

IN THE UNITED STATES DISTRICT COURT FOR MARYLAND

GREENBELT DIVISION

MS. PATRICIA FLETCHER,)
et al.,)
)
)
Plaintiffs,)
)
v.)
)
LINDA H. LAMONE in her official)
capacity as State Administrator of)
Elections for the state of Maryland)
And Robert L. WALKER in his)
official capacity as Chairman of)
the State Board of Elections,)
)
Defendants.)
_____)

Civ. Action No.: 1:11-cv-03220-RWT

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF
AND INCORPORATED EXHIBITS AND MEMORANDUM OF LAW**

The Howard University School of Law Civil Rights Clinic, The American Civil Liberties Union of Maryland, The Maryland State Conference of NAACP Branches, Somerset County Branch of the NAACP, the NACCP Legal Defense and Education Fund, The Prison Policy Initiative and Demos (collectively, “the amici”) respectfully move this Court for leave to file the attached *amicus curiae* brief and incorporated exhibits relative to plaintiff’s Motion for a Preliminary Injunction. The amici aver that they have requested, and received the consent to the filing of an *amicus curiae* brief from counsel to each of the parties to this case. Motion for Leave should be granted because:

1. In their motion for a preliminary injunction, the Plaintiffs challenge Maryland's landmark civil rights law, the "No Representation Without Population Act", alleging that the law violates the equal protection principle of 'One Person One Vote' and Article I of the U.S. Constitution. The amici, each of

whom have a special interest in this matter, assert that this interpretation of the law is incorrect.

2. District courts have inherent power to grant third parties leave to file briefs as *amici curiae*, particularly “where they provide helpful analysis of the law, they have a special interest in the subject matter of the suit, or existing counsel is in need of assistance.” *Bryant v. Better Bus. Bureau of Greater Md., Inc.*, 923 F. Supp. 720, 728 (D. Md. 1996) (internal citations omitted); *see also id.* (noting that amicus brief is proper where court “deem[s] the proffered information timely and useful.” (quoting *Yip v. Pagano*, 606 F. Supp. 1566, 1568 (D.N.J. 1985) (internal quotation marks omitted))). *See also Glynn v. EDO Corp.*, No. JFM-07-01660, 2010 WL 3294347, at *2 n.4 (D. Md. Aug. 20, 2010) (granting *amicus curiae* leave to file based on *Bryant*). As set forth below, the amici bring a broad and deep perspective to the issues raised in this case and have a compelling interest in the federal courts’ interpretation of issues relative to the No Population Without Representation Act.

3. The Civil Rights Clinic at Howard University School of Law engages in trial and appellate litigation in the service of human rights, social justice and economic fairness. The Clinic provides pro bono services to indigent, prisoner and pro se clients in federal and state courts on a range of civil rights matters, including but not limited to employment and housing discrimination, voting rights, police brutality and unconstitutional prison conditions. Central to the Clinic’s work has been its involvement in cases which involve the intersection of voting rights and racial discrimination. Among other things, the Clinic has repeatedly submitted amicus briefs to various federal courts, including the United States Supreme Court, when such issues have arisen. Because of the important voting rights issues in this case, specifically their impact on minorities throughout the state of Maryland, the matters raised in this case are of substantial concern to the Clinic.

4. The American Civil Liberties Union of Maryland is the state affiliate of the American Civil Liberties Union (ACLU), a nationwide, nonprofit, nonpartisan organization with more than 500,000 members dedicated to the principles of liberty and equality embodied in this nation's Constitution and civil rights laws. Since its founding in 1931, the ACLU of Maryland has appeared before various courts and administrative bodies in hundreds of civil rights and civil liberties cases – including numerous voting rights cases -- both as direct counsel and as *amicus curiae*. In 2009 and 2010, the ACLU of Maryland worked closely with the Legislative Black Caucus of the Maryland General Assembly to encourage enactment of the No Representation Without Population Act, a path-breaking civil rights law that promotes electoral fairness in federal, state, and local elections conducted throughout Maryland. In addition to working statewide on racial justice and election issues, the ACLU of Maryland has made Somerset County a particular focus of its civil rights work over the last five years, due to continuing problems with racial discrimination there. For African-American residents of Somerset County, who have historically suffered discrimination in the electoral process, implementation of the No Representation Without Population Act during the 2011 redistricting will greatly enhance the fairness of local elections, leveling the playing field for the first time, and affording all residents equal opportunities to elect representatives of their choice. For these reasons, the ACLU of Maryland has a strong interest in the challenges to the No Representation Without Population Act raised by the plaintiffs in this case.

