

**UNITED STATES DISTRICT COURT
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. LKG-21-03232

**PLAINTIFFS' REPLY IN SUPPORT OF MOTION
FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

Bill 103-21, Baltimore County's adopted redistricting plan, packs and cracks the County's large and geographically compact population of Black citizens—nearly a third of its overall population—with the effect of confining their influence to one out of the County's seven council districts. This is textbook vote dilution that Section 2 of the Voting Rights Act was designed to eradicate. *Reno v. Bossier Par. Sch. Bd.*, 520 U.S. 471, 479 (1997).

Opposing Black voters' request for relief from this discriminatory scheme, the County argues for a plan that “substantially preserves” the 2001 map, retaining white residents' control of six of the seven districts. ECF 34 at 1. But we are no longer in 2001. The Black share of the County's population has gone from 21% in 2000 to 32% in 2020, and the BIPOC share from 27% in 2000 to 48% in 2020. The County turns the Voting Rights Act on its head by arguing that an antiquated map is worth preserving because it was lawful 20 years ago.

Black citizens in Baltimore County are entitled to a second Black-majority district under Section 2. For the reasons explained in our opening brief and below, Plaintiffs have demonstrated that all three *Gingles* preconditions are met, and accordingly, a finding that Section 2 has been violated is presumptive. *See, e.g., United States v. Charleston Cnty.*, 316 F. Supp. 2d 268, 277 (D.S.C. 2003) (citation omitted), *aff'd*, 365 F.3d 341 (4th Cir. 2004). Specifically, Plaintiffs have shown that two Black-majority districts can be readily drawn consistent with traditional redistricting principles and that, absent a second majority-Black district, Baltimore County's electoral process will remain unequally open to its Black citizens for yet another decade.

The County and its expert nit-pick the illustrative plans Plaintiffs proposed while never directly disputing that a second Black-majority district can be established consistent with traditional districting principles. The County claims its map is more compact, but does not dispute that Plaintiffs' plans are reasonably compact, which is what Section 2 requires. The County leaves

Plaintiffs’ evidence largely un rebutted, providing no demographic analysis for why a second majority-Black district is not feasible and failing to address meaningfully Plaintiffs’ extensive evidence of racially polarized voting. While accusing Plaintiffs of giving “cursory” treatment to the Senate Factors (ECF 34 at 3), the County largely ignores 11 pages of Plaintiffs’ opening brief that lay out why the applicable Senate factors strongly support finding a Section 2 violation. ECF 28-1 at 19-30. The County’s superficial discussion of the other equitable factors (ECF 34 at 29-31) does little more than reiterate the County’s erroneous merits position. The evidence Plaintiffs have amassed—and a proper application of the law—warrant the preliminary injunction Plaintiffs seek.

RESPONSE TO THE COUNTY’S “FACTUAL” BACKGROUND

The County’s contention that there has been “marginal population growth among Blacks” (ECF 34 at 5) is wrong. Indeed, it is contradicted by the County’s expert. ECF 34-7 ¶ 19 (“Black population growth has occurred throughout the County”). This mistake rests simultaneously on an incorrect demographic measure, denominator manipulation, and poor arithmetic.

First, the County cites “single-race Black” statistics, ignoring the U.S. Census’s “any-part Black” designation (which includes individuals who identify as multi-racial or multi-ethnic). ECF 34 at 5-6. In addition to undercounting Black growth (for example, omitting residents who identify as both Black and Hispanic), the County ignores the Supreme Court’s direction that the “any-part Black” (APB) designation should be used for Section 2 purposes. *Georgia v. Ashcroft*, 539 U.S. 461, 473 n.1 (2003).¹ Notably, Dr. Gimpel’s report does not corroborate the figures in the

¹ Since the moving brief was filed, the parties and the Court have additional benefit of a 225-page opinion from a three-judge court in the Northern District of Alabama, enjoining use of the State’s adopted congressional map as noncompliant with Section 2. *See Singleton v. Merrill*, No. 2:21-cv-1536-AMM, 2022 WL 264819 (N.D. Ala. Jan. 24, 2022) (three-judge-court). There, Black voters and civil rights organizations brought a Section 2 challenge to Alabama’s seven-seat

County’s brief; Dr. Gimpel does not provide any demographic statistics prior to 2020. By incorrectly using “single-race Black” statistics throughout its brief, the County systematically undercounts its Black residents.

Second, the County’s math understates Baltimore County’s rapid racial diversification when it claims there is “just a 3.88% increase” in Black population since 2010. *See, e.g.*, ECF 34 at 5. Between 2010 and 2020, the any-part Black population in Baltimore County grew by almost 55,000 people, increasing the Black share of the population from 27.4% to 32.2%. ECF 28-2 (Cooper Decl.) ¶ 27. And between 2000 (when the first majority-Black district was created) and 2020, the Black population in Baltimore County grew by 118,814 people, increasing the Black share of the population from 20.7% to 32.2%. *Id.* If we were to follow the Council’s percentage-by-addition formula, the Black population grew by about 11.5%. But under any common understanding of how to calculate percentage growth, the Black population grew by 75.9% and the Black share of the population grew by 55.3%. *Id.*

Third, the County argues that the “marginal population growth among Blacks” was “concentrated in Districts 6 and 7” on the eastern side of the County. ECF 34 at 5. Again, that is not true. Rather, the County’s own maps show dramatic Black population growth on both the County’s eastern *and western* sides. This point is conceded by Dr. Gimpel: “Black population growth has occurred throughout the county, *not in a concentrated area*[.]” ECF 34-7 ¶ 19

congressional map on the basis that it constituted vote dilution by packing and cracking the Black population (27% of the state) into only one Black-majority district. The *Singleton* court specifically rejected Alabama’s argument that single-race Black data should be used in assessing majorities under *Gingles*. *Id.* at *58. After explaining why APB data is the proper measure, including that this is the consensus view of the Supreme Court, numerous other courts, and the Department of Justice, the *Singleton* court concluded that using “single-race Black” data would require the court to “marginaliz[e]” Black residents “based on their decision to identify both as Black and as part of another race or other races.” *Id.* at *58.

(emphasis added). Moreover, because the County's Black population in 2000 was considerably higher on the west side than the east side, similar rates of Black population growth across the County have resulted in a considerably larger Black population (both by number and percentage) on the west side.

Fourth, both the County and Dr. Gimpel fail to address the dramatic decline in white population over the past 20 years. As attested by Plaintiffs' expert, while "Baltimore County's overall population grew by more than 100,000 during this period, from 754,292 to 854,535 persons, the County's non-Hispanic White population fell by even more—110,627 persons—representing a *decline* of 20%." ECF 28-2 ¶ 27.

The County downplays the Black and BIPOC population's expansive growth and ignores the County's declining white population for a reason: to acknowledge Baltimore County's demographic transformation over two decades is to acknowledge that non-white citizens are entitled to electoral opportunity beyond what was available two decades ago and that white citizens no longer have a right to dominate six of the County's seven councilmanic districts.

ARGUMENT

I. The County's brief confirms that Plaintiffs are substantially likely to succeed in showing that Bill 103-21 violates Section 2.

A. *Gingles* Precondition One: An additional, reasonably compact majority-Black district can be created.

Plaintiffs' opening brief established that the first *Gingles* precondition is satisfied, *i.e.*, an additional, reasonably compact majority-Black district can be drawn. ECF 28-1 at 12-14. In response, the County claims that Plaintiffs' alternative plans do not adhere to certain secondary redistricting considerations as well as the County's map does. These arguments, amplified by bluster, are intended to distract the Court from the key question to be addressed in assessing the first *Gingles* precondition: Does the protected group pursuing the claim—in this case Black

Baltimore County residents—make up “more than 50 percent of the voting-age population in the relevant geographic area” so as to form a majority in a single member district? *Bartlett v. Strickland*, 556 U.S. 1, 18 (2009). The indisputable answer here is yes.²

Plaintiffs presented Baltimore County with five illustrative plans drafted by their expert demographer (William Cooper)³ that demonstrate how the County’s seven election districts could be configured so two reasonably compact districts would include a substantial majority of Black voting age population, rather than the single, heavily-packed Black district in Bill 103-21. All five plans readily satisfy *Gingles* 1 and are consistent with *all* traditional redistricting principles.

Plaintiffs submit additional exhibits that overlay the three maps in contention (the County’s and Plaintiffs’ Plans 1 and 5) on a map showing the racial composition of the western portion of the County. *See* Ex. F (Cooper 2d Decl.) Exs. D-4, E-5, F-5. Those maps, together with Mr. Cooper’s analysis, make it even more clear that it is possible to create a second majority-Black district consistent with traditional principles, and that the County’s proposed map illegally packs Black voters into District 4 and cracks other Black communities among Districts 1, 2, and 4.

