

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

BALTIMORE COUNTY BRANCH OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
et al.,

Plaintiffs,

v.

BALTIMORE COUNTY, MARYLAND,
et al.,

Defendants.

Civil Action No. 1:21-cv-03232-LKG

**DEFENDANT BALTIMORE COUNTY'S MEMORANDUM OF LAW IN OPPOSITION
TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

Dated: January 31, 2022

Respectfully submitted,

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Exhibit 3	Bill 103-21 with Exhibits A and B
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Exhibit 5	December 15, 2021 Letter from Greater Arbutus Business Association
Exhibit 6	December 14, 2021 Letter from P. Wolf
Exhibit 7	James Gimpel Declaration
Exhibit 8	August 24, 2021 Redistricting Commission Meeting Minutes
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Defendant Baltimore County, Maryland, through undersigned counsel and pursuant to Federal Rule of Civil Procedure 65, hereby opposes the Motion for Preliminary Injunction (the “Motion for Preliminary Injunction” or “Motion”) filed by Plaintiffs Baltimore County Branch of the National Association for the Advancement of Colored People, League of Women Voters of Baltimore County, Common Cause Maryland, Charles Sydnor, Anthony Fugett, Dana Vickers Shelley, Danita Tolson, Sharon Blake, Gerald Morrison, and Niesha McCoy (“Plaintiffs”), and in support states:

INTRODUCTION

Plaintiffs challenge the County Council’s adoption of Bill 103-21, a redistricting plan that substantially preserves—and in fact improves upon—the seven-district map once promoted by Plaintiff, the National Association for the Advancement of Colored People (“NAACP”). In 2001, the NAACP and other activists pushed for a new map creating a majority-Black¹ district with an almost 60% Black population: District 4. *See Exhibit 1*, Oct. 25, 2001 NAACP Letter at 3; *Exhibit 2*, Baltimore County 2002 Councilmanic Districts. That map was adopted, and a Black Councilmember has been elected to represent District 4 on the Council in every election since. *Exhibit 1*, Oct. 25, 2001 NAACP Letter at 3. This success in District 4 has not diminished or diluted Black voting power in the adjacent Districts 1 and 2, where Plaintiffs now propose creating new majority-Black districts.² Although no other Black candidates have run for County Council

¹ Baltimore County and the U.S. Census Bureau both use the term “Black or African American” in presenting demographic data. Consistent with the Plaintiffs’ Complaint, ECF 1, and Memorandum in Support of their Motion for Preliminary Injunction, ECF 28-1, this Opposition will use the term “Black.”

² The NAACP submitted a total of five proposed maps to the Council; Plaintiffs, however, only argue that Proposed Plan 1 and Proposed Plan 5 qualify as alternatives to the Council’s adopted map. Indeed, they had to abandon the other three maps because those maps relied on census data that, when adjusted as required under State law, did not create two majority-Black districts. As a result, Plaintiffs must show either that vote dilution is occurring in District 1 and can be remedied

in those districts, Black-preferred candidates have run and won Council seats, while Black candidates who are also Black-preferred candidates have run for and won other local elections out of the same districts. *See infra* Part I.C.2. In the last two decades, therefore, Black voting power has solidified and continued to grow in these western districts of Baltimore County, with tangible electoral success.

Against this backdrop, Plaintiffs cannot show they are likely to prove their vote dilution claim under § 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301. Plaintiffs ignore the risks their challenge poses to Black voting power and success in the County in pursuit of a numerically driven analysis that ignores the preconditions set forth in *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986)).

First, Plaintiffs’ general assertions about population growth “in the western areas of the County,” ECF 28-1 at 3, not only ignore that most Black population growth has actually occurred in eastern areas but also tell this Court nothing about the relevant question: whether District 1 or District 2 could be reshaped in accordance with traditional redistricting principles to account for a geographically compact Black population in that “particular area.” *Shaw v. Hunt*, 517 U.S. 899, 917 (1996). Plaintiffs fail to justify their proposed maps that break up communities of interest, ignore traditional boundaries, and threaten to dilute existing Black voting power. Without a showing that the Black voting-age population has “the potential to elect a representative of its own choice in [one of these] single member district[s] . . . there neither has been a wrong nor can [there] be a remedy.” *Bartlett v. Strickland*, 556 U.S. 1, 15 (2009).

by making that district majority-Black under Proposed Plan 1, or vote dilution is occurring in District 2 and can be remedied by making that district majority-Black under Proposed Plan 5. Plaintiffs’ discussion of a third “influence” district has no relevance, as “§ 2 does not require the creation of influence districts.” *Bartlett v. Strickland*, 556 U.S. 1, 13 (2009).

Second, Plaintiffs do not, and cannot, carry their burden of proving the second and third *Gingles* preconditions: that the Black community is cohesive or that Black-preferred candidates are consistently defeated by a white voting bloc. Plaintiffs repeatedly fail to undertake the “intensely local” inquiry that § 2 requires. *United States v. Charleston Cty., S.C.*, 365 F.3d 341, 349 (4th Cir. 2004). Rather than address the District 1 and 2 elections most probative to whether racially polarized voting happens in those districts, Plaintiffs and their experts draw overbroad conclusions from irrelevant statewide elections and omit any meaningful analysis of political cohesion or candidates of choice. A properly granular analysis of voting patterns in Districts 1 and 2 shows that the Black populations in those districts consistently elect their candidates of choice, and white voters often join with Black voters to elect such candidates.

Third, Plaintiffs’ cursory treatment of the totality of the circumstances cements the conclusion that they lack a viable cause of action, especially because their “challenge goes to a series of single-member districts, where dilution may be more difficult to grasp.” *Johnson v. De Grandy*, 512 U.S. 997, 1012 (1994). Plaintiffs ignore the significant strides the County has made in diversity and equality in the last two decades, including sea changes in the makeup of County leadership, ongoing efforts to increase community engagement on issues impacting minority residents, and the passage of legislation addressing the needs of and supported by the Black community. The full picture shows that Black voters have gained increasingly meaningful opportunities to engage in County politics and elect candidates of their choice. The Council’s adopted plan solidifies and furthers that power.

Finally, Plaintiffs fail to establish that the equities warrant the injunctive relief they seek. Plaintiffs seek to change the status quo by requiring the Council to adopt a new map. Contrary to Plaintiffs’ assertions, ECF 28-1 at 1, denying that extraordinary relief at this preliminary stage

does not “lock in” any alleged harm to Plaintiffs, much less for ten years. It simply means that this litigation (and the status quo) will continue. Plaintiffs can, despite failing to clearly show a likelihood of success, further attempt to prove their case. In contrast, granting Plaintiffs the extreme remedy they seek would disrupt the County and statewide election machinery already in motion for the upcoming fall elections, require drastic changes in district lines that threaten to reduce voter participation (and Black voting power), and thereby harm the public interest.

Plaintiffs’ fail to carry their burden of showing that the extraordinary remedy they seek is justified. The Motion for Preliminary Injunction should be denied.

FACTUAL BACKGROUND

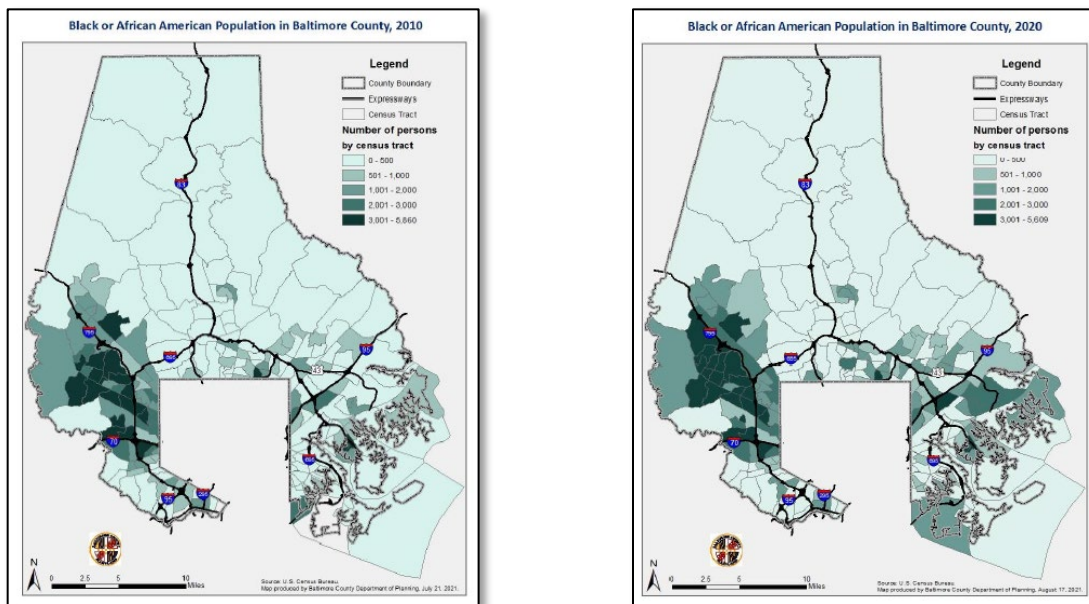
Following the 2020 decennial census, the Baltimore County Council undertook the redistricting required by state and federal law. After considering all relevant factors and community input, the Council proposed Bill 103-21, adopting a plan that maintained District 4 as a majority-Black district while preserving longstanding precinct and community lines and improving the overall compactness of the district map. *See Exhibit 3*, Bill 103-21. Bill 103-21 also created, for the first time, a majority-minority district: District 1. *See id.* at Exhibit B.

Although the Council received and evaluated alternative proposals for redistricting maps that would add a second majority-Black district, the Council also received letters from community groups and business associations opposing those plans (and supporting the Council’s proposal). These letters opposed the alternative maps because, by splitting communities, the plans threatened to harm both community interests and potentially diminish minority voting power. *See, e.g., Exhibit 4*, Oct. 25, 2021 Letter from Pikesville-Greenspring Community Coalition, Inc.; **Exhibit 5**, Dec. 15, 2021 Letter from Greater Arbutus Business Association; **Exhibit 6**, Dec. 14, 2021 Letter from P. Wolf. After evaluating community input and the relevant proposals, the Council enacted Bill 103-21. That legislation adopts the map preserving a majority-Black district and

longstanding communities of interest while increasing the compactness of the overall map.

Exhibit 7, Gimpel Decl. ¶ 8. The map also properly accounts for the County's current demographics.

The County's Black population did, in fact, grow in the last ten years—but not in the pattern Plaintiffs suggest. Between 2010 and 2020, the Black population in Baltimore County grew by only 46,055 people, increasing the Black population from 26.05% to 29.93%. **Exhibit 8**, Aug. 24, 2021 Redistricting Commission Meeting Minutes, Demographic Overview at 4. That is just a 3.88% increase. And that marginal population growth among Blacks is concentrated in Districts 6 and 7—both located on the County's *eastern* side:



Yet, Plaintiffs focus their challenge on the other side of the County, where the total Black populations in Districts 1, 2, and 4 have only grown by a total of 1.38%. *Report of Maryland Precinct Data*, 2020 Census, MARYLAND DEP'T OF PLANNING (Sept. 2021), <https://planning.maryland.gov/Redistricting/Documents/2020data/GreenReport.pdf>; *Report of Maryland Precinct Data*, 2010 Census, MARYLAND DEP'T OF PLANNING (May 2011), https://planning.maryland.gov/Redistricting/Documents/2010data/GreenReport_web.pdf. In fact,

the Black population in District only grew by 4.48% since 2010. *Id.* In District 1, the Black population *decreased* by 1.61%. *Id.*

And although Plaintiffs argue that District 4's Black population reflects "packing," Plaintiffs fail to tell the Court that Blacks represented 71% of the population in District 4 in 2011, and they did not challenge that percentage as unconstitutional. *See Exhibit 9*, Baltimore County Redistricting Manual at Appendix B. That percentage has grown only to 72.59% according to the 2020 census—a mere 1.76% growth. **Exhibit 3**, Bill 103-21 at Exhibit B.

Plaintiffs now contend that, based almost entirely on these demographic changes, the Council should be made to throw out its legal map and adopt one of the proposals the Council already considered and rejected: Proposed Plan 1 or Proposed Plan 5. But Plaintiffs do not, and cannot, establish that the County's adopted map violates the Voting Rights Act. Plaintiffs are thus not entitled to have their own plan adopted, especially not at this preliminary stage.

LEGAL STANDARD

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). And when the injunction sought is, like the one requested here, a mandatory one that would change the status quo, it "should be granted only in those circumstances when the exigencies of the situation demand such relief." *E. Tennessee Nat. Gas Co. v. Sage*, 361 F.3d 808, 828 (4th Cir. 2004). To obtain the requested preliminary injunction "enjoining implementation of Bill 103-21 and ensuring the creation of two majority-Black districts," ECF 28-1 at 34, Plaintiffs must establish that (1) they are likely to succeed on the merits, (2) likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest. *Id.* at 20. "Although Plaintiffs need not establish a certainty of success, they must make a clear showing that they are

likely to succeed at trial.” *Roe v. Dep’t of Def.*, 947 F.3d 207, 219 (4th Cir. 2020), *as amended* (Jan. 14, 2020). Plaintiffs fail to carry this burden.

ARGUMENT

This Court should deny Plaintiffs’ request for extraordinary relief requiring the Council to adopt a new redistricting plan. Plaintiffs do not make the required showing of likelihood of success, nor do they show that the remaining equitable factors warrant the relief they seek.

I. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS OF THEIR § 2 CLAIM.

Plaintiffs do not make a clear showing that they are likely to succeed at trial on their claim that Bill 103-21 violates § 2 of the Voting Rights Act.

That claim requires Plaintiffs to prove by a preponderance of the evidence that (1) the Black population in District 1 or 2, where Plaintiffs want a new majority-Black district created, is sufficiently large and geographically compact to constitute a majority in a single-member district, (2) the Black population in those districts is politically cohesive, and (3) the white majority in those districts votes as a bloc such that it usually defeats the Black-preferred candidate. *Levy v. Lexington Cty., S.C.*, 589 F.3d 708, 713 (4th Cir. 2009) (citing *Gingles*, 478 U.S. at 50-51).

These “factors cannot be applied mechanically and without regard to the nature of the claim.” *Voinovich v. Quilter*, 507 U.S. 146, 158 (1993). In particular, the Court should evaluate Plaintiffs’ showing on these factors through the lens that Plaintiffs are alleging vote dilution caused by single-member districts—when the Supreme Court has “stated on many occasions that multimember districting plans, as well as at-large plans, generally pose greater threats to minority-voter participation in the political process than do single-member districts.” *Grove v. Emison*, 507 U.S. 25, 40 (1993).

Only “[i]f these preconditions are met” must the Court “then determine under the ‘totality of circumstances’ whether there has been a violation of Section 2.” *Lewis v. Alamance Cty., N.C.*, 99 F.3d 600, 604 (4th Cir. 1996); *see also Hall v. Virginia*, 385 F.3d 421, 426 (4th Cir. 2004) (“[T]he failure of a minority group to satisfy all of the *Gingles* preconditions means that it cannot sustain a claim under Section 2.”).

“[S]imply clearing the *Gingles* hurdles, while necessary to prove a possible violation of § 2, is not sufficient to establish an actual violation.” *Charleston Cty.*, 365 F.3d at 348. Instead, the Court “must undertake a searching practical evaluation of the past and present reality, which demands a comprehensive, not limited, canvassing of relevant facts.” *Id.* The relevant factors may include those set forth by the Senate Report accompanying the 1982 Amendments to the Act, though those “factors are neither comprehensive nor exclusive.” *Collins v. City of Norfolk, Va.*, 883 F.2d 1232, 1236 (4th Cir. 1989) (*Collins II*).

Plaintiffs fail to show that, under the appropriately robust, locally focused inquiry, they are likely to satisfy all three *Gingles* preconditions and ultimately prove that Bill 103-21 causes vote dilution under the totality of the circumstances.

A. Plaintiffs Fail To Identify Reasonably Compact Alternative Districts That Could Accommodate A Sufficiently Large Minority Population.

Plaintiffs cannot satisfy *Gingles*’ first precondition: a showing that the County could create “more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice.” *De Grandy*, 512 U.S. at 1008. This precondition breaks into two tests: (1) a numerical test asking whether the Black population makes up more than 50 percent of the voting-age population in the proposed alternative district, *Bartlett*, 556 U.S. at 18; and (2) a reasonable compactness test asking whether the new district would be “reasonably compact and regular, taking into account traditional districting principles,” *Bush v. Vera*, 517 U.S.

952, 977 (1996) (emphasis omitted). That a numerical majority, standing alone, cannot satisfy precondition 1, reflects that “[f]ailure to maximize” the number of potential majority-Black districts “cannot be the measure of § 2.” *De Grandy*, 512 U.S. at 1017. For the same reason, mere (and minimal) growth in the Black population—especially when it is spread across the County and not concentrated in Districts 1 or 2—does not suffice to establish precondition 1.

Reasonable compactness is where Plaintiffs fail to carry their burden on this first precondition. “[N]o precise rule has emerged governing § 2 compactness,” but “the inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries.” *LULAC v. Perry*, 548 U.S. 399, 433 (2006). The Court should also evaluate the alternative district’s geographical compactness as compared to previous or existing districts, and “should be reluctant to order the creation of Voting Rights districts of bizarre or dramatically irregular shape.” *Marylanders for Fair Representation, Inc. v. Schaefer*, 849 F. Supp. 1022, 1053 (D. Md. 1994). Indeed, proposed districts that “reach[] out to grab small and apparently isolated minority communities” are “not reasonably compact.” *Perry*, 548 U.S. at 402.

And such districts that ignore traditional districting principles to group voters by race risk violating the Fourteenth Amendment by making race “the predominant factor” in redistricting. *Vera*, 517 U.S. at 959 (emphasis omitted); *see also Schaefer*, 849 F. Supp. at 1053 (“[A]lthough a State can—and at times must—place great weight on race when redistricting, it may not do so to the exclusion of all traditional, nonracial districting principles, leaving a district that rationally can be understood only as an effort to classify and separate voters by race.”).

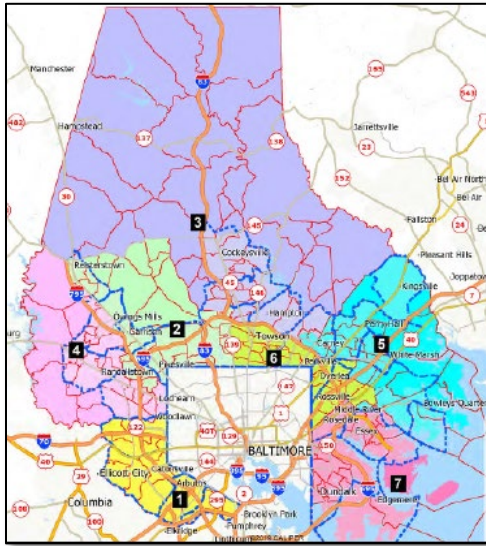
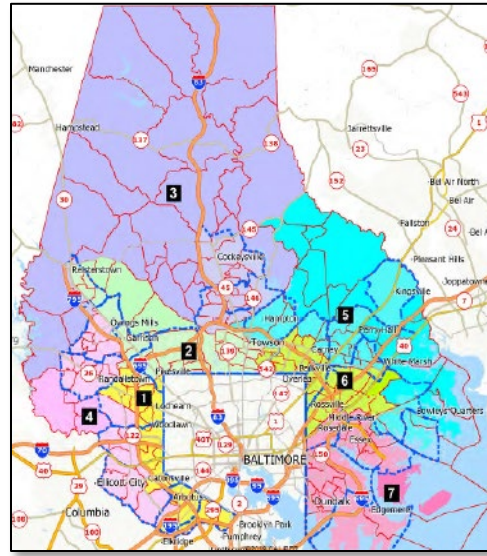
The alternative maps that Plaintiffs put forth in Proposed Plans 1 and 5 fail the test for reasonable compactness, especially when compared to the Council’s adopted map. *See Schaefer*, 849 F. Supp. at 1053 (“Voting Rights litigants should adduce evidence systematically comparing

proposed redistricting plans to either the plan being challenged or the predecessor plan in effect during the last relevant election.”).

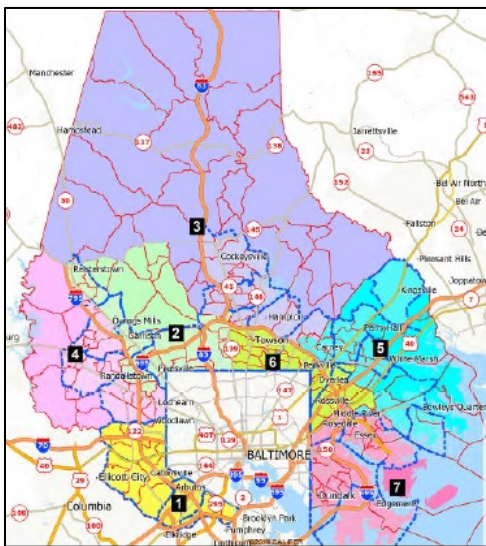
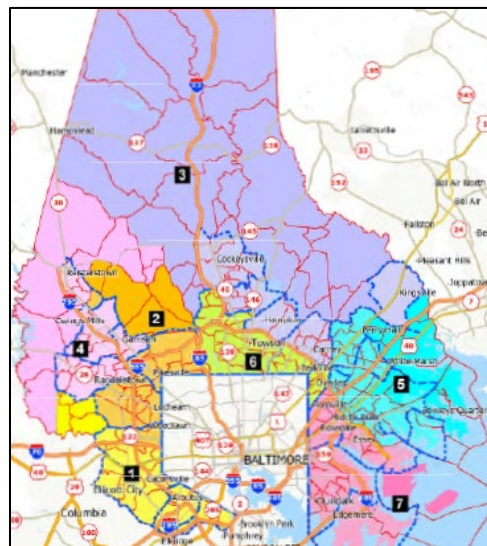
At the outset, *both* Plaintiffs’ and the County’s expert evidence show that the Council’s adopted map scores higher on generally accepted measures of compactness than the two alternatives proposed by Plaintiffs—and even scores higher than the two previous, legal maps unchallenged by Plaintiffs (and in fact promoted by the NAACP in 2001). *See* ECF 28-2, Cooper Decl. ¶ 61, Fig. 12; **Exhibit 7**, Gimpel Decl. ¶ 8. As Table 1 from Dr. Gimpel’s declaration reflects, the County’s 2020 plan scores highest on overall compactness out of the past three County maps *and* when compared to Plaintiffs’ Proposed Plan 1 and Proposed Plan 5. *Id.*

These disparate scores confirm what a layman’s comparison of the relevant maps already shows: Plaintiffs’ proposed maps are geographically irregular, suggesting that the Black populations are not sufficiently compact to support regular, reasonably compact redistricting, especially not in Districts 1 and 2. *Id.* ¶ 10. These maps simply do not “pass[] the eyeball test for geographical compactness.” *Ala. State Conf. of Nat’l Ass’n for Advancement of Colored People v. Alabama*, No. 2:16-CV-731-WKW, 2020 WL 583803, at *20 (M.D. Ala. Feb. 5, 2020); *see also* **Exhibit 7**, Gimpel Decl. ¶¶ 10-11.

For example, Proposed Plan 1 removes District 4’s boundary with Baltimore City and splits up the once-compact coverage of southwestern Baltimore County. Instead of having District 4 cover that entire southwestern portion, District 1 would wrap around the western and southern portions of Baltimore City, while District 4 would wrap around District 1. *Id.* ¶ 10. This shape is plainly irregular and a marked shift from previous maps, as it cuts historically intact communities across multiple districts.

Baltimore County's Plan**NAACP Proposed Plan 1**

Similarly, Proposed Plan 5 removes District 4's boundary with Baltimore City and would have District 2 cover the northwest portion abutting Baltimore City, as well as the western portion of the County abutting Baltimore City, in a reverse C-shape. *Id.* ¶ 11. That map would also have District 1 extend to the west of what is currently part of District 4. *Id.* As Dr. Gimpel opines, “[a]ny lay person could look at the NAACP’s proposed plan 5 and determine that the western councilmanic districts look gerrymandered.” *Id.*

Baltimore County's Plan**NAACP Proposed Plan 5**

The irregularities in these proposed alternatives reflect that there is “physical dispersal of the African-American population” in these districts and therefore “is an indicator of non-compactness.” *Alabama*, 2020 WL 583803, at *24. To reach a numerical majority in the alternative districts, Plaintiffs’ maps “reach[] out to grab small and apparently isolated minority communities.” *Perry*, 548 U.S. at 402; *see also* **Exhibit 7**, Gimpel Decl. ¶ 11.

These alternative maps therefore appear non-compact as a whole, but the adopted map also scores higher on compactness when focusing on the specific districts where Plaintiffs claim vote dilution is occurring. The Black population in those particular districts must be sufficiently compact to establish any potential § 2 violation *in that district*—otherwise, “where that district sits, there neither has been a wrong nor can be a remedy.” *Shaw*, 517 U.S. at 916 (1996). Under Plaintiffs’ Proposed Plan 1 making District 1 a second majority-Black district, District 1 scores lower than the adopted plan on the compactness measures. The same is true for District 2 under Proposed Plan 5. Although that plan gives District 2 a numerical Black majority, it does so at the expense of compactness, as it is far less compact than District 2 under both measures. Plaintiffs’ own expert evidence reflects similar differences in compactness between the adopted plan and their proposed alternatives.³

³ Plaintiffs’ expert does not justify the lower compactness scores of Plaintiffs’ proposed maps other than to vaguely state that “[t]here is no bright line rule on what constitutes an acceptable compactness score” and the alternative plans are within an undefined “normal range for compactness.” ECF 28-2, Cooper Decl. ¶ 62.

Compactness Scores of Previous Baltimore County Redistricting Plans, the 2020 Proposal, and NAACP Maps 1 and 5.												
Location	1990		2000		2010		2020		NAACP 1		NAACP 5	
	PPTest	Stest	PPTest	Stest	PPTest	Stest	PPTest	Stest	PPTest	Stest	PPTest	Stest
District 1	0.172	0.415	0.378	0.615	0.420	0.648	0.463	0.680	0.188	0.434	0.270	0.519
District 2	0.299	0.546	0.399	0.631	0.361	0.601	0.417	0.646	0.389	0.623	0.272	0.521
District 3	0.349	0.591	0.379	0.616	0.466	0.682	0.543	0.737	0.394	0.627	0.441	0.664
District 4	0.308	0.555	0.278	0.527	0.308	0.555	0.348	0.590	0.252	0.502	0.245	0.495
District 5	0.027	0.164	0.141	0.376	0.234	0.484	0.142	0.377	0.106	0.326	0.109	0.331
District 6	0.159	0.399	0.023	0.151	0.035	0.186	0.289	0.538	0.262	0.512	0.326	0.571
District 7	0.044	0.210	0.035	0.186	0.021	0.144	0.067	0.259	0.051	0.226	0.054	0.232
Average	0.194	0.411	0.233	0.443	0.264	0.471	0.324	0.547	0.235	0.464	0.245	0.476
PPTest=Polsby Popper test for Compactness Stest=Schwartzberg test for Compactness For both tests, high values closer to 1 indicate more compactly drawn districts												

Along with failing tests for geographical compactness, both sides' evidence shows that Plaintiffs' proposed alternatives violate traditional districting principles by splitting longstanding communities of interest and voting precincts. Plaintiffs' plans also undermine the goal of maintaining continuity in representation.

Proposed Plan 1 splits 15 communities, most of them after decades of remaining intact under the County maps. ECF 28-2, Cooper Decl. ¶ 64; **Exhibit 7**, Gimpel Decl. ¶¶ 10, 35. For example, Proposed Plan 1 splits cohesive communities in the southwest corner of Baltimore County, rather than maintain that area in a single district as it has been for decades. *Id.* The Arbutus Business Association and other community members wrote to oppose this plan, describing Southwest Baltimore County as a “unified large community” and stating that the proposed split of that community would “erase and negate all our team and community building.” **Exhibit 5**, Dec. 15, 2021 Letter from Greater Arbutus Business Association; *see also* **Exhibit 6**, Dec. 14, 2021 Letter from P. Wolf (“Arbutus, Lansdowne and Catonsville have slowly and painstakingly developed supportive relationships over the years. Splitting the western portion from the eastern portion of the district will reopen arbitrary lines that help no one.”). The same map would split

the Liberty Road corridor, which has historically remained intact in District 4, into three separate districts: Districts 1, 4, and 3. **Exhibit 7**, Gimpel Decl. ¶ 10.

Plaintiffs’ expert asserts that it is the Council’s map that splits communities—but fails to explain how the longstanding divisions that the plan maintains reflect splits among communities of interest rather than just minor, long-accepted divisions reasonably marked by the major highway running through them. ECF 28-2, Cooper Decl. ¶ 39. “A shared community of interest cannot be assumed.” *Alabama*, 2020 WL 583803, at *24. As Cooper failed to do in another redistricting case, he also fails here to “discuss the regional, cultural, social, economic, or political ties, if any, among the African-American communities in” alternative Districts 1 and 2. *Id.* Instead, he simply looks at overall demographic numbers to summarily claim that the Council’s maintenance of longstanding community lines is impermissible, without addressing how the Council’s plan in fact preserves actual communities of interest.

Plaintiffs and Cooper similarly fail to justify Proposed Plan 5’s lack of compactness. That map would split 22 precincts along with several communities. **Exhibit 7**, Gimpel Decl. ¶ 36. In contrast, the Council’s adopted plan minimizes the number of split precincts. And although it splits some census “places,” it does so according to divisions already present in the County’s 2000 and 2010 redistricting plans. *Id.* Proposed Plan 5, however, would move more than 270,000 residents out of their current districts, thereby producing an abysmal core retention rate across all districts and particularly in District 2. *Id.* ¶ 32. As Dr. Gimpel opines, such a drastic shift does not track traditional redistricting principles and, as has been documented, is likely to reduce political engagement. *Id.*

Core Retention Across Redistricting Plans Showing Continuity of Constituencies				
	2000 to 2010	2010 to 2020	2010 to NAACP 1	2010 to NAACP 5
District 1	0.999	1.000	0.564	0.949
District 2	0.938	0.988	0.749	0.548
District 3	0.888	0.988	0.788	0.828
District 4	0.950	1.000	0.548	0.595
District 5	0.765	0.510	0.521	0.542
District 6	0.713	0.556	0.720	0.420
District 7	0.904	1.000	1.000	0.924
Average	0.880	0.863	0.699	0.687
Cell entries show proportion of the residents in the district from the previous decade carried over to the new (proposed) district. Estimates use 2020 block data.				

Indeed, Plaintiffs’ proposed plans threaten to dilute the minority voting strength that District 4 in particular has created and preserved over the last two decades—not just for District 4 alone but for Black residents across the County. Not only would these alternative maps disrupt continuity of representation in a way likely to decrease voter turnout, but they would thin Black voting power by reducing it in District 4 and only marginally increasing it in either District 1 or 2. This result not only conflicts with traditional districting principles, *see id.* ¶ 12, but is also unnecessary because Black voters can elect their candidates of choice without changing the map. *See infra.*

In sum, Plaintiffs’ reliance on broad demographic numbers—which only reflect minimal change in the Black population—does not get them where they need to be on precondition 1. Their alternative maps, despite creating numerical Black majorities in either District 1 or 2, fail the standards for reasonable compactness. They disrupt longstanding communities of interest and voting lines, appear irregular and gerrymandered, and overall fall far short of the reasonable map adopted by the Council. The “bizarre shaping” of the proposed districts, “cut[ing] across pre-existing precinct lines and other natural or traditional divisions,” not only shows noncompactness,

but could also be suggestive of “a level of racial manipulation that exceeds what § 2 could justify.” *Vera*, 517 U.S. at 980–81. Plaintiffs have not shown a likelihood of success on precondition 1, and the preliminary injunction should be denied.

B. Plaintiffs Fail To Show That Black Voters In Districts 1 And 2 Are Politically Cohesive.

Plaintiffs also fail to clearly show they are likely to prove precondition 2 by establishing that District 1 or 2 contain a politically cohesive group of Black voters. “Political cohesion . . . implies that the group generally unites behind a single political platform of common goals and common means by which to achieve them.” *Levy*, 589 F.3d at 720. Courts may not simply assume “that voters of a particular race, because of their race, think alike, share the same political interests, and will prefer the same candidates at the polls”—such assumptions offend “the principles of equal protection.” *Lewis*, 99 F.3d at 618. Instead, a Voting Rights Act plaintiff “must provide evidence that [a minority community in the relevant area has] a history of working, voting, advocating, or organizing together around similar political, social, economic, or legal issues in the community.” *Holloway v. City of Va. Beach*, 531 F. Supp. 3d 1015, 1048 (E.D. Va. 2021).

Plaintiffs make no meaningful effort to carry their evidentiary burden (or to show that they are likely to succeed in doing so at trial). They and their expert Matt Barreto focus instead on countywide Black voting patterns in statewide races, ignoring other issues beyond voting that are relevant to political cohesion, and without addressing more probative primary voting and local elections. Barreto and Plaintiffs effectively conflate the showing Plaintiffs must make on white bloc voting with the separate (though related) showing they must make of political cohesion. As a result, they manage to make neither showing.

In fact, when faced with a number of diverse candidates in one election, Black voters in Districts 1 and 2 do not coalesce to one candidate at levels that could be deemed “cohesive.” For

example, in the 2018 gubernatorial primary election, multiple Democrats were on the ballot: Ben Jealous, Rushern Baker, Jim Shea, and Krish Vignarajah. Mr. Jealous and Mr. Baker are Black; Ms. Vignarajah is of South Asian descent. Although Mr. Jealous won Districts 1 and 2, the voting data establishes that he did not win overwhelmingly over the other candidates. Instead, Mr. Jealous won Districts 1 and 2 by 44.3% and 35.0%, respectively, while the other candidates split the rest of the votes almost equally. Plaintiffs fail to address statistics such as these and thus fail to carry their burden of showing a likelihood of success in proving precondition 2.

C. Plaintiffs Fail To Show Racially Polarized Voting.

Plaintiffs also do not clearly show that they are likely to prove precondition 3. Again, Plaintiffs address this precondition at too high a level of generality and without accounting for all of the district-specific evidence most relevant to assessing allegedly polarized voting. As one example, rather than attempt to prove racial polarization in Districts 1 and 2, Plaintiffs rely on the fact that two Maryland courts found racially polarized voting in *different* parts of Maryland—parts that are more rural and less diverse. *See* ECF 28-1 at 19 (pointing to *Schaefer*, 849 F. Supp. at 1059, which addressed the Eastern Shore, and *Cane v. Worcester Cty., Md.*, 840 F. Supp. 1081, 1090 (D. Md. 1994), which addressed southeastern Worcester County.). But it is the specific voting patterns in the districts where Plaintiffs allege vote dilution occurs that matter. Plaintiffs fail to adequately address that evidence or the elements relevant to it.

