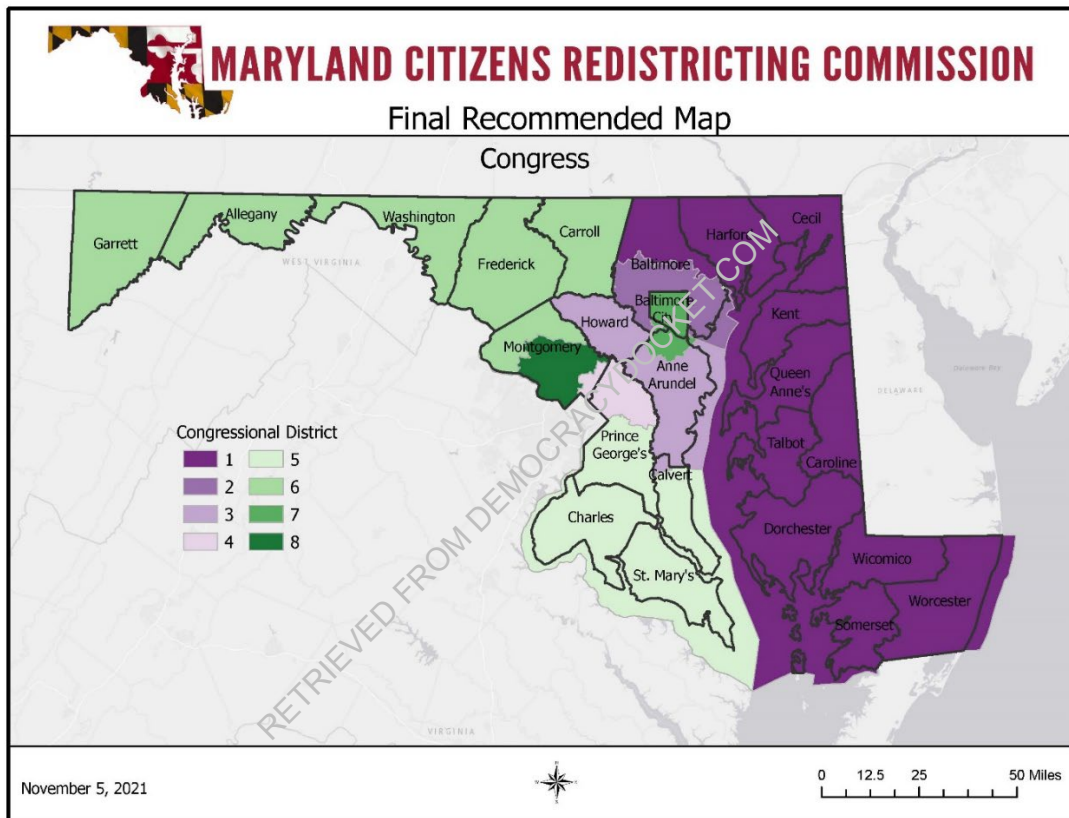
25. Over the course of the following months, the MCRC held over 30 public meetings

³ Executive Order 01.01.2015.21 (available at <https://governor.maryland.gov/wp-content/uploads/2015/08/EO-01.01.2015.21.pdf>).

⁴ <https://governor.maryland.gov/wp-content/uploads/2015/11/Final-Redistricting.pdf>.

⁵ U.S. Census Bureau, Apportionment Population and Number of Representatives by State: 2020 Census (2020). Available at <https://www.census.gov/data/tables/2020/dec/2020-apportionment-data.html>.

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.



27. Governor Hogan accepted the MCRC's proposed final map that same day and issued an order transmitting the maps to the Maryland General Assembly for adoption at a special session to begin on December 6, 2021.

28. Like 2011, Democrats control both chambers of the General Assembly and once

⁶ https://www.wboc.com/news/politics/hogan-accepts-redistricting-maps-from-citizens-commission-orders-special-session-of-general-assembly/article_6fba808f-eb83-53be-8ac6-4b37efec84f1.html.