² Contrary to the County’s unsupported assertion, ECF 34 at 1-2, n.2, Plaintiffs have not abandoned Plans 2, 3, or 4. Moreover, the County’s speculation is predicated on a fundamental error in law, evident in their suggestion that “Plaintiffs must show either that vote dilution is occurring in District 1 . . . or District 2” and must “be remedied by making that district majority-Black.” This misstates the law. Under *Shaw v. Hunt*, 517 U.S. 899 (1996), it is clear that “a plaintiff must prove that the minority group ‘is sufficiently large and geographically compact to constitute a majority in a single-member district.’” *Id.* at 914. Unlike *Shaw*, the vote dilution problem here is not tied to a particular district. Plaintiffs have submitted evidence (in the form of the Cooper declaration) that the “relevant area” is the County as a whole, and the sufficient concentration of Black voters exists in the western part of the County (i.e., current District 4 and the surrounding vicinity).

³ The *Singleton* court found Mr. Cooper “highly credible,” his approach “not dogmatic,” and his methods and conclusions “highly reliable.” 2022 WL 264819 at *59.

Plaintiffs hired Mr. Cooper during the County’s redistricting process to illustrate multiple ways that two reasonably compact majority-Black districts can be established and to present those findings to the County. Instead of taking the work of Mr. Cooper and Section 2 compliance seriously, the County never consulted any expert or conducted any demographic studies to consider the feasibility of another majority-Black district. The County’s failure to do so after Plaintiffs repeatedly alerted the County that its proposed map violated the Voting Rights Act reflects recklessness approaching deliberate indifference.⁴

The County’s expert—hired *after* Bill 103-21 was enacted—baldly asserts that the Council’s plan “meets the requirements of the law” and “there is nothing about it that is objectionable.” ECF 34-7 ¶ 7. In addition to his assertion being legally irrelevant under *Gingles* and improper expert testimony of a legal conclusion, Dr. Gimpel provides no support for his position. He does not substantiate why the County Plan complies with Section 2. He offers no justification for packing District 4 to increase its Black voting-age population to 75% under Bill 103-21, a glaring omission given that the County’s own data, ECF 34-2 at 3 (County 2001 Plan), shows the district was only 58.6% Black in *overall* population when first implemented in 2001, and yet has performed effectively to allow Black voters to elect preferred candidates for two

⁴ The Baltimore County Councilmanic Redistricting Commission, which recommended the plan adopted in Bill 103-21 (with only minor modification) did not report any consultation with demographic experts in deciding to reject a second majority-Black district. Instead, it adopted an arbitrary and irrational approach by examining *only* census blocks with majority Black populations to calculate whether two majority-Black districts could be established from *just* those census blocks. Final Report of the Councilmanic Redistricting Commission at 4-5. Accessible at: https://resources.baltimorecountymd.gov/Documents/CountyCouncil/Redistricting/Redistricting_Commission_Final_Rpt_2021_Signed.pdf. This was arbitrary because the Commission failed to consider the possibility that a second majority-Black district could be developed using census blocks that are not majority-Black. Because many majority-Black census blocks may be well over 50% Black, *every* individual census block in a majority-Black district need not also be majority-Black. A majority-Black district can and usually does combine both census blocks that are well over 50% and ones that are nearly 50%. Ex. F (Cooper Second Decl.) ¶ 6.

decades. And Dr. Gimpel provides no explanation for why it is *not* possible to unpack District 4 to foster creation of a second majority-Black district. ECF 34-7 ¶ 8.

With nothing else to offer, the County advances three critiques of the Plaintiffs’ maps. In addition to being legally irrelevant, each is wrong on the merits. In many cases, the County’s contentions in its brief are not supported by Dr. Gimpel’s analysis; in others, Dr. Gimpel’s analysis is internally inconsistent, in that the criticisms he lodges against some of Plaintiffs’ proposed maps and districts are even more evident in the County’s Plan.

1. Compactness: The County’s primary argument is that the Plaintiffs’ “Proposed Plans 1 and 5 fail the test for reasonable compactness.” ECF 34 at 9. This assertion is not supported by Dr. Gimpel’s analysis: Dr. Gimpel does not actually say that any of the Plaintiffs’ proposed plans are not “reasonably compact”; rather, he says only that the County’s plan is “compliant with traditional compactness,” and that the County Plan “scores higher on the compactness tests than” two of Plaintiffs’ five proposed plans. ECF 34-7 ¶ 8.

The County argues that the Council-approved districts are more compact and less “irregular” than Plaintiffs’ plans. ECF 34 at 10-12. These arguments about the absolute and relative compactness of the majority-Black districts Plaintiffs have proffered miss the point.

The first *Gingles* condition refers to the compactness of the minority population, not to the compactness of the contested district.” *Vera*, 517 U.S., at 997, 116 S.Ct. 1941 (KENNEDY, J., concurring); *see also Abrams*, 521 U.S., at 111, 117 S.Ct. 1925 (BREYER, J., dissenting) (compactness to show a violation of equal protection, “which concerns the shape or boundaries of a district, differs from § 2 compactness, which concerns a minority group’s compactness”); *Shaw II*, *supra*, at 916, 116 S.Ct. 1894 (the inquiry under § 2 is whether “the minority group is geographically compact” (internal quotation marks omitted)).

League of United Latin Am. Citizens (LULAC) v. Perry, 548 U.S. 399, 433 (2006). Provided the Black population is sufficiently concentrated to constitute the majority within a single reasonably compact district (or, here, two districts), the Section 2 compactness criterion is satisfied.

In assessing “reasonable compactness,” the shape of the district is a secondary consideration: *reasonable* compactness looks at whether the district has been drawn in a bizarre manner just to pull in a sufficient number of Black voters (which would raise Constitutional concerns). The Supreme Court has expressly rejected “as impossibly stringent” the view that “a district must have the least possible amount of irregularity in shape, making allowances for traditional district criteria.” *Bush v. Vera*, 517 U.S. 952, 977 (1996) (citation omitted). As the *Singleton* court recognized, the goal is *not* to maximize compactness, nor is this some sort of “beauty contest”:

Critically, our task is not to decide whether the majority-Black districts in the Duchin plans and Cooper plans are “better than” or “preferable” to a majority-Black district drawn a different way. Rather, the rule is that “[a] § 2 district that is **reasonably** compact and regular, taking into account traditional districting principles,” need not also “defeat [a] rival compact district[]” in a “beauty contest[].” *Vera*, 517 U.S. at 977–78 (emphasis in original) (internal quotation marks omitted). In analyzing this issue, we are careful to avoid the beauty contest that a great deal of testimony and argument seemed designed to try to win.

Singleton, 2022 WL 264819 at *65. Dr. Gimpel acknowledges that drawing district boundaries requires flexibility and that no redistricting criterion is paramount. ECF 34-7 ¶ 2 (“There is no perfect map ... a broad range of maps are legally acceptable”). Dr. Gimpel also concedes that the Council plan “is not the only reasonable plan that could have been enacted.” *Id.* ¶ 7.

The County and Dr. Gimpel point to the shape of Plaintiffs’ proposed districts as demonstrating insufficient compactness. ECF 34 at 10 (“geographically irregular”); ECF 34-7 ¶¶ 10-11 (“look geographically irregular”). Not only is this sort of “beauty contest” analysis irrelevant to *Gingles* factor 1, but Dr. Gimpel’s subjective assessments are easily rebutted:

- Dr. Gimpel’s assessment of Plaintiffs’ Plan 1 (ECF 34-7 ¶ 10) ignores that Plan 1 includes districts shaped no more oddly than those in the Council’s plan and merely divides the County’s western region in a more north/south rather than east/west fashion.

- With respect to Plan 5, Dr. Gimpel notes District 2's alignment along the Baltimore City border (ECF 34-7 ¶ 11), but the district previously included much of that border. And the extension of District 1 does no more than modestly change its current parameters.
- Dr. Gimpel's presentation of "compactness scores" (ECF 34-7 Tbl. 1) makes clear that, compared with the other districts in the County, there is nothing extreme about any of Plaintiffs' plans. Districts in the 2010 map, which Dr. Gimpel believes meet legal standards (*id.* ¶ 9), show less compactness than the majority-Black districts in Plans 1 and 5 to which he now objects. ECF 34-7 at 8 (Table 1) (*i.e.* 2010 map has PPTest scores of .021 and .035 and Stest scores of .144 and .186, far less compact than either Plan 1 or Plan 5). The same holds true for the 1990 and 2000 districts. Even with regard to Bill 103-21, the compactness scores for District 5 (.142/.377) and District 7 (.067/.259) are below those for the new majority-Black districts in either Plan 1 (.188/.434) or Plan 5 (.272/.521).

