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CECIL COUNTY

June 27, 2023

To the General Assembly:

I respectfully oppose House Bill 2100 because it does more than propose a technical amendment to Maryland's Constitution—it fundamentally weakens longstanding constitutional safeguards that were designed to protect Marylanders from partisan manipulation of congressional districts.

The history of Maryland's Constitution is instructive. During the 1967-68 Constitutional Convention, delegates proposed that the same redistricting standards apply to both state legislative and congressional districts. Those standards required districts to consist of adjoining territory, be compact in form, contain substantially equal population, and give due regard to natural boundaries and political subdivisions.

The inclusion of "compact" was not accidental. At the time, compactness was widely understood as an anti-gerrymandering principle intended to discourage bizarrely shaped districts, unnecessary tentacles, political manipulation, and the artificial grouping of voters for partisan advantage. Although the proposed Constitution was rejected by the voters, much of this language was later incorporated into Article III, Section 4 of the Maryland Constitution for state legislative districts because these principles were viewed as fundamental safeguards for representative government. In 2022 a Maryland court found those same principles were important for our US Congressional districts too.

HB 2100 moves Maryland in the opposite direction. Rather than extending those constitutional protections to congressional districts, the amendment expressly provides that Article III, Section 4 does not apply unless specifically incorporated. In doing so, it removes constitutional guardrails that have long reflected Maryland's commitment to fair and coherent districting.

This proposal follows recent court decisions rejecting the majority party's interpretation of the Constitution. When constitutional language prevents a desired political outcome, the answer should not be to rewrite the Constitution to remove the obstacle.

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That raises a legitimate question: is this amendment intended to clarify the law, or to change the rules after losing in court?

Equally troubling is the bill's concentration of judicial review. By allowing the General Assembly to vest original jurisdiction over congressional redistricting challenges directly in the Supreme Court of Maryland, the bill bypasses the ordinary judicial process that has long protected the integrity of constitutional litigation. Trial courts exist for a reason. They develop factual records, hear expert testimony, make findings of fact, and produce written opinions that sharpen the legal issues before appellate review. Eliminating those steps means fewer factual findings, fewer judicial perspectives, and fewer procedural safeguards before the state's highest court decides issues affecting every Maryland voter.

As an attorney, I have become increasingly concerned by a broader trend in legislatures across the country. Rather than simply changing substantive law, governments are increasingly changing the procedures citizens must use to challenge governmental action. Whether through restrictions on judicial review, limitations on evidentiary development, or grants of procedural immunity, the effect is often the same: fewer opportunities for citizens to obtain a full and fair hearing. Due process is about ensuring that decisions are reached through procedures that inspire public confidence and protect constitutional liberties, and should not be cast aside. These procedures were put in place specifically to address what the bill intends- to speed up a legal outcome by eliminating safeguards of the process.

Finally, I urge the Committee to consider this legislation not through the lens of today's political majority, but through the perspective of future generations. If you are supporting, ask yourself: Would I be comfortable granting these same powers to a legislature controlled by the opposite political party? Constitutions are intended to restrain government, not to make it easier for those temporarily in power to achieve their preferred outcomes. Marylanders deserve a strong Constitution and the rights it protects. This bill would weaken what it means to be a Marylander.

For these reasons, I respectfully request an unfavorable report on House Bill 2100.