Precondition 3 asks the Court “determine whether the majority votes as a bloc to enable it to usually defeat the minority’s preferred candidate.” *Levy*, 589 F.3d at 716. Contrary to what Plaintiffs and their expert apparently assume, this analysis does not begin and end with voting patterns in biracial (white vs. Black candidate) elections. Instead, “[a]scertaining whether legally significant white bloc voting exists begins with the identification of the minority members’ ‘preferred candidates.’” *Collins II*, 883 F.2d at 1237. “[A] minority-preferred candidate may be

a non-minority, just as a minority candidate may be the preferred candidate of the voters of the majority's race.” *Lewis*, 99 F.3d at 607. As a result, the analysis of precondition 3 is “not . . . so simple as how many blacks versus whites were elected”; rather, “[t]he court must examine the parties’ studies of voting preferences to determine which were the preferred candidates of the majority and minority communities.” *Collins v. City of Norfolk, Va.*, 816 F.2d 932, 937 n.5 (4th Cir. 1987) (*Collins I*). Only then does the Court “inquire whether in general a white bloc vote normally will defeat the combined strength of minority support plus white ‘crossover’ vote for the minority’s preferred candidates.” *Collins II*, 883 F.2d at 1237.

1. *Plaintiffs do not identify Black-preferred candidates.*

Plaintiffs skip over the necessary first step in analyzing alleged white bloc voting: they simply assume that only Black candidates are the Black community’s candidates of choice in Districts 1 and 2. Barreto states that “not every election contest contains a minority preferred candidate” and then makes no effort to identify any minority-preferred candidates in any elections. Instead, he analyzes only (statewide) elections involving Black candidates. ECF 28-3, Barreto Decl. ¶ 10. Meanwhile, Plaintiffs’ non-expert declarant Anthony Fugett hypothesizes that Black candidates will not run because an unidentified “they” are convinced they will lose based on judicial elections predating District 4’s creation.⁴ ECF 28-4, Fugett Decl. ¶¶ 9-12. This conclusory hypothetical, accompanied by Barreto’s failure to scrutinize voter preferences, cannot carry Plaintiffs’ burden.

⁴ Baltimore County currently has three Black Circuit Court judges: Judges Vicki Ballou-Watts, Sherrie R. Bailey, and Jan Marshall Alexander. Baltimore County Circuit Court Judges and Family Magistrates, <https://www.baltimorecountymd.gov/departments/circuit/judges/> (last visited Jan. 30, 2022). The issues surrounding Judge Wright’s early-aughts appointment as the County’s first Black judge are not a current concerns, especially given Plaintiffs’ failure to provide any evidence suggesting that racially polarized voting occurs in electing Baltimore County judges.

Because Plaintiffs rely on the false premise that only Black candidates and all Black candidates are the minority group's preferred candidates, they try to prove polarization with examples that do not necessarily reflect candidates of choice. Plaintiffs place great weight on the Democratic Senate primary race between (white) Chris Van Hollen and (Black) Donna Edwards. Plaintiffs assume that Ms. Edwards was the Black-preferred candidate solely because she is Black. But the evidence shows that the circumstances surrounding this particular election were much more complex. Only four of the 46 members of the Congressional Black Caucus, who worked with Ms. Edwards in the House, endorsed Ms. Edwards over Mr. Van Hollen. Politico, "Edwards Confronts Black Lawmakers Over Refusal To Back Her," <https://www.politico.com/story/2016/04/donna-edwards-congressional-black-caucus-chris-van-hollen-222169> (last visited Jan. 30, 2021). Even then-Representative Elijah Cummings, whose endorsement carried great weight with Maryland voters, refused to endorse Ms. Edwards. *Id.* Nor did Ms. Edwards win majority-Black precincts with significant numbers; rather, she struggled to get 60-65% of the vote in the precincts with the most Black voters. Without showing that Ms. Edwards, despite this contrary evidence, was in fact a Black-preferred candidate, Plaintiffs' emphasis on this election gets them nowhere.

Plaintiffs' myopic focus on Black candidates is further undermined by evidence that Black voters in Districts 1 and 2 often support, and elect, non-Black candidates to the Council. One need only look at the two current Council Members representing District 1 and District 2. Council Member Tom Quirk won District 1 in 2018 with 68% of the vote—at a time when the district's population of Black voters was between 27.2% (the percentage in 2011) and 28.33% (the percentage in 2020). *See Exhibit 9*, Baltimore County Redistricting Manual at Appendix B; *Exhibit 3*, Bill 103-21 at Exhibit B. He carried Black-dominated precincts with much higher

percentages. In precinct 001-006 (Edmonson), which has the highest percentage of Black voters among District 1 precincts, Mr. Quirk won 92.75% of the vote. **Exhibit 7**, Gimpel Decl. ¶ 22. And in precinct 001-001 (Woodlawn), which has the second highest percentage of Black voters in District 1, Mr. Quirk won 92.55% of the vote. *Id.* He enjoyed strong and cohesive support from the Black voting age population: he was the Black candidate of choice. And he won.

The same is true of Council Member Izzy Patoka, who represents District 2. He won 71.8% of the overall vote in District 2 in 2018, but enjoyed even greater success in heavily-Black precincts. In precinct 002-007 (Old Court), which has the highest percentage of Black voters in District 2, Mr. Patoka won 95.35% of the vote. *Id.* And in precinct 002-008 (Winand), which has the second highest percentage of Black voters in District 2, Mr. Patoka won 92% of the vote. *Id.* Both of these Council Members are white, but both have been supported as the Black community's candidates of choice in their respective districts—and it is the preferences of the Black voters in those districts that are most relevant to assessing Plaintiffs' claim of racial bloc voting. Because white candidates have achieved electoral success as Black-preferred candidates, Plaintiffs cannot show a likelihood of success on precondition 3.

2. *Plaintiffs ignore electoral successes of Black-preferred candidates.*

Even if Plaintiffs' preferred-candidate analysis were adequate (it is not), Plaintiffs and their expert also fumble the precondition 3 analysis at its second step. First, Plaintiffs wrongly assume that only Black candidate vs. white candidate elections are relevant to determining whether a white majority regularly defeats Black-preferred candidates. Then, they compound this error by ignoring the most relevant Black-white election showing that Black voters in District 2 can elect their candidates of choice, including when those candidates are themselves Black.

The Fourth Circuit has made clear that, especially when elections involving minority candidates are not the “substantial majority of the total number of elections,” a district court

evaluating racially polarized voting “must consider, at a minimum, a representative cross-section of elections, and not merely those in which a minority candidate appeared on the ballot.” *Lewis*, 99 F.3d at 608; *see also id.* at 605 (“[B]y considering only elections in which a black candidate was on the ballot, the district court failed to analyze a sufficient number of elections to enable it to determine whether white bloc voting usually operates to defeat minority-preferred candidates.”). And this representative cross-section should focus on endogenous elections—those involving the same seats at issue—over less-relevant exogenous elections. *See Wright v. Sumter Cty. Bd. of Elections*, 979 F.3d 1282, 1292-93 (11th Cir. 2020).

Plaintiffs disregard these standards by proffering only evidence of exogenous elections involving Black candidates. Plaintiffs’ and Barreto’s focus on just three statewide, Black-white elections “exaggerate[s] the extent of polarization and render[s] the data unreliable.” *Alabama*, 2020 WL 583803, at *29. Indeed, with no explanation from Plaintiffs as to why the 2018 Council elections are not probative, those Black-driven electoral successes rebut Plaintiffs’ cherry-picked evidence of racial polarization.⁵

Driving the nail into that coffin is another election that Barreto ignores, and Plaintiffs deal with only cursorily: the election of Black and Black-preferred candidate Cheryl Pasteur to the District 2 school board in 2018. The voting districts for the Baltimore County School Board are the same as the councilmanic districts. *Board of Education*, MARYLAND MANUAL ON-LINE, <https://msa.maryland.gov/msa/mdmanual/36loc/bco/html/functions/bcoeducation.html> (last visited Jan. 31, 2022). Ms. Pasteur ran against white Jewish candidate Anthony Glasser for the District 2 seat. **Exhibit 7**, Gimpel Decl. ¶ 21. Ms. Pasteur was the Black candidate of choice, as

⁵ Fugett’s declaration discusses unsuccessful campaigns by Black candidates in state legislative districts and Democratic primaries, ECF 28-4, Fugett Decl. ¶ 14, but Fugett, as a non-expert, does not scrutinize those elections and Barreto disregards them entirely.

she won Black-dominated precincts in high numbers. *Id.* But just as importantly, Ms. Pasteur also made a strong showing in mostly white, Jewish precincts (where voters refused to vote for her white, Jewish opponent over her) and won 66.14% of the overall vote in District 2. *Id.* So not only did Black voters support Ms. Pasteur, but she won sufficient white crossover votes to defeat a white candidate.⁶

Ms. Pasteur's election shows that Black candidates have run in District 2 as the Black-preferred candidate and have won—meaning no white majority bloc defeated them. Nor did any white majority bloc defeat the Black-preferred candidates Tom Quirk and Izzy Patoka. As a result, Plaintiffs do not show that any white voting bloc “usually” or “typically” defeats Black-preferred candidates in Districts 1 and 2 and particularly not in District-specific elections.⁷

Plaintiffs' selective evidence of supposed polarization does not change this conclusion, especially because they paint those statewide elections in broad strokes without meaningfully

⁶ Plaintiffs' only response to this compelling evidence against racial polarization is Fugett's claim that Ms. Pasteur's victory “is an outlier explained by the sole white candidate's failure to mount a campaign.” ECF 28-4, Fugett Decl. ¶ 15. This assertion is not only incorrect (and hardly supported by Mr. Glasser not completing a candidate questionnaire), but it is also irrelevant to precondition 3. To evaluate precondition 3, the Court may only look to *whether* a white majority consistently defeats Black-preferred candidates—not to *why* particular candidates might have won or lost. *See Charleston Cty.*, 365 F.3d at 348. Causation is only potentially relevant once the Court reaches the totality of the circumstances inquiry. *Id.* Yet Plaintiffs fail to address it there or anywhere in their brief, instead leaving this key evidence for a single paragraph in Fugett's declaration.

⁷ This strong evidence that Black-preferred candidates are elected in Districts 1 and 2 sets this case far apart from the recent congressional redistricting decision in *Singleton v. Merrill*, No. 2:21-CV-1291-AMM, 2022 WL 265002 (N.D. Ala. Jan. 24, 2022). The electoral statistics relevant to Baltimore County and especially to Districts 1 and 2 do not show anything close to the “clear[] and intensely racially polarized” voting that was basically undisputed in that case. *Id.* at *67. This action is also distinguishable on other material grounds, including the lack of compactness in Plaintiffs' proposed alternatives and the absence of evidence of continued struggles with official voting-related discrimination or racial appeals like those experienced in Alabama. *See id.* at *70-73.

addressing the Democratic primary evidence for those elections. As Dr. Gimpel explains, Black candidates in the Democratic gubernatorial primaries have performed well when running against white and Asian candidates. **Exhibit 7**, Gimpel Decl. ¶ 23. For example, in the 2018 primary, Ben Jealous and Rushern Baker, both Black Democrats, performed about the same across both majority white and diverse precincts. *See Exhibit 7*, Gimpel Decl., Figures 2-4. No white majority bloc swept in to handily defeat either candidate, even in white-majority precincts, and Jealous far out-performed the white and Asian candidates. *See id.*

In sum, Plaintiffs neither adequately identify Black-preferred candidates nor sufficiently address the most relevant elections in which those candidates have won with both Black and white support. Plaintiffs thus fail to clearly show they are likely to succeed at trial in proving precondition 3.

D. The Totality Of The Circumstances Does Not Show Vote Dilution.

Plaintiffs' failure to establish a clear likelihood of success on the *Gingles* preconditions defeats their § 2 claim, making it unnecessary to evaluate the totality of the circumstances. *See Hall*, 385 F.3d at 426. But even if the Court were to reach this step, Plaintiffs fail to show they can likely prove, under the "inclusive examination of the totality of the circumstances" required, that Bill 103-21 causes vote dilution in District 1 or District 2. *Charleston Cty.*, 365 F.3d at 348.

The "essence" of the totality-of-the-circumstances "inquiry is whether the electoral structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by minority and majority voters to elect their preferred representatives." *Cane v. Worcester Cty., Md.*, 35 F.3d 921, 925 (4th Cir. 1994). *Gingles* identified factors relevant to this analysis:

- (1) a history in the state or political subdivision of official voting-related discrimination against the minority group;

- (2) the extent of racial polarization in the elections of the state or political subdivision;
- (3) the extent to which the state or political subdivision has used voting practices or procedures that enhanced the opportunity for discrimination against the minority group;
- (4) the exclusion of minority group members from the candidate slating processes;
- (5) the extent to which past discrimination in areas such as education, employment, and health hinder the ability of members of the minority group to participate effectively in the political processes;
- (6) the use of racial appeals in political campaigns;
- (7) the extent to which minority group members have been elected to public office in the relevant jurisdiction;
- (8) whether elected officials exhibit a significant lack of responsiveness to the particularized needs of minority group members; and
- (9) whether the policies offered to justify the challenged voting practice are tenuous.

See id. (citing *Gingles*, 478 U.S. at 44-45). Although “each of these factors may be probative, no single factor or combination of factors is dispositive.” *Id.* Nor are these factors exclusive. *Collins II*, 883 F.2d at 1236.

Plaintiffs assert that the totality of the circumstances shows vote dilution based mainly on (1) allegedly racially polarized elections, (2) Baltimore County’s undisputed history of discrimination, and (3) the Council’s decision not to adopt Plaintiffs’ alternative maps. Plaintiffs’ selective focus on these areas does not show that vote dilution occurs in Districts 1 or 2.

1. *Plaintiffs do not identify racial polarization or exclusionary voting constructs.*

The evidence does not show racial polarization, much less to any significant degree. *See supra* Part I.C. The evidence especially does not show racial polarization in Districts 1 and 2, where Plaintiffs allege vote dilution occurs. To the contrary, it shows that Black candidates like

Cheryl Pasteur can, and do, win elections in the same councilmanic districts. The facts also show that Black voters in Districts 1 and 2 can, and do, elect other candidates of choice to the Council. Plaintiffs ignore these statistics. Instead, they cherry-pick outdated examples of losses by Black candidates, including a 1990 election and Judge Wright’s early-aughts losses—disregarding the changes in the last decades, including the election of three Black judges for the County. As to the more recent statewide and legislative district elections, these examples mean little when Plaintiffs failed at preconditions 2 and 3 to show that the Black candidates involved were the Black community’s preferred candidates and Plaintiffs’ expert did not analyze these exogenous races against more relevant District 1 and 2 races. *See supra* Part I.B-C.

Further, no evidence shows that elections in those localities or elsewhere in the State involve the use of racial appeals or voting practices that either exclude minority group members or enhance opportunities to discriminate against Blacks. Plaintiffs argue that it is the very seven-district structure of the County Council map that discriminates against Black voters, ECF 28-1 at 22, but Plaintiffs themselves advocate for maintaining that structure. Plaintiffs do not explain how single-member councilmanic districts—which the Supreme Court has repeatedly cast as preferable to at-large, multi-member districts—are somehow illegitimate. *See Grove*, 507 U.S. at 30 (“[W]e have strongly preferred single-member districts for federal-court-ordered reapportionment.”). They are not, especially when the evidence shows that Black candidates like Cheryl Pasteur and other Black-preferred candidates are repeatedly elected in those districts. Plaintiffs simply want the same structure, just drawn differently.

2. *Plaintiffs focus on pre-2002 history while ignoring significant recent improvements and responsive legislation targeted at the Black community.*

Plaintiffs’ focus on pre-2002 Baltimore County history ignores the creation of District 4 that year—which they themselves lobbied for—as well as the significant improvements the County

has made to encourage equality of opportunity and engage the Black community since then. It cannot be that vote dilution is found any time a state has a history of discrimination. Indeed, inequality was built into the very structure of this country. Instead, taking a comprehensive view of the relevant circumstances requires looking at the specific locality's work to improve upon and remedy these historical realities.

Baltimore County has made significant improvements in the areas that Plaintiffs identify—strides Plaintiffs ignore. Baltimore County Chief Diversity Officer Troy Williams' Declaration describes much of the County's ongoing efforts to increase equity and engagement across the County and with specific focus on the Black population. And Plaintiffs' own expert evidence reflects that, despite historical inequities the County continues to combat, Black residents have achieved huge gains in the areas of employment and education.

For example, although Plaintiffs fault the County for housing disparities—focusing on issues dating as far back as the 1950s—the Department of Housing and Community Development has, in more recent years, established multiple programs addressing low-income families' housing needs. **Exhibit 10**, Williams Decl. ¶ 27. The Baltimore County Enterprise Strategic Plan for 2019-2022 also focuses on housing as well as other equity initiatives. *Id.* ¶ 22.

In the same vein, Plaintiffs accuse the County of racial discrimination in employment, but the County has created an Employee Advisory Council, appointed women and people of color to executive leadership positions, and appointed diversity officers in key departments (including the Police Department) to further its efforts at equal employment across the County. *Id.* ¶¶ 10-14. Moreover, evidence submitted by Plaintiffs shows that Black residents in Baltimore County now participate in the labor force and are employed at higher rates than non-Hispanic White residents, including in government positions. *See* ECF 28-2, Cooper Decl., Ex. G-1 at 10 (reflecting that, in

2019, 72.0% of Blacks were in the labor force compared to 63.4% of Non-Hispanic Whites and 67.7% of Blacks were employed compared to 61.3% Non-Hispanic Whites); *see also id.*, Ex. G-2 at 5-7 (listing similar employment statistics and reflecting that 23.6% Black workers are employed in government positions compared to just 16.0% of white workers).

Plaintiffs' evidence also reflects that—despite Plaintiffs' pessimistic view—the Black community has, in recent years, reached higher or substantially equal levels of educational enrollment and attainment as compared to the white population. As of 2019, 26.7% of the Black population in Baltimore County held a high school degree or its equivalent, compared to just 25.5% of the white population and exceeding the total population average, also of 25.5%. *See* ECF 28-2, Cooper Decl., Ex. G-2 at 3; *see also id.*, Ex. G-1 at 5. Though fewer Black residents currently hold college degrees, they now outpace white locals when comparing school enrollment levels—meaning that statistic appears likely to change. 18.3% of the Black population is enrolled in high school compared to 17.8% of the white population, and 33.8% of Blacks in the County are enrolled in college or graduate school, compared to 33.0% of the white population and 32.2% of the total population. *See id.*, Ex. G-2 at 3.

Contrary to Plaintiffs' characterizations, the County has also worked to increase minority engagement in the community. In particular, the Baltimore County Human Relations Commission, which enforces the County's antidiscrimination law, also provides resources related to civil rights and discrimination. **Exhibit 10**, Williams Decl. ¶ 10. The Commission has also partnered with the County's Public Library and radio station to host community forums focused on criminal justice, voter empowerment, and health issues relevant to the County's Black and minority populations. *Id.* The County has also created a Diversity, Inclusion and Equity Community

Advisory Council that works to ensure equal access to services including education and prioritizes outreach to traditionally underserved communities, including the Black community. *Id.* ¶¶ 11, 13.

And the County Council has enacted legislation directly responsive to minority needs. Plaintiffs assert that the Council is not responsive to the electorate—but point only to the Council’s well-reasoned and thoroughly deliberated decision to adopt Bill 103-21 over some community opposition (and with community support). ECF 28-1 at 28-30. That argument takes an overly narrow view of the political responsiveness factor and ignores Council actions that respond to Black interests. In particular, the Council enacted Bill 96-20, *i.e.*, the Strengthening Modernization, Accountability, Reform, and Transparency (SMART) Policing Act, in 2020. **Exhibit 10**, Williams Decl. ¶ 18. That legislation aimed at policing reform addressed Black community needs and was strongly supported by Black community groups.

In sum, contrary to the dire picture Plaintiffs paint, Baltimore County is on the forefront of diversity, equity, and inclusion measures targeted at the Black community. And its County Council is directly responsive to, and engaged with, Black voters. The County and Council’s measures targeted at Black residents have improved and will continue to improve the group’s ability to take equal part in the community, especially through voting.

3. *Bill 103-21 is easily justified as a reasonable redistricting measure.*

Plaintiffs also try to cast the Council’s adopted redistricting plan as unjustified based solely on their view that the Council’s rejection of their alternative plans was illegitimate. The Council’s decision to adopt its own map instead of Plaintiffs’ is not evidence that the Council’s map itself has no legitimate government interest behind it. Indeed, adopting an entirely new map lacking reasonably compact districts could itself have reflected an illegitimate emphasis on race at the expense of traditional redistricting principles. *See supra* Part I.A. The Council instead acted legitimately by beginning with the existing district map and working to ensure continuity. **Exhibit**

7, Gimpel Decl. ¶¶ 9, 29-30. The Plaintiffs’ proposed alternatives, in contract, gave little weight to continuity, compactness, or other well-established redistricting principles. *Id.* ¶ 32; *supra* Part I.A.

Moreover, Plaintiffs fail to provide any evidence that the Council did not act according to law and undertake a “transparent, multi-step process” to adopt its new map. *Id.* ¶ 12. The available evidence shows instead that the Council acted according to its special expertise and familiarity with the County to balance competing considerations and produce a map that accounts for the need to preserve Black voting strength alongside other traditional districting principles. *Id.* ¶ 38. That Plaintiffs would prefer alternative, less-compact maps that split communities does not show that the Council’s map lacks justification. Nor does it show that the totality of the circumstances compels the conclusion that Plaintiffs will likely prove vote dilution at trial.

II. PLAINTIFFS DO NOT ESTABLISH THAT MANDATORY INJUNCTIVE RELIEF IS WARRANTED.

The Court should deny Plaintiffs’ Motion because they fail to clearly show a likelihood of success on the merits. *See Dewhurst v. Century Aluminum Co.*, 649 F.3d 287, 293 (4th Cir. 2011) (affirming denial of motion for preliminary injunction based on plaintiffs’ failure to establish likelihood of success); *see also Profiles, Inc. v. Bank of Am. Corp.*, 453 F. Supp. 3d 742, 753 (D. Md. 2020) (that a plaintiff has not shown likelihood of success “prevents entry of . . . a preliminary injunction.”).

Even if the remaining *Winter* factors were relevant, they would require the same result. *Benisek v. Lamone*, 138 S. Ct. 1942, 1943–44 (2018) (“[A] preliminary injunction does not follow as a matter of course from a plaintiff’s showing of a likelihood of success on the merits.”). At the outset, Plaintiffs cannot clearly show that they are likely to be irreparably harmed without immediate relief because they cannot show that Bill 103-21 causes vote dilution. *See N.C. State*

Ports Authority v. Dart Containerline, 592 F.2d 749, 750 (4th Cir. 1979) (“There is a correlation between the likelihood of plaintiff’s success and the probability of irreparable injury to him.”). They especially cannot show that any such harm would continue “through at least 2032.” ECF 28-1 at 31. The Court’s exercise of discretion to deny extraordinary relief at this preliminary stage would not prevent Plaintiffs’ challenge from continuing to trial. Nor would it bar some future challenge if, before the next census, Plaintiffs developed sufficient evidence that the map produces vote dilution. Plaintiffs’ fear of being “lock[ed] in” to the just-adopted map, ECF 28-1 at 1, is overblown. Nor do Plaintiffs explain the sudden urgency behind the major changes they propose to the County’s districting structure when the overall Black population was just 1.59% less in 2011—yet Plaintiffs saw no need to challenge the decennial redistricting in that year.

And even if Plaintiffs could show likely harm, they could not show that the balance of equities tips in their favor or that an injunction would serve the public interest. *Nken v. Holder*, 556 U.S. 418, 435 (2009) (“[T]he third and fourth factors . . . merge when the Government is the opposing party”). “In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Winter*, 555 U.S. at 24.

In contrast to the unlikely and unproven harm Plaintiffs claim they will suffer without an injunction, the public interest will be harmed by throwing out a legitimate and legally adopted redistricting plan on the 2022 election cycle. “[A] due regard for the public interest in orderly elections” can support the Court’s “discretionary decision to deny a preliminary injunction,” even if a redistricting plan has been held unlawful (which Bill 103-21 is not). *Benisek*, 138 S. Ct. at 1944–45. This interest supports denial here.

Statewide candidate filing deadlines are set for February 22, beginning a fast-paced election cycle that will culminate in the fall. Even if this Court requires the Council to adopt one of the Plaintiffs’ proposed alternatives before that date, doing so threatens to “work[] a needlessly chaotic and disruptive effect upon the electoral process.” *Id.* at 1945. Especially because Plaintiffs’ alternative maps disrupt core retention and drastically shift district lines, they threaten to cause voter confusion and suppress voter turnout—including (if not especially) among the Black population that Plaintiffs seek to protect. Indeed, the potentially negative impact of either plan on Black voting power counsels against granting injunctive relief at this early stage when Plaintiffs have not made a strong showing on the merits. *See supra* Part I.

“An injunction is a drastic and extraordinary remedy, which should not be granted as a matter of course.” *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 165 (2010). Plaintiffs have not carried their burden of clearly showing that the mandatory relief they seek is warranted. Their Motion should therefore be denied.

CONCLUSION

WHEREFORE, for these reasons, the Court should deny Plaintiffs’ Motion for Preliminary Injunction.

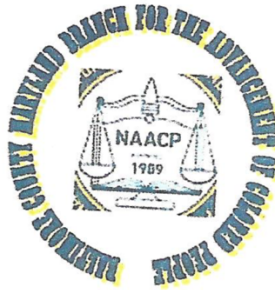
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January, 2022, a copy of the foregoing Opposition to Plaintiffs' Motion for Preliminary Injunction, accompanying Exhibits, and Proposed Order were served via the Court's CM/ECF system upon all counsel of record.

/s/ Melissa O. Martinez

Melissa O. Martinez

Exhibit 1



October 25, 2021

VIA ELECTRONIC MAIL

James R. Benjamin, Jr., Esq.
Glenn Marrow, Esq.
Baltimore County Office of Law
400 Washington Avenue
Towson, MD 21204

Chairman Julian Jones
Members of the Baltimore County Council
400 Washington Avenue
Towson, MD 21204

Dear Mr. Benjamin, Mr. Marrow, Chairman Jones, and Members of the Baltimore County Council:

On behalf of the Baltimore County NAACP and the ACLU of Maryland, we write to follow up on our recent communications with the Redistricting Commission and our telephone conversation last week with Mr. Benjamin and Mr. Marrow, through which we expressed our concerns about unlawful minority vote dilution inherent in the redistricting plan recommended to the Baltimore County Council by the Commission.

As you know, over the past decade Baltimore County has enjoyed tremendous demographic diversification in its population, with Black, Latinx, and Asian populations each growing significantly, enabling the County to boast a Black, Indigenous, People of Color (BIPOC) population now making up fully 47 percent of the County's overall population¹ – up from 25 percent in 2000, and 35 percent in 2010.² Such changes afford Baltimore County a rich diversity among residents with respect to race, ethnicity, culture, perspective, and experience, much more so than in the past.

¹ See U.S. Census Bureau, Baltimore County data, *available at* <https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html>

² See Baltimore County website, County Demographics, *available at* <https://www.baltimorecountymd.gov/departments/economicdev/meet-baltimore-county/stats-and-figures/county-demographics.html>

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These changes create an exciting opportunity for Baltimore County to use the once-a-decade redistricting process to expand engagement of voters and candidates of color in their democracy and representative government. As Montgomery County redistricting official Valerie Ervin noted recently in seizing this opportunity by creating a redistricting plan that reflects and celebrates that county's diversifying population:

This map tells the story of Montgomery County. ... Hopefully, an outgrowth of this map is that we'll see more people running for council seats who we haven't seen before. More Latino candidates, more Asian candidates, more Black candidates — that would be the best outcome of all.³

We ask Baltimore County officials to seek the same goal for your constituents.

This approach is not only most beneficial to the community, but it is required by law, because the County's demographic changes bring with them corresponding responsibilities under the federal Voting Rights Act. To comply with the Voting Rights Act, the County must ensure that its redistricting process and election system are racially fair, affording all voters – old and new, Black, Brown, and white – realistic opportunities to participate fully in the electoral process and to elect candidates of their choice. To achieve racial fairness and comply with the Voting Rights Act, the redistricting plan proposed for the County should – *to the greatest extent possible* – be one that reflects the overall diversity of the County and gives residents opportunities to elect their chosen candidates roughly proportionate to their numbers in the population.

Yet, Voting Rights Act requirements and principles went virtually unmentioned by the County's Redistricting Commission in its public deliberations and appear to have been given no consideration whatsoever in its recommended plan. Instead of discussing the obvious benefits gained through racial diversification of the County's population and government and how to capitalize on these gains through redistricting, Commission members decried drops in the County's white population in proportion to its Black population – offensively inquiring about where white people might be going, and where new Black residents are coming from.⁴ We are concerned that these sentiments have infected the redistricting process, further highlighting the need for the County Council to reassess the Commission's recommended plan and to affirmatively address its noncompliance with the Voting Rights Act.

³Tan, R., "Montgomery County draws up new district map that reflects surge in racial diversity," Washington Post, Oct. 21, 2021, available at <https://www.washingtonpost.com/dc-md-va/2021/10/21/montgomery-county-redistricting-election/>

⁴See, e.g., August 24, 2021, Redistricting Commission Meeting, video available at <http://baltimorecountymd.igm2.com/Citizens/Calendar.aspx?View=List>, starting at 24:50 minute mark (e.g., querying about the so-called "outflow of white citizens"; "Where did they go?"; "In my almost century of living here, I have never seen such an outflow of white citizens to other subdivisions."; "It doesn't surprise me that there's an outflow, but 70,000 people? Wow."; "Baltimore City lost a lot of African Americans. Did most of them come here?")

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Structure of Baltimore County Government

The seven-member Baltimore County Council is elected every four years from seven single-member districts, while the County Executive is elected at large. Until 2001, all seven Council districts were created to encompass majority-white populations, and as a result, in election after election, only white candidates were elected to County office from these districts, as is also true for the at-large County Executive position. The total exclusion of Black candidates from elective office reflected racially polarized voting and the continuing legacy of race discrimination in Maryland and the County and raised significant concern among Black residents. Such concerns deepened as the County's Black population grew and County government nevertheless remained all-white. Thus, in 2001, civil rights activists, including the NAACP and ACLU, urged the County Council during the decennial redistricting to craft a plan incorporating measures to ensure compliance with the racial fairness requirements of the Voting Rights Act. The Council ultimately agreed with our position, and to achieve this goal for the first time adopted a plan creating one district, designated District 4, with a majority-Black population.

In the election immediately following that plan's adoption, County voters made history by electing the first-ever Black representative to the Council from the majority-Black district. Consistently since that time, over five election cycles, District 4 voters have chosen a Black councilmember to represent them, demonstrating the success of this approach in allowing Black voters to elect their representatives of choice. Meanwhile, however, every one of the remaining majority-white districts has continued to elect only white representatives to the Council – again showing the persistence of racially polarized voting and the importance of districting in addressing resulting minority vote dilution.

History and Voting Rights Act Requirements

Baltimore County has a long and ugly history of race discrimination and exclusion, the legacy and continuing effects of which still manifest themselves today in County practices and policies affecting housing, policing, employment, and elections. Indeed, so egregious is the County's history of racism that in 1974 "[t]he U.S. Civil Rights Commission famously called the county a 'white noose' around the city it encases."⁵ This history includes maintenance of a nearly all-white government and unabashed resistance to housing integration throughout much of the 20th Century. It reached into the 21st century through the County's use of an election system that shut out Black candidates and voters until forced to alter the system under threat of legal action in 2001. Moreover, the effects of the County's history stretch to the present day, as shown by the need for federal intervention to enforce desegregative housing measures through administrative procedures and agreements currently in place; wrongful killing of Black residents by white police officers,

⁵ Shah, S., "Untying the White Noose of Baltimore County," Baltimore Sun, October 18, 2021, *available at* https://www.baltimoresun.com/opinion/op-ed/bs-ed-op-1018-white-noose-20211018_73daycqkyvak3mwkj6uf6hx6eq_story.html?fbclid=IwAR0OkayDsqax0MjqnesxEy3jJxp2zbJslR6LZzhxuH4AS_0VHWh76ARI3M

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leading to millions of dollars in damages awards; and a 2019 Justice Department lawsuit against the County police department for race discrimination against Black applicants, necessitating current monitoring under a consent decree. There is no denying that this history and its continuing legacy negatively impact opportunities for Black Baltimore Countians today, including opportunities in voting and elections. As such, officials conducting redistricting must take care to ensure compliance with the Voting Rights Act. Specifically, this means the County must make affirmative efforts to design its election system so that voters within a cohesive racial minority, like those in the white majority, are afforded an effective and realistic opportunity to elect officials of their choice, to an extent roughly proportional to their numbers in the population.

Section 2 of the Act prohibits the use of voting practices that are purposefully discriminatory, as well as those that "result" in discrimination. *Thornburg v. Gingles*, 478 U.S. 30, 35 (1986). According to the Act's legislative history and its interpretation by the Supreme Court, the key question in analyzing a vote dilution claim under Section 2 is whether, based on the totality of circumstances, the challenged plan provides voters in a racial minority with "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."⁶ 42 U.S.C. § 1973(b) (2006).

Regrettably, we believe the map recommended to the Council by the Redistricting Commission clearly violates the Voting Rights Act. If the County adopts that map, we will have no choice but to file suit for race discrimination in violation of the Act.

Census data from 2020 reflects that the racial makeup of Baltimore County's voting age population (VAP)⁷ is 55.2 percent white; 29.8 percent Black, 6.0 percent Latinx, and 7.0 percent Asian, with the remainder other or mixed race. *See Exhibits 1 et al.* But without conscious choices by

⁶ In *Gingles*, 478 U.S. at 50-1, the Supreme Court held that to establish a violation of the "results" standard of Section 2, plaintiffs must show: (1) the minority group is sufficiently large and geographically compact to constitute a majority in one or more single member districts; (2) the minority is politically cohesive, *i.e.*, tends to vote as a bloc; and, (3) the majority also votes as a bloc "usually to defeat the minority's preferred candidate." The other Senate factors "are supportive of, but not essential to, a minority voter's claim." *Id.* at 48 n.15. In *Johnson v. De Grandy*, 512 U.S. 997, 1018 (1994), the Court confirmed the *Gingles* analysis and held that the ultimate determination of a Section 2 violation is to "be assessed 'based on the totality of circumstances.'" The analysis under *Gingles* and *Johnson* has been adopted and consistently applied in the Fourth Circuit, the federal circuit in which Maryland lies. *E.g.*, *United States v. Charleston County*, 365 F.3d 341 (4th Cir. 2004).

⁷ It is well settled in the case law that voting age data – rather than general population data – should be used to assess racial fairness under the Voting Rights Act. *E.g.*, *City of Rome v. United States*, 446 U.S. 156, 186 n.22 (1980) (voting age population statistics are "probative because they indicate the electoral potential of the minority community"); *Ketchum v. Byrne*, 740 F.2d 1398, 1402 (7th Cir. 1984), *cert denied*, 471 U.S. 1135 (1985); *Romero v. City of Pomona*, 665 F.Supp. 853, 864 (C.D. Cal. 1987); *City of Port Arthur, Texas v. United States*, 517 F. Supp. 987, 1015-18 (D.D.C. 1981)(three-judge court). For this reason, our analysis and proposals utilize voting age data, rather than general population statistics, while the County's proposal erroneously relies exclusively on general population data. We have repeatedly asked you and other officials involved in the redistricting for the voting age data and shapefiles for the Commission's proposed map, but these requests have thus far met with no success. Accordingly, today we filed a formal Public Information Act request seeking this information.