The majority-Black districts in Plaintiffs' plans do not display the sort of abnormal lines and shapes that courts have sometimes found problematic. The issue is whether a district is "reasonably compact," because "compactness is a relative concept which must be interpreted in light of § 2's 'laudatory national mission' of opening the political process to minorities." *Cane v. Worcester Cnty.*, 841 F. Supp. 1081, 1086-87 (D. Md. 1994) *aff'd* 35 F.3d 921, (4th Cir. 1994). Rejecting a compactness challenge raised by Worcester County to an illustrative plan drawn by William Cooper for the County Commission there, the *Cane* Court opined:

The plaintiffs' proposed Plan 1 is not unreasonably irregular in shape, considering the population dispersal within the County. The plan merely affirms the existing racial divisions in the County. . . . The districts may not be symmetrical, but they are compact. They do not rely on districts that run through several "tentacle-like corridors" nor are the district's boundary lines so unreasonably irregular, bizarre or uncouth as to approach obvious gerrymandering. They are in line with the configurations of electoral districts that have been approved in other cases.

Id. In Plaintiffs' plans, the Black population in the proposed Black-majority districts resides within the same small region within the County and in contiguous communities. No district lines stretch across unusual distances or into different areas of the County. *See LULAC*, 548 U.S. at 435; *Marylanders for Fair Representation v. Schaefer*, 849 F. Supp. 1022, 1054 (D. Md. 1994) (three-judge-court) (finding state legislative districts sufficiently compact to satisfy *Gingles* 1 despite

linking together dense Black populations from different cities with a narrow rural corridor). Similarly here, the same expert, Mr. Cooper, analyzed the compactness of Plaintiffs' plans and concluded, "both of the Plaintiffs' Proposed Plans are reasonably shaped and compact – and clearly within the normal range for compactness." ECF 28-2 (Cooper Decl.) ¶ 62.

Despite its exaggerated protestations, the County understands that compactness is a secondary redistricting consideration when assessing a district drawn to prevent minority vote dilution. Indeed, as the Baltimore County Redistricting Manual notes, "[t]he 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." ECF 34-9 at 4 (emphasis added).

2. *Community Splits*: The County also objects that the majority-Black districts Plaintiffs suggest result in undue "splits" of communities (in Plan 1) or precincts (in Plan 5). ECF 34 at 13-15. Although the Baltimore County Charter provides that councilmanic districts should be drawn with "due regard" to "current natural, geographic, and community boundaries" (ECF 34-9 at 3), this is understood to be a decidedly "subsidiary" requirement, derived from state law requirements that state legislative districts give "due regard" to "political subdivisions." ECF 34-9 at 6-7. Not only is this a subsidiary consideration, but, because the County has no municipalities, there are no "political subdivisions" here that must be honored. Instead, the County Charter calls only for "due regard" for a "community," which in Baltimore County is recognized as both imprecise and not strictly tied to planning districts or community association boundaries. *Id.* at 7-8. Splitting traditional communities between districts is not foreclosed (*id.* at 9) and is undeniably warranted when necessary to achieve Voting Rights Act compliance. *E.g., Cane, supra* at 1086-87 ("While the plan does entail running the newly created districts across other voting district lines and through

towns, this is unavoidable because of the heavy white population and the need to achieve a majority African–American population in one of the districts.”)

Dr. Gimpel objects to the split of some communities in Plaintiffs’ Plan 1 (ECF 34-7 ¶ 35) but fails to acknowledge that none of those community splits are found in Plaintiffs’ Plan 5. Further, as explained in the declaration of Senator Charles Sydnor, Plan 1 recognizes and respects the “community of interest” among neighborhoods situated inside the Baltimore Beltway. Ex. H (Sydnor Decl.) Ex. H, ¶ 10.

Although acknowledging that Plan 5 “splits fewer census ‘places’” than the County’s map, Dr. Gimpel contends that the County map’s split of predominantly Black communities is preferable because those communities have been split before. ECF 34-7 ¶ 36. In other words, despite their vigorous objection to splitting predominantly white communities, ECF 34 at 13-14, ECF 34-7 ¶ 35, the County and Dr. Gimpel dismiss as unimportant the County map’s split of Black communities. Ex. H (Sydnor Decl.) ¶ 12; ECF 28-2 at ¶ 39-40.

In sum, the County’s overheated protests about community and precinct splits cannot circumvent the legal concerns raised by Plaintiffs, as these are secondary considerations which can only be accommodated after vote dilution issues grounded in Section 2 are addressed.⁵

3. “Core Retention”: Finally, the County challenges Plaintiffs’ Plan 5 on the basis that it purportedly produces “an abysmal core retention rate,” according to Dr. Gimpel’s calculations. ECF 34 at 14-15. As with precinct splits, neither the County nor Dr. Gimpel cite any authority for the

⁵ Failing to appreciate that Mr. Cooper used precinct splits intentionally to address concerns voiced by Baltimore County residents about community splits, Dr. Gimpel objects to the number of precincts split in Plaintiffs’ Plan 5 and suggests this indicates a “hastily drawn map.” ECF 34-7 ¶ 36. Neither the County nor Dr. Gimpel cites any authority for why precincts should not be split to protect communities of interest, as Mr. Cooper did in Plan 5, nor for the notion that avoidance of such splits constitutes a basis to circumvent Section 2.

proposition that so-called “core retention rates” are a material consideration when assessing Section 2 compliance. *See* ECF 34-7 ¶¶ 26-32.⁶ As Plaintiffs’ expert Mr. Cooper explains, core retention is “a largely irrelevant consideration” because the need for new district lines that comply with Section 2 compels changes to the voting populations in adjacent districts. Ex. F (Cooper 2d Decl.) ¶ 4. The County’s first majority Black district—lauded by Dr. Gimpel—could not have been created had the County applied his core retention concept in 2001. *See* ECF 34-7 ¶ 16. In any case, neither the County nor Dr. Gimpel explain why this concept has any relevance given the tremendous demographic changes in the County since that time.

Not only is Dr. Gimpel’s “retention rate” data irrelevant legally, its numbers contradict his argument. The retention rates in the proposed new majority-Black districts are better than what Dr. Gimpel found acceptable elsewhere: in Plan 1, District 1 has a retention rate superior to Districts 5 and 6 in the Council’s map; in Plan 5, the District 2 retention rate (which Dr. Gimpel describes as “particularly” abysmal) exceeds the rate he finds acceptable in the Council map’s District 5.

B. *Gingles* Precondition Two: The relevant communities are cohesive.

The County’s suggestion that racially polarized voting does not exist in Baltimore County (ECF 34 at 17), is astounding. In the history of Baltimore County, no white councilmember has ever been elected to a Black-majority district and no Black councilmember has ever been elected to a white-majority district. ECF 28-4 (Fugett Decl.) ¶ 20. The County’s *own expert* concedes that the County Council is aware “of the fact that there has been sufficient racial bloc voting in the

⁶ Dr. Gimpel references Supreme Court decisions recognizing incumbency protection as a legitimate, political (i.e. non-race based) redistricting consideration, ECF 34-7 ¶ 29, but there is no assertion that the Council drew its map to serve such objectives. None of the referenced decisions suggests that incumbency protection would ever trump Section 2 considerations. Moreover, all of Plaintiffs’ proposed plans protect all incumbents running for reelection. None of Dr. Gimpel’s cited authorities recognizes maintaining geographic continuity either as important or a basis to reject districts drawn to comply with Section 2.

County’s past” and that “there is a tendency for Black populations to favor Black candidates and white populations to prefer white ones.” ECF 34-7 ¶¶ 15, 20. It is plain that Black and white voters in Baltimore County have different electoral preferences.

Dr. Gimpel does not argue otherwise. Rather, in response to the thorough analysis demonstrating racially polarized voting presented by Plaintiffs’ expert Dr. Matthew Barreto, he is silent. Dr. Gimpel’s declaration never mentions the 2016 Senate Van Hollen-Edwards primary. Nor does he contend with the compelling analysis Dr. Barreto provides regarding the Hogan-Jealous or Hogan-Brown gubernatorial races. And, in contrast to Dr. Barreto, Dr. Gimpel does not employ any scientific methodology to analyze election data.⁷ Rather than engage in statistical analysis, Dr. Gimpel offers anecdotes and guesswork, untethered from any methodology accepted by courts in voting rights cases. ECF 34-7 ¶ 14.