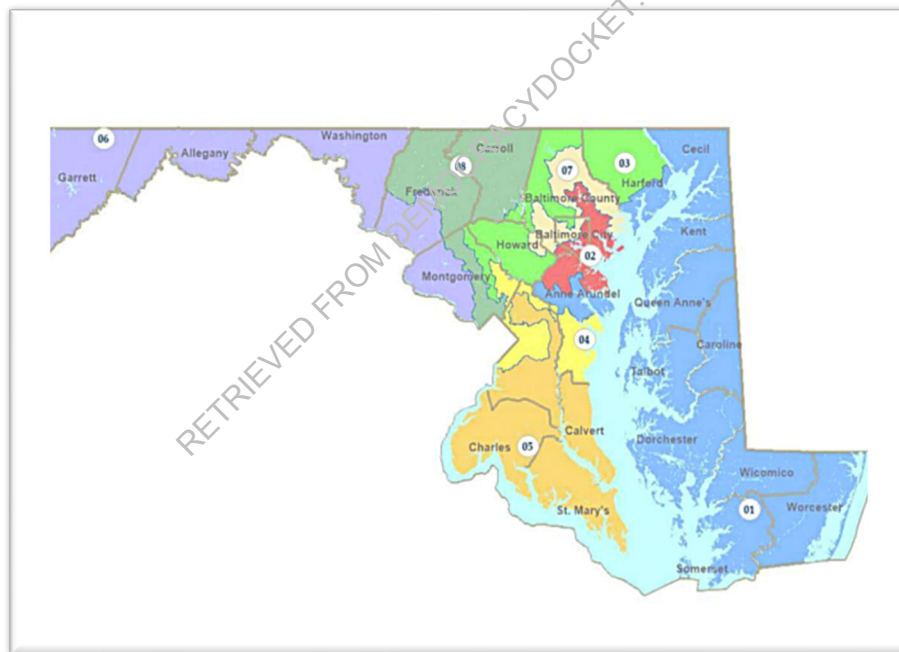
again had unilateral control over the map-drawing process during the special session.

29. The Democratic leadership formed the General Assembly's Legislative Redistricting Advisory Commission ("LRAC") to complete the congressional-redistricting process, along with the state-legislative redistricting process.

30. Democrats controlled LRAC, with Democratic members outnumbering Republican members four to two.

31. LRAC adopted its final proposed map on a strict party-line vote on November 23, 2021.

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33. On December 7, 2021, the Maryland House voted along party lines to reject an amendment that would have substituted the MCRC's map for the Plan.

34. On December 8, 2021, HB1 was adopted. The vote was along party lines in both

⁷ See History of HB1 available at <https://mgaleg.maryland.gov/mgaweb/legislation/details/HB0001/?ys=2021s1>.

chambers of the Maryland Legislature, with the lone exception being a Democrat who voted against the Plan.

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

36. On December 9, 2021, the Plan was enacted into law by means of a veto override, again on a party-line vote in both chambers of the General Assembly, the lone exception being a Democrat in the House of Delegates who voted against the Plan.

37. The HB1 Plan adopted by Maryland Democrats is very similar to the gerrymandered map that was the subject of universal derision ten years ago as the worst gerrymander in the country.

38. To this day, the General Assembly has not released any information about who drew the HB1 map, what software they used, or what redistricting principles it prioritizes.

III. Evidence of Partisan Gerrymandering

[The 1773 Plaintiffs anticipate that the facts in this section will be established by the testimony of the plaintiffs' expert witnesses.]

39. Congressional districts that are geographically noncompact are an indicator of partisan gerrymandering.

40. The two most common metrics used by political or social scientists to measure the geographic compactness of electoral districts are Reock (also known as dispersion) and Polsby-Popper (also known as perimeter). Reock is calculated by drawing the smallest circumscribing circle around an electoral district and then taking the ratio of the area of the district to the area of the circle. This metric is generally useful and is particularly sensitive to districts that are elongated. Polsby-Popper is calculated by creating a circle with the same circumference of the district and then taking the ratio of the area of the district and the area of the circle. This metric is generally

useful, is sensitive to when a district is elongated, and is particularly sensitive to indentations and protrusions in a district's shape.

41. Of the 29 state congressional district plans adopted by the beginning of March 2022, Maryland's average Reock score is lower (less compact) than the average Reock score of all but two of those plans (Illinois and Idaho). Of the same 29 plans, Maryland's average Polsby-Popper score is lower (less compact) than the average Polsby-Popper score of all but two of those plans (Illinois and Oregon). By either of these commonly used measures, Maryland's average compactness score is—as it was in 2011—one of the worst in the nation.