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redistricting officials to alter district boundaries through the current process, white residents will retain a substantial voting-age majority over Black residents in *six of seven* Baltimore County councilmanic districts – *nearly 86 percent*, as shown in the chart below.⁸

District	County Plan VAP White (estimated)	County Plan VAP Black (estimated)
1	51.3%	26.9%
2	54.5%	32.0%
3	76.8%	8.5%
4	18.6%	69.8%
5	66.6%	18.1%
6	56.4%	29.0%
7	66.9%	18.0%

While creation of a single majority-Black district was arguably sufficient to achieve compliance with the Voting Rights Act in 2001, this is no longer true today, when the Black VAP has increased to nearly 30 percent, and the total BIPOC VAP is just shy of 45 percent. *Id.* The current system offers BIPOC voters a fair opportunity to elect candidates of their choice just 14.3 percent of the time – that is, exclusively in District 4 – far lower than is justified.

Given current demographics, continuation of a system with just one majority-Black district would mean unlawfully “packing” BIPOC voters into District 4 and/or “cracking” them among other districts so they remain in the minority, affording them “less opportunity than other members of the electorate, to participate in the political process and to elect representatives of their choice.”⁹

⁸ Due to the County’s continuing failure to make publicly available the data reflecting the voting age populations in its plan, local data scientist Fergal Mullally provided estimated numbers he calculated using the County’s proposed plan and precinct numbers available from the Census. Although these estimates are not as precise as what we would be able to calculate if the County provided the shapefiles to us, this is the best data available at this time. And if the County believes the estimates are not fully accurate, we welcome your effort to correct the record by providing the data to us as we have requested for the several weeks.

⁹ As the Supreme Court explained in *Voinovich*,

How such concentration or “packing” may dilute minority voting strength is not difficult to conceptualize. A minority group, for example, might have sufficient numbers to constitute a majority in three districts. So apportioned, the group inevitably will elect three candidates of its choice, assuming the group is sufficiently cohesive. But if the group is packed into two

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See, e.g., Voinovich v. Quilter, 507 U.S. 146 (1993); *Hall v. Virginia*, 385 F.3d 421, 429 n.12 (4th Cir. 2004). Where, as here, the BIPOC share of the County’s population justifies creation of multiple opportunity districts, and residential patterns within the community make it possible to create these districts, the Voting Rights Act *requires* it. The redistricting plan currently before the County Council fails to meet this requirement.

Accordingly, we make several alternative proposals¹⁰ that would meet Voting Rights Act requirements by significantly expanding opportunities for BIPOC voters, commensurate with their increasing share of the County population.

Alternative NAACP-ACLU Proposals

We have made clear from the outset of our advocacy that there are multiple ways to create a redistricting plan that complies with the Voting Rights Act. County officials can and should consider as many options as are available to achieve the aims of racial fairness. Initially, we proposed one option, but because some officials have become overly fixated on that one option and how to critique it, we have now created four separate alternatives that we submit for your consideration. *This is not intended to suggest that the County must accept one of these options.* Rather, these proposals are submitted to illustrate that a redistricting plan for Baltimore County that complies with the Voting Rights Act *can be* created, by showing four different examples of how it might be done. While we do not mean to dictate what specific plan the County should adopt, we do mean to show it is easily possible to craft a racially fair plan achieving Voting Rights Act compliance, while still adhering to traditional redistricting principles and satisfying all other legal and political requirements. This is of critical importance for legal purposes. All of the districts in our proposed plans are contiguous, and population totals are properly apportioned among the seven districts. And, most important legally, each of our alternative plans creates two opportunity districts affording Black voters a solid opportunity to elect representatives of their choice, with some also providing a third “swing” or “influence” district affording both white and BIPOC voters a realistic chance to elect their chosen candidates. We believe this is legally required and also note that community polling at recent Town Hall meetings shows that residents in attendance *strongly* support addition of at least one more majority Black district among the seven.

The NAACP/ACLU plans are detailed in Exhibits 1-4 and include for each option maps and charts showing the plan’s demographics and comparing the proposal to the Commission’s recommended

districts in which it constitutes a super-majority, it will be assured only two candidates. As a result, we have recognized that “[d]ilution of racial minority group voting strength may be caused” either “by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority.”

507 U.S. at 153-54, *quoting Gingles*, 478 U.S., at 46, n. 11.

¹⁰In conducting this analysis and creating our proposals, we worked with demographer William S. Cooper, who has more than three decades of experience doing this work, lending enormous expertise to our efforts.

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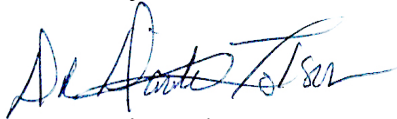
plan. Under Proposal 1, which is the plan we submitted to Redistricting Commission initially, Districts 1 and 4 would each include a majority of Black voting age population and District 6 would be almost evenly divided between white and BIPOC populations. Proposals 2, 3, and 4 provide majority-Black opportunity districts located in Districts 2 and 4.

Each of our four illustrative plans affirmatively addresses concerns about minority vote dilution and racial polarization and would provide all voters and candidates in the County opportunities to participate in the election process and elect representatives of their choice, commensurate with their numbers in the population. Furthermore, each of these proposed plans is clearly superior to the Redistricting Commission's recommended plan, which would offer Black voters only one of seven opportunity districts, unlawfully diluting the Black vote by packing an excessively high Black population into District 4 and splitting remaining Black population in the area between Districts 1 and 2 such that white voting age populations in six of the seven districts dwarf Black voting age populations.

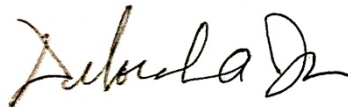
For these reasons, we strongly urge you to reject the Commission's recommended redistricting plan and to create a new, racially fair plan in compliance with the Voting Rights Act. If you would like to discuss this matter further, please contact us, and we will be happy to arrange to do so.

Thank you for your attention to this matter.

Sincerely,



Dr. Danita Tolson
President, Baltimore County NAACP
danitolson@aol.com



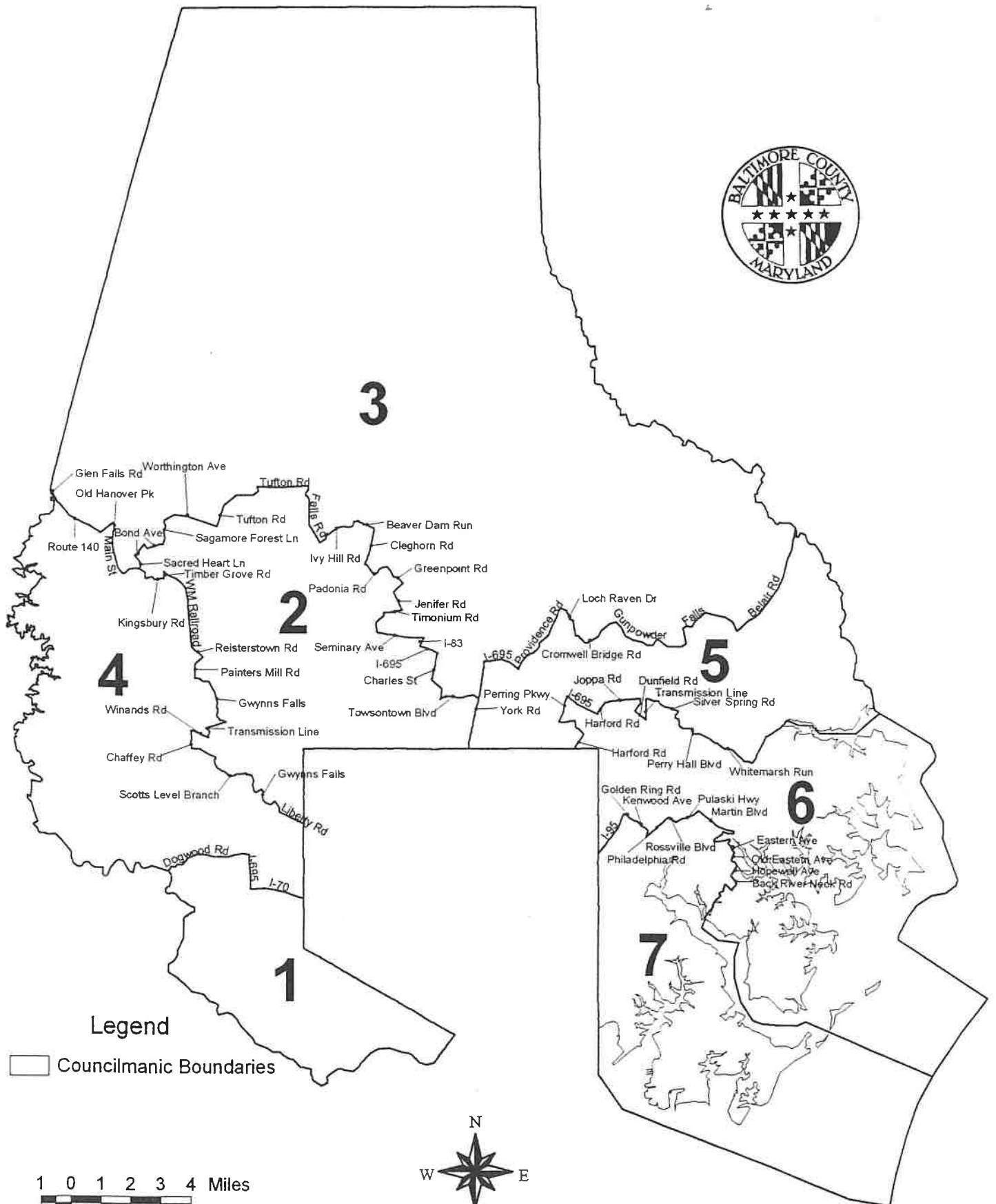
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Exhibit 2

Baltimore County: Councilmanic Districts 2002



Data Source:
U.S. Bureau of the Census
2000 TIGER Line Data (1:100000)

Baltimore County 2002 Population by Councilmanic District

Total Population by Race by Councilmanic District

DISTRICT	Population	Target	Deviation	White	Black	Hispanic	Native American	Asian	Pacific Islander	Other Race
1	106674	107756	-1.00%	73903	24398	2317	282	5114	42	951
2	103622	107756	-3.84%	78302	19928	1748	126	3568	13	573
3	111655	107756	3.62%	100352	4565	1794	154	4862	19	482
4	108828	107756	0.99%	39013	63763	2577	265	2611	42	953
5	107004	107756	-0.70%	88938	11509	1730	176	4533	36	454
6	111234	107756	3.23%	86435	19590	2108	390	2294	36	817
7	105275	107756	-2.30%	94189	7847	1500	530	965	54	455
Total	754292	754292		561132	151600	13774	1923	23947	242	4685

Percent Population by Race by Councilmanic District

DISTRICT	Population	Target	Deviation	%White	%Black	%Hispanic	%Native American	%Asian	%Pacific Islander	%Other Race
1	106674	107756	-1.00%	69.28%	22.87%	2.17%	0.26%	4.79%	0.04%	0.89%
2	103622	107756	-3.84%	75.57%	19.23%	1.69%	0.12%	3.44%	0.01%	0.55%
3	111655	107756	3.62%	89.88%	4.09%	1.61%	0.14%	4.35%	0.02%	0.43%
4	108828	107756	0.99%	35.85%	58.59%	2.37%	0.24%	2.40%	0.04%	0.88%
5	107004	107756	-0.70%	83.12%	10.76%	1.62%	0.16%	4.24%	0.03%	0.42%
6	111234	107756	3.23%	77.71%	17.61%	1.90%	0.35%	2.06%	0.03%	0.73%
7	105275	107756	-2.30%	89.47%	7.45%	1.42%	0.50%	0.92%	0.05%	0.43%
Total	754292	754292		74.39%	20.10%	1.83%	0.25%	3.17%	0.03%	0.62%

Data Set: Census 2000 Redistricting Data (Public Law 94-171) Summary File

EXHIBIT 3

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2021, Legislative Day No. 20

Bill No. 103-21

All Councilmembers

By the County Council, November 15, 2021

A BILL
ENTITLED

AN ACT concerning

Revision of Councilmanic Districts

FOR the purpose of revising and reconstituting the councilmanic districts of Baltimore County in accordance with the latest census figures published as a result of the U.S. Census of 2020, as required by Section 207 of the Baltimore County Charter.

WHEREAS, Section 207 of the Baltimore County Charter empowers and directs the County Council to revise the councilmanic districts along population lines as determined by the decennial census of the United States; and

WHEREAS, the population results of the 2020 U.S. Census indicate the need for revising the current councilmanic district lines; now, therefore

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND that, in accordance with Section 207 of the Baltimore County Charter, the councilmanic districts of Baltimore County be and are hereby revised and reconstituted to read as follows:

Baltimore County is divided into seven councilmanic districts composed of the following election districts or parts of districts as the districts presently exist:

Council District	Present Election District or Parts Thereof
-------------------------	---

- | | |
|------|---|
| I. | The entire 1 st Election District; and the entire 13 th Election District. |
| II. | Precincts 7, 8, 23, and 25 of the 2 nd Election District; Precincts 2 through 14, all inclusive, of the 3 rd Election District; Precincts 2 through 6, all inclusive, and Precincts 8, 10, 13, and 14 of the 4 th Election District; Precinct 8, Precincts 16 through 18, all inclusive <u>17 and 18</u> , and Precincts 21, 23, and 28 of the 8 th Election District; and Precincts 1 and 2 of the 9 th Election District. |
| III. | Precincts 9 and 11 of the 4 th Election District; the entire 5 th , 6 th , and 7 th Election Districts; Precincts 1 through 7, all inclusive, Precincts 9 through 15 <u>16</u> , all inclusive, Precincts 19, 20, 22, and Precincts 24 through 27, all inclusive, of the 8 th Election District; Precincts 7 through 9, all inclusive, Precincts 23 through 25, all inclusive <u>Census Blocks 240054917011007, 240054917011008, and 240054917011009 of Precinct 23, Precinct 24, Census Blocks 240054922002000, 240054922002001, 240054922002002, 240054922002006, 240054922003000, 240054922003001, 240054922003002, 240054922003003, 240054926003003,</u> |

1 240054926003005, and 240054926003007 of Precinct 25, Census Blocks
2 240054917012002, 240054917012003, 240054917012004, 240054917012005,
3 240054917012006, 240054917012007, ~~240054917012008~~, 240054917013000,
4 240054917013001, 240054917013002, 240054917013003, 240054917013004,
5 240054917013005, ~~240054919002003~~, 20054919002004, and 240054919002005
6 of Precinct 26, and Precinct 27 of the 9th Election District; the entire 10th Election
7 District; and Precincts 1, 2, 23, and 26 of the 11th Election District.

8 IV. Precincts 1 through 6, all inclusive, Precincts 9 through 22, all inclusive, Precinct
9 24, and Precincts 26 through 31, all inclusive, of the 2nd Election District; Precinct
10 1 of the 3rd Election District; and Precincts 1, 7, 12, and 15 of the 4th Election
11 District.

12 V. Census Blocks 240054917011002, 240054917011005, 240054917011006,
13 240054919001003, 240054919001004, 240054919001005, 240054919001006,
14 240054919001007, 240054919001010, 240054919001013, 240054919001014,
15 240054919001015, 240054919002002, 240054919002006, 240054919002007,
16 240054919002008, 240054919002009, 240054919002010, 240054919002011,
17 240054919002012, 240054919002013, 240054919002014, 240054919002015,
18 240054919002016, and 240054919002017 of Precinct 23, Census Blocks
19 240054917011000, 240054917011001, 240054917011003, 240054917011004,
20 240054917011010, 240054917012000, 240054919001000, 240054919001001,
21 240054919001002, 240054919001008, 240054919001009, 240054919001011,
22 240054919001012, 240054919002000, 240054919002001, 240054922002003,
23 240054922002004, 240054922002005, 240054922002007, 240054922002008,

240054922002009, 240054922002010, 240054922002011, 240054922002012,
240054922002013, and 240054926003006 of Precinct 25, and Census Blocks
240054917012008 and 240054919002003 of Precinct 26 of the 9th Election
District; Precincts 3 through 22, all inclusive, and Precincts 24, 25, and 27 of the
 11th Election District; Precincts 3 and 4 of the 14th Election District; and Precinct
 3, Census Blocks 240054514011000, 240054514011001, 240054514011002,
 240054514011003, 240054514011004, 240054514011005, 240054514011006,
 240054514011007, 240054514011008, 240054514012000, 240054514012001,
 240054514012002, 240054514012003, 240054514012004, 240054514012013,
 and 240054514012015 of Precinct 4, Precincts 5 through 9, all inclusive, Census
 Block 240054512002032 of Precinct 11, and Precincts 25 and 26 of the 15th
 Election District.

VI. Precincts 3 through 6, all inclusive, Precincts 10 through 22, all inclusive, Census
 Blocks 240054916001000, 240054916001001, 240054916001002,
 240054916001003, 240054916001004, 240054916001006, and
 240054916001007 of Precinct 26, and Precincts 28 and 29 of the 9th Election
 District; Precincts 1 and 2, and Precincts 5 through through 14, all inclusive, of
 the 14th Election District; and Census Blocks 240054512001000,
 240054512001001, 240054512001002, 240054512001004, 240054512001005,
 240054512001006, 240054512001007, 240054512001008, 240054512001009,
 240054512001010, 240054512001011, 240054512001016, 240054512001018,
 240054512001019, 240054512001020, 240054512001021, 240054512001026,
 240054512001032, 240054512002003, 240054513001000, 240054513001001,

240054513001002, 240054513001003, 240054513001004, 240054513001005,
240054513001006, 240054513001007, 240054513001008, 240054513001009,
240054513001010, 240054513001011, 240054513001012, 240054513001013,
240054513001014, 240054513001015, 240054513001016, 240054513001017,
240054513001018, 240054513001019, 240054513001020, 240054513001021,
240054513002000, and 240054513002001 of Precinct 4 of the 15th Election
District.

VII. The entire 12th Election District; and Precincts 1, 2, and 10, Census Blocks
240054503001001, 240054503001002, 240054503001003, 240054503001004,
240054503001005, 240054503001006, 240054508002000, 240054508003004,
240054508003005, 240054508003006, 240054508003007, 240054508003009,
240054508003010, 240054508003011, 240054508003012, 240054508003013,
240054508003014, 240054508003015, 240054508003016, 240054508003017,
240054508003018, 240054508003019, 240054508003020, 240054508003021,
240054923001000, 240054923001001, 240054923001002, 240054923001003,
240054923001004, 240054923001005, 240054923001006, 240054923001007,
240054923001008, 240054923001009, 240054923001010, 240054923001011,
240054923001012, 240054923001013, 240054923001014, 240054923001015,
240054923002000, 240054923002001, 240054923002002, 240054923002003,
240054923002004, 240054923002005, 240054923002006, 240054923002007,
240054923002008, 240054923002009, 240054923002010, 240054923002011,
240054923002012, 240054923002013, 240054923002014, 240054923002015,
240054923002016, 240054923002017, 240054923002018, 240054923002019,

1 240054923002020, 240054923003005, 240054923003006, 240054923003007,
2 240054923003008, 240054923003009, 240054923003010, and
3 240054923003015 of Precinct 11, and Precincts 12 through 24, all inclusive, of
4 the 15th Election District.
5

6 SECTION 2. AND BE IT FURTHER ENACTED, that a geographic representation of
7 the seven revised councilmanic districts is set forth in the 2022 Proposed Councilmanic District
8 Map attached as Exhibit A dated 12/20/2021, and the corresponding Population and
9 Demographic Summary is attached as Exhibit B dated 12/20/2021.
10

11 SECTION 3. AND BE IT FURTHER ENACTED, that this Act, having been passed by
12 the affirmative vote of five members of the County Council, shall take effect 45 days after its
13 enactment, and the councilmanic boundaries established herein shall become effective for the
14 next regularly scheduled election of the County Council in 2022.

Exhibit A

Proposed 2022 Baltimore County Councilmanic Redistricting Map

Case 1:21-cv-03232-LKG Document 34-3 Filed 01/31/22 Page 9 of 11

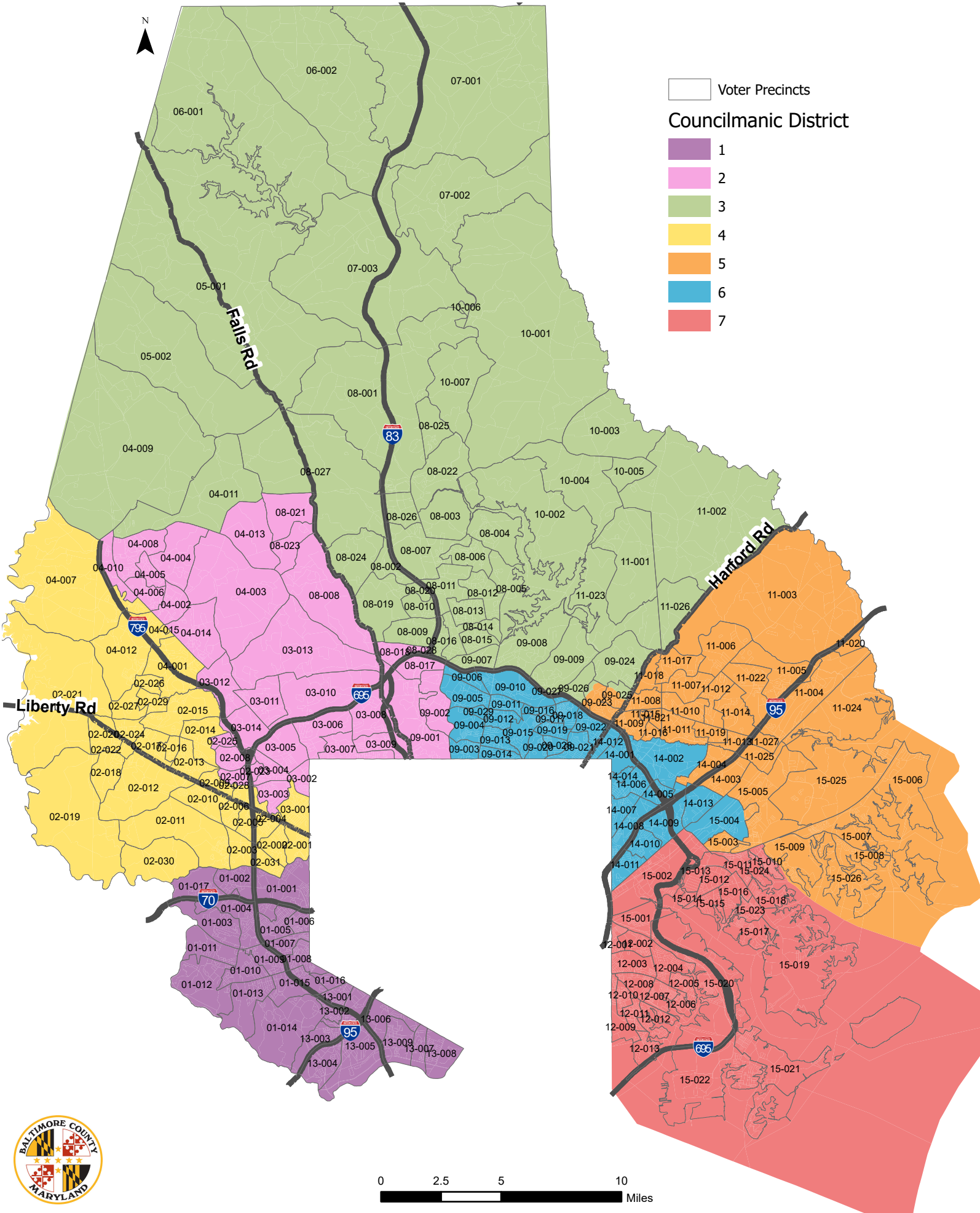


Exhibit B

BILL 103-21 - REVISION OF COUNCILMANIC DISTRICTS**Total Population Summary**

Council District	Total Population	Ideal District Population	Population Deviation from Ideal	Percent Deviation from Ideal	White	Black or African American	Hispanic or Latino	Asian	Two or More Races	Other Race	Am. Indian & Alaska Native	Native Hawaiian & Other Pac. Islander
1	122,391	122,382	9	0.01%	56,509	34,674	10,615	14,051	5,532	752	227	31
2	116,914	122,382	-5,468	-4.47%	61,447	35,344	9,069	6,022	4,135	718	152	27
3	120,376	122,382	-2,006	-1.64%	90,229	9,221	6,779	8,956	4,484	501	156	50
4	119,487	122,382	-2,895	-2.37%	17,122	86,734	6,266	4,461	3,962	725	187	30
5	121,767	122,382	-615	-0.50%	74,923	23,959	6,110	10,772	5,244	489	232	38
6	128,310	122,382	5,928	4.84%	65,970	39,361	8,728	7,968	5,331	651	261	40
7	127,428	122,382	5,046	4.12%	77,695	24,844	13,967	2,481	7,012	652	741	36
Total	856,673				443,895	254,137	61,534	54,711	35,700	4,488	1,956	252

		Council District	White	Black or African American	Hispanic or Latino	Asian	Two or More Races	Other Race	Am. Indian & Alaska Native	Native Hawaiian & Other Pac. Islander
Ideal Population	122,382	1	46.17%	28.33%	11.48%	8.67%	4.52%	0.61%	0.19%	0.03%
Max Deviation (±5%)	6,120	2	52.56%	30.23%	5.15%	7.76%	3.54%	0.61%	0.13%	0.02%
Max Deviation Range	116,263 to 128,501	3	74.96%	7.66%	7.44%	5.63%	3.72%	0.42%	0.13%	0.04%
		4	14.33%	72.59%	3.73%	5.24%	3.32%	0.61%	0.16%	0.03%
		5	61.53%	19.68%	8.85%	5.02%	4.31%	0.40%	0.19%	0.03%
		6	51.41%	30.68%	6.21%	6.80%	4.15%	0.51%	0.20%	0.03%
		7	60.97%	19.50%	1.95%	10.96%	5.50%	0.51%	0.58%	0.03%
		Total	51.82%	29.67%	7.18%	6.39%	4.17%	0.52%	0.23%	0.03%

Voting Age Population Summary

Council District	Total Population	Ideal District Population	Population Deviation from Ideal	Percent Deviation from Ideal	White	Black or African American	Hispanic or Latino	Asian	Two or More Races	Other Race	Am. Indian & Alaska Native	Native Hawaiian & Other Pac. Islander
1	95,736	95,950	-214	-0.22%	47,307	26,841	6,959	10,535	3,412	483	170	29
2	90,776	95,950	-5,174	-5.39%	50,105	26,851	5,926	4,737	2,551	464	121	21
3	94,938	95,950	-1,012	-1.05%	73,760	6,773	4,417	6,856	2,629	339	118	46
4	93,906	95,950	-2,044	-2.13%	15,260	67,365	4,268	3,575	2,764	507	145	22
5	95,190	95,950	-760	-0.79%	62,808	16,664	3,899	8,167	3,097	331	193	31
6	103,001	95,950	7,051	7.35%	56,250	30,126	6,125	6,456	3,359	440	220	25
7	98,098	95,950	2,148	2.24%	64,708	17,605	8,637	1,920	4,177	409	613	29
Total	671,645				370,198	192,225	40,231	42,246	21,989	2,973	1,580	203

		Council District	White	Black or African American	Hispanic or Latino	Asian	Two or More Races	Other Race	Am. Indian & Alaska Native	Native Hawaiian & Other Pac. Islander
Ideal VA Population	95,950	1	49.41%	28.04%	11.00%	7.27%	3.56%	0.50%	0.18%	0.03%
Max Deviation (±5%)	4,798	2	55.20%	29.58%	5.22%	6.53%	2.81%	0.51%	0.13%	0.02%
Max Deviation Range	91,192 to 100,748	3	77.69%	7.13%	7.22%	4.65%	2.77%	0.36%	0.12%	0.05%
		4	16.25%	71.74%	3.81%	4.54%	2.94%	0.54%	0.15%	0.02%
		5	65.98%	17.51%	8.58%	4.10%	3.25%	0.35%	0.20%	0.03%
		6	54.61%	29.25%	6.27%	5.95%	3.26%	0.43%	0.21%	0.02%
		7	65.96%	17.95%	1.96%	8.80%	4.26%	0.42%	0.62%	0.03%
		Total	55.12%	28.62%	5.99%	6.29%	3.27%	0.44%	0.24%	0.03%

EXHIBIT 4



Pikesville-Greenspring Community Coalition, Inc.

Mical Wilmoth Carton, Secretary
3004 Old Court Road, Pikesville, MD 21208
410 486-6420 Phone / PGCCInc@aol.com
<http://pgccinc.org>

October 25, 2021

To all Baltimore County Council Members:

The Honorable Tom Quirk, District 1
The Honorable Izzy Patoka, District 2
The Honorable Wade Kach, District 3
The Honorable Julian Jones, Jr., District 4
The Honorable David Marks, District 5
The Honorable Cathy Begins, District 6
The Honorable Todd Crandell, District 7

Re: Baltimore County Redistricting

Dear Council Members:

This letter is being written on behalf of the Pikesville-Greenspring Community Coalition, Inc., (PGCC) an oversight group representing 15 Neighborhood and Home Owner Associations located within Baltimore County's Second District.

We understand that a number of possible redistricting configurations have been presented to the Baltimore County Council as part of the current redistricting process for Baltimore County, and at least one of these configurations recommends moving our member, the Colonial Village neighborhood, from District 2 to District 1. PGCC strongly recommends against this. Among other reasons, PGCC can only have members from within District 2 by our Charter and ByLaws.

That said, we do support the suggestions for District 2 which maintain this area of Pikesville without changes as presented by the Baltimore County Redistricting Commission. While we understand the reasoning behind the ACLU and NAACP recommendations, we do not support dividing Pikesville in order to achieve these goals.

As the newest PGCC member, the neighborhood of Colonial Village has long been considered a part of the Pikesville community. It is the southernmost entrance to Pikesville along Reisterstown Road, and the entrance to our most prominent Reisterstown Road commercial district; and its interests align most closely with those of many of our other residential communities.

We urge you to help us maintain the Pikesville area as a coherent and cohesive community, and to reject any requests that the Colonial Village residential community be removed from Baltimore County District 2.

Sincerely,

Mical Wilmoth Carton, Secretary

EXHIBIT 5



Greater Arbutus Business Association

December 15, 2021

The Honorable Julian Jones
Honorable Baltimore County Council Members
400 Washington Avenue
Towson, MD 21204

Dear Council President and Members,

The Southwest corner of Baltimore County has long suffered an invisible separation of communities. Over the past several years, strong connections and relationship have formed to create a more cohesive Southwest Baltimore County. Through collaborations of the Arbutus Community Association, Catonsville Chamber of Commerce, GABA, Baltimore County Arts Guild, Southwest Visions Foundation, UMBC, Halethorpe Community Association, Halethorpe Civic League, Patapsco Greenway Heritage, and Wilkens Police & Community Relations Organization SW Baltimore County has become unified large community. We recognized the benefit of creating a larger team to benefit our corner of the County.

The proposed split of our district will erase and negate all our team and community building. Catonsville and Arbutus have found a lot of opportunities to connect, promote and grow SW Baltimore County. UMBC and the Baltimore County Arts Guild have been great connectors and facilitators of this growth, connection, and regional prosperity. We still have plenty of work to do, together! Please do not separate our communities! Southwest Baltimore County needs to remain together!

The proposal may have its political benefits for some. I wanted the Council and others to recognize and understand all the work that has been done to unify our corner of the County. Our biggest collaboration has been the recent designation of Arbutus as a Sustainable Community. Catonsville is also a Sustainable Community. Having 2 Sustainable Communities side by side provides unique and far-reaching opportunities. Please don't destroy this.

In closing, I cannot stress how important the above information is for everyone to know when considering to split Southwest Baltimore County.

Thank you for your time and consideration,

Sincere Regards,

Bettina M Tebo, Executive Director

EXHIBIT 6

Paula W. Wolf
5524 Selma Avenue
Halethorpe, MD 21227

December 14, 2021

The Honorable Julian Jones
Honorable Baltimore County Council Members
400 Washington Avenue
Towson, MD 21204

Dear Council President and Members:

I write to support the proposed redistricting map as set out in Council Bill #103-21. The map maintains the southwestern portion of Baltimore County in a single district. I believe that this is important for a variety of reasons.

Splitting the first district is about more than political representation. It is about the ability to work toward common goals and receiving adequate resources to do so. If the district is split as some have proposed, longitudinally, it will put the southern-most part of the County in the same district as the Liberty Road area. Not only is this not "geographically compact" it does little to ensure mutuality of interests at the very local level.

Arbutus, Lansdowne and Catonsville have slowly and painstakingly developed supportive relationships over the years. Splitting the western portion from the eastern portion of the district will reopen arbitrary lines that help no one.

All communities compete for resources. They compete for assets. Pitting side-by-side communities against each other is unhelpful. Arbutus was recently named a sustainable community. This is an effort that is the culmination of many years of work in community building. The map proposed by the NAACP-ACLU will split the area much as was done by Interstate-95 many years ago.

Furthermore, a considerable number of residents in the area are renters. Many either cannot, or choose not, to participate in the election process. Some are students, who continue to vote at their primary residence. Others are simply not invested in the process for a variety of reasons. To assume that based on the demographics alone the outcome of changing the map will result in a second person of color being elected ignores this issue.

The 12th legislative district, which also overlaps the existing 1st district in the Arbutus area, has a diverse make-up so it is clear that minority candidates can succeed in this area. It is equally possible that splitting the district may result in less diversity because of the factors previously stated.

I understand that this is a difficult, and as with everything political these days, highly fraught decision. Thank you for taking my opinion into consideration.

Sincerely,

Paula W. Wolf

EXHIBIT 7

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

BALTIMORE COUNTY BRANCH OF THE NATIONAL
ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, *et al.*,

Plaintiffs,

v.

BALTIMORE COUNTY, MARYLAND,
et al.,

Defendants.

Civil Action No. 1:21-cv-03232-LKG

DECLARATION OF JAMES GIMPEL, Ph.D.

1. I am a Professor of Political Science in the Department of Government at the University of Maryland, College Park. I received a Ph.D. in political science at the University of Chicago in 1990. My areas of specialization include political behavior, political geography, geographic information systems (GIS), state politics, population mobility and immigration. Publications include papers in well-regarded peer-reviewed political science journals (*AJPS*, *APSR*, *JoP*, *QJPS*), journals in other social science fields, as well as several books relating to the same topics. I was retained at the rate of \$400 per hour plus costs. My opinions expressed in this matter are in no way contingent on the payment of any monies owed to me for my services. My opinions in this report are given within a reasonable degree of professional certainty, and any monies owed to me are in no way contingent on the outcome of this case.