For example, Dr. Gimpel claims that Maryland is “arguably more racially progressive.” ECF 34-7 ¶ 14. It is unclear how wishful speculation that Maryland might be seen by some as racially progressive on a statewide basis has any relevance to the issues confronting Baltimore County, with its long history of racism and racial polarization. No state (much less a subdivision within a state), progressive or not, is free to draw maps that unfairly dilute minority citizens’ votes. Dr. Gimpel also asserts “abundant evidence suggests that the white voters regularly vote for Black candidates” in the County (ECF 34-7 ¶ 14), without actually providing any evidence at all. Finally, Dr. Gimpel combines these two unanchored thoughts to offer his personal “view” that it is

⁷ To reach his conclusions, Plaintiffs’ expert, Dr. Barreto, used election data from 2010 to 2020 and a widely accepted methodology called ecological inference analysis. *See generally* Barreto Decl.; *Cane v. Worcester Cnty., Md.*, 840 F. Supp. 1081, 1087 (D. Md. 1994) (employing similar expert analysis in finding racially polarized voting in Worcester County); *Ala. State Conf. of NAACP v. Ala.*, 2020 WL 583803, at *29, n.27 (M.D. Ala. Feb. 5, 2020) (recognizing ecological inference as the “gold standard” for racially polarized voting analysis). The Council’s expert never mentions, much less conducts, ecological inference analysis to support his opinions.

unnecessary to draw “additional majority-minority Council seats in Baltimore County” (ECF 34-7 ¶ 14), disregarding decades of Supreme Court case law under the Voting Rights Act.

C. *Gingles* Precondition Three: White voters vote sufficiently as a bloc to usually defeat Black voters’ preferred candidates.

As established in Dr. Barreto’s analysis of white bloc voting, Plaintiffs are also likely to succeed in establishing that “the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate” (*Gingles* 3). *Thornburg v. Gingles*, 478 U.S. 30, 51 (1986); ECF No. 28-1 at 18-19 & ECF 28-3 ¶¶ 14-21. In response, the County offers (i) Cheryl Pasteur’s election to the school board, (ii) conjecture, and (iii) hyperbolic rhetoric about “nails” in “coffins.” ECF 34 at 21-22. Ms. Pasteur’s singular election to a non-partisan seat on the Board of Education does *not* stand for the County’s proposition that “Black candidates have run . . . and have won” in the County. ECF 34 at 22. And the County’s unsupported theory that white Baltimore County voters cross over to elect Black-preferred candidates is demonstrably false.

1. The Election of Cheryl Pasteur to the Baltimore County School Board

The County and Dr. Gimpel rely heavily on Cheryl Pasteur’s election, but ignore its aberrational character, which fully rebuts their *Gingles* 3 analysis. Ms. Pasteur’s 2018 election to the school board was barely a contest. She was a well-known and extremely qualified candidate—a former FBI agent, longtime educator, and former principal of Old Court Middle and Randallstown High Schools—while her opponent, Anthony Glasser, was a relatively unknown optometrist with no professional background in education. Pasteur Decl., Ex. G, ¶¶ 3, 6. Ms. Pasteur had four decades of professional experience in education and *mounted a vigorous campaign*, raising and spending thousands of dollars, attending public events, and organizing hundreds of volunteers. Dr. Glasser *did not raise or spend a nickel* on his “campaign,” avoided

public appearances, engaged no evident volunteers, had no campaign signs or literature, and failed even to respond to the Baltimore Sun’s candidate questionnaire. *Id.* ¶¶ 7-12. And the race at issue was a non-partisan school board position rather than an office through which candidates compete through partisan primaries.

Even if Ms. Pasteur had competed in a typical contested election, she is the *only* example throughout all Baltimore County history of a Black candidate getting elected to County-level office outside of District 4. The County repeatedly cites Ms. Pasteur’s election to overstate the success of Black-preferred “candidates” in the plural when it should use the singular. *See* ECF 34 at 22 (“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.); *id.* at 24-25 (“*Black candidates* like Cheryl Pasteur can, and do, win elections in [Districts 1 and 2]”) (emphases added). It happened once.⁸ The County’s single example (there are no others) does not disturb Plaintiffs’ strong showing that white bloc voting in the County *generally* defeats Black-preferred candidates. Rather, as the *Gingles* Court made clear, the occasional success of one or even a few Black candidates in particular elections does not disprove the general existence of racial bloc voting. *Gingles*, 478 U.S. at 57-58. This is because, as is true in the case of Ms. Pasteur, special circumstances may explain minority success in certain contests within the larger context of a racially polarized electorate. *Id.*; *see also Collins v. City of Norfolk*, 816 F.2d 932, 937-38 (4th Cir. 1987).

⁸ Dr. Gimpel uses the singular, but nevertheless mischaracterizes Ms. Pasteur as “an example” as if others exist. ECF 34-7 ¶ 21. According to Dr. Gimpel, this one-off school board race “suggests that there is no pronounced racial polarization in County elections[.]” *Id.* That is an illegitimate conclusion to reach from a single, virtually uncontested, nonpartisan, down-ballot election. Barreto Decl. ¶ 22.

2. The County and Dr. Gimpel fail to undertake a serious statistical study of electoral performance consistent with court standards.

Dr. Barreto found high levels of white bloc voting for candidates running against the Black candidates whom Black voters cohesively supported. For example, in the 2016 Van Hollen-Edwards Democratic primary election, the extreme racial polarization meant whites voting as a bloc were able to defeat Congresswoman Edwards, the Black-preferred candidate (countywide and, most relevantly, in County Districts 1, 2, and 4). ECF-28-3, ¶ 18. The same was true in the 2014 Hogan-Brown and 2018 Hogan-Jealous gubernatorial elections. *See* ECF-28-3, ¶¶ 14-17.

The County tries to brush aside these examples by focusing on how “Black voters in Districts 1 and 2 often support, and elect, non-Black candidates to the Council.” ECF 34 at 19. There is no question that Black citizens in Districts 1 and 2 often vote for non-Black Council candidates; the extreme racial polarization and white-majority status of Districts 1 and 2 has meant there has rarely been anyone other than non-Black candidates to choose from.⁹ But the elections of Tom Quirk and Izzy Patoka *did not feature a Black candidate against a white candidate*, which are the elections most probative under Section 2.¹⁰

⁹ ECF 28-4 (Fugett Decl.) ¶¶ 16-17 (describing reasons for dearth of Black candidates, including virtual impossibility, given racially polarized voting, of his own viability in a district where white voting age population exceeds Black voting age population by over 24 percentage points).

¹⁰ *U.S. v. Charleston County, S.C.*, 365 F.3d 341, 350 (4th Cir. 2004) (recognizing that election contests between Black and white candidates are most probative of racially polarized voting); *LULAC v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993) (“This court has consistently held that elections between white candidates are generally less probative in examining the success of minority-preferred candidates, generally on grounds that such elections do not provide minority voters with the choice of a minority candidate.”) (collecting cases); *Cane v. Worcester County, supra*, at 1090, (“[E]lections in which the preferred minority candidate is an African-American are more probative.”). *Accord, Marylanders for Fair Representation v. Schaefer, supra* at 1059-60 (assuming the point and examining only Black-white elections and Black candidate lack of success in majority-white districts over time to find proof of white bloc voting sufficient to defeat Black-preferred candidates.).

A statistical analysis of the elections featuring Black candidates against white candidates demonstrates that white bloc voting would defeat Black candidates in Districts 1 and 2 under the County’s new map. The chart below is a performance comparison for the 2016 Van Hollen-Edwards Democratic primary election, the 2014 Hogan-Brown gubernatorial election, and the 2018 Hogan-Jealous gubernatorial election. In the County’s Districts 1 and 2, whites voting as a bloc consistently outperform the Black candidate:

Candidate Performance Comparisons in Bill 103-21’s Map for Districts 1, 2, and 4:

Year	Election Type	Office	Candidates	Candidate Race	District 1	District 2	District 4
2014	General	Governor	Hogan (R)	White	54.4%	53.8%	22.2%
			Brown (D)	Black	42.9%	44.5%	76.1%
2016	Primary	Senate	Van Hollen (D)	White	51.2%	64.1%	32.8%
			Edwards (D)	Black	39.8%	29.9%	61.8%
2018	General	Governor	Hogan (R)	White	54.2%	56.6%	29.6%
			Jealous (D)	Black	44.5%	42.6%	69.4%

Ex. E (Barreto 2d Decl.) ¶ 14. The Black candidates would have won were the elections confined to majority-Black District 4. And, as demonstrated in Dr. Barreto’s performance analysis, they generally would have won in both majority-Black districts in Plaintiffs’ Plans 1 and 5. They would have lost, however, were the elections confined to the County’s majority-white Districts 1 and 2.

Ex. E (Barreto 2d Decl.) ¶¶ 13-16. In Baltimore County, Black and white citizens do vote differently.

D. The County fails to rebut that the totality of the circumstances and the Senate Factors support the finding of a violation of Section 2.

The County does not dispute any of the “Senate factors” that Plaintiffs have established – that the County (1) has a history of racial segregation that excluded Black citizens from the County and thus deprived them of the opportunity to vote there, (2) has extremely racially polarized voting, (3) continues to have significant racial disparities in education, employment, health, and housing,

and (4) has a history of almost never electing Black candidates to public office. ECF 28-1 at 20-30. The County's response seems to be "things aren't as bad as they used to be" and "trust the white councilmembers to take care of their Black constituents."

