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Frosh Appeals Federal Court's Redistricting Ruling, Seeks Supreme Court Guidance

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Gov. Lawrence J. Hogan Jr. (R) and the state's top lawyer appear to be at odds again, after Maryland Attorney General Brian E. Frosh (D) asked the U.S. Supreme Court Thursday to overturn a federal court order requiring the state to redraw its congressional boundaries before the 2020 elections.

Hogan's communications director was highly critical of Frosh's decision – which adds another layer of doubt about what Maryland's congressional lines will look like in the presidential election year. Since taking office, Hogan has worked to remove redistricting duties from elected officials and put them in the hands of a nonpartisan commission.

“It's outrageous that the Attorney General and legislative leaders are continuing to fight against free and fair elections, even in the wake of a unanimous federal court ruling,” said Amelia Chasse, the governor's spokeswoman.

That ruling, from a three-judge panel in Baltimore last week, represented a victory for a group of 6th District Republicans who argued that Maryland's current map violates their First Amendment right of association.

The map was drawn by Democrats who control the General Assembly and then-Gov. Martin J. O'Malley (D) in 2011, to make Maryland's western-most district more competitive. John K. Delaney (D) unseated 10-term Republican Rep. Roscoe G. Bartlett in 2012, the first time the map was used.

The ruling ordering new districts was issued on Nov. 7, the day after the elections. It set a March 7, 2019, deadline for drawing a new map. The judges said that if the legislature and Hogan fail to agree on new districts, the court would draw its own lines.

Frosh said he was seeking the appeal in the hope that the Supreme Court would provide “guidance” and standards for how congressional boundaries should be drawn.

“The Supreme Court is ... poised to address the issue of partisan gerrymandering once again this term,” he wrote. “Any further guidance from the Supreme Court will be important to ensure that, even if this Court's order is affirmed, state lawmakers do not redraw Maryland's electoral map for 2020 using a standard that is not the one ultimately adopted by the Supreme Court.”

Whether the high court decides to hear Frosh's appeal could determine if Hogan and lawmakers will draw new congressional lines in the upcoming General Assembly session. Either way, Hogan has said he's determined to continue to pursue redistricting reform before the next round of map-drawing following the 2020 Census.

"The governor will continue to push for nonpartisan redistricting reform, and will once again introduce legislation in the next session," Chasse said.

The attorney general's appeal notes that the Board of Elections' deadline for having a new map is not until mid-October of 2019, and it includes a commitment to accept the justices' ruling.

"If the Supreme Court affirms [the ruling of the three-judge panel]... defendants agree to begin immediately drafting a new map and simultaneously to negotiate in good faith with plaintiffs to reach a mutually agreed revised schedule for arriving at a new map, in the same form as the procedure established by the Court's final judgment. Defendants commit that in no event will plaintiffs have fewer than 15 days for the filing of their objections to the defendants' proposed plan, if any. Defendants also commit that there will be no fewer than 60 days for the Court-established Congressional District Commission to develop its own plan, if that becomes necessary."

While many state lawmakers were pushing Frosh to appeal, there is general agreement that the ruling holds much promise for Democrats across the nation.

"I was surprised he did it because of the national political implications. You'd think he would have just left this one alone," said state Sen. Michael J. Hough (R-Frederick). "In order to save one or two Democrat seats in Maryland, he could be, for the national party, imperiling a bunch of others."

"Republicans have more gerrymanders than Democrats do nationally, because they [control] more state legislatures," Hough said.

Frosh's appeal includes a request for a stay of the Nov. 7 ruling order pending Supreme Court review. It reveals a level of cooperation between the litigants in the case, known as *Benisek v. Lamone*, in order to save the state the "needless expenditure of public resources."

"Plaintiffs have authorized defendants to state that they conditionally consent to the relief requested in this motion and will file a separate statement respecting the motion," the filing states.

"It's interesting that they've worked out a timeline with the plaintiffs to get things done fast," said Walter K. Olson, co-chairman of the Maryland Redistricting Reform Commission, which Hogan set up shortly after he took office.

Olson, senior fellow at the libertarian Cato Institute, said that if Frosh's appeal fails and the Maryland ruling is upheld, it will serve as a template for voters in other states who feel they've been the victims of partisan gerrymandering, including Democrats in states like Texas and North Carolina.

"Even though Maryland is a very extreme example, the different things that Maryland does are pursued in other states," he said. "The things that were done in the 6th District have also been

done to a very flagrant extent in other states that were Republican gerrymanders. There would be big implications for striking down gerrymanders in other states.”

Whenever the state redraws its congressional map, the stakes will be high and careers will be on the line. Many Montgomery County voters, it’s assumed, will end up in the 8th District, a seat currently held by Rep. Jamie Raskin (D).

If that happens, 6th District Rep.-elect David J. Trone (D) will likely find himself even farther outside the district than he is now.

“David Trone may have just spent \$30 million to be a one-term Member of Congress,” Hough quipped, adding, “He has the money to buy a house in Frederick, that’s for sure.”

Down the road, there are questions about whether Rep. Steny H. Hoyer (D), a St. Mary’s County resident who has served since 1981, can survive in a district that has far fewer Prince George’s County voters.

If the Supreme Court doesn’t rule until late in its term — and its last redistricting decisions this year weren’t released until right before the court’s recess in June — Maryland lawmakers could end up in special session next year drawing new maps, under intense scrutiny.

“It would be fascinating for political reporters to see that,” said Hough.