Focus of Report

2. On January 27, 2022, I was asked by the defendants in this case to respond to Plaintiffs' experts on Baltimore County's proposed councilmanic redistricting plan, Bill 103-21, passed by the Baltimore County Council on December 20, 2021 (the "Plan" or "Baltimore County's Plan"). I begin by reviewing the values and redistricting criteria commonly used by local legislatures to draw legislative

districts. These criteria are often in conflict with each other, creating challenges for any would-be mapmaker. There is no perfect map that optimizes the value of all the measures now incorporated into the redistricting process. Those charged with the task of drawing, then approving, district boundaries inevitably weigh some priorities more heavily than others, some criteria must take precedence, and a broad range of maps are legally acceptable. Technical experts in redistricting disputes can produce numerous plans to consider, but nothing about their expertise leads inexorably to the conclusion that one plan is best. Fortunately, redistricting authorities in states and localities don't have to advance the perfect plan, only one that meets legal requirements. A broad range of reasonable plans will meet these requirements, including the Council's plan presently proposed for adoption.

Redistricting Criteria in Conflict

3. Perfection in redistricting plans is elusive because conflicting criteria are involved in map drawing and the balance of conflicting values creates trade-offs. Among the traditional and widely applied redistricting criteria are the following:

- 1) Contiguity
- 2) Equal population across districts
- 3) Compactness of shape
- 4) Consistency with past districts
- 5) Districts should not split county and municipal boundaries
- 6) Some districts should be drawn to ensure descriptive representation of minorities
- 7) Districts should be composed of persons with a community of interest
- 8) Districts should be politically balanced between the political parties
- 9) Districts should protect incumbents

4. Extended discussions of the regularity of specific types of conflicts can be found elsewhere (Lowenstein and Steinberg 1985; Butler and Cain 1992; Niemi and Deegan 1978). Most

obviously, the demand for equality of population may determine the shape and compactness of districts. Sparsely settled populations may require enclosure by elongated or string-like shapes. Attempting to preserve communities of interest will commonly make it difficult to achieve an even balance of partisans (Gimpel and Harbridge-Yong 2020). Ensuring descriptive representation of minority voters in one or more districts will also make it more difficult to achieve partisan balance in nearby districts (Brace, Grofman and Handley 1987). The underlying residential patterns in Baltimore County, the state of Maryland, and many other states, also make it very difficult to strike a perfect balance. The upshot of residential settlement is that some criteria will have to be relaxed as others are enforced. In this give-and-take, mapmakers cannot have everything, which is why extended quarrels over the qualities of the perfect map seem to ignore the complexity of the judgments involved.

5. As for the principles guiding redistricting practice in Baltimore County, the County Charter puts the following criteria in place for the drawing of Councilmanic districts:

- 1) Compact
- 2) Contiguous
- 3) Substantially equal in population
- 4) Giving due regard to natural, geographic and community boundaries
- 5) Compliance with federal requirements, chiefly the Voting Rights Act

6. The Council is also given the flexibility to consider other factors, recognizing that the process is political, and that county legislators may have a wide range of legitimate objectives in designing a redistricting plan. Whatever other considerations the Council considers, the explicitly listed Charter criteria are to be preeminent. The non-Charter criteria cannot override the Charter ones (Baltimore County Redistricting Manual 2021, 3). Remarkably, the Redistricting Manual even goes so far as to emphasize this latter point by providing an example, first underlining the often-political nature of the process, then adding:

In other words, if in the exercise of discretion, political considerations result in a redistricting plan in which councilmanic districts are non-contiguous, are not compact, are of substantially unequal population, etc., that plan will fail. The Charter trumps political considerations. Politics or non-Charter considerations never trump Charter requirements. (Baltimore County Redistricting Manual 2021, 3-4)

7. Mindful of these guidelines, in the following pages I evaluate the proposed Baltimore County redistricting plan, setting its characteristics alongside criticisms leveled by the plaintiffs and others, and alongside other proposals. My conclusion is that the proposed plan meets the requirements of the law, while achieving other desirable and reasonable Council goals. Although it is not the only reasonable plan that could have been enacted, and the Council considered a range of options, there is nothing about it that is objectionable either from the perspective of traditional redistricting practices, or by the standards of state and federal law.

Compactness

8. Baltimore County's Plan is, by simple inspection, compliant with traditional compactness or contiguity standards. This is a nontrivial achievement. The state is unusually shaped, with the Chesapeake Bay jutting up through the middle of it. Northern reaches of the Bay form the southeastern boundary of the County (Districts 7, District 5). There are islands offshore, but they have long been included as parts of districts centered in the main body of the county and do not violate contiguity standards. Measures of compactness show the proposed Baltimore County districts to be more compact than those that were part of legal plans of districting in the last several decades. Table 1 offers summary figures that compare the present plans with past plans, and also the plaintiffs' proposed Maps 1 and 5. Notably, even geographically contorted shapes such as District 7, abutting the Bay coastline, is more compact in the currently proposed plan than it is either in past plans or in the plaintiffs' Maps 1 and 5 proposals. Two districts where the proposed plan makes significant improvements in compactness over the approved 2010 plan include Districts 6 (Towson area) and District 3 (Northern

Rural). In fact, Plaintiffs' expert, Mr. William Cooper concedes that Baltimore County's Plan scores higher on the compactness tests than the NAACP's proposed plans 1 and 5 (Cooper Report, ¶¶ 61-62).

9. Past district lines play an important role in redistricting efforts. Every map maker starts with the prior districts in place. The presumption is that those lines were set down for good reasons and met legal standards for the conduct of elections. New districts should move people as little as possible from the prior district formulations to promote continuity. The County's proposed redistricting plan attempts to largely maintain Districts 1, 2, and 4 that were in effect during the 2014 and 2018 councilmanic elections (See Figure 1 below). As explained below, the NAACP, when drawing its proposed maps, appears to have given little consideration to previous district lines.

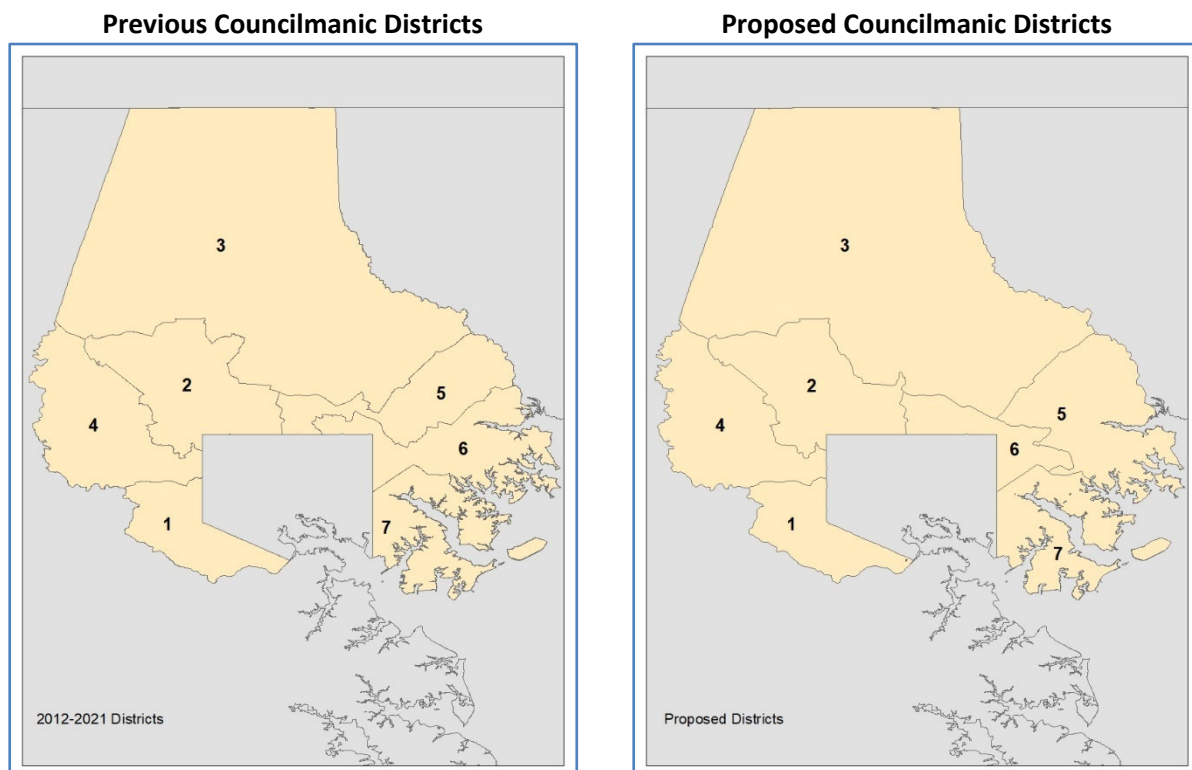


Figure 1. Comparison of Districts Under Baltimore County's Previous Council Districts and the New Proposed Council Districts.

10. In contrast to the County's Plan, the NAACP's proposed plans 1 and 5 look geographically irregular (Figures 2-3). The NAACP's proposed plan 1 (Figure 2) removes District 4's

boundary with Baltimore City. Instead of having District 4 cover the entire southwestern portion of Baltimore County, under the NAACP's proposed plan 1, District 1 would wrap around the western and southern portions of Baltimore City with District 4 engulfing District 1. In addition, the NAACP's proposed plan 1 splits the largely-African American Liberty Road Corridor, which has historically remained intact in District 4, into three separate districts: Districts 1, 3, and 4.

Baltimore County's Plan

NAACP Proposed Plan 1

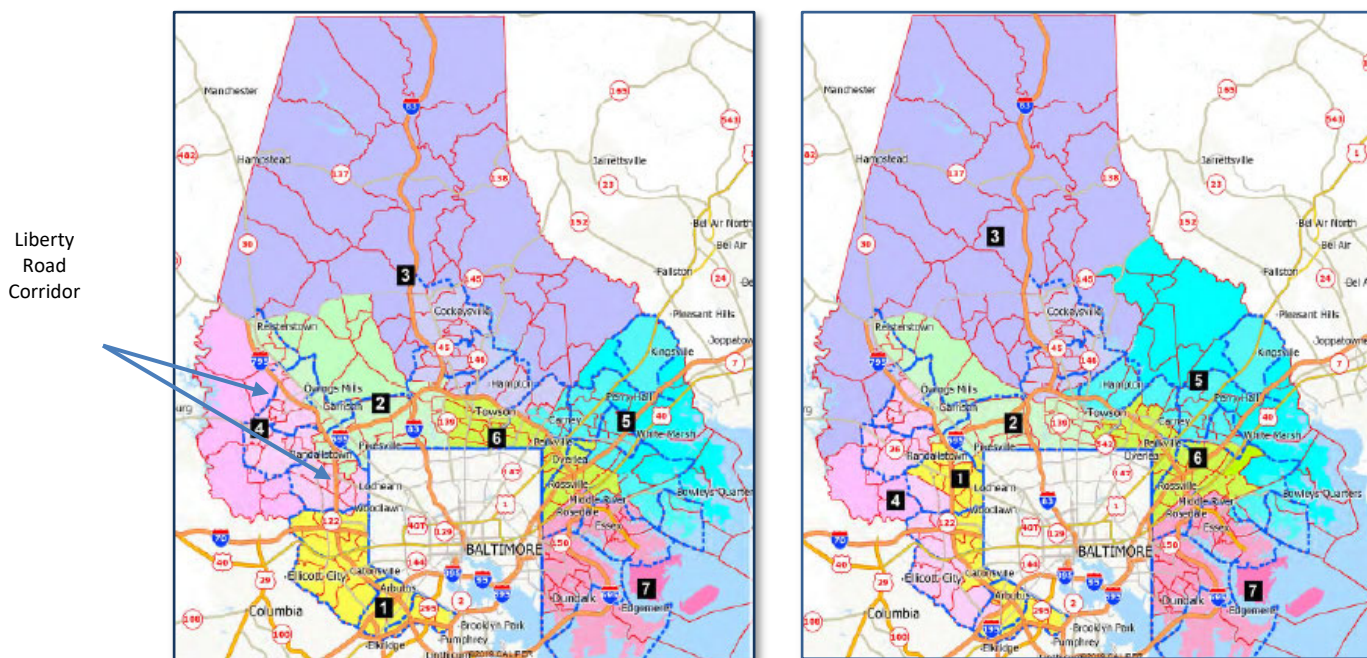


Figure 2. Comparison of Districts under Baltimore County's Plan and the NAACP's Proposed Plan 1.

11. Similarly, the NAACP's proposed plan 5 removes District 4's boundary with Baltimore City (See Figure 3). The NAACP's proposed plan 5 would have District 2 cover the northwest portion abutting Baltimore City, as well as a large western portion of the County abutting Baltimore City, in a reverse C-shape. The NAACP's proposed plan 5 would also have District 1 extend to the west of what is currently part of District 4. Any lay person could look at the NAACP's proposed plan 5 and determine that the western councilmanic districts look gerrymandered, with the purpose of having Districts 1 and 2

reaching out in different directions to encircle minority communities. Liberty Road, which has historically remained intact in District 4, would be split between Districts 2 and 4 (see Figure 3).

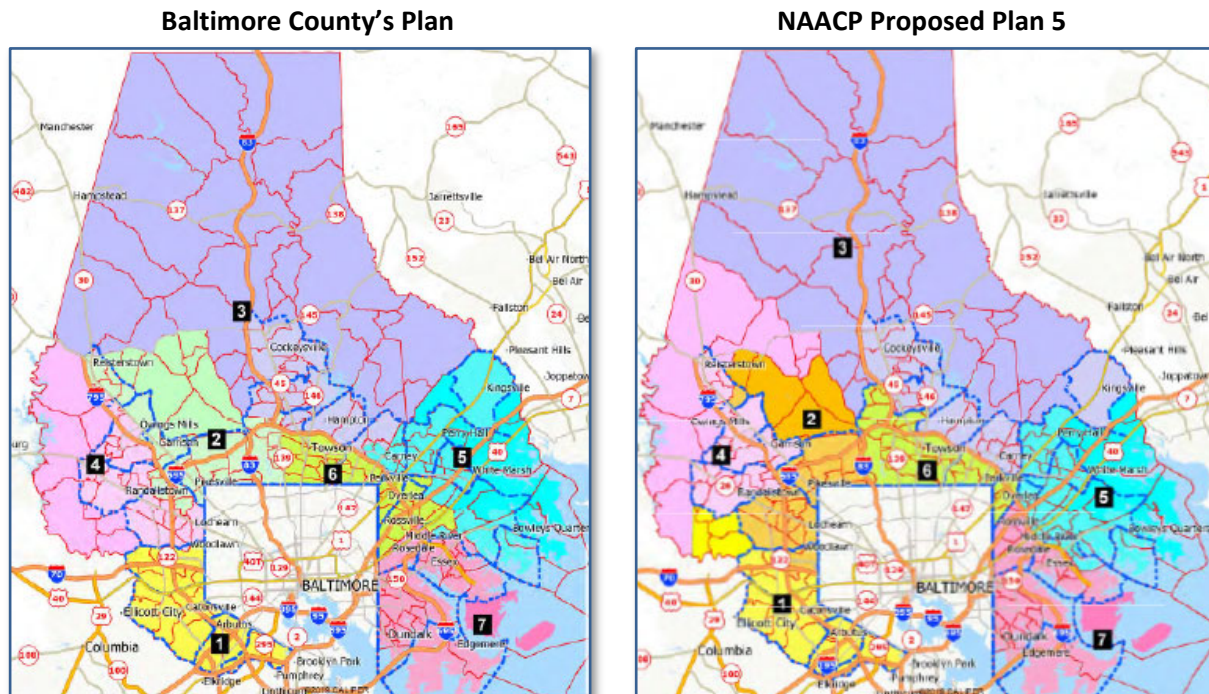


Figure 3. Comparison of Districts under Baltimore County's Plan and the NAACP's Proposed Plan 5.

Compliance with the Voting Rights Act

12. Section C of the Baltimore County Redistricting Manual addresses compliance with the standards of the Voting Rights Act of 1965 (43 U.S.C. 1973), as amended. The manual helpfully identifies the specific circumstances that can lead to VRA violations, and legal causes of action, pointing to the tests offered by the Supreme Court ruling in the landmark case, *Thornburgh v. Gingles* 478 U.S. 30 (1986). Briefly, minority descriptive representation is understood to mean that sizable minority, mainly African American and Latino, populations, should have a reasonably sure chance to elect their candidate of choice, which may mean, but not necessarily mean, someone from their own racial/ethnic group. To this end, minorities should not be spread so thinly across districts that they have no opportunity to elect their candidate of choice through bloc voting. Ensuring that African Americans and Latinos have an ability to elect an African American or Latino candidate, under circumstances of racially polarized voting, has been deemed necessary for compliance with the Voting Rights Act. In redistricting practice, this means drawing at least some districts that have large enough Black (or Latino) majorities that minority candidates will emerge from a racially polarized election process to become officeholders.

13. Arguments abound about just what level of minority voter concentration is appropriate, and the answers depend on the local context, and specifically the history of election results when minority candidates run for office. If voting in an area is racially polarized, the threshold percentage of Black constituents to ensure Black representation will have to be set quite high. This is because turnout may vary widely from election-to-election. A candidate who may be easily elected when their supporters turn out at a rate of 60 percent may not be electable if their participation drops to 40 percent. This magnitude of difference in turnout rates across elections is quite common.

14. Moreover, if Black candidates are nominated to compete against white candidates in a general election or contesting candidates from diverse racial/ethnic backgrounds in a primary, then the Black candidate may not be electable when racial/ethnic cues operate to determine vote choice.

Maryland is arguably more racially progressive than other states, and abundant evidence suggests that the white voters regularly vote for Black candidates, in Baltimore County, and elsewhere. In my view, this mitigates the need for drawing additional majority-minority Council seats in Baltimore County.

15. Even so, the County Council has been mindful of the fact that there has been sufficient racial bloc voting in the County's past, that one majority-minority seat remains in place, with a sufficiently high percentage of Black voters that Black descriptive representation is assured. There is no contradiction here. On the one hand, it is surely true that Maryland and Baltimore County have made considerable progress toward improving race relations over the years, but both have had a sufficiently difficult history to require careful consideration of the boundaries of District 4.

16. As explained in the October 25, 2021, Baltimore County NAACP and ACLU of Maryland's letter to the Baltimore County Office of Law and Council Chairman Julian Jones, in 2001, upon the urging of the NAACP and ACLU, the Baltimore County Council created a single district, District 4, with a majority African American population (see Figure 4 below):

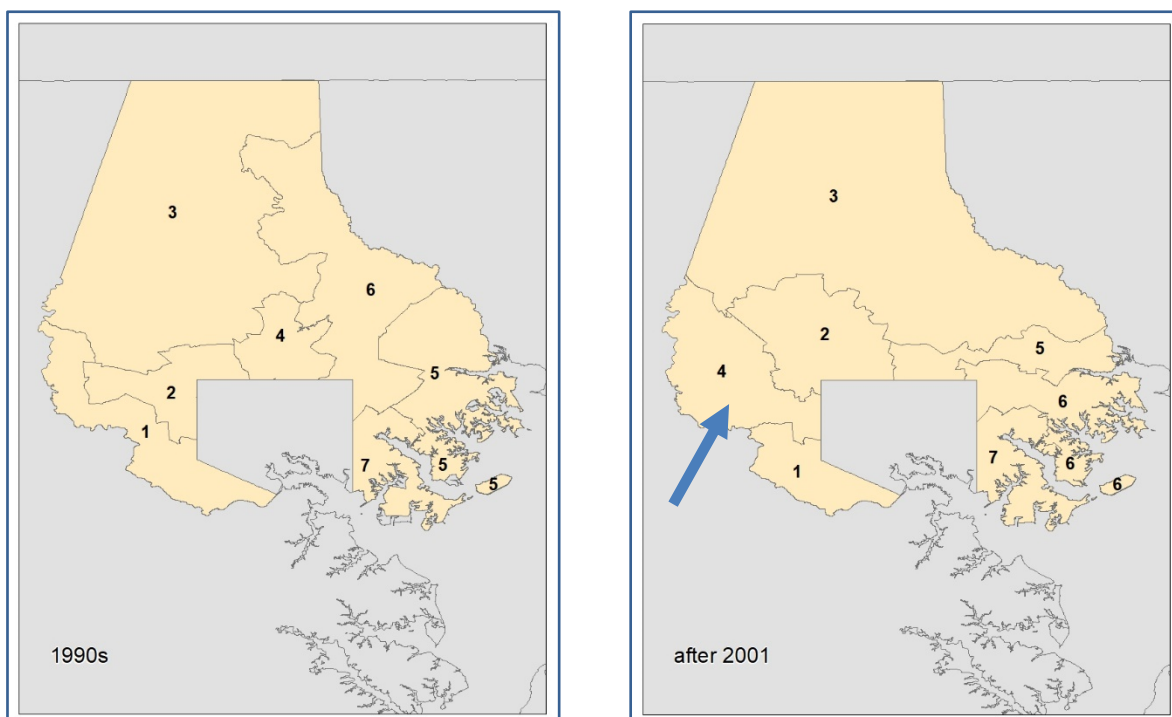


Figure 4. Baltimore County Council Districts Before and After Creation of the Majority Minority District (District 4) in 2001. Source: Baltimore County Redistricting Manual, 2021.

Since the creation of a majority African American District 4 in 2002, District 4 has elected two African American Council Members: Mr. Kenneth Oliver, who served for 12 years, and Mr. Julian E. Jones Jr., who was first elected in 2014 and remains in office as the District 4 Council Member. Mr. Jones has been selected to serve as Chairman of the Council by his fellow Council Members in 2018, 2021 and 2022.

17. In proposing the current plan, the Council shows an understanding not only of this history and the background of race relations in the County, but also takes stock of the positive strides that have been made, all while seeking to achieve multiple goals in the redistricting process. In reaching a consensus on the present proposal, many alternatives were carefully considered in a transparent, multi-step process controlled by law and government standards (Baltimore County Redistricting Manual, 12-13).

18. The Baltimore County redistricting proposal sets the majority Black voting age population of District 4 at 72 percent, as indicated in Table 2.

Table 2. Black and Hispanic Voting Age Populations in Baltimore County Proposed Redistricting Plan, 2020 Census Adjusted			
Location	% Hispanic VAP	% Black VAP	% Black + Hispanic VAP
District 1	7.3	28.0	35.3
District 2	6.5	29.3	35.8
District 3	4.7	7.6	12.3
District 4	4.5	71.7	76.2
District 5	4.1	17.5	21.6
District 6	5.9	29.2	35.1
District 7	8.8	17.9	26.7
Source: 2020 Census Adjusted Figures. Maryland Department of Planning https://planning.maryland.gov/MSDC/Pages/census/censusdata.aspx			

19. Although it is true that the Black population has increased in Baltimore County over the course of the last decade, this growth has been dispersed across the county, occurring more on the eastern side of the county, than on the western side, where the plaintiffs propose adding a majority-

minority district (see Figure 5). The fact that Black population growth has occurred throughout the county, not in a concentrated area, also shows progress in the move away from the highly segregated racial/ethnic settlement patterns of the past.

20. Throughout the County, the level of racial/ethnic polarization in elections has also been greatly diminished in recent elections compared to past decades. To be sure, there is a tendency for Black populations to favor Black candidates and white populations to prefer white ones. But that does not indicate that the Black and white populations are at odds in their preferences. White voters regularly crossover to support Black candidates, and those candidates do win.¹

21. As an initial matter, since the County's adoption of the NAACP/ACLU proposed map in 2002, no African American candidate has run for County Council in any district outside of District 4. There is simply no example of a Black candidate losing to a white candidate in a County Council race. Notably, in one 2018 District 2 race for a seat on the nonpartisan Baltimore County School Board, a Black female candidate, Cheryl Pasteur, defeated a white candidate, Anthony Glasser, by running strongly throughout the white precincts. In fact, Ms. Pasteur won District 2 handily, by 66.14% of the vote.² Ms. Pasteur won in heavily white, Jewish precincts in District 2 by substantial margins over her white, male, Jewish opponent.³ This is an example of a local contest in which a Black candidate ran, and won, against a white candidate in a district outside of District 4. This race suggests that there is no

¹ This feature, specific to Baltimore County, distinguishes it from other jurisdictions in which racial/ethnic polarization in elections persist, like Alabama, where the state redistricting map was recently stuck down as unconstitutional. In the Alabama case, there seemed to be evidence of racially polarized voting, particularly in biracial endogenous elections. In contrast, as explained here, white, liberal voters regularly cross racial lines in Baltimore County elections.

² https://elections.maryland.gov/elections/2018/results/general/gen_results_2018_2_by_county_04-1.html.

³ https://elections.maryland.gov/elections/2018/election_data/Baltimore_By_Precinct_2018_General.csv. The demographic data used in this section reflect 2010 and 2020 Adjusted figures in compliance with Maryland state law. The data relating to precinct demographics only reflect votes on Election Day, which is the only available data at the councilmanic level.

pronounced racial polarization in County elections even in a low-profile race in which we might expect it most (see Figures 6 and 7).

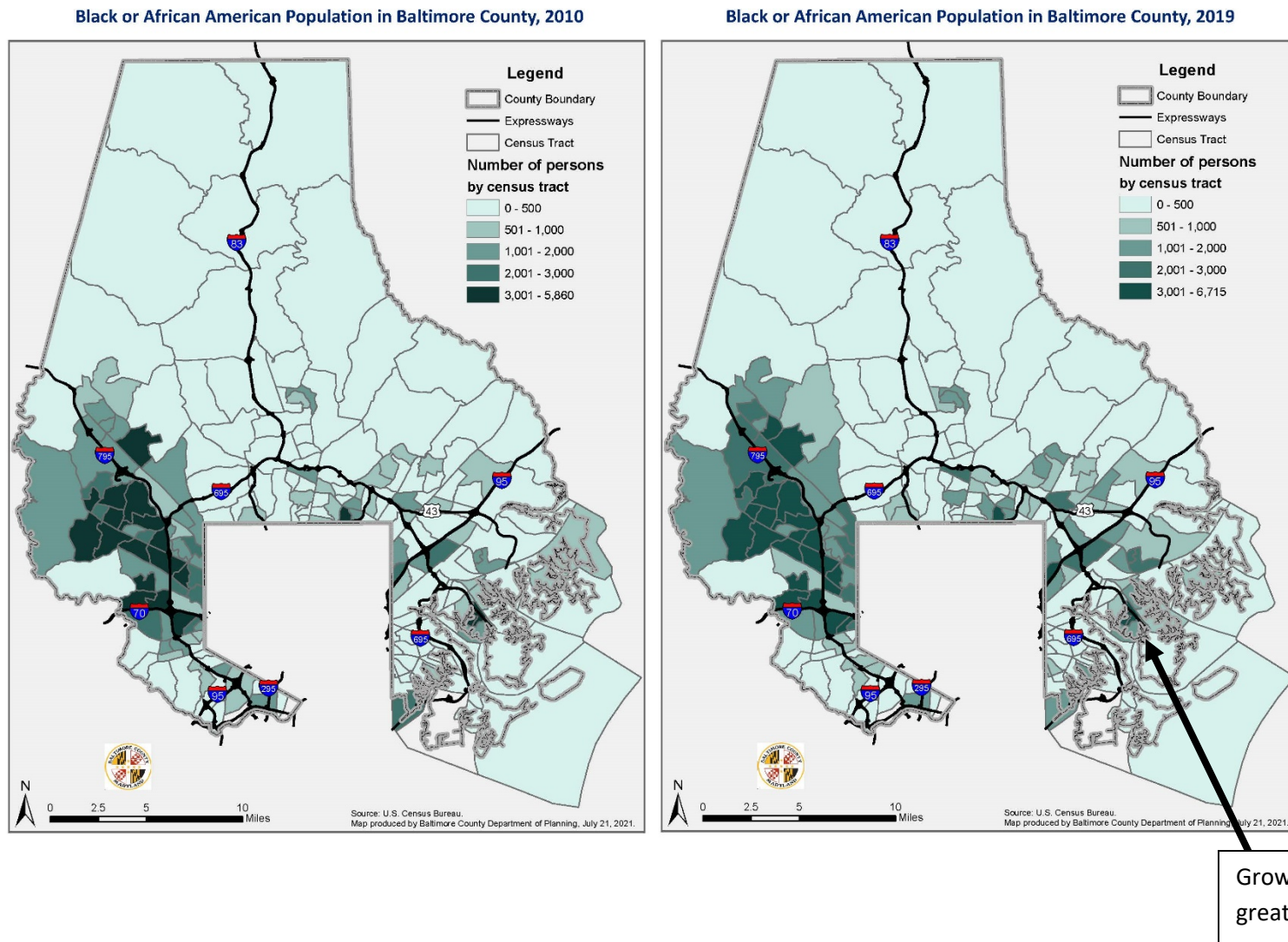


Figure 5. Black Population Growth in Baltimore County, 2010-2019, by Census Tract.
Source: U.S. Census Bureau and Baltimore County Department of Planning, July 21, 2021

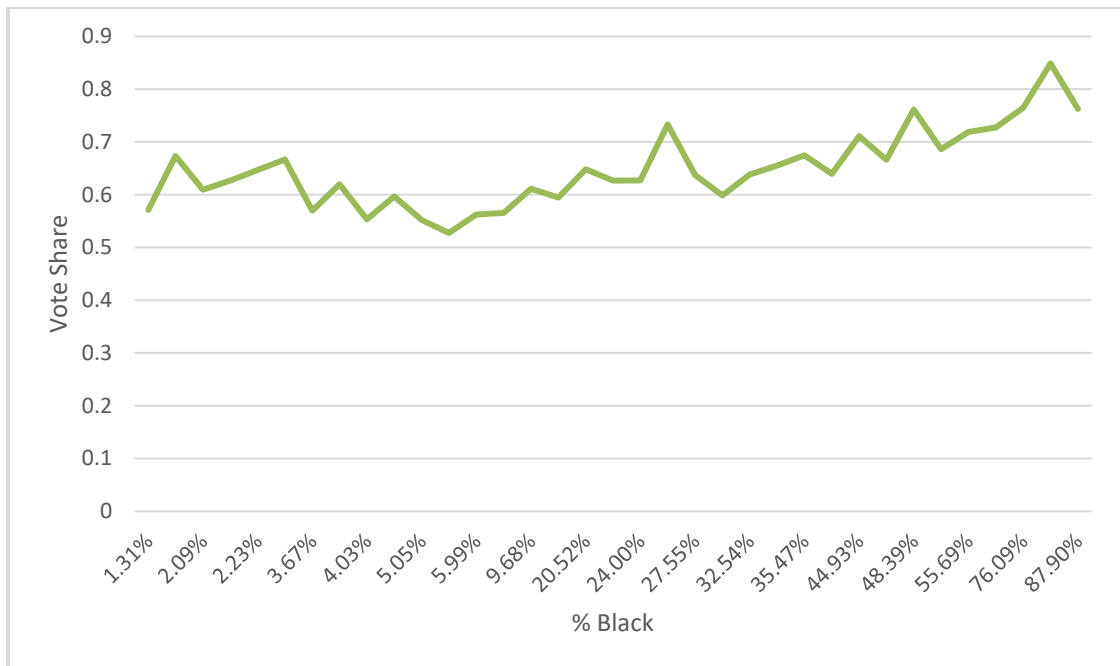


Figure 6. Percentage of Vote Received by Cheryl Pasteur Compared to Percent Black Population in Voting Precincts

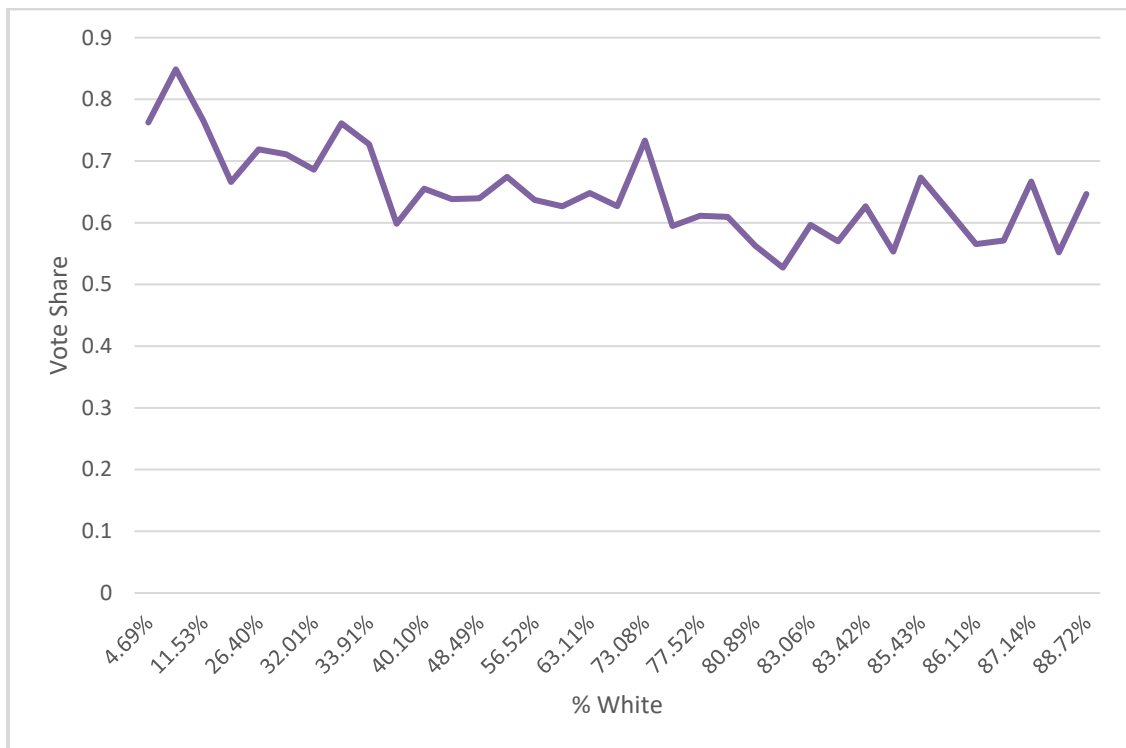


Figure 7. Percentage of Vote Received by Cheryl Pasteur Compared to Percent White Population in Voting Precincts.