The County also does not dispute any aspect of Dr. Lawrence Brown's account of the County's racist history, including recent instances of exclusion of affordable housing and refusal to desegregate schools, resulting in the County being the most segregated major county in Maryland and continuing to have among the most segregated schools in the State. ECF 28-3 (Brown Decl.) ¶¶ 28, 32. The County simply claims that the County "has made significant improvements." ECF 34 at 26. But the relevant question is not how far the County has come, it is how far it has to go.

The County provides a declaration from its Chief Diversity Officer (an office only created in 2019) that misleadingly states that the County Council has appropriated funds for affordable housing. ECF 34-10 ¶ 20. Mr. Williams and the County fail to mention that this funding is required under a Court-ordered monitoring agreement with the U.S. Department of Housing and Urban Development as to which the County is severely out of compliance. As described in the Declaration of Charles Matthew Hill, attached as Exhibit I, in March 2016, HUD entered into a binding Voluntary Compliance Agreement with various organizations advocating for fair housing, individual BIPOC and disabled residents, and the County. *Id.* ¶ 8. The agreement requires the County to undertake a myriad of actions, monitored by HUD, to address the race discrimination and segregation its policies perpetuated. *Id.* While the County may have budgeted money to create affordable housing, the County has failed to meet its obligations under the agreement to facilitate the production of 1,000 "hard units" of affordable, accessible housing in particular census tracts with high-performing schools, economic opportunities, and racial/economic diversity. *Id.* ¶ 10.

In light of the County's neglect toward Black and BIPOC citizens in search of affordable housing (despite a formal agreement requiring certain thresholds be met), the County's self-congratulatory claims about "improvements" and special diversity committees ring hollow.

II. The County fails to contest meaningfully the equitable factors supporting a preliminary injunction.

The County appears not to dispute that a Section 2 violation constitutes an irreparable harm to minority voters such as Plaintiffs. ECF 34 at 9-10. *See United States v. City of Cambridge*, 799 F.2d 137, 140 (4th Cir. 1986) (discriminatory voting laws are "the kind of serious violation of the Constitution and the Voting Rights Act for which courts have granted immediate relief"). Instead, the County resorts to unsupported hyperbole regarding a speculative and unsupported claim of "potentially negative impact of either [of Plaintiffs'] plan[s] on Black voting power," an incredible claim given the County's steadfast resistance to equal voting opportunities for its Black and BIPOC citizens. ECF 34 at 31.

As an initial matter, denying preliminary relief simply because the first deadline of this election cycle is approaching would create a perverse incentive for municipalities to defer redistricting decisions until the eleventh hour in order to delay or avoid judicial review. By enacting a lawful plan in the first place, the County could have avoided the need to readjust its councilmanic districts as election season approaches. Instead, the County chose to enact a map that dilutes Black and BIPOC citizens' voting strength, despite full knowledge that it was unlawful under the Voting Rights Act. The County does not enjoy a free pass from complying with federal law in this year's elections.

In any event, the County's claims are indefensible, and this Court has time and authority to ensure that the County effectively implements a lawful map. The County has been aware *for months* that its proposed plan violated the Voting Rights Act and that the slow pace of its

consideration of the maps would push up against the election deadline. And because Plaintiffs in this case have offered a plethora of potential remedial plans, altering Bill 103-21 to resolve its legal defect will take little time. Any “inconvenience” legislators face in having to fix an unlawful plan they enacted just seven weeks ago “does not rise to the level of a significant sovereign intrusion.” *Covington v. North Carolina*, 270 F. Supp. 3d 881, 895 (M.D.N.C. 2017). These timing-based concerns, far from harming the County or the public interest, “simply serve to emphasize why a preliminary injunction during these early stages of the filing period would better serve the public than waiting until the eve of the election.” *NAACP-Greensboro Branch v. Guilford Cnty. Bd. of Elections*, 858 F. Supp. 2d 516, 529 (M.D.N.C. 2012).

CONCLUSION

The Court should preliminarily enjoin Bill 103-21’s implementation prior to the February 22, 2022, deadline for candidate registration, as there is still sufficient time for maps to be enacted and vetted without undermining the public’s interest in an orderly election in 2022.

Dated: February 7, 2022 Respectfully submitted,

/s/ Deborah A. Jeon

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EXHIBIT E

SECOND DECLARATION OF MATTHEW A. BARRETO

**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. LKG-21-3232

SECOND DECLARATION OF MATT BARRETO, PH. D.

1. I previously executed a declaration on January 18, 2022, that was submitted in this action (ECF 28-3). Since then, I have reviewed Baltimore County's Memorandum of Law in Opposition to Plaintiffs' Motion for Preliminary Injunction (ECF 34) and the accompanying Declaration of Dr. James Gimpel (ECF 34-7).

2. As explained, in this matter I have been working with Dr. Kassra Oskooii, tenured professor of Political Science at the University of Delaware.

3. It is our conclusion that Dr. Gimpel's declaration does not follow accepted social science practices for analyzing racially polarized voting. While he offers opinions, his declaration does not contain the type of ecological inference (EI) analysis that courts have relied on in Section 2 voting rights cases. We outline our rebuttal to Dr. Gimpel below.

4. Dr. Gimpel does not disagree that Blacks are currently over 30% of Baltimore County's population, which, as demonstrated by the district maps for Plaintiffs' proposed alternative redistricting plans, is clearly large enough in size and sufficiently compact to establish

two majority-Black council districts in Baltimore County. While Dr. Gimpel claims that Black population growth has occurred throughout the County, he does not dispute that a second Black-majority district can be drawn in the west side of the County where the largest population concentration can be found.

5. When localities redraw political district boundaries after every decennial census, they must take into account demographic and population changes over the previous decade. In Baltimore County, the Black population grew by 54,982 while the White population declined by 61,293.

6. In paragraph 12 of his report, Dr. Gimpel acknowledges that “minorities should not be spread so thinly across districts that they have no opportunity to elect their candidate of choice.” But this is precisely what Baltimore County does to Black voting strength: on the one hand overly packing the Black population into District 4, and on the other hand cracking it across Districts 1 and 2 such that Black voters are spread so thinly across Districts 1 and 2 that they have no opportunity to elect their candidate of choice.

11. There is no question that the 2022 redistricting map adopted by Baltimore County does not perform for Black candidates of choice outside of District 4 (that is, Black candidates who are the candidates of choice of Black voters). The key elections for the Court to consider are those in which Black candidates faced White candidates.

12. In his report, Dr. Gimpel offers no opinion, data or evidence disputing our detailed statistical analysis that key elections with Black candidates demonstrate racially polarized voting. Black voters were very cohesive in support for Black candidates Anthony Brown, Benjamin Jealous and Donna Edwards. White voters in Baltimore County bloc-voted against all three of these Black candidates. Dr. Gimpel is in agreement with this analysis.

13. What's more, the results of our performance analysis, reported in Table 1 below, show that the newly adopted County map does not perform for Black candidates of choice in Districts 1 and 2¹. In fact, *White Republican* candidate, Larry Hogan, easily defeated Black Democrats in the 2014 and 2018 gubernatorial elections in those districts. The defeat of these Black candidates of choice resulted from the white bloc-voting patterns that I attested to in my earlier declaration. Because District 1 (29.71% Black VAP) and District 2 (31.18% Black VAP) crack the Black population residing in this part of the County, there is no question that the existing map does not perform to elect the Black candidates of choice. Stated differently, Black voters cannot overcome the clear White bloc-voting that we had observed. In contrast, District 4 shows clear evidence of packing, by creating a district with a very large Black population (74.74% Black VAP). Unsurprisingly, the same Black candidates who lost in Districts 1 and 2, won with very high margins (ranging from about 30 to 50 percentage points) in District 4.

14. **Table 1: Candidate Performance Comparisons in Newly adopted 2022 County Map Districts 1, 2, and 4**

Year	Election Type	Office	Candidates	Candidate Race	District 1	District 2	District 4
2014	General	Governor	Hogan (R)	White	54.4%	53.8%	22.2%
			Brown (D)	Black	42.9%	44.5%	76.1%
2016	Primary	Senate	Van Hollen (D)	White	51.2%	64.1%	32.8%
			Edwards (D)	Black	39.8%	29.9%	61.8%
2018	General	Governor	Hogan (R)	White	54.2%	56.6%	29.6%
			Jealous (D)	Black	44.5%	42.6%	69.4%

15. While Dr. Gimpel states that Mr. Brown and Mr. Jealous were successful in their own Democratic *primary* elections, he offers no statistical analysis to show they were preferred by White voters. Further, and perhaps most devastating to his claims, when the full electorate in Districts 1 and 2 are considered, Whites voted strongly against Mr. Brown and Mr. Jealous in the November election, instead siding with White Republican candidate Larry Hogan.