42. Maryland's low compactness scores are not due to the State's irregular shape. This is proved by the fact that the MCRC designed an alternative congressional district plan for Maryland with an average Reock score that is 26% higher (more compact) than the one adopted by the Maryland legislature. The MCRC's alternative plan also has a Polsby-Popper score that is 92% higher (more compact) than the one adopted by the Maryland legislature.

43. Maryland's congressional districts are geographically noncompact, and indicate partisan gerrymandering.

44. Congressional district lines that frequently cross the boundaries of existing political jurisdictions and split them into segments are an indicator of partisan gerrymandering.

45. Maryland's congressional district lines cross the boundaries of eight Maryland counties. By contrast, the MCRC's proposed district lines only cross the boundaries of five counties. The number of divided counties in the map adopted by Maryland is thus 60% greater than the number of divided counties in the MCRC's proposed map.

46. Maryland's congressional district map splits those eight divided counties into 20 segments. By contrast, the MCRC's map splits five divided counties into 12 segments. The

number of county segments in the map adopted by Maryland is thus 67% greater than in the MCRC's proposed map.

47. Maryland's congressional district lines cross many county boundary lines and split them into segments, which indicates partisan gerrymandering.

48. Allocating election results from past elections to a current congressional district plan—thereby holding, in effect, hypothetical elections under that current plan—can indicate the likely electoral outcomes if those districts are used in the future. This technique is called “reconstituting” elections. If the outcomes of reconstituted elections are excessively disproportionate to vote shares, this is an indicator of partisan gerrymandering.

49. If the votes for the 2012 presidential election were redistributed among Maryland's newly enacted districts, Democrats would win in seven districts. Republicans would win in one district, and with the smallest winning margin in the State (53%). Yet Republicans cast 37% of all ballots in 2012. Barely winning one of eight seats—12.5% of the seats—with 37% of the statewide vote is a disproportionately poor outcome that indicates partisan gerrymandering.

50. If the votes cast in Maryland in the 2012 Senate race (32% Republican vote share statewide), or the 2018 Senate race (32% Republican vote share), or the 2020 presidential race (33% Republican vote share) were reconstituted in Maryland's newly enacted districts, in each case Democrats would win all eight, or 100%, of the State's congressional seats. These are disproportionately skewed outcomes given the parties' relative vote shares.

51. Reconstituted elections in Maryland show an excessive, disproportionate advantage favoring the Democrats, which indicates partisan gerrymandering.

52. In the political science literature, a “wasted vote” is one that does not effectively contribute to the selection of the winner of an election. The term is used to describe two categories

of votes: (1) all votes cast for candidates who lost, and (2) all votes, in excess of a simple majority of 50% plus one, cast for candidates who won. The fact that one party persistently wastes more votes than another party in elections held in a particular district plan is an indicator of partisan gerrymandering.

53. One way to measure parties' relative share of wasted votes is by the "efficiency gap." This is calculated by subtracting one party's wasted votes in a particular election from the other party's wasted votes, and then dividing by the total votes. A negative percentage shows an advantage for one party, a positive percentage shows an advantage for the other party. An advantage that is excessive for one party is an indicator of partisan gerrymandering.

54. The efficiency gap analysis for Maryland's congressional elections, considering reconstituted elections in every statewide election going back to 2012, shows a significant advantage in favor of the Democrats. This fact indicates partisan gerrymandering.

55. The Princeton Gerrymandering Project (PGP) is a non-profit public interest organization which, in its own words, "develop[s] and use[s] mathematical tests that rigorously diagnose unequal opportunity and unfair outcomes in district maps."⁸ It has never been accused of being biased in favor of Republicans.

56. The PGP gives Maryland's current congressional district plan an F grade for Partisan Fairness (significant Democratic advantage); a C for Competitiveness (Similarly competitive to other maps that could have been drawn); an F for Geographic Features (Non-compact districts, more county splits than typical); and an Overall Grade of F. These grades are on the same scale as academic grades, where F indicates a failing grade, and are very poor.