22. In addition, the results of the most recent election establish that the current Council Members are the candidates of choice for the Black voters in Districts 1 and 2. District 1 Council Member Tom Quirk won 68% of the total vote in District 1.⁴ In precinct 001-006 (Edmonson), which has the highest percentage of African American voters in District 1, Council Member Quirk won 92.75% of the vote.⁵ In precinct 001-001 (Woodlawn), which has the second highest percentage of African American voters in District 1, Council Member Quirk won 92.55% of the vote.⁶ District 2 Council Member Izzy Patoka won 71.8% of the total vote in District 2.⁷ In precinct 002-007 (Old Court), which has the highest percentage of African American voters in District 2, Council Member Patoka won 95.35% of the vote.⁸ In precinct 002-008 (Winand), which has the second highest percentage of African American voters in District 2, Council Member Patoka won 92% of the vote.⁹

23. Compared to many states, by now, Maryland's electorate is familiar with African American candidates running and winning nomination for statewide office. Just in the last decade, several recent Democratic primaries in addition to statewide general elections have featured well-known Black candidates squaring-off against white opponents. For example, in the 2018 Democratic gubernatorial primary, two Black Democrats, Ben Jealous and Rushern Baker, ran against a white candidate and an Asian American candidate.¹⁰ The Black candidates did not do appreciably worse in Districts 1, 2 and 4 in the precincts with the largest white populations (See Figures 8-10, below).¹¹ Ben Jealous performed slightly worse in District 2's highly white precincts than he did in those with more

⁴ https://elections.maryland.gov/elections/2018/results/general/gen_results_2018_2_by_county_04-1.html.

⁵ https://elections.maryland.gov/elections/2018/election_data/Baltimore_By_Precinct_2018_General.csv.

⁶ https://elections.maryland.gov/elections/2018/election_data/Baltimore_By_Precinct_2018_General.csv.

⁷ https://elections.maryland.gov/elections/2018/results/general/gen_results_2018_2_by_county_04-1.html.

⁸ https://elections.maryland.gov/elections/2018/election_data/Baltimore_By_Precinct_2018_General.csv.

⁹ https://elections.maryland.gov/elections/2018/election_data/Baltimore_By_Precinct_2018_General.csv.

¹⁰ https://elections.maryland.gov/elections/2018/results/primary/gen_results_2018_1_by_county_04-1.html.

¹¹ https://elections.maryland.gov/elections/2018/election_data/Baltimore_By_Precinct_Democratic_2018_Primary.csv.

diversity, but Baker's percentage improved in areas of white concentration (see Figure 9).¹² Jealous managed to win the plurality even in many of the least diverse of District 2's precincts.¹³ Gone are the days when 80-90 percent of white voters would choose the white candidate over a minority candidate in a Democratic primary. District 4 has a larger Black voter concentration than the other two Districts and Jealous ran far ahead of his challengers, but certainly performed no worse in the majority white precincts than in the more diverse ones (see Figure 10).¹⁴

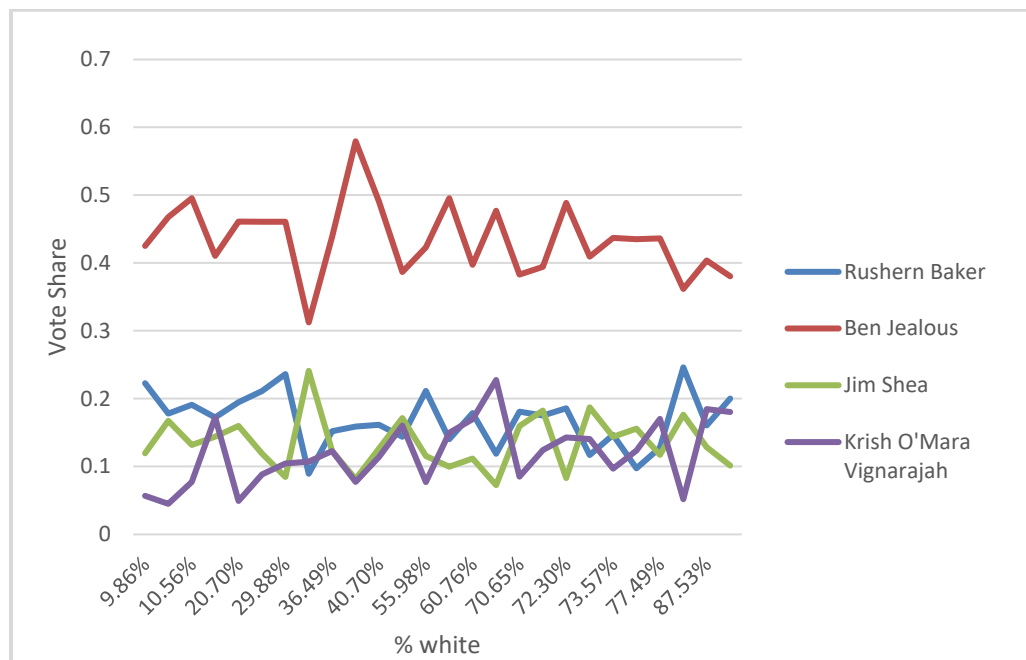


Figure 8. Democratic Candidate Performance in the 2018 Gubernatorial Primary Across Precincts in Baltimore County Councilmanic District 1.

¹²https://elections.maryland.gov/elections/2018/election_data/Baltimore_By_Precinct_Democratic_2018_Primary.csv.

¹³https://elections.maryland.gov/elections/2018/election_data/Baltimore_By_Precinct_Democratic_2018_Primary.csv.

¹⁴https://elections.maryland.gov/elections/2018/election_data/Baltimore_By_Precinct_Democratic_2018_Primary.csv.

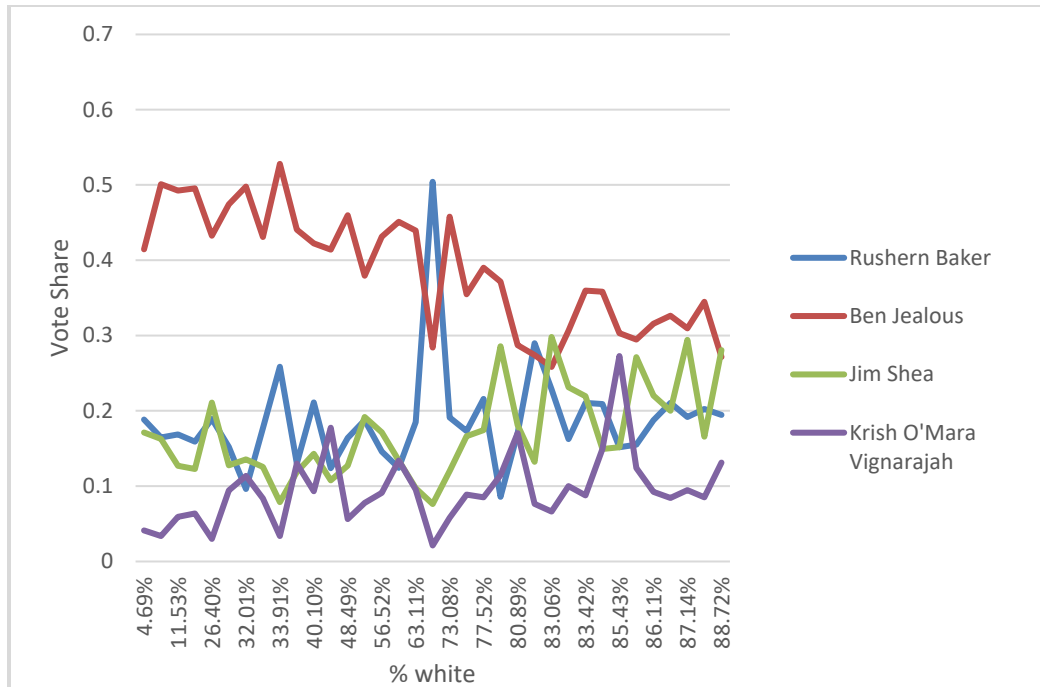


Figure 9. Democratic Candidate Performance in the 2018 Gubernatorial Primary Across Precincts in Baltimore County Councilmanic District 2.

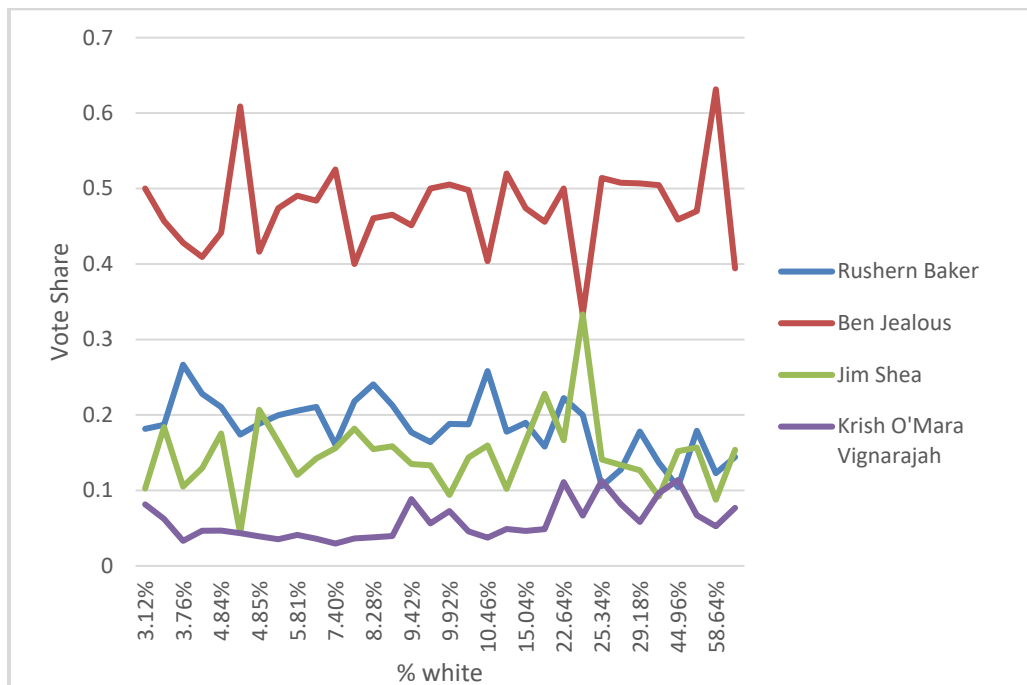


Figure 10. Democratic Candidate Performance in the 2018 Gubernatorial Primary Across Precincts in Baltimore County Councilmanic District 4.

24. The 2018 Democratic gubernatorial primary also shows that there was no one candidate “preferred” by Black voters in Districts 1, 2, and 4. Although Ben Jealous received the most votes in the majority-Black precincts in these districts, he did not win the majority of the votes.¹⁵ Instead, the votes were divided among the other three Democratic candidates.

25. In the 2014 Democratic gubernatorial primary, Black candidate Anthony Brown won over white candidate Douglas Gansler in both Districts 1 and 2.¹⁶ Brown won over Gansler in majority Black precincts in Districts 1 and 2.¹⁷ Across the entirety of District 1, Brown won over Gansler, 39.5% to 25.5%.¹⁸ In District 2, Brown won over Gansler, 32.1% to 30.9%.¹⁹ Anthony Brown won the statewide Democratic nomination that year. This primary election shows that there was no white majority in Districts 1 and 2 that was able to defeat the minority voters’ candidate of choice. In addition, the minority voters’ candidate of choice was able to attract a sufficient number of crossover white votes to win in Districts 1 and 2.²⁰

Continuity with Previous Boundaries

26. One goal that the Council certainly achieves with the Plan is continuity of representation of the County’s traditional communities of interest. The neighborhoods and settlements within the county are largely retained within the same districts where they were positioned in the 2010 plan, and in the 2002 plan backed by the NAACP and ACLU. Gauging continuity with past districts could be done

¹⁵https://elections.maryland.gov/elections/2018/election_data/Baltimore_By_Precinct_Democratic_2018_Primary.csv.

¹⁶https://elections.maryland.gov/elections/2014/election_data/Baltimore_By_Precinct_Democratic_2014_Primary.csv.

¹⁷https://elections.maryland.gov/elections/2014/election_data/Baltimore_By_Precinct_Democratic_2014_Primary.csv.

¹⁸https://elections.maryland.gov/elections/2014/election_data/Baltimore_By_Precinct_Democratic_2014_Primary.csv.

¹⁹https://elections.maryland.gov/elections/2014/election_data/Baltimore_By_Precinct_Democratic_2014_Primary.csv.

²⁰https://elections.maryland.gov/elections/2014/election_data/Baltimore_By_Precinct_Democratic_2014_Primary.csv.

by simply comparing the similarity of the geographic boundaries themselves. But given the fundamental necessity of adjusting boundaries to meet the equal population requirement, it makes more sense to develop a measure of continuity that captures the similarity or intersection of population encompassed by the old and new boundaries. Labeled “core retention,” the idea is that district continuity is maximized when the previous population of the district is as close as possible to the new population in terms of its location.

27. When rebalancing the population after ten years of change, the goal is not to throw in any 122,000 people when redrawing a boundary, but to encompass as many of the same constituents among those 122,000 as possible from the previous co-located district. Considerable effort is expended to rebalance the population while maintaining familiarity and trust in the represented-to-representative relationship.

28. The goal of maintaining stability and continuity in representation is sometimes viewed as incumbency protection, and cynically characterized as allowing politicians to pick their voters. There are, however, principled arguments for wanting to draw districts consistent with previous mappings. Among them is the desire for continuity in a regional legislative delegation, perhaps because Baltimore County localities are well served by the accruing experience of a representative on the Council. In fact, the strength and influence of the Black voters in District 4 have allowed constituents to band together to demand, and get, services and funding for resources, like community centers. Splitting Black voters in District 4 into multiple districts may have the unintended consequence of diluting the strong Black voting power that has been so successful in District 4.

29. With respect to the goal of preserving continuity in district boundaries, Republicans and Democrats now and in the past have insisted that this is a reasonable goal of redistricting and perfectly within the law. The Supreme Court has recognized the importance of maintaining geographic continuity in a number of important precedents, including *Miller v. Johnson* (515 US 900 (1995)), and

Abrams v. Johnson (521 US 74 (1997)). The U.S. Supreme Court has also affirmed the value of maintaining existing relationships between incumbents and their constituents in *White v. Weiser* (412 US 783 (1973)); *Karcher v. Daggett* (462 US 725 (1983)); in *Bush v. Vera* (517 US 952(1996)), and in *Reno v. Bossier Parish School Board* (528 US 320 (2000)).

30. Longstanding redistricting practice dating to the founding period shows support for the goal of preserving established district boundaries as a value in the redistricting process. For several redistricting cycles now, the goals of core retention and stability in representation have been recognized in Baltimore County. A glance back at the Council maps over previous cycles, (i.e., they are appended as exhibits in the Baltimore County Redistricting Manual (2021)) offers evidence of the considerable continuity in district drawing, with high core retention rates from the 1990s to the 2000s, from the 2000s to the 2010s, and from 2010 to the Council's 2020 plan.

31. Specifically, Table 3 shows the estimates for core retention from 2010 to the proposed 2020 redistricting plan. Also shown is the estimate of voters retained from the 2000 to the 2010 plan (left). The rightmost column in the table shows estimates of core retention from the 2010 to the NAACP Map 1 and NAACP Map 5 proposals. Judging from Table 3, the Council redistricting plans enacted in 2010 and 2020 sought to minimize the assignment of residents to new and unfamiliar districts. The Council proposal is an acknowledgement of the reality that voters do not typically possess (or seek) a lot of information about local elections and candidates. Given that Councilmanic elections are often low profile, garnering less attention than offices at the top of the ballot, this continuity across decades greatly simplifies the task of voter comprehension and judgment come Election Day.

Table 3. Core Retention Across Redistricting Plans Showing Continuity of Constituencies				
	2000 to 2010	2010 to 2020	2010 to NAACP 1	2010 to NAACP 5
District 1	0.999	1.000	0.564	0.949
District 2	0.938	0.988	0.749	0.548
District 3	0.888	0.988	0.788	0.828
District 4	0.950	1.000	0.548	0.595
District 5	0.765	0.510	0.521	0.542
District 6	0.713	0.556	0.720	0.420
District 7	0.904	1.000	1.000	0.924
Average	0.880	0.863	0.699	0.687
Cell entries show proportion of the residents in the district from the previous decade carried over to the new (proposed) district. Estimates use 2020 block data.				

32. Without question, the plaintiffs' Maps 1 and 5 do very poorly, moving far more Baltimore County residents across district lines than is necessary to maintain population balance. Map 5 is the worse of the two. In this map, District 4's core retention rate is just 60%; District 2, only 55%; District 5, just 54%; and District 6 bottoms out at only 42%. At this low level, District 6 can't even be said to have an incumbent councilmember, since most of the district has never had the chance to see that person on the ballot. The proposed NAACP 5 Map pushes over 270,000 residents out of their present districts, a massive displacement. NAACP Map 1 reassigns over 260,000 to a new council district. Orphaning voters in this way has been shown to lead to high abstention and lower turnout rates in subsequent elections (Hayes and McKee 2009; 2012; Hunt 2018; Hood and McKee 2013; McKee 2013). Continuity in representation, obtained by maintaining continuity in redistricting plans from one decade to the next, promotes higher political engagement.

Respecting Communities of Interest

33. At the level at which county councils govern, communities of interest are neighborhoods, cities, and places (whether incorporated or not) that are historically well recognized such that residents identify them as home. Baltimore Countians may not be able to precisely pinpoint the boundaries of their local domain, but they recognize the places they live out their lives as having

well-recognized qualities, with attendant social attachments and affiliations (Stephanopolous 2012, 1385). Similarly, voter precincts are the building blocks of the County's communities and come closest to representing life on a neighborhood scale. An important principle guiding redistricting in Baltimore County is that the boundaries of these territorial communities should be respected as plans are drafted.

34. Baltimore County's proposed redistricting plan performs well when it comes to minimizing the number of split precincts. Table 4 summarizes the figures for split precincts and localities for the Baltimore County proposal, the 2010 District map, the 2000 District map, as well as NAACP proposals 1 and 5.

Table 4. Divided Communities in Recent and Alternative Redistricting Plans for Baltimore County Council					
	2000	2010	2020	NAACP 1	NAACP 5
VTDS	2	0	2	0	22
Places	16	16	15	15	5
Cell entries show the number of "VTDS" (or precincts, that are divided in each (proposal) plan, and the number of Census "Places" also divided.					

35. The NAACP's Map 1 proposal splits a large number of communities that have historically been kept intact, including Catonsville and Arbutus (see Figure 11). Both Catonsville and Arbutus would be split between Districts 1 and 4. As reflected in a letter submitted by Arbutus Business Association, stakeholders within these communities have spent years working together to develop shared civic and business goals. Adoption of Map 1 would force these stakeholders to start anew and work with multiple Council members they do not know and are unaware of their circumstances and needs. In addition, although a small portion of the Northeast part of majority-Black Milford Mill has been part of District 2, Map 1 would cut Milford Mill directly in half, with Windsor Mill Road dividing the community into Districts 2 and 4.



Figure 11. NAACP Proposed Map 1 Separates the East and West portions of the Arbutus and Catonsville Communities in the County's southwest Corner

36. The County's Plan divides far fewer of the County's precincts than the NAACP's Map 5. The NAACP's Map 5 divides 22 different precincts, which is indicative of a hastily drawn map. Precincts are small in population size and should be divided only rarely. Although the NAACP's Map 5 proposal splits fewer census "places," the divisions found in the 2020 Council proposed map are largely reflective of those that were present in the two previous redistricting plans. These are not 15 new divisions to surprise the Baltimore County electorate, or to carry out a wild gerrymander, but the familiar lines that have been present for more than twenty years.

The County Council's Expert Role

37. A powerful argument in favor of County Council involvement in the redistricting process is the impressive amount of local knowledge these legislators amass in living out their lives in a particular place, running for office, and serving a particular geographic constituency over time. Indeed, a high level of local knowledge is required to develop the kind of following that builds trust and enables effective representation. But this same kind of knowledge is what uniquely enables legislators to draw maps encompassing interests known to belong together, as a territorial community, rather than woodenly applying principles that would divide them, hampering the expression of common values and aspirations.

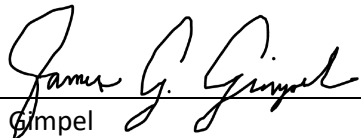
38. This kind of familiarity recognizes important community-level details unknown and often unknowable to the faraway redistricting consultant; how neighborhoods relate to one another, how roadways and waterways separate communities psychologically not just physically, and other informal boundaries that distinguish interests that cannot be easily mapped relying on available boundary files. Typically, a redistricting consultant will gloss over granular communities of interest, not having the local expertise about what to include and what to discount. A County legislator, however, is apt to know every strip mall; ethnic restaurant; road construction project; pipeline; water tower; neighborhood association; farm; intersection; power plant, and factory. Not all of these features are going to be relevant to drawing boundaries, and clearly not everywhere, which is why a GIS specialist would not be inclined to collect this information on a highly localized basis. Drawing upon local knowledge, however, on a neighborhood basis, Councilmembers can identify a community of interest invisible to outsiders, but obvious to everyone occupying local ground. This is the kind of knowledge that has guided Baltimore County redistricting practice across several decades.

39. The present boundaries are not arbitrary. They commonly run along major highways or along natural features of the landscape that have been guidelines in the past. This is the sense in which

Baltimore County redistricting respects the way the county has been planned and settled. Population growth patterns since 2010 have been largely reinforcing of these settlement patterns, explaining why the 2020 boundaries reflect those that County voters have become adjusted to across several decades of representation.

40. I declare under the penalties of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Executed on January 31, 2021


James G. Gimpel

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EXHIBIT 8

2021 Baltimore County Redistricting Commission

Meeting Minutes – August 24, 2021 Meeting – Demographic Presentation

This was the third meeting of the Commission, not including public input hearings. Due to the COVID-19 pandemic, the meeting was held via virtual webconference. The meeting started at 3:00 p.m., with 17 attendees. All Commission members were present during the entire meeting. During the meeting, a total of 26 attendees were present. Also in attendance were members of the GIS team assisting the Commission.

Council Secretary Tom Bostwick greeted the Commission members and all attendees and gave opening remarks. Mr. Bostwick briefly discussed the current posture of the Commission, specifically that the Commission is still awaiting adjusted population data from the State Department of Planning, the anticipated release of that data in September, and the general deadlines and time constraints the Commission faces.

Mr. Bostwick introduced Kui Zhao, a Demographer with the Baltimore County Planning Department. Ms. Zhao presented data on the demographic trends of Baltimore County from 2010 through 2020. A PDF of the presentation slides are attached to these minutes. The presentation was comprised of demographic data from the 2010 and 2020 census, as well as the 2019 report from the American Community Survey, an annual poll of approximately 2.5% of the U.S. households conducted by the U.S. Census Bureau that asks participants to report demographic and economic data, such as race or ethnicity, country of birth, age, household income, homeownership status, and educational attainment.

After Ms. Zhao's presentation, several commission members asked questions and made comments. Mr. Latshaw commented on the 11.71% decrease (68,061 people) in the population reporting as white. Mr. Latshaw asked Ms. Zhao about whether there was equal increase in this group in surrounding counties. Ms. Zhao pointed generally to Howard County, whose population grew by 15.8% (45,232 people) and Frederick County, whose population grew by 16.4% (38,332), both of which are well above the state population growth of 7%. Ms. Zhao also stated she would try to find more data to get a fuller picture of migration in and out of the Baltimore County.

Mr. Latshaw and Ms. Zhao also discussed the average age of the County. Mr. Latshaw commented that he has previously heard that Baltimore County has one of the oldest populations on the east coast, except for Florida. Ms. Zhao commented that she has heard this comment as well, but that the Planning Department's research has found that of the 3,600 counties nationwide, Baltimore County is about in the middle in terms of average age. Ms. Zhao also commented that the decennial census does report data age, but such data will be available sometime in September.

Mr. Neuberger and Mr. Almon asked Ms. Zhao about the ideal Council district size now that we have the Census county population count is available. The census reports Baltimore County population as 854,535. If that figure is divided by 7 Council districts, the ideal district population would be 122,077. However, by State law, the Commission and the Council is required to use an adjusted population count that includes any currently incarcerated individuals by their last

residential address. The adjusted population count will be released by the Maryland Planning Department in September. Mr. Almon also asked about the populations of the Council districts as they are currently constituted and how far are they from the ideal population. Ms. Zhao and Ms. Lupton said they would try to get an answer to that. Finally, Mr. Almon commented that it may be helpful to look at data based on federal or state districts within Baltimore County and asked the Commission staff to provide the Congressional and State legislature district population counts and related data. Ms. Zhao said this is available, but stated that such maps are subject to change with State redistricting.

Mr. Neuberger made several comments on the use of census blocks versus election precincts as the geographic unit to create and define the Council districts. Mr. Neuberger first praised the GIS staff and commented that the redistricting web app has been very useful. He then asked Mr. Bostwick to comment on the reason for using election precincts. Mr. Bostwick commented that Council districts have historically only been drawn using precincts, but that there is no requirement in law to use election precincts. Mr. Bostwick then commented that he has not inquired how a change in the geographic unit for redistricting would affect the Baltimore County Board of Elections, specifically regarding their duty to adjust the precinct boundaries in response the local and state redistricting processes. Mr. Neuberger commented on the limited utility of using the web app as it currently uses census blocks groups (comprised of census blocks) and not election precincts, which do not align with block groups. Finally, Mr. Neuberger asked Mr. Bostwick and the Commission staff to ask the local Board of Elections if it would disrupt their post-redistricting process if the Council districts were based on census blocks or block groups rather than precincts.

Mr. Plymouth and Ms. Montgomery seconded Mr. Neuberger's praise for the web app and the GIS team, Mr. Foley in particular for his personal guidance on how to use the web app. They also asked Mr. Foley about how to reset the app to the council districts as currently constituted. Mr. Latshaw asked Mr. Bostwick to give the specific timing regarding adjusted population data and deadline for Commission report. Several Commission staff members commented regarding the adjusted data requirement and the Maryland Planning Department webpage.

Ms. Montgomery moved to nominate Mr. Latshaw as Commission Chair. Mr. Plymouth seconded the motion. Mr. Bostwick called the roll and all members voted in favor. Upon the affirmative vote, Mr. Latshaw thanked the members and closed the meeting at approximately 4:30 p.m.

Baltimore County, MD Demographic Overview

Department of Planning

August 24, 2021

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 - Poverty status
 - 60 years or over

County Quick Facts:

Total Population

2020 and 2010 Census Population by Jurisdiction

State/Region/Jurisdiction	2020	2010	Change	Percent Change
Maryland	6,177,224	5,773,552	403,672	7.0%
Baltimore Region	2,794,636	2,662,691	131,945	5.0%
Anne Arundel	588,261	537,656	50,605	9.4%
Baltimore County	854,535	805,029	49,506	6.1%
Carroll	172,891	167,134	5,757	3.4%
Harford	260,924	244,826	16,098	6.6%
Howard	332,317	287,085	45,232	15.8%
Baltimore City	585,708	620,961	-35,253	-5.7%
Suburban Washington Region	2,300,979	2,068,582	232,397	11.2%
Frederick	271,717	233,385	38,332	16.4%
Montgomery	1,062,061	971,777	90,284	9.3%
Prince George's	967,201	863,420	103,781	12.0%

Compiled by Maryland State Data Center.

8/24/2021

Department of Planning

3

County Quick Facts:

Race and Ethnicity

Data Category	2020		2010		Change	
Total Population	854,535	-	805,029	-	49,506	6.15%
White alone	452,124	52.91%	520,185	64.62%	-68,061	-11.71%
Black or African American alone	255,793	29.93%	209,738	26.05%	46,055	3.88%
American Indian and Alaska Native alone	3,527	0.41%	2,625	0.33%	902	0.09%
Asian or Pacific Islander alone	55,272	6.47%	40,396	5.02%	14,876	1.45%
Some Other Race alone	34,198	4.00%	12,801	1.59%	21,397	2.41%
Two or More Races	53,621	6.27%	19,284	2.40%	34,337	3.88%
Hispanic or Latino*	61,492	7.20%	33,735	4.19%	27,757	3.01%

*: Can be of any race.

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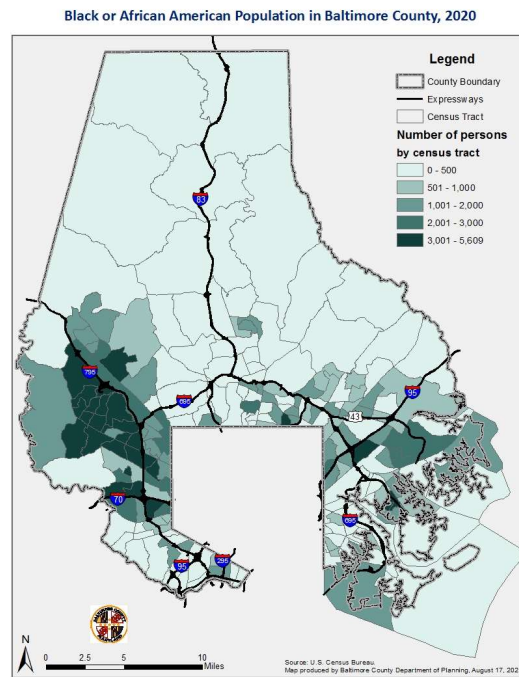
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Race Data:

Black or African American

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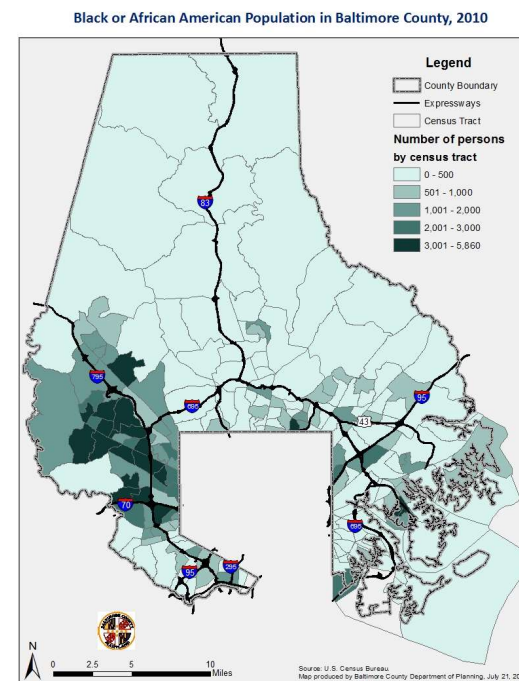
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Black or African American

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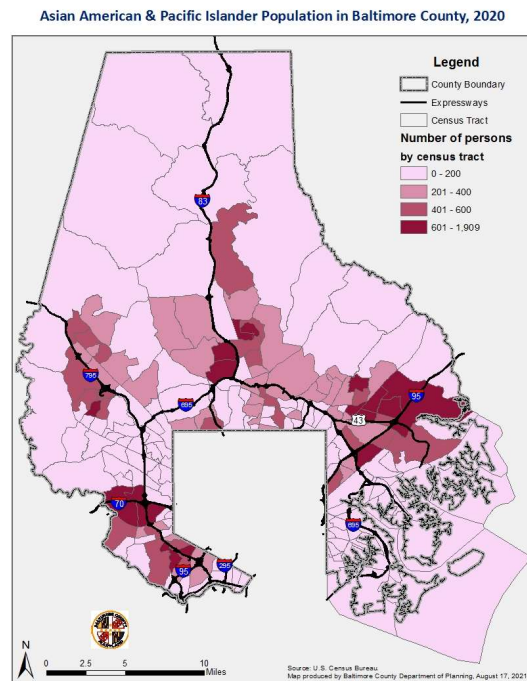
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Race Data:

Asian or Pacific
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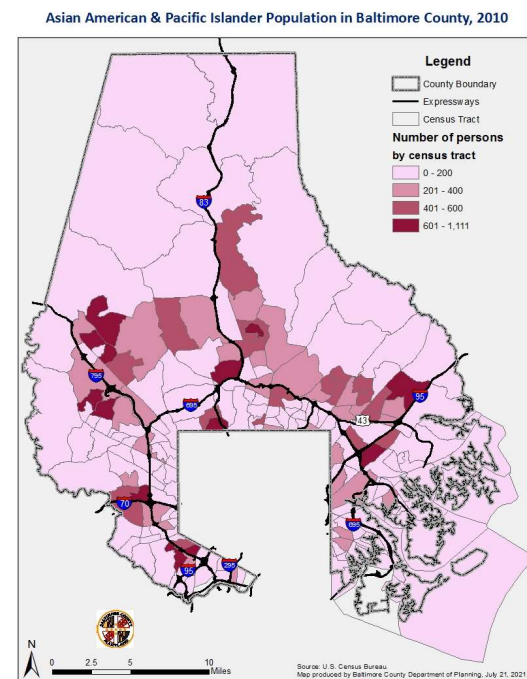
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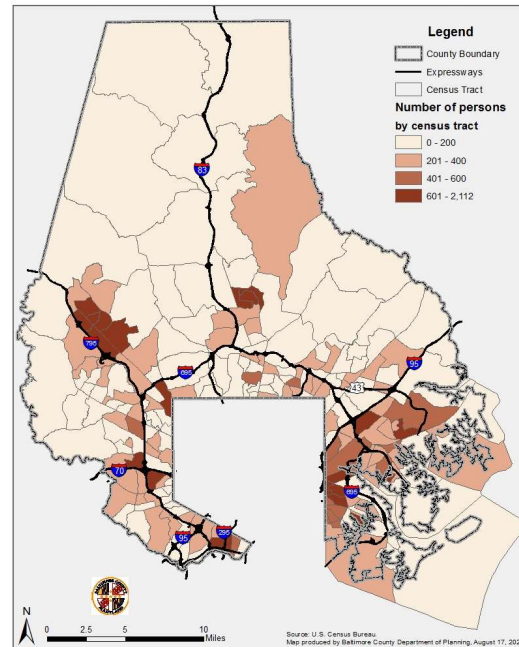
Ethnicity Data:

Hispanic or Latino

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People of Hispanic or Latino Origin in Baltimore County, 2020



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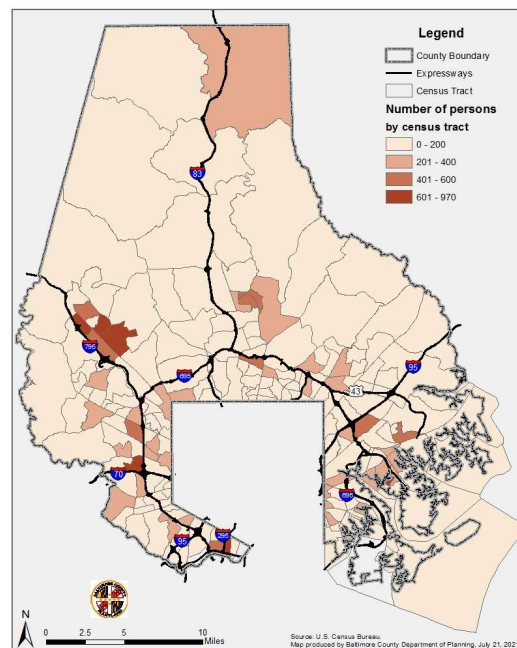
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People of Hispanic or Latino Origin in Baltimore County, 2010