16. While Dr. Gimpel and Baltimore County argue that some White Democrats have won office with Black support, they cannot ignore the fact that when *Black* Democrats run against White opponents, they lose. This evidence supports Plaintiffs' point that, while the Black voters in Baltimore might prefer White Democrats when there is no Black opponent, when a *Black* Democrat contests an election, White voters bloc-vote against the Black candidate. In his analysis of the 2014 and 2018 Democratic Gubernatorial primary election, Dr. Gimpel suggests that there is a sufficient number of crossover White votes for Black candidates to win in Districts 1 and 2. *See* Gimpel Decl. ¶¶ 23-25. Not only does he fail to conduct any actual social science analysis that would yield scientifically acceptable point estimates of racial voting behavior, he also completely ignores what transpires in the general elections as demonstrated above.

15. In Table 2 below, we compare how Black Democrats Anthony Brown and Ben Jealous would have performed using the district boundaries under the newly adopted county map relative to other high-profile general races featuring *White* Democratic candidates. As the results vividly show, the only Democrats who do not perform (i.e., win) in Districts 1 and 2 are the two Black Democrats. Using the 2014 general election results, Anthony Brown would have received 42.9% and 44.5% of the votes in new Districts 1 and 2, respectively. On the same exact ballot, White Democratic candidate for Attorney General, Brian Frosh, would have secured 55.7% and 59.9% of new District 1 and 2 votes, respectively. Based on the 2018 results, Ben Jealous would have received 44.5% and 42.6% of the votes in new Districts 1 and 2, respectively. On the same ballot, the White Democrats running for Senate and Attorney General would have secured more than 65% of Districts 1 and 2 votes. This analysis provides additional evidence of the

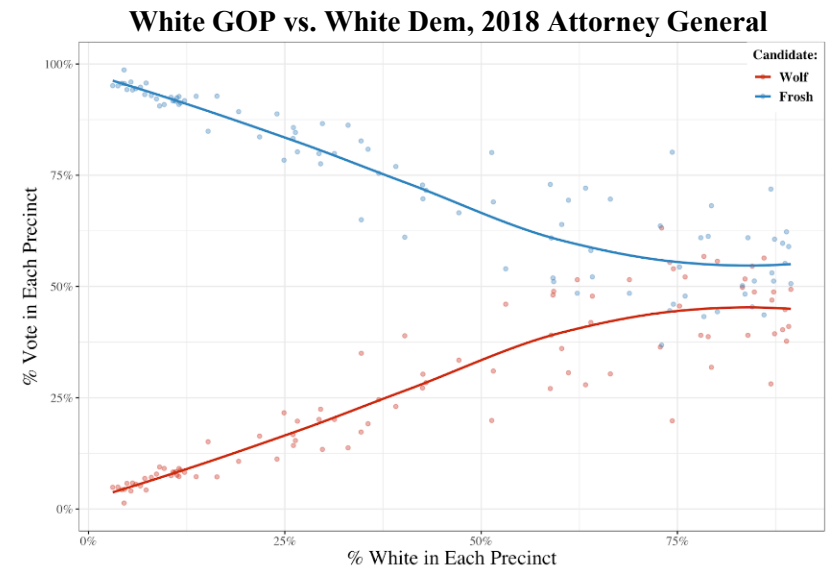
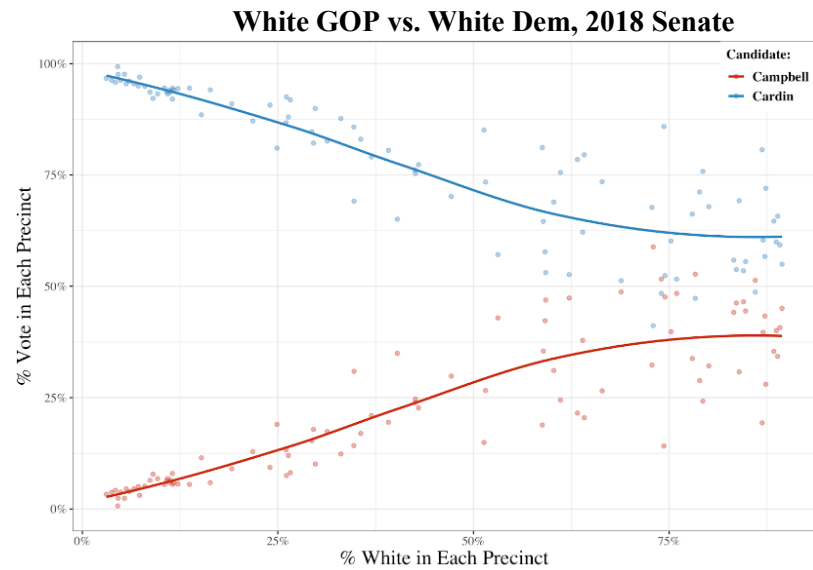
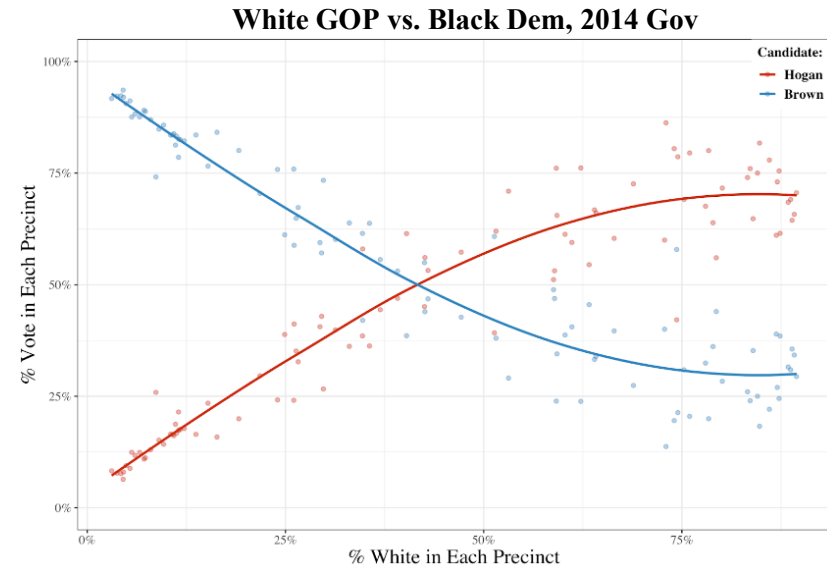
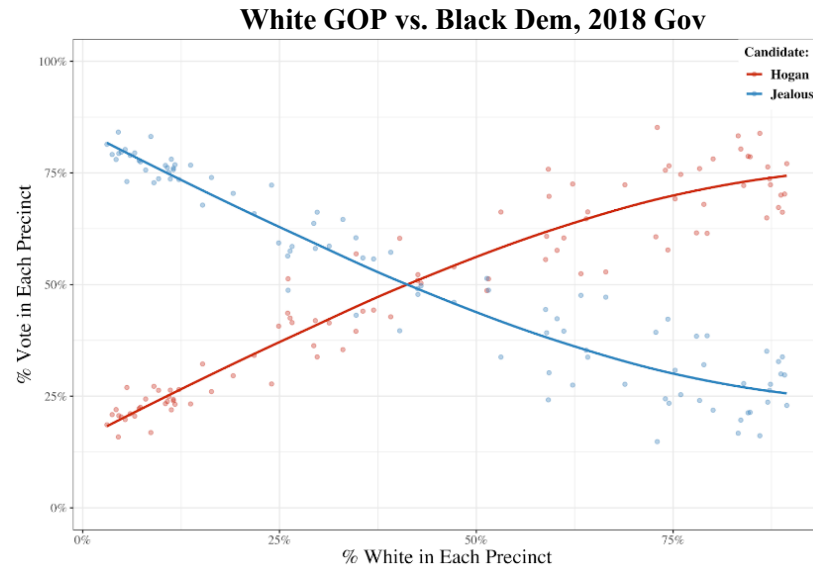
tremendous barriers that even prominent Black candidates would face in Districts 1 and 2 if the County's map is allowed to take effect.