57. The PGP's poor grades indicate partisan gerrymandering.

⁸ PGP Website ("About"), available at <https://gerrymander.princeton.edu/about>.

58. Where particular twists and turns in district lines, especially in bizarre, noncompact district lines, correlate with concentrations of partisan voters, it is an indication of partisan gerrymandering.

59. Maryland's district lines, and especially particular indentations and outcroppings, correlate closely with concentrations of partisan voters, in, for example, district 6, district 8, and district 1. These correlations indicate partisan gerrymandering.

60. The 1773 Plaintiffs hereby incorporate by reference the proposed findings of fact filed by the 1816 Plaintiffs, concerning (1) the testimony of their expert Sean Trende, (2) the compactness scores of Maryland's districts, (3) the purpose of the distortions of Maryland's congressional districts, and (4) Mr. Trende's simulation analysis of Maryland's congressional districts, which he used to determine partisan bias.

61. Finally, the political circumstances under which a congressional redistricting plan is adopted can indicate partisan gerrymandering. The political circumstances here indicate partisan gerrymandering, including that: (1) The newly enacted plan was forced by one party upon another by means party-line votes, and then by a party-line veto override. (2) The private company that helped to draw the district lines, and the method it used, have not been identified. (3) The last set of district lines were drawn in 2011 by a private company that used a software program that was explicitly designed to enhance the prospects of Democratic candidates. *Benisek v. Lamone*, 348 F. Supp. 3d 493, 502-03 (D. Md. 2018) (referring to NCEC Services, Inc., its "Democratic Performance Index" software, and its mandate to obtain another Democratic seat). (4) The existence throughout the legislative process of the NCRC's alternative district map, which showed all along that the State's lines did not have to be as noncompact, county divisive, and biased as they are.

62. Considering the totality of the circumstances, including several factors that independently indicate partisan gerrymandering, and the complete absence, or even proffer of a convincing alternative explanation for Maryland's district map, the Court finds that Maryland's newly enacted congressional district map is an extreme and effective partisan gerrymander. Specifically, Maryland's congressional district plan violated traditional districting criteria, including district compactness and respect for existing political boundaries, in pursuit of a partisan advantage for the members of the party that designed it.

IV. Witnesses

A. The Plaintiffs' Expert Witnesses

63. The 1773 Plaintiffs presented live testimony from Dr. Thomas L. Brunell, an expert in redistricting and election analysis.

64. Dr. Brunell has published a book on redistricting and dozens of peer-reviewed articles in prestigious journals in his field on redistricting, the Voting Rights Act, elections, and representation. He is the lead author on two textbooks for American politics. He is well-qualified to testify on the subjects at issue in this case.

65. Dr. Brunell's demeanor and responsiveness showed his comfort with the subjects of his expertise. Dr. Brunell demonstrated candor and explained how he has applied a realistic and consistent methodology in his testimony. For these reasons, the Court finds that Dr. Brunell offered credible opinion testimony.

66. The 1816 Plaintiffs presented live testimony from Mr. Sean P. Trende, an expert on applications of spatial statistics to political questions.

67. Mr. Trende has a Master's Degree in Applied Statistics and is a doctoral candidate. He has published articles on the subject of his testimony before the Court.

68. Mr. Trende's demeanor and responsiveness showed his comfort with the subjects of his expertise. He demonstrated candor and explained how he has applied a realistic and consistent methodology in his testimony. For these reasons, the Court finds that Mr. Trende offered credible opinion testimony.

B. The Defendants' Expert Witnesses

69. The Defendants presented live testimony from two expert witnesses: Dr. Alan Lichtman and John T. Willis.

70. Dr. Lichtman has not published any peer-reviewed or law review article on the subject of partisan gerrymandering.

71. Mr. Willis only provided testimony about what the Maryland legislature might have intended, and eschewed any knowledge about what it actually intended. His testimony was, consequently, speculative.

72. Neither witness presented a convincing rebuttal to the several different indicators of partisan gerrymandering identified by the Plaintiffs' experts.

March 11, 2022

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I certify that on March 11, 2022 the foregoing Parrott Plaintiffs' Proposed Findings of Fact was filed and served electronically via the Court's MDEC system.

/s/ Eric W. Lee
Eric W. Lee

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