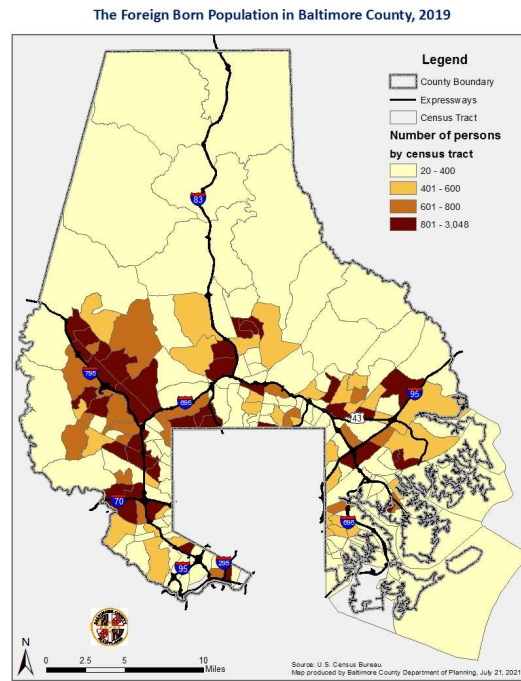
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Demographic Characteristics

Foreign Born

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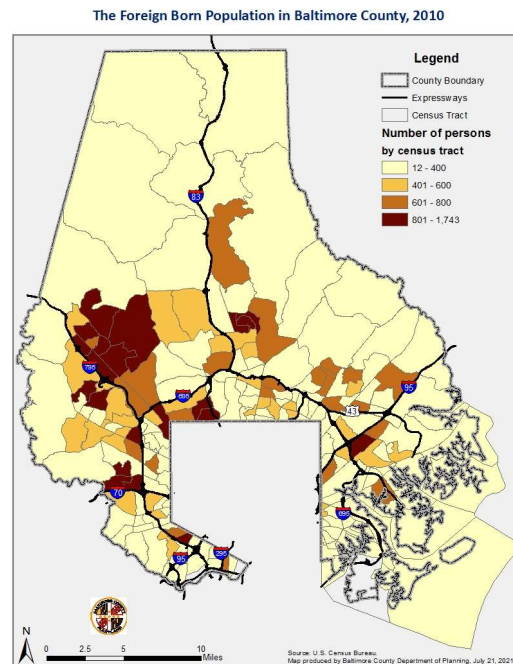
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Demographic Characteristics

Foreign Born

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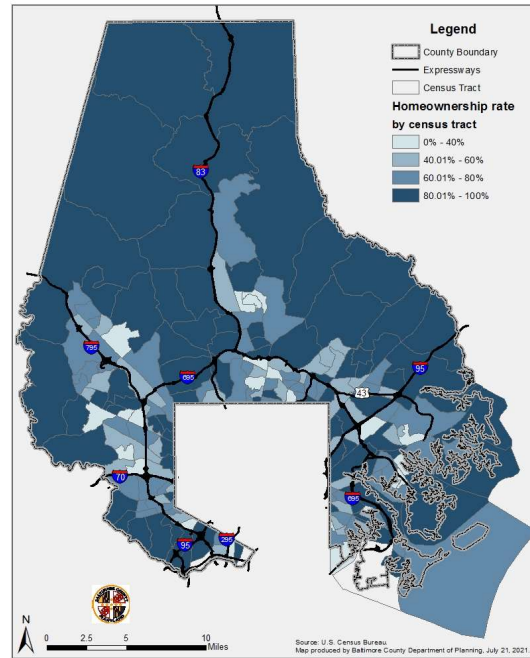
Demographic Characteristics

Homeownership

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Homeownership Rate in Baltimore County, 2019



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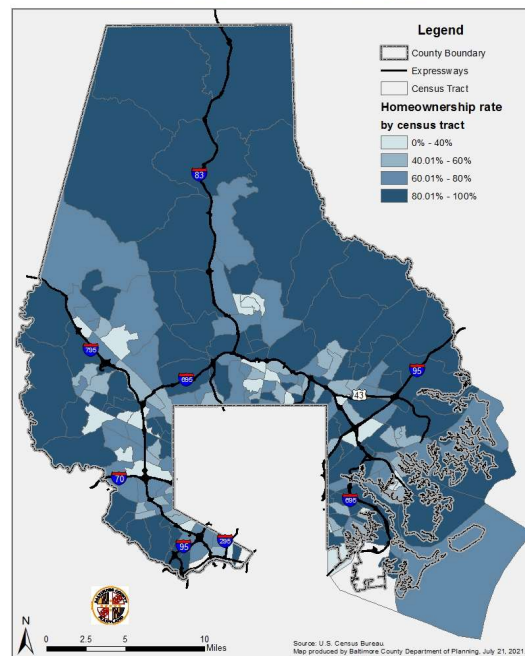
Demographic Characteristics

Homeownership

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Homeownership Rate in Baltimore County, 2010



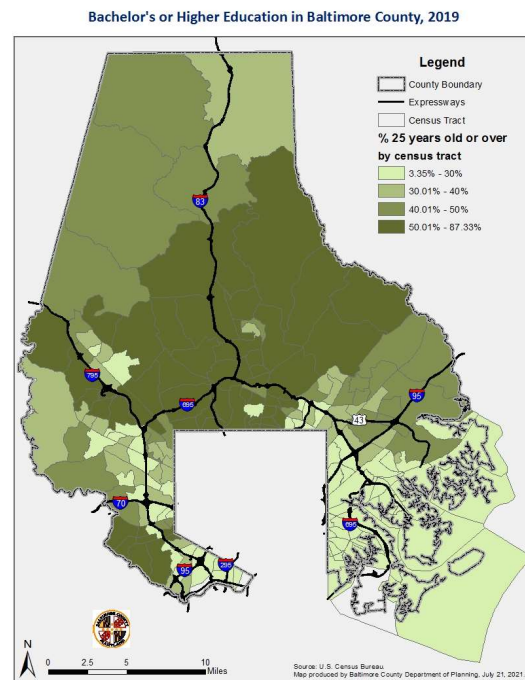
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Demographic Characteristics

Educational Attainment

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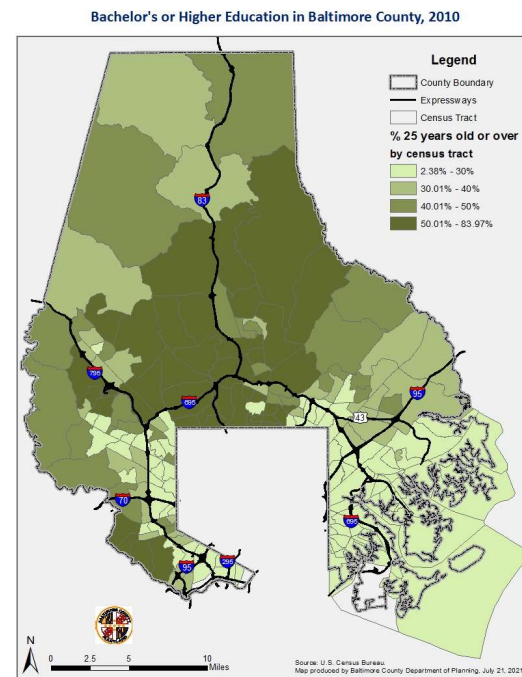
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Demographic Characteristics

Educational Attainment

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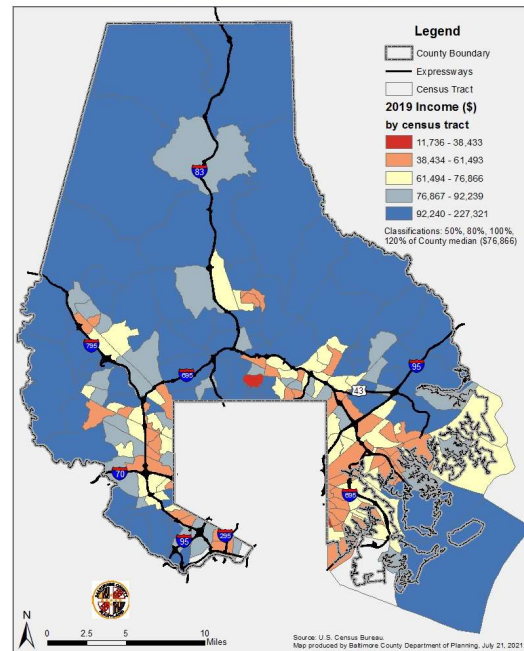
Demographic Characteristics

Median Household Income

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Median Household Income in Baltimore County, 2019



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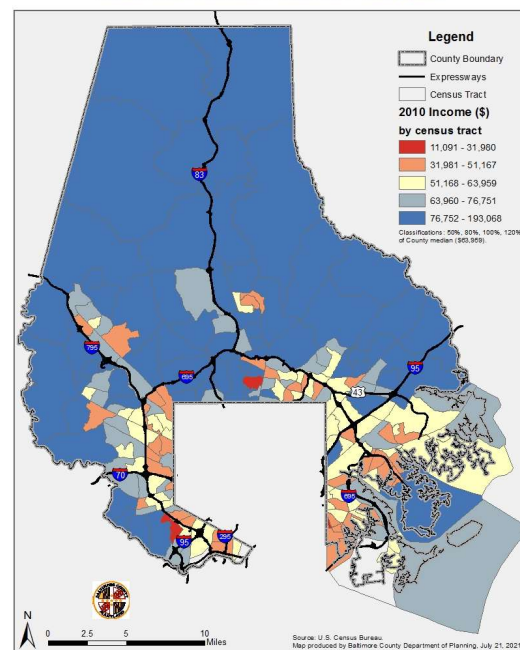
Demographic Characteristics

Median Household Income

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Median Household Income in Baltimore County, 2010



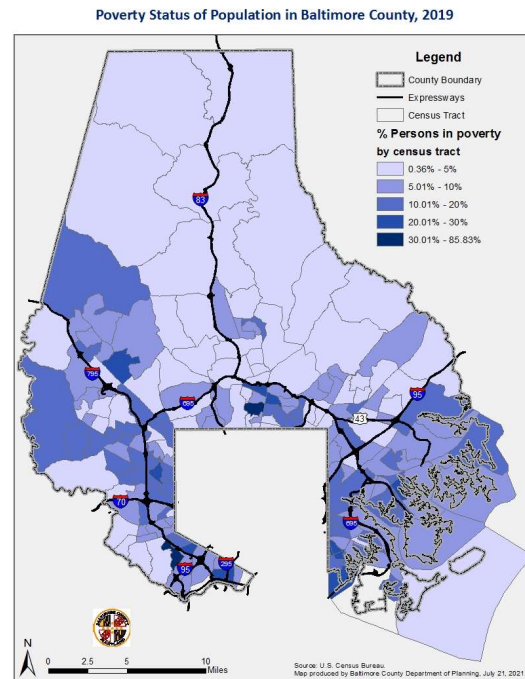
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Demographic Characteristics

Poverty Status

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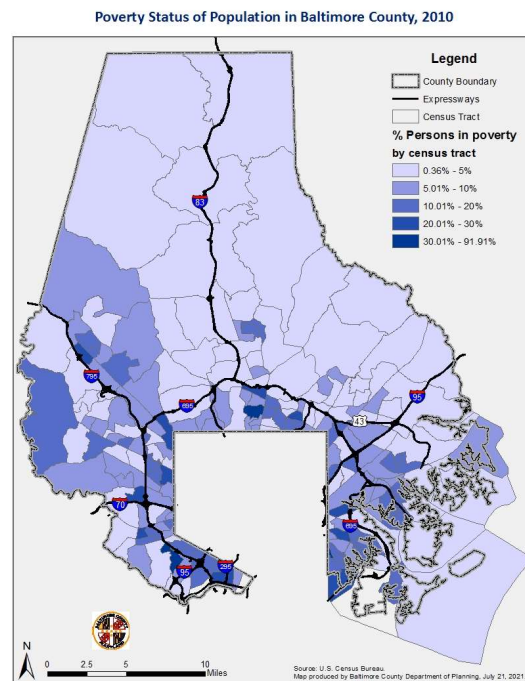
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Demographic Characteristics

Poverty Status

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20

Demographic Characteristics

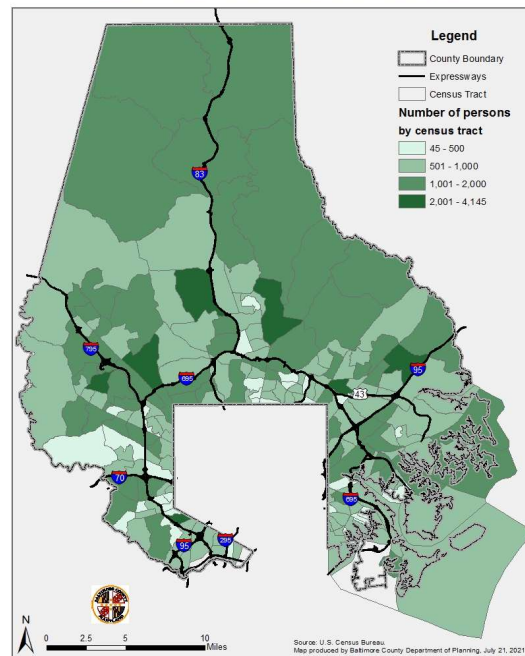
60 Years or Over

Median age:
2010 = 39.1
2019: 39.4.

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Population 60 Years Old and Over in Baltimore County, 2019



21

Demographic Characteristics

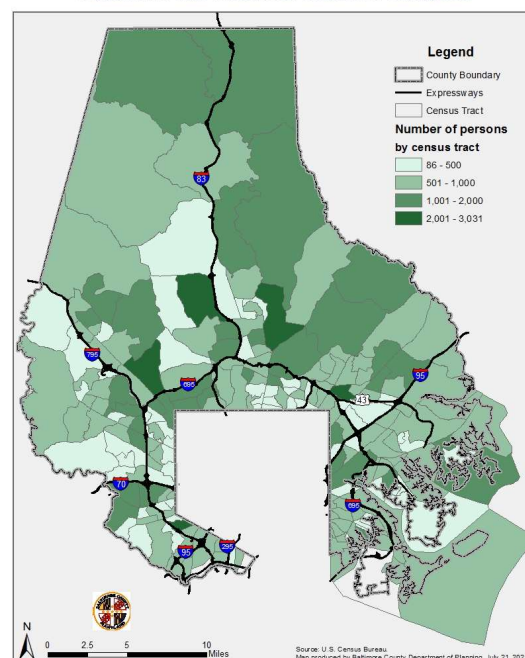
60 Years or Over

Median age:
2010 = 39.1
2019: 39.4.

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Population 60 Years Old and Over in Baltimore County, 2010



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Exhibit 9

BALTIMORE COUNTY REDISTRICTING MANUAL



Prepared By:

**Baltimore County Council Staff
January, 2021**

I. INTRODUCTION

In December, 2001 the County Council passed Resolution 142-01 to establish a commission to review the Baltimore County Charter provisions that govern the process of redistricting. These provisions, embodied in Section 207 of the Charter, had remained virtually unchanged since the adoption of the Charter in 1956.

The Commission, chaired by former Councilman John V. Murphy, (the “Murphy Commission”) recommended that the Council adopt legislation amending Charter Section 207. In response, the Council passed Bill 67-02, which prescribes formation of the Councilmanic Redistricting Commission (the “Redistricting Commission”) and sets forth the process for redistricting, the relevant deadlines, and the substantive requirements for the composition of the revised district. County voters approved the Charter amendment on November 5, 2002. The current Charter Section 207 follows:

Charter Section 207. Revision of Councilmanic Districts.

(a) *Redistricting commission; composition.* Not later than March 1 of the year after each decennial census of the United States, the County Council shall establish, by resolution, a councilmanic redistricting commission. The commission shall be composed of five members appointed by the County Council. A person who holds elective office is not eligible for appointment to the commission.

(b) *Commission action.* The commission shall hold at least three public hearings, and, by October 15 of the year in which the commission is appointed, the commission shall recommend to the county council legislation to revise, amend, or reconstitute, but not to increase or decrease the number of, councilmanic districts in effect at such time. The legislation shall provide for councilmanic districts that are compact, contiguous, and substantially equal in population, and in which due regard is given to current natural, geographic, and community boundaries.

(c) *Council action.* The county council shall hold one or more public hearings on the recommendation of the commission, and by January 31 of the year following the appointment of the commission, the council shall adopt a final redistricting plan by legislative act adopted by a majority plus one of the total number of county council members. The final plan may not increase or decrease the number of councilmanic districts in effect at the time. The plan shall provide for councilmanic districts that are compact, contiguous, and substantially equal in population, and in which due regard is given to current natural, geographic, and community boundaries.

(d) *Final redistricting plan.* The final redistricting plan adopted by the county council is not subject to the executive veto provided in Article III, Section 308(g), but is subject to the referendum provision of Article III, Section 309.

A. REDISTRICTING MANUAL

In addition to the current redistricting procedure, the Murphy Commission recommended that the Council develop a manual of relevant redistricting laws and procedures to serve as a guide for future revisions of the County's councilmanic districts. In 2002, the Council directed its staff to prepare a Redistricting Manual with the passage of Resolution 62-02. In accordance with that resolution, this manual was published on the Council's website for the 2010 redistricting process and has been revised and updated for the 2020 redistricting process.

B. COMMISSION MEMBERSHIP & MEETINGS

The Murphy Commission report recommended that the Redistricting Manual address how the Redistricting Commission was to be chosen, who could or could not be chosen, and how the Redistricting Commission would operate.

The method of Redistricting Commission appointment is clearly within the province and discretion of the elected members of the County Council and cannot be codified in a non-binding procedural manual. The Councilmembers determine how Redistricting Commission members are chosen and who is chosen. The only limitations are those contained in Charter Section 207(a): (1) there must be five commission members, and (2) a person who holds elective office is not eligible for appointment.

While other state and local redistricting commissions have party affiliation or equal political representation requirements, no such restrictions are found in Charter Section 207. At a minimum, the Council, in its resolution establishing the Redistricting Commission, should name the members, designate the Chairman of the Redistricting Commission, and specify a definite date for the Redistricting Commission to report to the Council.

As for the manner in which the Redistricting Commission will operate, logic dictates that it should conduct all of its proceedings, including its working sessions, as a committee of the whole. However, this is an issue for the Redistricting Commission to decide, or for the County Council to decide when it appoints and charges the Redistricting Commission with its task.

C. 2010 REDISTRICTING PROCESS

This Charter redistricting procedure governed the redistricting process after the 2010 Census. With the passage of Resolution 26-11, the Baltimore County Council established the five member Redistricting Commission on March 7, 2011. The Redistricting Commission held public hearings on April 12, April 23, and April 28, and submitted its written report and recommended redistricting plan to the Council on June 30, 2011.

On August 1, 2011, the Council held a public hearing on the recommendations of the Redistricting Commission. Upon consideration of the Redistricting Commission's recommendations, the Council passed Bill 59-11 on October 3, 2011, which revised and reconstituted the County's seven councilmanic districts in accordance with the 2010 Census. The councilmanic district boundaries established by Bill 59-11 became effective for the 2014 election.

II. SUBSTANTIVE LAW

A. BACKGROUND

Redistricting is conducted after each decennial census. The U.S. Constitution mandates a periodic census of the country. The population is enumerated every ten years, and the results are used to allocate Congressional seats, electoral votes, and government program funding. The census is performed by the United States Census Bureau. The most recent census was conducted in 2020. Based upon the 2020 data, State and local legislative bodies will redistrict in accordance with their jurisdictional requirements.

Most elected offices in the United States represent distinct geographical areas. These areas are electoral districts. Redistricting is the process of redrawing electoral district boundaries. Redistricting is different than reapportionment, which is the assignment of seats in the U.S. House of Representatives to States based on their population. This is a requirement of Article 1 of the U.S. Constitution. Once the number of representatives each State receives is determined, each State has the responsibility of creating specific electoral districts from which representatives are to be elected. This is the process of redistricting.

B. CHARTER REQUIREMENTS

The Baltimore County Charter requires that the Redistricting Commission recommend to the County Council, and that the final plan adopted by the County Council provide for, councilmanic districts that are:

- Compact
- Contiguous
- Substantially equal in population, and
- In which due regard is given to current natural, geographic, and community boundaries

Along with the applicable federal requirements (e.g. compliance with the federal Voting Rights Act), adherence to these standards is the essential prerequisite of any future redistricting plan. This is not to say that the County Council, in preparing the final redistricting plan, may consider only these stated factors. On the contrary, because the process is in part a political one, the Council may consider countless other factors, including broad political and narrow partisan ones, and the Council may pursue a wide range of objectives. So long as the plan does not contravene the Charter criteria, that it may have been formulated to achieve other social or political objectives will not affect its validity. However, those non-Charter criteria cannot override the Charter ones.

It is the responsibility of the County Council to draw the councilmanic districts. Fulfillment of that responsibility involves the exercise of discretion, and because the process is partly a political one, political considerations and judgments may be, and often are, brought to bear. But neither discretion nor political considerations and judgments may be utilized in violation of Charter standards. In other words, if in the exercise of discretion, political considerations result in a redistricting plan in which councilmanic districts are non-contiguous, are not compact, are of

substantially unequal population, etc., that plan will fail. The Charter trumps political considerations. Politics or non-Charter considerations never trump Charter requirements. In this regard, see *In the Matter of Legislative Districting of the State*, 370 Md. 312 (2002).

An analysis of the Charter requirements follows and is instructive on the task at hand.

1. COMPACT & CONTIGUOUS

Compactness is a practical or functional concept. A district would not be sufficiently compact if it was so spread out that there was no sense of geographic community; that is, if its members and its representative could not effectively and efficiently stay in touch with each other, or if it was so convoluted and tortuous that there was no sense of district identity, that is, if its members and its representative could not easily tell who actually lived within the district.

A district must also be contiguous. The definition of contiguity is simple. A contiguous district consists of territory touching, adjoining and connected as distinguished from territory separated by other territory. Therefore, although a district may consist of territory divided by a river or other body of water, a district that is divided by another district does not meet the contiguity requirement. The requirements of compactness and contiguousness are not problematic for Council districts; these criteria often become relevant in challenges to the gerrymandering schemes which are sometimes alleged in Congressional redistricting cases.

2. SUBSTANTIALLY EQUAL POPULATION

The requirement for equality of population in the councilmanic districts is the critical element of the redistricting process. This requirement is at the heart of the constitutional guarantee of equal representation.

In 1962, the Supreme Court, in *Baker v. Carr*, 369 U.S. 186, interpreted the Equal Protection Clause of the 14th Amendment to the U.S. Constitution to require that electoral districts be periodically adjusted or redrawn to account for population shifts among them. According to the court's "one person, one vote" doctrine, malapportioned districts result in the votes of those voters in highly populated districts counting less than those of voters in less populated ones. Those residing in districts of lesser population are over-represented, while those citizens residing in larger districts are under-represented. The Court has firmly established that Equal Protection requires that districts from which State representatives are elected must be as nearly equal in population as is practicable. *Reynolds v. Sims*, 377 U.S. 533, 577 (1964); *Maryland Committee for Fair Representation v. Tawes*, 377 U.S. 656, 674 (1964); *Davis v. Mann*, 377 U.S. 678, 690 (1964); *Roman v. Sincock*, 377 U.S. 695, 708 (1964); *Lucas v. Forty-Fourth General Assembly of Colorado*, 377 U.S. 713, 734 (1964).

The one person, one vote principle was initially applied to state legislatures and congressional districts. Since then, the rule has been extended to the election of county and municipal representatives if such governments exercise substantial governmental powers.

The standard is not one of absolute equality. The Courts have always acknowledged that there are legitimate reasons to deviate from creating districts with perfectly equal populations, among them, the requirement to create compact and contiguous districts, and to give due regard to certain boundaries, as well as many other factors, including political and partisan considerations. As long as the deviations from a strict population standard are based on legitimate considerations incident to the effectuation of a rational public policy, some deviation is permissible.

Accordingly, there is a constitutional guarantee of equal representation for equal numbers of people, and legislative districts must be as nearly of equal population as is practicable. The Supreme Court has never set an exact mathematical ratio that will be constitutionally permissible or impermissible, but extrapolating from the many court decisions on this subject, it is likely that variations among districts that approach 20% will be considered unacceptable.

As Chief Justice Warren observed in writing for the Supreme Court in the 1964 case of *Reynolds v. Sims*, 377 U.S. 533, “mathematical nicety is not a constitutional requisite” when drawing legislative plans. All that is necessary is that they achieve “substantial equality of population among the various districts.” That term has come to mean that a legislative plan will not be invalidated for inequality of population if its overall range is less than 10%. The 10% standard was first articulated in a dissenting opinion written by Justice Brennan in the case of *Gaffney v. Cummings*, 412 U.S. 735 (1973), and the Court later endorsed and followed the rule.

The most common way of determining if districts are out of balance is to determine the total maximum deviation, which is the aggregate total of the percentage of variation from the ideal between the largest and the smallest district.

For example and by way of illustration, if one assumes a county with 40,000 population and four Council districts, the ideal size of a district would be 10,000 persons:

County Population	40,000
Number of Council Districts	4
Ideal District Size	10,000
<u>Actual District Size</u>	<u>% Deviation from Ideal</u>
District 1 9,500	-5.0%
District 2 9,850	-1.5%
District 3 10,250	+2.5%
District 4 10,400	+4.0%
Total Deviation	9%

In this example, the smallest district has 9,500 persons and is thus 5% smaller than the ideal district size. The largest district, on the other hand, has 10,400 persons, or 4% more than the ideal district. By adding the absolute percentage deviation of the largest district to that of the smallest district, the total maximum deviation in this case is 9%.

There is no magic maximum deviation that is utilized to determine that plans that meet that number will always be permissible and plans that exceed it will always be unlawful. Nevertheless, in local redistricting decisions (State and Congressional redistricting plans are subject to stricter scrutiny regarding permissible deviation), a maximum deviation of 10% or less is likely to be found to be of prima facie validity. See *In re 2012 Legislative Districting*, 436 Md. 121 (2013). Thus, the 10% figure is a helpful rule of thumb, and the Baltimore County Council has utilized and adhered to the rule in the last three redistricting processes.

3. DUE REGARD

The County Charter requires the Redistricting Commission and the County Council to give “due regard” to current natural, geographic, and community boundaries in drawing the district lines.

This phrase was crafted by the Murphy Commission in 2002 after its review of the State’s redistricting process, as well as the processes in other Maryland counties. The concept embodied in the phrase is that when the members of the County Council redistrict as required by law, they should give some form of consideration (“due regard”) to the status quo - to the current natural, geographic and community boundaries of the Councilmanic districts as they were established following the last preceding decennial census.

There are several obvious questions raised by the Charter language chosen by the Murphy Commission. What is “due regard?” ... and what is a “community?”

The phrase chosen by the Murphy Commission most closely mirrors the phrase found in the Maryland Constitution governing legislative redistricting. Since the Maryland Court of Appeals has interpreted this Constitutional provision, it is helpful to review the State provision and the Court’s analysis of it.

Article III, Section 4 of the Maryland Constitution requires each State legislative district to consist of adjoining territory, be compact in form, and be of substantially equal population, and “due regard shall be given to natural boundaries and the boundaries of political subdivisions”.

According to the Court of Appeals, Article III, Section 4 of the Constitution provides two sets of requirements, one subsidiary to the other. The primary set of requirements is that the legislative districts be compact, consist of adjoining territory, and be of substantially equal population. The second set of requirements is subsidiary to these, namely, that legislative districting ought to follow both natural and political boundaries, including both county boundaries and the borders of incorporated municipalities, i.e. the boundaries of political subdivisions. The primary intent of the due regard provision is to preserve those fixed and known features which enable voters to maintain an orientation to their own territorial areas. The requirements of the due regard provision are “mandatory,” yet “fluid”.

The Court recognized that each of the constitutional requirements of Section 4 work in combination with one another to ensure the fairness of legislative representation. That they tend to conflict in their practical application is, however, a plain fact, which is that population could be

apportioned with mathematical exactness if not for the territorial requirements, and compactness could be achieved more easily if substantially equal population apportionment and due regard for boundaries were not required. *In the Matter of Legislative Districting of the State*, 370 Md. 312 (2002).

The Court's holding is that the requirement imposed on the General Assembly to give due regard to natural and political boundaries is subsidiary or secondary to its primary duty to create compact, contiguous legislative districts of substantially equal population. In the give-and-take process of redistricting, a process that is both political and practical, the first set of requirements – to create compact, contiguous, equally-populated districts – takes precedence over the second – to follow natural and political boundaries in drawing the lines. The report of the Murphy Commission confirms its agreement with this analysis and conclusion.

The April 22, 2002 report of the Murphy Commission states, in part, that:

“In regard to guidelines, there were proposals we considered which in our view should be considered as **recommendations but not requirements** for future consideration. For example the idea that communities should be kept together is compelling. We **added the word “community” to the list of criteria in the Charter to be considered**. However there was a suggestion in furtherance of this goal that we should require new districts to preserve community association boundaries. While we found this to be an admirable goal, we could not recommend it as a requirement, in view of the uncertainty of such boundaries and even the makeup of the community associations. We could not be certain that after ten (10) years there would always be a contact person for each association. Consequently, we recommend this idea become **one of a list of criteria** given in the Policy Manual as **a guide and goal for the Commission and Council to consider**.” (emphases supplied)

Accordingly, both the Redistricting Commission and the County Council must give consideration to current natural, geographic and community boundaries, but their primary task is to create compact, contiguous, equally-populated Councilmanic districts.

The requirement that due regard be given to natural and geographic boundaries is relatively straightforward and uncomplicated. The maps in Appendix A demonstrate that these boundaries (rivers, railroad lines, highways, etc.) have been respected in the past. They are the obvious starting point for the drawing of election district boundaries at any level of government in any jurisdiction.

4. (i) COMMUNITY

The more difficult issue is the meaning of the word “community” in Section 207. The Maryland Constitution requires the General Assembly to consider political boundaries, that is, the legally-established boundaries of Maryland's counties and municipalities. Baltimore County is a single, self-governing political subdivision with no incorporated municipalities. What then are the community boundaries that the County Council must consider?

Because the County has no incorporated municipalities, the boundaries of its communities are oftentimes imprecise. Whereas the boundaries of municipalities are legally established by vote of the registered voters who are residents of the area to be incorporated, the boundaries of Baltimore County's communities are either historical or have been designated by County Council resolution for purposes of a community plan adopted as part of the Master Plan, or for a specific funding program, or for some other ad hoc purpose.

The boundaries established for certain purposes differ at times from the traditional boundaries, and in some cases, the designated boundaries include only portions of the County's traditional communities. For example, the boundaries of the County's Commercial Revitalization Districts were officially designated by resolution of the County Council in 1997 (Res. 114-97) and have since been amended or re-designated by subsequent resolutions. This designation carries with it certain benefits and incentives for the redevelopment of properties within the districts. The districts include parts of the communities traditionally known as Arbutus, Woodlawn, Pikesville, Reisterstown, Loch Raven, Towson, Dundalk, Essex, and others.

Recognizing this lack of precision to the boundaries of Baltimore County's communities, the fundamental issue, in analyzing the language of the County Charter, is the meaning of the word "community". According to the Baltimore County Master Plan 2020, there are 31 regional "planning districts", and approximately 40 "community plans" have been adopted by the County Council as amendments to the Master Plan. There are also numerous "community associations" in the County, official and unofficial, and there are countless other place names in the County. Additionally, specific areas of the County have seen rapid urbanization and infill, further blurring the lines between once-distinct communities in areas such as Towson and Owings Mills.

It seems evident that "community" means something more than a place, name or a neighborhood, and something other than a planning district. A Baltimore County community is one of the well-established, traditional/historical areas of the County that is recognized by the Master Plan or County Council resolution as a discrete area for purposes of planning or funding.

A subsidiary issue for consideration is that, in almost all cases, these traditional communities are represented by one or more associations. The question then arises as to whether traditional communities are tied to or associated with any particular association(s) that claims to represent the community.

4. (ii) MURPHY COMMISSION ON COMMUNITY

The Murphy Commission members understood the County's history. It seems evident from a reading of the Murphy Commission report that the use of the word "community" was intended to mean more than merely "communities of interest", a phrase addressed by the Court of Appeals in its 2002 decision *In re Legislative Districting of State*, 370 Md. 312, 321, (2002). The Court specifically rejected the argument that the due regard provision protects "communities of interest", a concept the Court found nebulous and unworkable, pointing out that such communities, involving concentrations of people sharing common interests, are virtually unlimited and admit of no reasonable standard.

The Murphy Commission stated that: “We added the word “community” to the list of criteria in the Charter to be considered. However there was a suggestion in furtherance of this goal that we should require new districts to preserve community association boundaries. While we found this to be an admirable goal, we could not recommend it as a requirement, in view of the uncertainty of such boundaries and even the makeup of the community associations.”

The Murphy Commission thus explicitly rejected the notion that the phrase “community boundaries”, as used in Section 207, refers to or is tied to community association boundaries and seemed intent on limiting the meaning of the phrase, due in part to the “uncertainty” of boundaries.

5. SUMMARY

The Murphy Commission was well versed in the law of redistricting. The Murphy Commission recommended the codification of the primary requirements that Councilmanic districts be compact and contiguous and the subsidiary requirement that “due regard” be given to natural, geographic, and community boundaries, characterizing the objects of the due regard phrase, i.e. those natural, geographic, and community boundaries, as matters to be considered.

It seems clear that, with the 2002 amendment to Charter Section 207, compactness, contiguousness, and due regard for natural, geographic, and community boundaries take precedence over otherwise valid political and social factors that the Redistricting Commission or the County Council may consider during the process of redistricting.

A long line of federal court decisions, as well as decisions of the Maryland Court of Appeals, have made it clear that the critical issue is that districts be as nearly of equal population as is possible, but that the creation of compact and contiguous districts is a legitimate reason to deviate from perfect equality of population (but not more than 10%). Other, non-required considerations are equally legitimate, but they may not override the required considerations.

The Maryland Court of Appeals has clarified for the County that the constitutional “due regard” requirement - which is very similar to the County Charter requirement - is a subsidiary requirement that is “fluid”. The Murphy Commission concurred, stating that the elements of the due regard phrase are factors for the consideration of the decennial Redistricting Commission and the County Council.

There have been past instances in which County Council redistricting decisions have affected traditional, recognized communities in the County, i.e. redrawn district lines have split traditional, recognized communities. Such action is not foreclosed to future Councils, but the Council will now be required to give consideration to the current boundaries, however imprecise, of communities before committing to drawing lines that split them.

C. VOTING RIGHTS ACT

In addition to the requirements of Charter Section 207, there are other legal considerations that the Council must consider in the process of redistricting. Although the Council’s primary effort must be to ensure that the seven Councilmanic districts are substantially equal in population,

the Council must also ensure that its redistricting actions do not give rise to a claim of vote dilution by a minority class.

Section 2 of the Voting Rights Act of 1965 (43 U.S.C. 1973), as amended in 1982, prohibits any voting practice or procedure that results in a denial or abridgement of the right to vote on account of race or color. The Section provides a private cause of action by which protected groups can challenge election procedures.

1. THORNBURG V. GINGLES

The 1986 Supreme Court decision in *Thornburg v. Gingles*, 478 U.S. 30 (1986) set the standard for minority vote dilution cases. Although the case concerned an at-large election system in North Carolina, its holding is applicable to elections in a single-member district system or a multi-member district system.