16. **Table 2: Candidate Performance Comparisons in Newly adopted 2022 County Map in elections with White and Black Democrats: Districts 1 and 2**

Year	Election Type	Office	Candidates	Candidate Race	District 1	District 2
2014	General	Governor	Hogan (R)	White	54.4%	53.8%
			Brown (D)	Black	42.9%	44.5%
2014	General	Attorney	Pritzker (R)	White	39.6%	37.1%
		General	Frosh (D)	White	55.7%	59.9%
2018	General	Governor	Hogan (R)	White	54.2%	56.6%
			Jealous (D)	Black	44.5%	42.6%
2018	General	Senate	Campbell (R)	White	27.6%	23.0%
			Cardin (D)	White	65.8%	70.7%
2018	General	Attorney	Wolf (R)	White	33.2%	31.7%
		General	Frosh (D)	White	66.7%	68.3%

17. This pattern is easily visualized in a scatterplot array of previous election performance across all voting precincts in new Districts 1, 2, and 4 comparing elections with White Democrats and Black Democrats. Rather than just showing the Court one or two precincts, we present the full set of 93 precincts across these districts to show the clear pattern of vote choice by race of voters and race of candidates. These results are presented as a four-graph panel in Figure 1 below. The top two graphs show that when a White Republican faces a Black Democrat, Whites bloc-vote against the Black Democrat, as evidenced by the blue regression line sloping downwards to far below 50% support. The bottom two graphs show, however, that when a White Republican faces a White Democrat, Whites provide enough crossover votes to help White Democrats to win the election.

Figure 1: Election Results by Race, Baltimore County in D1, D2, and D4



19. Without citing any evidence, Dr. Gimpel claims that White voters in Maryland are “arguably more racially progressive than other states” and “regularly vote for Black candidates,” and he asserts that “in my view, this mitigates the need for drawing additional majority-minority Council seats.” Gimpel Decl. at ¶ 14. As we have made clear, however, Districts 1 and 2 are deprived of Black population through the County’s packing of District 4, and further crack the Black population, such that they do not perform for Black candidates of choice. Dr. Gimpel does not provide any comprehensive statistical analysis to dispute our finding that, when Black candidates of choice run, Whites bloc-vote against them. Dr. Gimpel does not provide any statistical analysis to dispute our finding that Black voters are highly cohesive and unite behind Black candidates of choice. In fact, he agrees, writing “to be sure, there is a tendency for Black populations to favor Black candidates and white populations to prefer white ones.” Gimpel Decl. ¶ 20.

20. In approving of the County’s creation of District 4 as a necessary VRA majority-Black (and now super-majority Black) district, Dr. Gimpel seems to take the position that there is in fact racially polarized voting in Baltimore County and that the County correctly responded to the NAACP’s and ACLU’s urging to create the first-ever majority-Black- district in 2002, but he also appears to believe that Blacks deserve only one district out of seven 20 years later. There is an inherent contradiction in Dr. Gimpel’s position about a second Black performing district in 2022. If he agrees that there is in fact racially polarized voting – which there is – and there is evidence that Black candidates of choice are blocked by White voters – which there also is – then the same factors that required the creation of a Black district in 2002 require the creation of a second Black district in 2022, given that Blacks now compose a much larger share of the voting age population.

21. Dr. Gimpel points to the fact that, since 2002, no Black candidate has lost to a White candidate in a race for County Council (using a cutoff date that allows him to ignore the one Black candidate who did run and lose for the council in 1990). Gimpel Decl. ¶ 21. But he draws no conclusion from that fact. The absence of such an election is most readily explained (as Anthony Fugett described in his declaration at paragraphs 10, 12, and 16) as the result of no Black candidate having been foolish enough to run for the Council in heavily White districts in which Whites bloc-vote against Black candidates.

22. Dr. Gimpel points to one aberrational election, the 2018 school board election in District 2 in which a Black candidate, Cheryl Pasteur, defeated a white candidate, Anthony Glasser. But, as described in Ms. Pasteur's declaration, that was the result of an exceptionally high-profile Black candidate (Ms. Pasteur) who mounted a vigorous campaign in what was essentially an uncontested election. Dr. Glasser, who had no background in education, apparently spent no money and almost no effort on his "campaign." That Ms. Pasteur was able to win that election – the only example in County history of a Black candidate defeating a white candidate in a majority-White district – in no way "suggests that that there is no pronounced racial polarization in County elections," as Dr. Gimpel asserts in paragraph 22 of his declaration. Making that assertion based on a single, highly unusual election is far outside the bounds of accepted social science practices for analyzing racially polarized voting. Indeed, Dr. Gimpel did not conduct any ecological inference analysis reporting Black or White vote choice estimates for the candidates in this election. He simply makes an assertion based on election results.

23. In Voting Rights Act lawsuits, courts have widely accepted ecological inference as a method to assess racially polarized voting. The methods accepted include Goodman's ecological regression and King's ecological inference, a more precise and statistically robust

version of ecological regression. Ecological inference (EI) is also widely used in published social science to ascertain vote choice estimates by race and ethnicity. EI is a well-known method and regularly used by both the courts and political scientists to study racially polarized voting. In our analysis, we rely on the software package eiCompare², which we developed and published (Collingwood et al. 2016; Barreto et al. 2019), based on King (1997) and Rosen, et al. (2001)³. The methods, analysis and tables we presented in my original declaration of January 18, 2022, and throughout this second declaration rely on accepted statistical analysis of racially polarized voting. In a recent Section 2 Voting Rights Act lawsuit, a federal judge cited eiCompare analysis as accurate and scientifically valid:

Plaintiffs' expert in political science and statistical analysis, Dr. Matthew Barreto, (see Tr. at 154:5-11), used accurate and scientifically validated methods to identify and analyze racially polarized voting in the District... In sum, Dr. Barreto is extremely well credentialed and at the leading edge of political science and statistical analysis with respect to racially polarized voting and voting estimates. I found him to be entirely credible... Through a statistical package and method called eiCompare, Dr. Barreto then used both King's EI and RxC to estimate voting preference by race and compared the results.

NAACP, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist., 462 F. Supp. 3d 368, 381 (S.D.N.Y. 2020), *aff'd sub nom. Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021).

24. In contrast, Dr. Gimpel does not run any ecological inference (or ecological regression) analysis for any elections that he discusses. He provides a combination of commentary, summary of election results, sometimes citing a few hand-picked precincts, and unconventional Excel charts of selected precinct results. None of this constitutes ecological inference or racially polarized voting analysis that proves whether Whites vote in favor of Black candidates of choice. In order to offer evidence of Gingles 2 or Gingles 3 prongs, Dr. Gimpel must provide the court with accepted ecological inference analysis, which he has not done.

25. In his report, Dr. Gimpel refers to the need to pack, or overconcentrate, the Black population in a single district so it can reliably elect Black candidates of choice, but he provides no analysis of election results showing that the such over-packing of Black population is necessary. Gimpel Decl. ¶ 15. In fact, as our analysis above shows, District 4 consistently votes for Black candidates at the 70% or sometimes 80% level, thereby “wasting” Black votes that could go towards electing Black candidates of choice in another district. District 4 can easily be “unpacked” so the Black population can shift to an adjacent district to form a second majority-Black district.

26. Experts in the field voting rights make clear that over-packing is a form of vote dilution, which Dr. Gimpel completely ignores. Packing of minority voters and vote dilution is described in a Law Review article by Gerry Hebert and Allan Lichtman in 1993⁴. Hebert was Special Litigation Counsel for the U.S. Department of Justice in the Voting Section for more than 20 years and often oversaw VRA litigation on precisely these types of cases related to over-packing of the Black population. The rationale for unpacking districts is indeed part of the *Gingles* decision and should be considered a VRA principle when evaluating legislative districting. They write: “packing occurs when minorities are aggregated into one or more districts beyond the level needed for minority voters to achieve effective political control. Such packing “wastes” minority votes that could empower minorities to elect candidates of their choice in a larger number of districts. To prove packing, plaintiffs must also demonstrate that the alleged packed districts waste minority votes by concentrating minorities beyond the level needed for effective political control.”

27. Analysis of the NAACP’s proposed maps shows that two districts can perform to elect Black candidates of choice.

28. Our performance analyses of Plaintiffs' proposed Plans 1 and 5, reported below in Tables 2 and 3, illustrate that drawing a second Black-majority district would give Black voters the opportunity to elect their candidates of choice, in spite of significant White bloc-voting. Had the districts been drawn as shown under Plan 1, Brown, Edwards, and Jealous would have won in the proposed Black-majority District 1 and continue to win in District 4. Under the County's map, all three Black candidates lose in District 1. With the districts drawn as proposed under Plaintiffs' Plan 5, Brown and Jealous would have won in the Black-majority District 2, while Edwards would vastly improve her chances of electoral success. Once again, all the Black candidates would continue to win in District 4.