5. The Maryland State Conference of NAACP Branches is the State chapter of the national NAACP, a nonpartisan, interracial membership organization founded in 1909. The Somerset County Branch of the NAACP is the local unit of the national and state organizations, comprising members

within Somerset County. The mission of the NAACP and its state and local affiliates is to ensure the political, education, social, and economic equality of all persons, and to eliminate racial discrimination. The Maryland State Conference and the Somerset NAACP have long been focused on ensuring full and equal voting rights for African Americans and other communities of color, by engaging in voting rights litigation, legislative advocacy, voter registration, and voter education efforts. The NAACP believes that prison-based gerrymandering, or the allocation of incarcerated persons to places where they are confined, instead of their home communities, has the effect of diluting minority voting rights. Counting of incarcerated persons at their place of confinement has created obstacles to equal electoral participation by African Americans in Maryland, and especially in Somerset County. For these reasons, both the state NAACP and Somerset NAACP organizations worked with the Maryland General Assembly to enact the No Representation Without Population Act, and they have substantial interests in making sure that this law remains in place as the redistricting process moves forward throughout the state of Maryland.

6. The nonprofit nonpartisan Prison Policy Initiative conducts research on how mass incarceration affects the larger society, with a particular focus on how prison populations in the Census affect the electoral process. Since 2001, the organization has been leading a national effort to urge the Census Bureau to count incarcerated people as residents of their home addresses, and working with state and local governments, including Maryland, to develop interim solutions to the problem of “prison-based gerrymandering”. As the issues raised in this case concerning the No Representation Without Population Act directly relate to the organization’s mission and work, the organization has a substantial interest in this case.

7. The NAACP Legal Defense & Educational Fund, Inc. (“LDF”) was founded under the direction of Thurgood Marshall, and is the nation’s oldest civil rights law firm. The quest for the unfettered participation in civic and political life of all Americans has been and remains an integral component of LDF’s mission. LDF has represented parties in voting rights cases before federal courts throughout the country and the United States Supreme Court. *See, e.g., Nw Austin Mun. Util. Dist. No. One v. Holder*, 129 S. Ct. 2504 (2009) (defending the constitutionality of Section 5 of the Voting Rights Act); *Thornburg v. Gingles*, 478 U.S. 30 (1986) (defining the scope of Section 2 of the Voting Rights Act); *Smith v. Allwright*, 321 US 649 (1944) (abolishing the white primary). Consistent with its organizational mission, LDF is committed to ending the problem known as “prison-based gerrymandering,” which dilutes minority representation and weakens the political power of minority communities. LDF has participated in the national effort to ensure that, for redistricting purposes, incarcerated individuals are counted as residents at their home addresses and not in the places where they are confined.

8. Dēmos is a non-profit, non-partisan organization that works to build a robust and inclusive democracy, with high levels of electoral participation and civic engagement; an economy where prosperity and opportunity are broadly shared and disparity is reduced; and a revitalized public sector that works for the common good. Removing barriers to political participation and ensuring full representation of America’s diverse citizenry are key to Dēmos’ goals. Dēmos works nationally and at the state level to end the distortions in representation caused by treating incarcerated persons as residents of the prison for purposes of redistricting, instead of as residents of their home communities. This practice denies fair representation to the home communities that remain the legal residence of incarcerated persons for virtually all purposes, and artificially inflates the representation of districts that

contain prisons. Dēmos engages in research, public education and litigation to end the practice of prison-based gerrymandering, and actively supported Maryland's No Representation Without Population Act as a landmark reform that advances voting rights and ensures fairness in representation.

9. As set forth more fully in the accompanying brief, contrary to Plaintiffs' claims, the thoroughly documented and consistently applied implementation of the No Representation Without Population Act resulted in districts that were more equal than districts drawn prior to the laws' enactment which did not contain such an adjustment. Further, Plaintiffs cannot argue that the No Representation Without Population Act disadvantages them as African-American voters because their facts demonstrate the opposite: As you would expect from a law designed to properly credit African-American communities with their true populations, the No Representation Without Population Act serves to enhance African-American voting strength.

10. The amici, therefore, respectfully submit the attached brief and incorporated exhibits and memorandum of law to assist the Court with the complex legal issues in this case, including important matters relative to the effects of the No Representation Without Population Act.

Dated: December 2, 2011



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 2, 2011, that I electronically filed this Motion for Leave to Participate as Amici Curiae in this case on behalf of the Howard University School of Law Civil Rights Clinic, ACLU of Maryland, Maryland State Conference of NAACP Branches, Somerset County Branch of the NAACP, NAACP Legal Defense And Educational Fund, Inc., Prison Policy Initiative, and Demos, with the Clerk of the Court using the CM/ECF system.

The following were served via electronic mail:

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