A finding of discriminatory purpose is not required to establish a voting rights case. The basic standard to come out of the case is the establishment of a three-part test that constitutes the “necessary precondition” for the establishment of a claim under the Act. The three- part test is:

- (1) The minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district. (Most courts have interpreted Section 2 and *Gingles* to require a majority of black voting age population).
- (2) The minority group must be able to show that it is politically cohesive.
- (3) The minority group must be able to demonstrate that the white majority votes sufficiently as a block to enable it, in the absence of special circumstances such as the minority candidate running unopposed, usually to defeat the minority’s preferred candidate.
- (4) A later case, *Bartlett v. Strickland*, 556 U.S. 1 (2009), added the requirement that a minority group be a numerical majority of the voting-age population in order for Section 2 of the Voting Rights Act to apply.

While the three-part test provides the primary basis for analysis, it does not necessarily end the inquiry. If A person or group challenging the redrawn districts can meet the three-part test, they stand an excellent chance of prevailing in litigation, but meeting the test merely permits the plaintiff to pass the threshold necessary to establish a claim. In response to a challenge, the court will still look at the totality of the circumstances and will consider the various factors set out in the Senate Report accompanying the 1982 legislation updating the Voting Rights Act. They are:

- (1) The extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process;

- (2) The extent to which voting in the elections of the state or political subdivision is racially polarized;
- (3) The extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
- (4) If there is a candidate slating process, whether the members of the minority group have been denied access to that process;
- (5) The extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process;
- (6) Whether political campaigns have been characterized by overt or subtle racial appeals;
- (7) The extent to which members of the minority group have been elected to public offices in the jurisdiction;
- (8) Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority groups; and
- (9) Whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, standard, practice, or procedure is tenuous.

2. SUBSEQUENT CASE LAW

Subsequent Supreme Court cases have further clarified the extent to which race factor into the redistricting process. In *Shaw v. Reno*, 509 U.S. 630 (1993) the Court held that legislative and congressional districts will be struck down by courts for violating the Equal Protection Clause if they cannot be explained on grounds other than race. While not dispositive, “bizarrely shaped” districts are strongly indicative of racial intent. In *Miller v. Johnson*, 515 U.S. 900 (1995) the Court further expounded that a district becomes an unconstitutional racial gerrymander if race was the “predominant” factor in the drawing of its lines. Recently, in *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257 (2015) the Court clarified that equal population is not a “factor to be considered” when redistricting, but rather a constitutional mandate.

Recent case law has explored the distinction between a racially motivated redistricting and a politically motivated redistricting. In *Bush v. Vera*, 517 U.S. 952 (1996) the Court struck down three racial minority-majority districts drawn by the Texas legislature. The legislature argued that partisan politics, not race, was the dominant motive in drawing district lines. However, the Court found that the legislature was unconstitutionally using race as a proxy for political affiliation. To survive strict scrutiny under the Equal Protection Clause and avoid being struck down as a racially biased redistricting, a district must be reasonably compact.

In *Cooper v. Harris*, 137 S. Ct. 1455 (2017) the Court finally held that partisanship cannot be used to justify a racial gerrymander. Further, Section 2 of the Voting Rights Act requires that a racial minority have the opportunity to elect a “candidate of choice,” not that a particular percentage of minority voters be present in a district. This case represents a synthesis of earlier cases on the requirements of Section 2 as set out in *Gingles*, and the now well-developed case law on racial gerrymandering that began with *Shaw v. Reno*.

D. POLITICAL GERRYMANDERING

No other area of election law has been as confounding to the federal courts as that of politically motivated redistricting, or gerrymandering. While there have been several Supreme Court cases, the only relevant case at present is *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019). The Court examined two cases – one from North Carolina and one from Maryland – that challenged explicit political gerrymandering. The Supreme Court found that partisan gerrymandering is a political question and thus is non-justiciable. This formally closes the courthouse door to challenges to a redistricting process on federal grounds.

The Supreme Court’s ruling in *Rucho* makes it unclear where the current direction of case law will go on political gerrymandering. It may still be possible to bring specific state-based claims, but it is unclear how such a claim will be viewed by Maryland state courts, since the Maryland controversy over the 2010 state congressional maps was consolidated in the *Rucho* ruling. However, it is clear from the underlying facts in both the *Rucho* cases that an intent to politically gerrymander should be clear, unequivocal, and bluntly explicit.

III. REDISTRICTING PROCEDURE

Redistricting in Baltimore County involves a multi-step process. All dates listed assume the Council continues to meet on the first and third Mondays of each month and follow the current bill introduction and voting timeframe. The chronology of those steps is as follows:

- (1) The County Council must appoint a five-member Councilmanic Redistricting Commission no later than March 1 of the year following the decennial census, i.e. March 1, 2021;
- (2) The Redistricting Commission must hold at least three public hearings;
- (3) The Redistricting Commission must recommend legislation encompassing a redistricting plan to the County Council by October 15 of the year in which the Redistricting Commission was appointed, i.e. October 15, 2021;
- (4) The County Council must hold one or more public hearings on the Redistricting Commission recommendation; and
- (5) The County Council must adopt a final redistricting plan, by legislative act, by January 31 of the year following appointment of the Redistricting Commission, i.e. January 31, 2022.

Neither the Redistricting Commission recommendation nor the Council's final plan may change the number of councilmanic districts in effect at that time. The Council's legislative act requires the affirmative vote of at least five members for passage. It is not subject to executive veto. The revised districts will become effective for the 2022 election.

A. TIMING

The Redistricting Commission has a maximum time frame of seven and one-half months within which to hold its requisite three public hearings and prepare a redistricting plan as a recommendation to the Council. The Murphy Commission report stressed the "need to engage the citizens of the County in the redistricting process as much as possible" and recommended public hearings "in many locations" around the County.

Assuming the Redistricting Commission utilizes the entire time permitted to it, the Council only has approximately 60 calendar days to hold a public hearing and introduce legislation to revise the districts. Given the scheduling and advertising requirements, this is a relatively brief period of time. While the Council must hold at least one public hearing, the truncated timeline indicates the Murphy Commission's intent that most, but not all, of the outreach role be the task of the Redistricting Commission. However, there is flexibility for the Council to request the Redistricting Commission's report ahead of the deadline if the Council agrees that it should hold more than one public hearing.

In order to meet scheduling and advertising requirements, the Council's proposed legislation reforming and revising the councilmanic districts must be introduced no later than the December 20, 2021 meeting for final vote at the January 17, 2022 meeting.

It is equally doubtful that the Redistricting Commission will have the luxury of spending seven months to hold public hearings and to prepare a redistricting plan as a recommendation to the Council. In particular, the pandemic caused by the COVID-19 virus has caused delays in the Census process that will likely impact when the Redistricting Commission may receive certain necessary maps and data. Also, the Board of Elections will require the completed redistricting plan in sufficient time to prepare for the statewide primary election of 2022. Current state law (Md. Code Ann., Elec. Law § 8-201) requires the primary election to be held on the last Tuesday in June, 2022.

Another practical issue inherent in the redistricting process is that it begins on a date certain, and all succeeding deadlines flow from that date. The former language of Section 207 required the County Council to act within a certain time after publication of the Census data. Now, the Council must begin the process no later than March 1, independently of the publication or availability of the census data. Therefore, the procedural steps detailed herein should be initiated as soon as possible after January 1 so that the Council is ready to appoint the Redistricting Commission as soon as the census data is available to the County.

B. RESOURCES & STAFFING

Generally, the Redistricting Commission and the County Council should utilize the same working facilities and the same staff. The logistics involved require a joint utilization of facilities because the volume of data to be gathered, stored and securely maintained for a nine-month period is significant. The Council staff should be utilized because the staff is experienced and non-political; the staff is familiar with the County and can best handle the technical (e.g., the scheduling of public hearings and the drafting of legislation) and legal issues inherent in the process of redistricting.

All Council or Redistricting Commission staff must keep confidential the communications of the Redistricting Commission members and all Redistricting Commission work product. Redistricting is a political process that is committed solely to the legislative branch of County government. The County Executive plays no role in the process, nor do the members of the General Assembly. The Council may hire support outside of County government to assist in the project.

The staff and all the resources detailed herein will be made available to the Redistricting Commission as soon as it is appointed and the census data is available. The Redistricting Commission will work independently to prepare its recommendation to the Council. When that recommendation is presented, the Council will then prepare its legislation pursuant to the Charter requirements.

C. OPERATION & LOGISTICS

As early as possible in the redistricting process, the Council should contact the County Office of Planning and the State Department of Planning. The Council should obtain a separate computer unit to be utilized solely for the redistricting project, and the Council library should be designated as the location for the computer and all other data associated with the project. The library should not be used for any other purpose until the project is completed.

The Census Bureau provides all Maryland census data to the Maryland Department of Planning which in turn will provide the data, in electronic form, to each County. The census data that forms the basis for the Council's decisions is presented in the form of census "blocks". A census block is the smallest geographic unit at which the Census Bureau publishes basic demographic data and is defined as a geographic area bounded by visible features, such as a road, stream, power line, railroad track, etc. Census blocks can vary in geographic size from one city block in an urban area to hundreds of square miles in a rural area. These blocks do not respect natural and geographic boundaries in all cases. The Council may not divide census blocks in the course of making its redistricting decisions.

The census data supplied by the State will contain the total number of persons by precinct and census block and total number of persons by major race group and by voting age population. A housing unit count will also be included. In addition to the census data, the following data should be obtained, again, as early as possible after January 1:

- A listing of all precincts by councilmanic district, number, and voting location

- A population breakdown, by precinct, and by race, for each councilmanic district
- A complete voter registration list
- The complete results of the preceding gubernatorial election
- A copy of the most recent redistricting bill
- Maps of each current councilmanic district (2' X 4'), showing existing boundaries and internal monuments
- Maps of legislative and congressional districts
- A directory of street addresses, indicating the election district, precinct, legislative district, congressional district, and zip code for each street address

All of this data will be made available to the Redistricting Commission members and the members of the County Council.

The objective for both the Redistricting Commission and the County Council is to redistrict by aggregating precincts into each Councilmanic district (see Bill 47-01 in Appendix D). The Councilmanic boundary lines should be identifiable monuments - precinct lines, roads, schools, etc., and the existing precinct lines are the starting point. The Redistricting Commission and the County Council must follow precinct line boundaries if at all possible and under no circumstances deviate from census block boundaries. The census block lines are inviolate; the precinct lines are not. If precinct lines are split, the Board of Elections Supervisors will later give effect to such splits by renumbering and realigning the split precincts to conform to the Council's decisions.

Once the Redistricting Commission recommendation is received, the Council should deal with redistricting as a committee of the whole. The members can work with the Council-assigned staff on an individual or group basis to review the maps.

C. EFFECTIVE DATE

The law adopting the Council's redistricting plan must be passed by the affirmative vote of at least five members, and it must explicitly state that the councilmanic boundaries established therein become effective for the next regularly scheduled election of councilmembers, e.g. 2022, on conclusion of the process that follows the 2020 census. The redistricting map that depicts the decisions inherent in the legislation should be clearly labeled "Baltimore County: Councilmanic Districts 2022".

IV. SUMMARY OF APPENDICES

Appendix A consists of five maps depicting the redistricting decisions of the County Council following the 1970, 1980, 1990, 2000, and 2010 census, respectively. It is readily apparent that the seven councilmanic districts in all cases meet the two objective criteria of compactness and contiguousness. These maps demonstrate that the Council has generally followed natural, geographic, and community boundaries. Beginning with the redistricting process following the 2010 census, the Council has also given "due regard" to these boundaries as a requirement of County law.

Appendix B consists of a chart dated March 8, 2011 and depicts the breakdown of the 2010 census data upon which the Council based its most recent redistricting decisions. The data shows that the total County population in the 2010 census count was 805,029* (*the census count was actually 807,053 when including incarcerated persons under the “No Representation Without Population Act” passed by the General Assembly in 2010, which requires population counts to include individuals incarcerated in the State or Federal correctional facilities at their last known residence before incarceration if the individuals were residents of the State of Maryland), an increase of 52,761 from 2000. Therefore, each of the seven districts should contain a population of 115,293 in order to be equal in number. Although increases in population occurred in all the Districts, Districts 3, 4, 5 and 6 were above that figure, while 1, 2, and 7 were below. District 5 was 6.06% above the optimal number, while District 1 was 6.05% below; therefore, the County-wide deviation was 12.11%. At the conclusion of the 2011 redistricting process, District 5 was 4.31% over the optimal number, while District 4 was 3.88% under the optimal number. Therefore, the total deviation was 8.19% and well within the 10% rule.

Appendix C is the full report of the 2002 Murphy Commission.

Appendix D is Bill 59-11.

Appendix E is the June, 1991 advice of the Attorney General on this subject. As a practical matter, the Council sometimes splits existing precinct lines, and the local election board makes the appropriate changes. The Council should work closely with the board to obtain accurate data from the board before the redistricting process begins and to ensure that the final Council decisions are accurately translated by the board upon the final adoption of the redistricting plan.

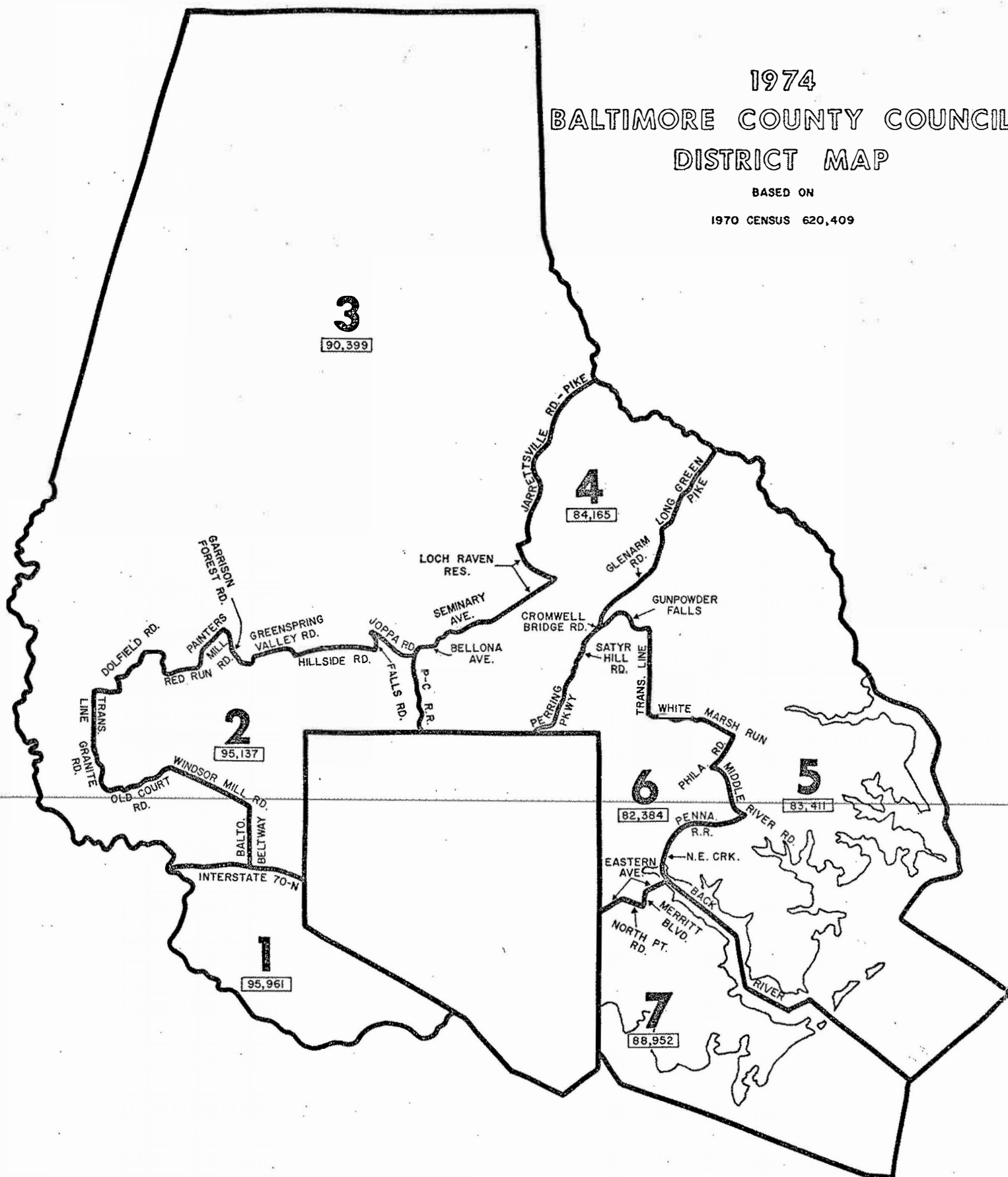
Appendix F is a 1991 memo that discusses the legal basis for the conclusion that the new Districts are effective for the next regularly scheduled election, and not sooner, as well as some of the practical consequences of that conclusion.

APPENDICES

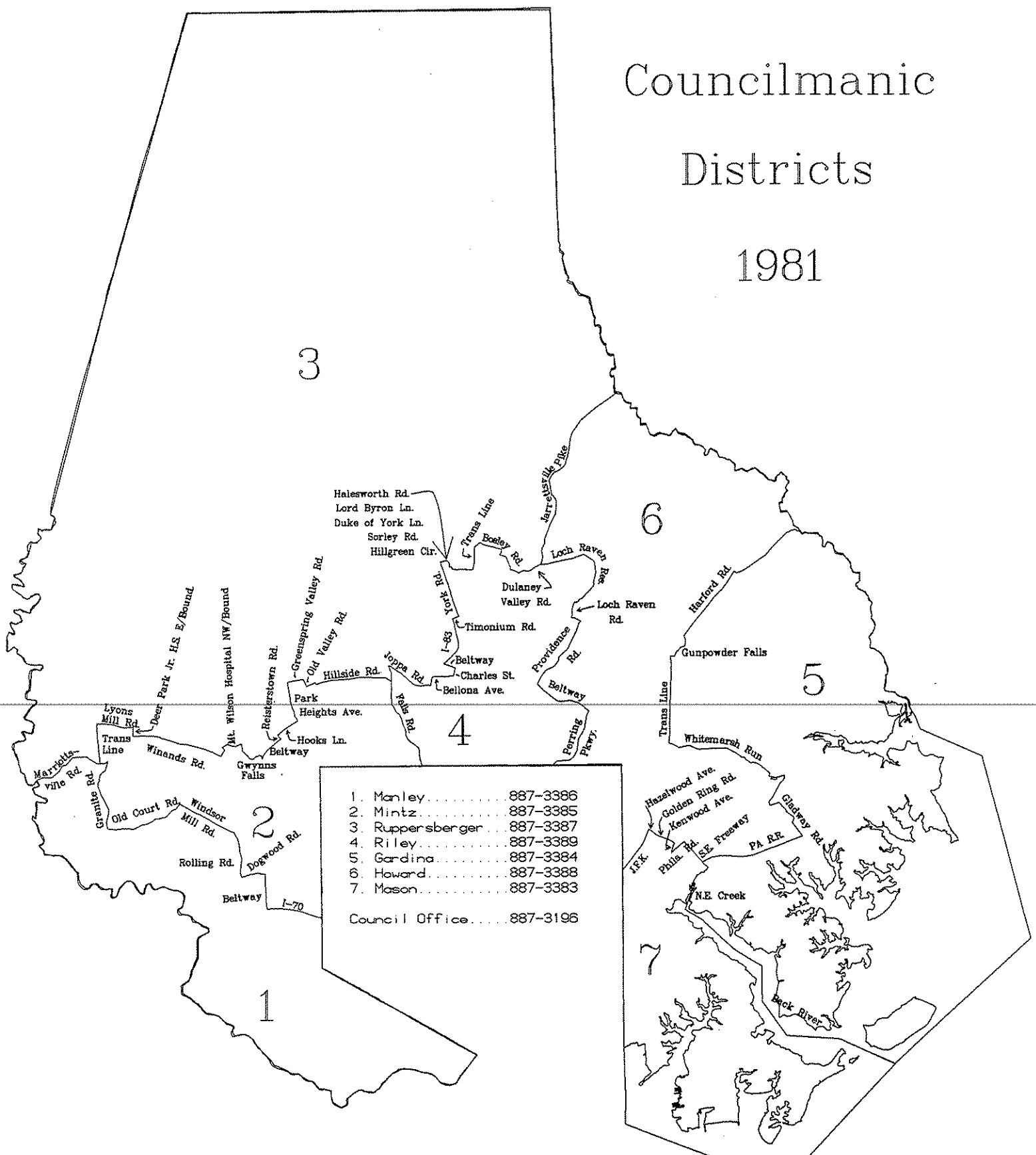
1974 BALTIMORE COUNTY COUNCIL DISTRICT MAP

BASED ON

1970 CENSUS 620,409

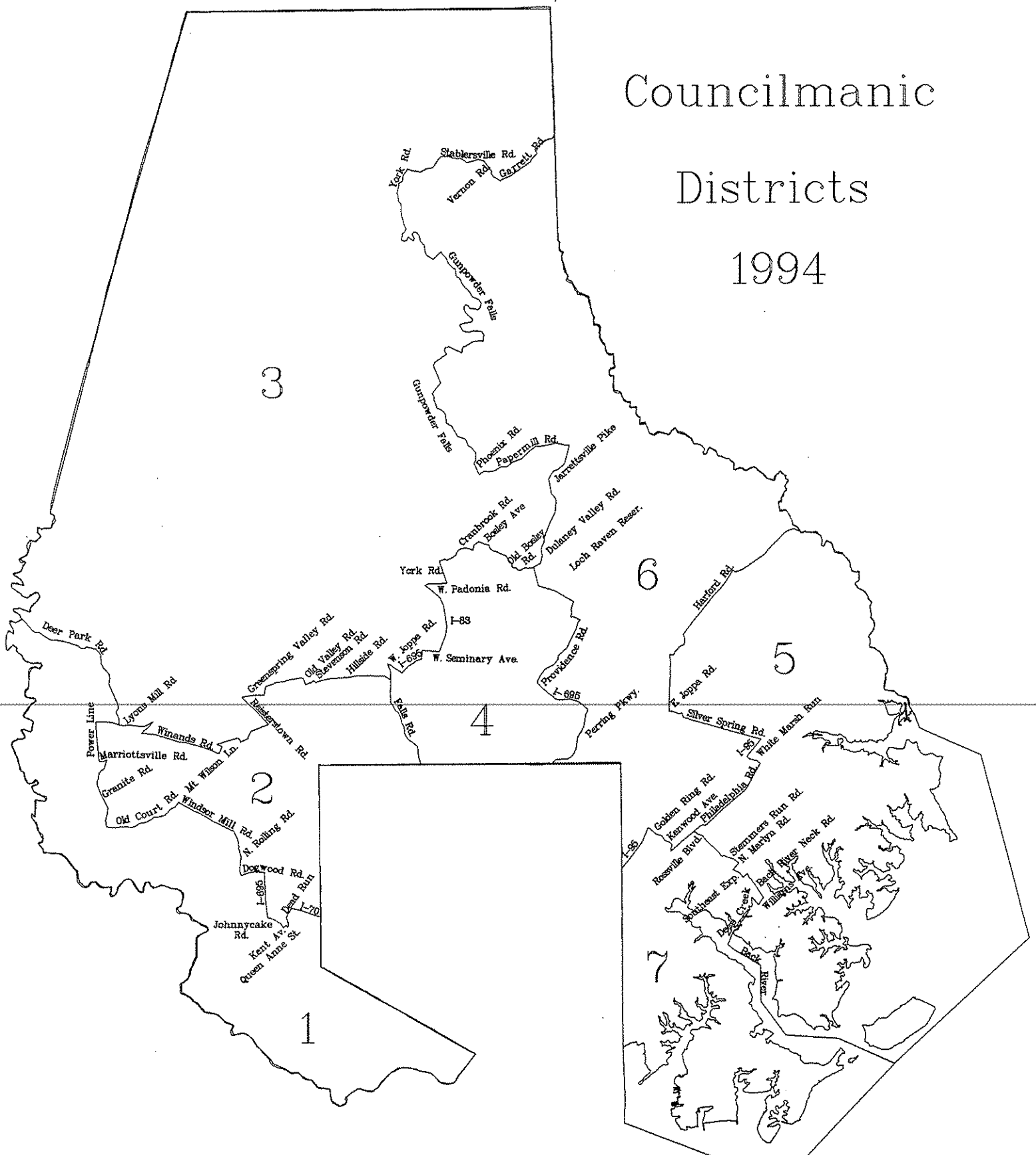


1981

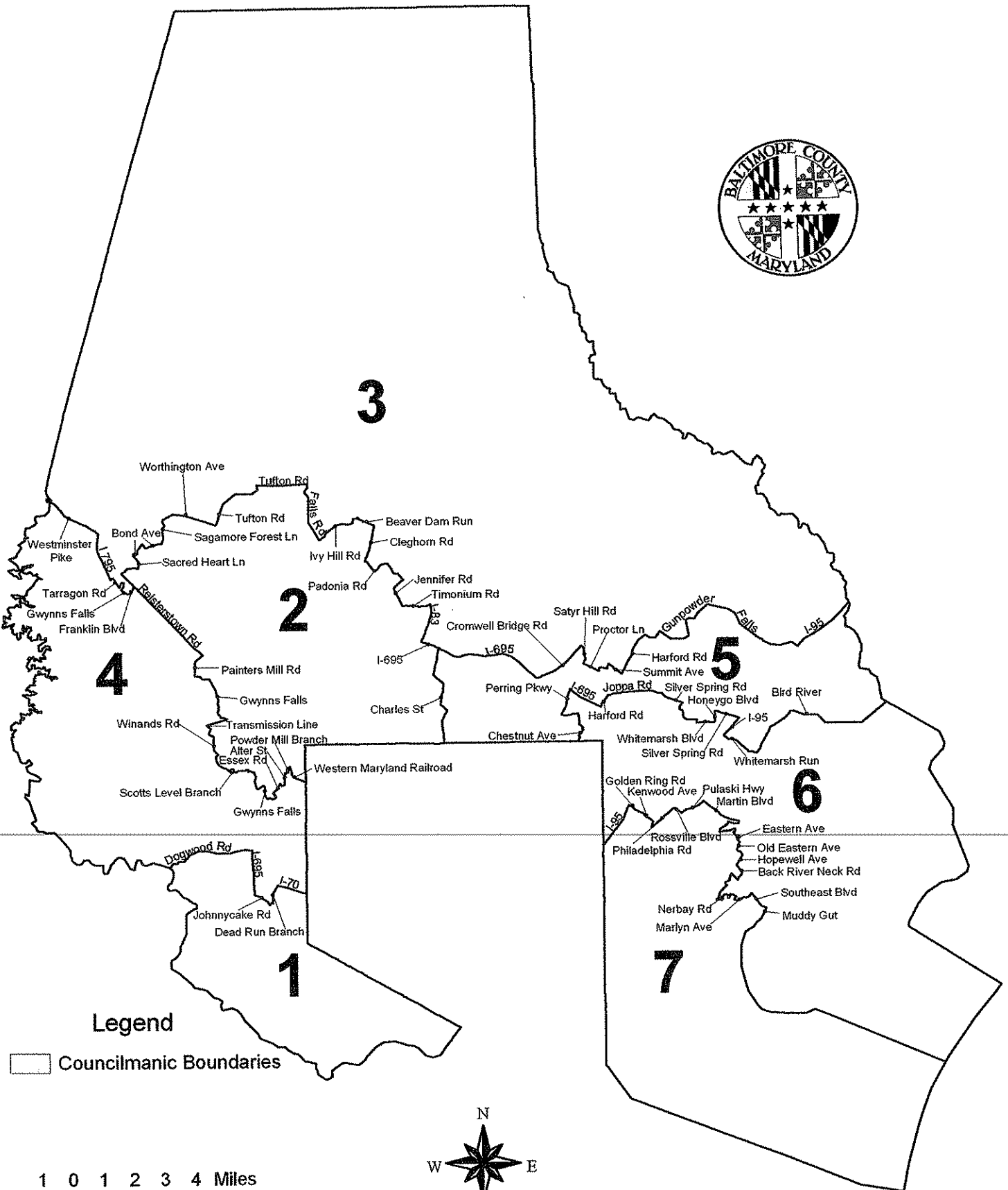


Baltimore County

Councilmanic Districts 1994

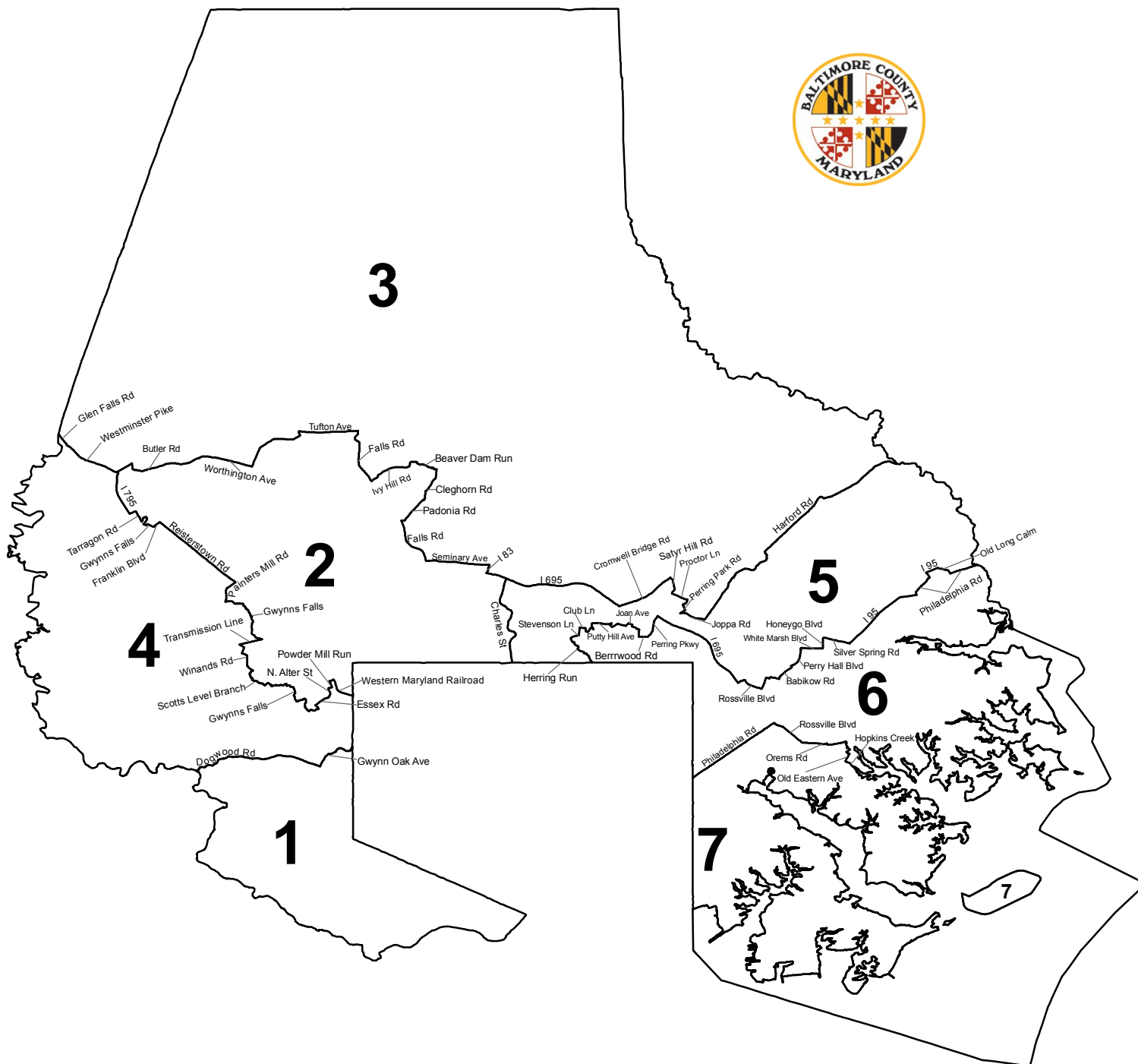


Baltimore County: Councilmanic Districts 2002



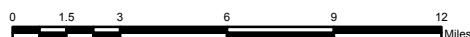
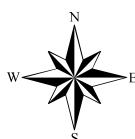
Data Source:
U.S. Bureau of the Census
2000 TIGER Line Data (1:100000)

Baltimore County: Councilmanic Districts 2014



Legend

 Councilmanic Boundaries



Data Source:
U.S. Census Bureau
2010 TIGER/Line Data

Plan: BaltimoreCounty/Districts

Plan Type:

Administrator:

User:

Population Summary Report

Tuesday March 8, 2011

2:49 PM

DISTRICT	POPULATION	DEVIATION	% DEVN.	White	Black	AmIndian	Asian	Hawaiian	Other	[Hispanic Origin]
1	106,048	-6,956	-6.05	64,929	29,406	324	7,981	59	2,383	5,481
2	110,850	-4,154	-3.61	73,397	26,975	209	6,060	62	1,837	4,809
3	116,544	1,540	1.34	97,821	8,058	238	6,809	50	1,414	4,149
4	116,630	1,626	1.41	24,493	82,812	299	4,037	35	1,964	4,584
5	121,975	6,971	6.06	90,537	19,560	228	7,717	37	1,095	4,085
6	121,097	6,093	5.30	80,997	28,987	491	5,475	49	1,995	5,445
7	109,885	-5,119	-4.45	88,011	13,940	836	1,998	27	2,113	5,182

Total Population:

805,029

Ideal District Population:

115,004

Summary Statistics

Population Range:

108,048 to 121,975

Ratio Range:

1.13

Absolute Range:

-6,956 to 6,971

Absolute Overall Range:

13,927.00

Relative Range:

-6.05% to 6.06%

Relative Overall Range:

12.11%

Absolute Mean Deviation:

4,637.00

Relative Mean Deviation:

4.03%

Standard Deviation:

5,516.35

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April 22, 2002

The Honorable John Olszewski, Sr.
Chairman, Baltimore County Council
Second Floor - Court House
Towson, Maryland 21204

Re: County Council Redistricting
Commission
Final Report and Recommendations

Dear Mr. Chairman:

Pursuant to Council Resolution 142-01, your Redistricting Commission hereby submits its Final Report and Recommendations for changes to the Charter to extend the time line for the County Council to complete redistricting and insure public input at the earliest stages of the redistricting process.

The Commission recommends the Charter establish a Redistricting Commission to hold public hearings and make recommendations to the Council. As a consequence of the new time lines and to encourage participation in the next election, we also recommend that ~~the period for which a citizen must reside in any district prior to being a candidate from that~~ district should be reduced from two (2) years to six (6) months. The Commission unanimously approved all recommendations.

I was honored to serve on your Commission with such distinguished members who diligently came to every meeting and brought great insight and understanding. We commend your Secretary, Tom Peddicord, for his patience, counsel and guidance throughout the process.

We are grateful to the many citizens who contributed to the research conducted by your Commission with regard to how other jurisdictions redistrict as well as research of the case law which provides the foundation for the process. The efforts by these citizens saved the Commission a great deal of time and focused our efforts.

The Honorable John Olszewski, Sr.
Page Two
April 17, 2002

We solicited public input through direct contact with those we understood were interested in this process. Our deliberations were given substantial press coverage in metropolitan and local news papers. We advertised the date for the public hearing, and distributed our preliminary recommendations by mail, on the County's internet website and before the public hearing. On March 25, 2002 we held a public hearing to assure the public had every opportunity to comment on and participate in our discussions. Finally, we are most grateful to those persons and groups who previously studied this issue and had already formulated recommendations for change. This information in particular was helpful in evaluating alternatives and perspectives.

As a result of the public hearing, we recommend that the Council create a Redistricting Policy Manual which would become a repository for prior redistricting experiences and software for the future. We recommend a section of the manual provide summaries of court cases and legislation which affects redistricting. A further section would give detailed guidelines for the Commission and the Council to consider when drafting their plans. We think this would provide a good starting point for each Commission after a ten (10) year hiatus.

In regard to guidelines, there were proposals we considered which in our view should be considered as recommendations but not requirements for future consideration. For example the idea that communities should be kept together is compelling. We added the word "community" to the list of criteria in the Charter to be considered. However there was a suggestion in furtherance of this goal that we should require new districts to preserve community association boundaries. While we found this to be an admirable goal, we could not recommend it as a requirement, in view of the uncertainty of such boundaries and even the make up of the community associations. We could not be certain that after ten (10) years there would always be a contact person for each association. Consequently, we recommend this idea become one of a list of criteria given in the Policy Manual as a guide and goal for the Commission and Council to consider.

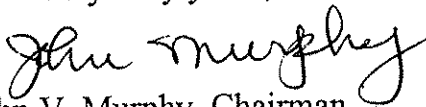
Many of the proposals we reviewed contained great detail regarding how the Commission was to be chosen, who would or would not be chosen, how the Commission would operate, etc. While there was often wisdom in these suggestions, we felt that this would be far too much detail for the Charter because such documents should contain the broad structure of government. Yet, we wanted to preserve this wisdom in order that the next Commission would have this information immediately available to them. Toward that end, we again recommend that a section of the Policy Manual be set aside for this information.

The Honorable John Olszewski, Sr.
Page Three
April 17, 2002

Finally your Commission strongly urges the Policy Manual reflect the need to engage the citizens of the County in the redistricting process as much as possible and, to that end, provide for public hearings in many locations around the County which would be appropriately announced to the public using all practical means. We also recommend that the work of the Commission be adequately funded so the studies, software and expert analysis could be available to the Commission members and the Council in a timely fashion.

Please let us know if you have any questions or would like us to review this matter with the Council at a work or public session.

Very truly yours,


John V. Murphy, Chairman

JVM:pam

Enclosures

cc: Members of the Redistricting Commission

G:\RedistrictingComm\FinalLetter

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2011, Legislative Day No. 14

Bill No. 59-11

All Councilmembers

By the County Council, September 6, 2011

A BILL
ENTITLED

AN ACT concerning

Revision of Councilmanic Districts

FOR the purpose of revising and reconstituting the councilmanic districts of Baltimore County in accordance with the latest census figures published as a result of the U.S. Census of 2010, as required by Section 207 of the Baltimore County Charter.

WHEREAS, Section 207 of the Baltimore County Charter empowers and directs the County Council to revise the councilmanic districts along population lines as determined by the decennial census of the United States; and

WHEREAS, the population results of the 2010 U.S. Census indicate the need for revising the current councilmanic district lines; now, therefore

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND that, in accordance with Section 207 of the Baltimore County Charter, the councilmanic districts of Baltimore County be and they are hereby revised and reconstituted to read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike-out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

Baltimore County is divided into seven councilmanic districts composed of the following election districts or parts of districts as the districts presently exist:

**COUNCILMANIC
DISTRICT**

PRESENT ELECTION DISTRICT OR PARTS THEREOF

- | | |
|-----|---|
| I | The entire 1st Election District; and the entire 13th Election District. |
| II | Precincts 7, 8, 23 and 25 of the 2 nd Election District; Precincts 2 through 14, all inclusive, of the 3 rd Election District; Precincts 2 through 6, all inclusive, and Precincts 8, 10, 13 and 14 of the 4 th Election District; Precincts 8, 17, 18, 21, 23 and 24 of the 8 th Election District; and Precincts 1 and 2 of the 9 th Election District. |
| III | Precincts 9 and 11 of the 4 th Election District; the entire 5 th Election District; the entire 6 th Election District; the entire 7 th Election District; Precincts 1 through 7, all inclusive, and Precincts 9 through 16, all inclusive, and Precincts 19, 20, 22 and 25 of the 8 th Election District; Precincts 7 through 9, all inclusive, and Precincts 24, 25 and 27 of the 9 th Election District; the entire 10 th Election District; and Precincts 1 and 2 of the 11 th Election District. |
| IV | Precincts 1 through 6, all inclusive, and Precincts 9 through 22, all inclusive, and Precincts 24 and 26, and Precincts 27 through 29, all inclusive, of the 2 nd Election District; Precinct 1 of the 3 rd Election District; and Precincts 1, 7 and 12 of the 4 th Election District. |

- V Precincts 3 through 6, all inclusive, and Precincts 10 through 14, all inclusive, and Precincts 16, 18, 23, 26 and 29 of the 9th Election District; Precinct 3 and Precincts 5 through 12, all inclusive, and Precincts 14 through 22, all inclusive, of the 11th Election District, and Precinct 2 of the 14th Election District.
- VI Precincts 15 and 17, and Precincts 19 through 22, all inclusive, and Precinct 28 of the 9th Election District; Precincts 4 and 13 of the 11th Election District; Precinct 1 and Precincts 3 through 14, all inclusive, of the 14th Election District; Precincts 3 through 10, all inclusive, and Precincts 24, 25 and 26 of the 15th Election District
- VII The entire 12th Election District; and Precincts 1 and 2, and Precincts 11 through 24 23, all inclusive, of the 15th Election District

SECTION 2. AND BE IT FURTHER ENACTED, that this Act, having been passed by the affirmative vote of five members of the County Council, shall take effect 45 days after its enactment, and the councilmanic boundaries established herein shall become effective for the next regularly scheduled election of council members in 2014.



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ATTORNEY GENERAL
JUDSON P. GARRETT, JR.
DEPUTY ATTORNEYS GENERAL

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COUNSEL TO THE GENERAL ASSEMBLY
RICHARD E. ISRAEL
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THE ATTORNEY GENERAL OF MARYLAND

OFFICE OF
COUNSEL TO THE GENERAL ASSEMBLY
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ANNAPOLIS, MARYLAND 21401-1991
AREA CODE 301
BALTIMORE & LOCAL CALLING AREA 841-3889
WASHINGTON METROPOLITAN AREA 858-3889
TTY FOR DEAF - ANNAPOLIS 841-3814 - D.C. METRO 858-3814

June 20, 1991

The Honorable Thomas L. Bromwell
7503 Belair Road, Second Floor
Baltimore, Maryland 21236

Dear Senator Bromwell:

You have requested advice on whether a charter county may alter or split precinct lines in the course of reapportioning councilmanic districts.

Although §5(H) of Article 25A appears to authorize charter home rule counties to rearrange and create election districts and precincts, Attorney General Burch in a 1971 opinion concluded that Article 33, §2-12, vested the power to subdivide or change the boundaries of precincts exclusively in the local boards of elections; thus, county power under §5(H) of Article 25A was held to be superseded by public general law, viz., Article 33, §2-12. 56 Opinions of the Attorney General 175 (1971). 1/

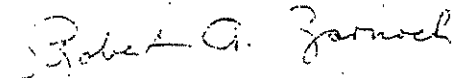
¹ This 1971 opinion finds support in language of the Court of Appeals in County Council v. Montgomery Ass'n, 274 Md. 52 (1975). There, the Court noted that the General Assembly enacted a "comprehensive" State Election Code, which included such matters as "the location of polling places" and the "creation of precinct boundaries". 274 Md. at 60-61. After reviewing the powers of the State and local election boards, the Court went on to note that:

"This pervasive state administrative control of the election process, on both the statewide and local levels, is a compelling indication that the General Assembly did not intend that local governments should enact election laws, but rather intended that the conduct and regulation of elections be strictly a state function." 274 Md. at 62.

The Honorable Thomas L. Bromwell
Page 2

While charter counties with councilmanic districts lack the power to alter or split election precincts, they are required to redistrict councilmanic lines to conform to the dictates of the Fourteenth Amendment to the United States Constitution.^{2/} Nevertheless, a county redistricting plan that draws a councilmanic district line through an existing precinct cannot be implemented without regard to §2-12 of Article 33. Presently, precinct boundaries are "frozen" until November 15, 1992 pursuant to §2-12(d) of Article 33 and may not be changed without the approval of the State Administrator of Election Laws. Even after November 15, 1992, changes in precincts are the responsibility of the local boards of election. Art. 33, §2-12(a). Thus, for a councilmanic redistricting plan to be capable of implementation, a county must recognize that any proposed precinct boundary alteration is dependent upon the election board's acquiescence in making the change. It should also be noted that if a county feels compelled to propose a precinct boundary alteration, the path the new boundary takes must follow existing census block tabulation boundaries. Art. 33, §2-12(c).

Sincerely,



Robert A. Zarnoch
Assistant Attorney General
Counsel to the General Assembly

RAZ:maa

² Because local government reapportionment schemes may depart from precise mathematical equality, and because minor deviations from population equality may be justified, Andrews v. Koch, 528 F.Supp. 246, 251 (E.D.N.Y. 1981), aff'd 688 F.2d 815 (2nd Cir. 1982), aff'd 459 U.S. 801 (1982), it is often possible to comply with one-person one-vote requirements and to respect precinct lines. 25 Am.Jur.2d Elections §19.

BALTIMORE COUNTY, MARYLAND
INTER - OFFICE CORRESPONDENCE

TO: The Hon. Douglas B. Riley
Chairman, County Council

FROM: Thomas J. Peddicord, Jr.
Legislative Counsel/Secretary

SUBJECT: Redistricting

DATE: July 11, 1991

Several councilmembers have asked me about the effective date of the bill which will implement the Council's redistricting plan. Pursuant to the mandate of Section 207 of the Charter, the Council is scheduled to adopt a bill at its meeting on August 5 (either Bill No. 125-91 or Bill No. 126-91) which revises the seven councilmanic districts in a manner consistent with the requirements of federal law. The bill(s) before the Council provides that it shall become effective forty-five days after enactment. Simply put, the question is whether, upon the passage of the redistricting bill and the passage of 45 days, the incumbent councilmembers will represent newly revised districts and therefore, in some cases, new constituents. I think the answer is, clearly, no. The new councilmanic boundaries established by the bill will be effective for the election of councilmembers in 1994. Accordingly, I think it would be wise to amend the final redistricting bill to so state.

My conclusion is based primarily upon the language of Article II of the Baltimore County Charter. Section 201 of the Charter provides that the Council is composed of seven members, each of whom shall, at the time of his election and for two years prior thereto and during his full term of office, reside in a different one of the seven

districts provided for in the Charter. Further, all members shall be elected by the voters in the councilmanic district in which they reside. Section 202 provides that if a member, during his term, moves his residence from the district from which he was elected, his office is immediately vacated, but no member shall be forced to vacate his office by reason of a change in the boundary lines of his councilmanic district made during his term. Section 203 provides that members hold office for terms of four years commencing at the time of their election and until their successors qualify. Section 205 provides that a vacancy in the office of councilmember is filled by Executive appointment of a person whose name is submitted by the State Central Committee members representing the political party to which the previous member belonged, and the member so appointed must reside in the same councilmanic district as his predecessor and until his successor shall qualify. Section 206 divides the County into seven council districts enacted in accordance with Section 207 (the redistricting provision under which the Council is currently acting to revise its districts).

The framers of the Charter have made it clear that stability, continuity of representation and orderly operation of the Council are some of the express goals of Article II of the Charter.

The Charter clearly contemplates continuity of representation by a councilmember, during his or her full four-year term, of those voters who elected him from a specific district, from which he moves at the risk of vacating his office. The requirement to revise the districts once in each ten-year period does not alter this basic format. For example, if the effect of revising councilmanic districts pursuant to Section 207 were to literally change the boundaries of the district during the term of office and thus change the status of the elected councilmembers, then the procedure in Section 205 for the filling of a councilmanic vacancy is cast into doubt. That Section requires the appointment of a successor who must reside in the same councilmanic district as his predecessor. A district represents a defined territory - defined as of the date of election - and not a mere number.

The Maryland Constitution contains a similar provision in Article III, Section 13(a) for the filling of a General Assembly vacancy -- similar as to the requirement of sameness of political party and sameness of district. As to the first element of party sameness, the State Law Department has opined that when such a vacancy occurs, the central committee of the political party to which the vacating member was affiliated at the time of election is authorized to submit a name to the appointing authority, even if the vacating member changed political party affiliation after his election (70 OAG 116, citing also a similar provision as to party in Article 25, Section 16 of the Annotated Code of Maryland relating to vacancies in the office of county commissioner and applying the same reasoning thereto). In arriving at his conclusion, the Attorney General cited the principle that laws relating to elective office must be construed so that the will of the electorate is carried out. The will of the people is reflected in the election of county councilpersons who present themselves to the voters under the banner of one of the political parties. We can safely assume that a candidate's party affiliation does play a role in voters' decisionmaking. Hence, it is reasonable to regard the mechanism for filling a vacancy set out in Section 205 as an effort to give at least an indirect voice in the selection of the councilperson's successor to the electorate -- through the political party officials elected in the same election in which the vacating councilperson was elected.

This principle and the reasoning set forth by the Attorney General seem equally applicable to the requirement found in Article III, Section 13(a) and in Section 205 for the appointment of a successor from the same district as the vacating member. Again, the will of the people can only be (indirectly) carried out if the successor comes from the same district which elected the vacating councilperson, not a revised district prior to the election of 1994.

In addition to the express provisions of the Charter, I believe the redistricting process which we have been following yields the same conclusion as to the effective date of councilmanic redistricting.

That process is mandated by provisions of federal law and a long line of reappointment cases beginning with Baker v. Carr, 369 U.S. 186 (1962). The impetus to reapportion to meet constitutional standards is directed to assuring qualified citizens that when they exercise their elective franchise they will have an equally effective voice in the election of the members of their local, state and congressional delegations. There is no indication that the constitutional mandate to reapportion is designed to affect the representation status of the elected member of those delegations prior to or after elections. In Reynolds v. Sims, 377 U.S. 533 (1964), the Supreme Court said "Legislators represent people... Legislators are elected by voters." In this case and others, the Court has made it clear that a legislator represents the constituency which elected him or her.

The specific issue which has been addressed by appellate courts in several states concerns the effect of redistricting by the state legislature upon a special election held to fill a congressional vacancy. In Sloan v. Donoghue, 20 Cal.2d 607, 127 P.2d 922 (1942), the Supreme Court of California held that, notwithstanding redistricting by the State Legislature since the last regular congressional election, (a) the new district boundaries would not apply until the next regular congressional election and (b) a special election called in the interim should be held under the old district boundaries. The same conclusion was reached by the Supreme Judicial Court of Massachusetts in an Opinion of the Justices to the Governor, 282 N.E.2d 629 (1972). On the other hand, the appellate courts of Arkansas and New York reached a different conclusion, although in the New York case there were two dissenting opinions. Catlett v. Beeson, 240 Ark. 646, 401 S.W.2d 202 (1966); People ex rel. Fitzgerald v. Voorhis, 222 N.Y. 494 119 N.E. 106 (1918). The far more compelling and reasonable view in these cases was that adopted by the Supreme Court of California, the Supreme Judicial Court of Massachusetts and the dissenting Justices of the Court of Appeals of New York. This view holds, in part , that the Supreme Court's reapportionment cases indicate that the right to vote includes the right not to have that vote diluted. If a special election were to be held in a revised

congressional district, the voters of certain areas would be denied a voice in the replacement of their representative in the Congress (those voters who were now in another district but had voted for the vacating member). Just as obviously, other voters would be allowed to participate in the selection of a successor to a representative whom they did not elect in the first place. The same anomalous result would obtain in the process for the replacement of a Baltimore County councilmember if Section 205 were interpreted to require the appointment of a successor from the revised district, assuming a vacancy occurred prior to the 1994 election. In that instance, the vote of the people would be diluted through the mechanism of party representation (the practical nightmare which could result from such an interpretation is evidenced further by the fact that the Section provides that the state central committee members who are entitled to vote for a successor are those representing the political party to which the previous member belonged, and whose legislative district is wholly or partially included in the councilmanic district in which the vacancy has occurred).

In this context of a special election to fill a congressional vacancy, I think the reasonable conclusion is that the revised districts are not applicable. The existing districts remain unchanged until the next regular election. To conclude otherwise leads to arbitrary results and, when applied to Council vacancies, such a conclusion destroys the goals of stability and continuity of representation contemplated by Article II of the Charter. The issue is whether the same reasoning applies outside the context of a special election. I think it must.

The Supreme Court of California faced a novel issue in a 1983 case involving the relationship of an initiative measure with the legislature's redistricting act. Legislature of State of California v. Deukmejian, 669 P.2d. 17. The initiative measure, if adopted, would have realigned legislative and congressional districts and repealed the recently enacted redistricting measure. The Court held that the state constitutional provision specifying that redistricting

may occur once within the ten-year period following a federal census precluded a further change in boundaries through the initiative process, i.e. the legislature is authorized to redistrict only once in the ten-year period.

One of the alternative arguments advanced by the petitioners to defeat this conclusion was that the redistricting statute had not yet been used or implemented, since no election had been held pursuant to its provisions, and therefore the statute had not yet become effective. Their conclusion was that the once-a-decade rule applied only if the new districts had become effective. In rejecting this argument, the court held that the new districts had become "effective" in the sense that the legislature had fulfilled its obligation to adjust the districts and, unless invalidated in a referendum vote, they could not be changed again until the next census had been completed, i.e. once the mandatory aspect of the law (to redistrict) was fulfilled and the prohibitory aspect activated (the once-a-decade interpretation of the California state constitution), the redistricting measure was sufficiently "effective" to bar an attempt to later redistrict by means of an initiative measure.

This is the only case I have found thus far which discusses the effective date of a redistricting act outside of the context of filling a vacancy in office. I don't think its holding in any way defeats the conclusion that revised districts at any level become "effective" at the next regularly scheduled election; that elected representatives continue to represent the people who elected them and the district from which they were elected (stated otherwise, their status does not change during their terms); that to conclude otherwise may lead to absurd results; and that to conclude otherwise violates both the constitutional standards applicable to the redistricting process and the goals of Article II of the Baltimore County Charter.

The cases briefly discussed above arose, in part, because the redistricting act at issue in each case provided that it was to be effective upon a certain date or after the expiration of a certain

number of days, i.e. the normal effective date provision of the jurisdiction (Bills 125-91 and 126-91 are prepared in the same fashion). Therefore, for example, the dissenting justice in the Massachusetts case, citing the principle that a statute which is clear and unambiguous leaves no room for speculation or interpretation, would have held that the redistricting act was effective as stated and that the special election would be required to be held from the new district. In his view, it was improper for the majority to interpolate words into the statute when its words were clear and explicit, notwithstanding the unreasonable results which could occur. I think such reasoning is specious, but the important fact is that the Council can avoid the issue by amending the final redistricting bill to specifically provide that the new boundaries provided therein shall take effect and apply to the next regularly scheduled election for councilmembers in 1994.

This issue of the effective date of the redistricting action of the Council is one which has significant practical and political considerations. When the Council last revised its districts in 1981, it had already completed the quadrennial comprehensive zoning process in the prior year, and the 1982 primary election was only thirteen months away. This year, the zoning process begins on August 1, 1991, four days before the scheduled vote on redistricting, and the primary election is three years away. Obviously, incumbent councilmembers, prospective councilmembers, supporters of same, and residents of the County will rely upon the new district boundaries in formulating plans to stand for election, solicit the support of constituents, or organize to support those who stand for election. That is a political reality. But it is important for the current councilmembers to recognize that they will continue to represent the constituents who elected them and the districts which they were elected to represent. Their status does not change. That is the legal reality. It would perhaps be beneficial for the Council to fully discuss the implications of these realities and , if necessary, to formalize a procedure or a working agreement to deal with issues as they arise, particularly in regard to comprehensive rezoning (the assumption is that at least some "issues" -

requests for changes in zoning classifications - will arise in areas of the County affected by the new councilmanic boundaries). Obviously, the simplest procedure or agreement is that the status quo prevails: the incumbent councilperson for each of the existing districts continues to represent that district and those constituents, continues to make the decisions affecting same, continues to handle the constituent requests of same, etc. for the balance of his or her term. That approach may be especially helpful during the comprehensive zoning process. Although it is the County Council which must vote upon each change to a zoning map as proposed by the Planning Board (Section 26-124) and the County Council which must adopt the complete county-wide zoning map (Section 26-125), the members will often defer the decision to the councilperson in whose district the specific issue has been filed. Therefore, an agreement or understanding among the members before the process begins seems a reasonable precaution.

Section 26-122 of the Code requires that the County be divided into districts, divisions, or zones as deemed best to carry out the provisions of the title, including the quadrennial comprehensive zoning map process. The districts referred to are the councilmanic districts, and the comprehensive zoning map process has always been structured on the basis of these districts. Issues are filed by councilmanic district. Planning Board and County Council hearings are scheduled by councilmanic district. I have suggested to OPZ that it should proceed with the comprehensive map process on the basis of the existing councilmanic districts and should ignore the fact of the councilmanic redistricting for purposes of that process. That approach is consistent with the conclusion that the new district boundaries are not effective until the 1994 election.

TJP:clh

RILEY.10/DAPTJP

EXHIBIT 10

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

BALTIMORE COUNTY BRANCH OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
et al.,

Plaintiffs,

v.

BALTIMORE COUNTY, MARYLAND,
et al.,

Defendants.

Civil Action No. 1:21-cv-03232-LKG

DECLARATION OF TROY WILLIAMS

I, Troy Williams, being duly sworn, depose, and state as follows:

1. I am over the age of eighteen years and fully competent to testify to the facts and matters set forth herein based upon my personal knowledge.

2. I am the Chief Diversity and Inclusion Officer for Baltimore County, Maryland.

3. I have reviewed the Complaint and Motion for Preliminary Injunction filed by Plaintiffs Baltimore County Branch of the National Association for the Advancement of Colored People, League of Women Voters of Baltimore County, Common Cause of Maryland, Charles Sydnor, Anthony Fugett, Dana Vickers Shelley, Danita Tolson, Sharon Blake, Gerald Morrison, and Niesha McCoy ("Plaintiffs") in the above-captioned matter.

4. In recent years, Baltimore County has made genuine efforts to diversify and become more inclusive in its executive leadership, hiring and employment, community education and engagement, legislation and policies, as well as housing and social services.

Current Baltimore County Executive Structure

5. Currently, women and people of color hold executive positions in the Baltimore County government, including the County Administrative Officer, Senior Advisor, and Deputy Chief of Staff. Of the twenty executive positions outside of County Executive, thirteen are women and people of color.

6. Women and people of color lead the Baltimore Department of Aging, Department of Corrections, Department of Economic and Workforce Development, Fire Department, Department of Health, Department of Social Services, Office of Human Resources, Office of Law, Police Department, Department of Public Works and Transportation, and Department of Recreation and Parks.

7. For all of the positions appointed by the County Executive mentioned in the two preceding paragraphs, the County Council unanimously confirmed all of those selections where Council confirmation was required.

8. The County has created and/or hired for positions of diversity officers within the Baltimore County Fire Department, the Baltimore County Police Department, Information Technology, Department of Health, and Department of Social Services.

9. The Baltimore County Public Library has also hired a Chief Diversity Officer.

Diversity in Baltimore County Hiring and Retention

10. The Baltimore County Human Relations Commission was established in 1963 and enforces the County's antidiscrimination law. The Commission is responsible for a host of activities, holds public meetings and provides additional resources to citizens who believe they have been discriminated against. The resources provided include training workshops in collaboration with the Maryland Commission on Civil Rights, dissemination of critical

government services information to the community throughout the COVID-19 response, and issuing public statements in support of important civil rights including the right to peaceful protests. The Commission has partnered with the Baltimore County Public Library and WEAA-88.9 radio to host Baltimore County Dialogues In Race and Community Conversations, addressing equity issues in criminal justice, environmental rights and sustainability in underserved communities, voter empowerment, LGBTQ+ community, and health care. The Commission has conducted various voter and community education and civil rights advocacy projects, conducted several anti-discrimination investigations in the areas of employment and housing, monitored the monthly Baltimore Hate Crime Incident report, and made individual holiday contributions to the United Way of Central Maryland.

11. On December 10, 2019, County Executive John A. Olszewski, Jr. signed Executive Order 2019-002, establishing the Diversity, Inclusion and Equity Awareness Program. This program created the Diversity, Inclusion and Equity Employee Advisory Council and the Diversity, Inclusion and Equity Community Advisory Council.

12. The Employee Advisory Council advocates for, engages in and responds to issues, concerns and needs of the workforce as it relates to diversity, inclusion and equity across government. The Council ensures that every Baltimore County employee is aware of the County's policy statement regarding diversity, inclusion and equity, while also providing general awareness education. The priorities outlined in the Council's strategic plan include making the workplace more equitable across the enterprise, providing additional employee supports that advance a modern workforce, facilitating difficult conversations around equity and inclusion, increasing equitable access to employment and educational opportunities, and fostering transformational change that will positively impact county employees.

13. The Community Advisory Council advocates for, engages in and responds to issues, concerns and needs of county residents as it relates to diversity, inclusion and equity. The priorities outlined in the Council's strategic plan include ensuring that all county residents have basic needs met, ensuring equitable access to education, police and other resources that consider both demography and geography, serving as agents of change, identifying disparities using a data-driven approach, and prioritizing traditionally underserved and marginalized communities, social groups and individuals in the County.

14. Employment statistics show that the County government workforce tracks the County's population. Based on the 2020 Census, the County population is 29.93% Black. As of September 2021, Black employees made up 26.3% of the County government workforce.

Community Education and Engagement

15. For fiscal year 2022, the County Executive has requested the formal creation of a stand-alone Office of Diversity, Equity and Inclusion ("DEI") through legislation to respond to the County's growing population and diversity. When operating as an "informally structured" organization, DEI has successfully operationalized several organizational frameworks, delivered enterprise-wide training, and initiated strategic stakeholder engagement activities and partnerships. DEI initiatives, collaborations, and partnerships include the Community Gardens Workgroup, Age-Friendly Baltimore County, the Health Equity Workgroup, and Homelessness Roundtable.

16. The Department of Equity and Cultural Proficiency, a division of Baltimore County Public Schools, promotes systems and structures that provide support for all BCPS students, teachers, leaders, staff, and stakeholders in which equity and access are embedded in all areas of academic programs, social-emotional supports, and business operations.

17. The Baltimore County Coalition of the Maryland Lynching Memorial Project works to honor victims of racial terror lynching in Baltimore County and to confront the legacy of racial injustice experienced by the Black community. Its goals include installing historic markers for lynching victims in Baltimore County, exposing the history and continuing menace of systemic racism in Baltimore County, lifting up the voices of black people, creating a space where all can speak to their own experiences, creating a shared community vision for advancing racial justice, diversity, equity, and inclusion in Baltimore County, and working towards advancing social justice. Baltimore County is currently working with this group to develop a Truth and Reconciliation Park for Baltimore County, where the history of lynching in the County will be memorialized, and the contributions of African-Americans and other underserved populations to the development of the County will be documented.

Legislation and Policies to Address Racial Disparities

18. On October 5, 2020, the Baltimore County Council passed Bill 96-20, *i.e.*, the Strengthening Modernization, Accountability, Reform, and Transparency (SMART) Policing Act. The new legislation was introduced and sponsored by Council Chair Julian E. Jones, Jr and supported by County Executive John A. Olszewski, Jr.. When introducing the bill, County Executive Olszewski stated the proposal was intended to respond to the “calls for change” concerning “every Black man and woman who has ever been treated unfairly by law enforcement while going about their daily lives.” This legislation focuses on the use of physical force, prohibits chokeholds and neck restraints, and requires other officers to intervene if another officer engages in excessive force. Retaliation against an officer who intervenes or reports another officer is prohibited. The Act also requires annual training of police officers in de-escalation techniques, implicit bias awareness, and the use of physical force. The law also prohibits the hiring of police

officers who have resigned or have been terminated from another police position for disciplinary issues. The legislation was strongly supported by Black community groups.

19. The Equitable Policing Advisory Group is tasked with combating the concerning racial disparities in policing, namely traffic stops. The Advisory Group reviews traffic stop data, police policies, police practices, and police training to understand whether racial bias or discriminatory practices contributed to the disparity in stops. Its goals are making recommendations for greater transparency and accountability around the issue of equity in policing, focusing its efforts on collecting and analyzing traffic stop data, and incorporating national best practices with respect to bias-free policing.

20. On March 9, 2016, the County entered a HUD Conciliation Agreement. Since the agreement took effect, the County Council has continuously approved the budget allocations called for in that agreement, including the \$3 million each year for ten years to leverage financing for the creation of “hard units.”

21. On February 21, 2013, the County Council passed Bill 3-12 which includes a person’s sexual orientation and/or gender identity or expression in the protected class list against discrimination. The bill protects LGBT people, and specifically transgender individuals, from discrimination in the areas of housing, employment, education, financing and public accommodations.

22. The Baltimore County Enterprise Strategic Plan for 2019-2022 includes plans to promote the equitable distribution of county resources, create opportunity for all, increase transparency, promote a culture of openness, make information accessible, and communicate honestly. Among the Plan’s goals are to ensure all residents have access to high-quality and affordable housing, cultural, and recreational opportunities in safe communities. The Plan also

seeks to build a future centered on equitable decisions, provide opportunities and allocate resources and services through an equity, diversity, and inclusion lens that enhances growth and prosperity, and ensure greater economic viability and opportunity amongst traditionally underrepresented populations, communities, and businesses.

Promoting Diversity, Equity, and Inclusion in Procurement of Goods and Services

23. The County has several supplier diversity programs, including the Minority and Women's Business Enterprise Program. This program was established to increase minority-owned and women-owned business participation in county contracts. The County has an overall goal of 15 percent of the total dollars spent on discretionary procurements awarded to and performed by such businesses. The County consistently meets this goal, primarily through the utilization of its Procurement Review Group (PRG). In response to the County's recent disparity study, the county is currently considering setting a higher goal through the use of legislation and/or Executive Order.

24. The County has collaborated with the Minority, Women, Small and Disadvantaged Business Enterprise ("M/W/S/DBE") Unit and Deputy Chief Administrative Officer to conduct targeted outreach and engagement of underrepresented businesses for the COVID Small Business Relief Program, review and assist in the development of the 2020 Disparity Study, and conduct national benchmarking research addressing staffing models, PRISM system enhancements, and the use of statutory goals for M/B/W/DBE participation.

25. The County, pursuant to the Enterprise Strategic Plan for 2019-2022, utilizes an "Equity Review" for its Capital Budget Planning process. The County reviews its budgetary needs through an equity lens to ensure that county resources are distributed in an equitable fashion. Each department is required to consider a list of equity questions that ensure the full consideration of

the County's historically marginalized and underserved communities in the allocation of county resources.

26. Baltimore County Executive John A. Olszewski, Jr. is committed to using federal pandemic funding from American Rescue Plan to ensure an equitable recovery for all residents and businesses. To help plan Baltimore County's long-term economic recovery, including how to prioritize these federal funds, in March 2021, County Executive Olszewski formed an Economic Recovery Subcabinet to develop a holistic countywide plan that incorporates the needs of families, workers, and businesses. The Subcabinet has been tasked with information gathering, examining nationwide best practices, and hosting listening forums with community stakeholders to develop recommendations. In addition to prioritizing communities that were disproportionately impacted by the COVID-19 pandemic, the Subcabinet is focused on integrating a data-driven approach. In November 2021, County Executive Olszewski announced spending proposals for Baltimore County's allocation from the American Rescue Plan, which advance a broad range of innovative, equity-focused efforts in addition to ongoing pandemic-response needs.

Addressing Systemic Disparities in Housing and Social Services

27. Baltimore County's Department of Housing and Community Development has established various supportive housing programs to address the housing needs of low-income families such as the Housing Choice Voucher Program, the Veterans Affairs Supportive Housing Program, and the Family Self-Sufficiency Program. In November 2019, the Baltimore County Council approved the Housing Opportunity Made Equal (HOME) Act that prohibits landlords from rejecting renters solely based on their source of income. The Act aims to make housing opportunities equal by not punishing Baltimore County residents for taking advantage of available housing programs.

28. The County established the Veterans' Employee Committee which ensures that the needs of Baltimore County employees who are veterans are addressed effectively and efficiently. In coordination with other Diversity and Inclusion Employee Committees, the Office of Human Resources, Office of Diversity and Inclusion, and other designated individuals, the Veterans' Employee Committee assists in developing innovative strategies to address the needs of members of the workforce who are veterans.

29. The County collaborated with the Office of Community Engagement to build partnerships and enhance access to government services for various segments of the County's international/immigrant communities. This involved facilitating bi-weekly calls with Latinx and interfaith leaders to coordinate COVID-19 response services at the community level, coordinating with Amigos Baltimore County to establish a Latinx focused food distribution site at Timonium Fairgrounds, and collaborating with the Baltimore County Office of Government Affairs to assist immigrant and interfaith community partners, via the COVID-19 response grants.

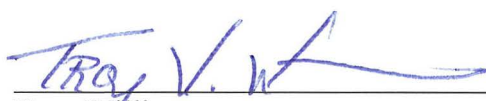
30. The County DEI Office also collaborated with the Office of Community Engagement to facilitate an Interfaith Advisory Group that ensures that the county is responsive and collaborative in meeting the needs of the community around COVID-19 response and other social needs.

31. On December 23, 2019, the County Executive reaffirmed that Baltimore County will continue to take part in the U.S. Refugee Admissions Program. Baltimore County is fully committed to building, maintaining and advancing strong communities that recognize and embrace diversity and will continue to welcome refugees.

32. Looking forward, the County hopes to establish Ethnic Communities Advisory Groups, develop and implement a New American Leadership Institute, and develop a partnership with the Latino Economic Development Center.

33. I declare under the penalties of perjury that the foregoing is true and correct.

Executed on January 31, 2022.



Troy Williams

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

BALTIMORE COUNTY BRANCH OF THE
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
et al.,

Plaintiffs,

v.

BALTIMORE COUNTY, MARYLAND,
et al.,

Defendants.

Civil Action No. 1:21-cv-03232-LKG

**ORDER DENYING
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

UPON CONSIDERATION of Plaintiffs' Motion for Preliminary Injunction, Defendant Baltimore County's Memorandum in Opposition to Plaintiffs' Motion for Preliminary Injunction, replies thereto, arguments of counsel during hearing, and there being good cause, it is this ____ day of _____, 2022, hereby:

ORDERED, that Plaintiffs' Motion for Preliminary Injunction is **DENIED**.

HON. LYDIA KAY GRIGGSBY
United States District Judge

cc: All Counsel of Record