29. **Table 2: Candidate Performance Comparisons in NAACP MAP 1 Districts 1, 2, and 4**

Year	Election Type	Office	Candidates	Candidate Race	District 1	District 2	District 4
2014	General	Governor	Hogan (R)	White	36.5%	55.9%	37.3%
			Brown (D)	Black	61.1%	42.1%	60.6%
2016	Primary	Senate	Van Hollen (D)	White	38.5%	70.7%	41.6%
			Edwards (D)	Black	53.9%	23.7%	52.2%
2018	General	Governor	Hogan (R)	White	40.3%	58.0%	40.6%
			Jealous (D)	Black	58.6%	41.1%	58.2%

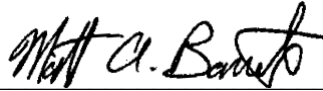
30. **Table 3: Candidate Performance Comparisons in NAACP MAP 5 Districts 1, 2, and 4**

Year	Election Type	Office	Candidates	Candidate Race	District 1	District 2	District 4
2014	General	Governor	Hogan (R)	White	56.0%	36.7%	38.6%
			Brown (D)	Black	41.3%	61.5%	59.7%
2016	Primary	Senate	Van Hollen (D)	White	52.5%	49.9%	42.5%
			Edwards (D)	Black	38.5%	44.7%	51.4%
2018	General	Governor	Hogan (R)	White	55.5%	42.4%	41.7%
			Jealous (D)	Black	43.2%	56.7%	57.3%

31. All of the opinions in this declaration and my previous declaration are offered to a reasonable degree of professional certainty in my capacity as an expert on political science,

social science statistical analysis, demographics, and voting patterns, including analysis of racially polarized voting. This report is intended to provide a summary reply to Dr. Gimpel on issues related to demographics and voting patterns in Baltimore County. If additional data becomes available or relevant, I will provide additional data analysis as requested by the Court and counsel.

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

A handwritten signature in black ink, appearing to read "Matt A. Barreto", written over a horizontal line.

Matt Barreto

Agoura Hills, California
Executed on February 7, 2022

End Notes

¹ Results for all performance analysis tables presented here are based on the datasets used in my initial declaration. As previously noted, early, provisional, and absentee votes by precincts are not reported by the State of Maryland or Baltimore County for election years 2014 and 2018. For 2018, I relied on election data compiled by the Redistricting Data Hub (<https://redistrictingdatahub.org>), which apportioned early, provisional, and absentee votes to precincts in the same share that the election day votes were split among candidates.

² Collingwood, Loren, Kassra Oskooii, Sergio Garcia-Rios, and Matt Barreto. 2016. “eiCompare: Comparing Ecological Inference Estimates across EI and EI: RxC.” *The R Journal*. 8:2; Barreto, Matt, Loren Collingwood, Sergio Garcia-Rios and Kassra Oskooii. 2019. “Estimating Candidate Support: Comparing Iterative EI and EI-RxC Methods” *Sociological Methods and Research*. 48(4).

³ King, Gary. 1997. *A Solution to the Ecological Inference Problem*. Princeton, NJ: Princeton University Press; Rosen, Ori, Wenxin Jiang, Gary King, and Martin A. Tanner. 2001. “Bayesian and Frequentist Inference for Ecological Inference: The R x C Case.” *Statistica Neerlandica* 55(2):134-56

⁴ Allan J. Lichtman and J. Gerald Hebert. 1993. “A General Theory of Vote Dilution.” *La Raza Law Reivew*. 6(1).

EXHIBIT F

SECOND DECLARATION OF WILLIAM S. COOPER

**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. LKG-21-3232

SECOND DECLARATION OF WILLIAM S. COOPER

1. I previously executed a declaration on January 18, 2022, that was submitted in this action (ECF 28-2). Since then, I have reviewed Baltimore County's Memorandum of Law in Opposition to Plaintiffs' Motion for Preliminary Injunction (ECF 34) and the accompanying Declaration of James Gimpel (ECF 34-7).

2. Attached to this exhibit are modified versions of exhibits that were attached to my previous declaration.

a. Exhibit D-3 replicates a portion of my prior Exhibit D-1, which was a map of the 2021 Council Plan. Exhibit D-3 enlarges the western portion of the County to provide greater resolution and includes additional community name details.

b. Exhibit D-4 replicates Exhibit D-3 but overlays the Black Voting Age Population distribution details shown in my prior Exhibit C-1.

c. Exhibit E-4 replicates a portion of my prior Exhibit E-1, which was a map of Plaintiff's Proposed Plan 1. Exhibit E-4 enlarges the western portion of the County to provide greater resolution and includes additional community name details.

d. Exhibit E-5 replicates Exhibit E-3 but overlays the Black Voting Age Population distribution details shown in my prior Exhibit C-1.

e. Exhibit F-4 replicates a portion of my prior Exhibit F-1, which was a map of Plaintiff's Proposed Plan 5. Exhibit F-4 enlarges the western portion of the County to provide greater resolution and includes additional community name details.

f. Exhibit F-5 replicates Exhibit F-4 but overlays the Black Voting Age Population distribution details shown in my prior Exhibit C-1.

3. I have reviewed Dr. Gimpel's criticism of the compactness of the districts I drew in Plaintiffs' plans. His criticism is unfounded. Each of the districts in Plaintiffs' Plans 1 and 5 (as well as their other plans) more than satisfies measures of compactness that have been repeatedly approved by courts across the country. Notably, as shown in Dr. Gimpel's Table 1, the average compactness scores of the Plaintiffs' Plans 1 and 5 (under both the Polsby-Popper Test and the Schwartzberg Test) are greater than the average scores of the maps the County adopted in 1990 and 2000, and the district-by-district scores are comparable. Dr. Gimpel does not assert that the compactness of those earlier maps was somehow improper, and it was not. The relevant issue in Voting Rights Act cases is not which map is most compact but rather whether the maps that satisfy the other relevant criteria under the Act also comply with traditional standards of compactness. Here, Plaintiffs' proposed maps comply with traditional standards of compactness.

4. In his declaration, Dr. Gimpel expressed concern about the extent of "core retention" in Plaintiffs' Proposed Plan 1 and Plan 5. I do not find these concerns legitimate. The Plaintiffs' proposed plans each create a new councilmember district consistent with the Voting Rights Act and the *Gingles* 1 criteria. In order achieve Voting Rights Act compliance, changes

in district boundaries are necessary. Core retention is a largely irrelevant consideration when an election plan is challenged on the grounds that it violates Section 2. The very nature of the challenge means that districts adjacent to the new majority-minority district must change, while otherwise adhering as much as possible to other traditional redistricting principles. In addition, Plaintiffs' proposed Plans 1 and 5 were presented to the County Council before it adopted a redistricting plan. Had the Council implemented Plan 1, Districts 3, 5, 6, and 7 in that plan could be reconfigured to match exactly the districts in the Council's adopted 2021 Plan. Likewise, had the Council implemented Plan 5, Districts 5, 6, and 7 could be reconfigured to exactly fit the same districts in the adopted 2021 Plan. These adjustments would substantially ameliorate the core retention concerns Mr. Gimpel expressed.

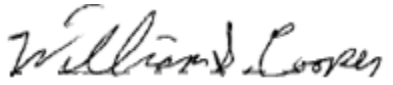
5. I was struck by the absence of demographic analysis in the County's filing, as well as in Mr. Gimpel's declaration, regarding the ability to design the council districts to include two reasonably compact majority-Black districts, which as my prior declaration shows is readily possible. I have seen no evidence that either the County Council or its Redistricting Commission, which recommended the adopted 2021 Redistricting Plan to the Council, undertook any demographic or Section 2 compliance analysis to support their rejection of plans that create a second majority-Black district or to support their adoption of a plan with a single majority-Black district.

6. The Commission reported, and the Council mistakenly credited, doubts about the feasibility of creating two majority-Black districts based on faulty assertions of insufficient population within majority-Black census blocks to create a second such district. The relevant portion of the Commission Report is quoted below. This analysis is flawed on many levels. Contrary to the implication of the Commission Report, a majority-Black district does not have to

consist exclusively of majority-Black census blocks. As I have shown, two reasonably compact majority-Black Voting Age Population districts can readily be established with the County's Black population distribution in line with court-accepted standards under Section 2. Such majority-Black VAP districts can be established as drawn in each of Plaintiffs' plans, as well as with other borders.

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

Executed on February 6, 2022



William S. Cooper

Redistricting Commission Report excerpt:

B. Majority-Black Districts

In 2011 and again during the current redistricting process, there were requests during the public hearings and in emails from stakeholders to create another majority-minority district similar to District 4. An analysis of the Voting Rights Act and subsequent case law is set forth in the Baltimore County Redistricting Manual. The Black population is the second largest demographic group in the County at 254,137 or 29.7%. No other non-White demographic group in the County is more than 54,000 people or about 6%. To constitute a majority (50% + 1 person) in an ideally-populated district, the Black population must be at least 61,192. Given the population figure, it should be mathematically feasible to create another majority-Black district. However, this does not adequately consider two critical constraints: the population distribution – specifically racial concentration – and the inherent limitations created by the geography and physical shape of Baltimore County. It also does not account for the effect that such a drastic re-drawing of district boundaries would have on the demographics of the other five Council districts, and neighborhoods and communities.

1. Demographic Concentration

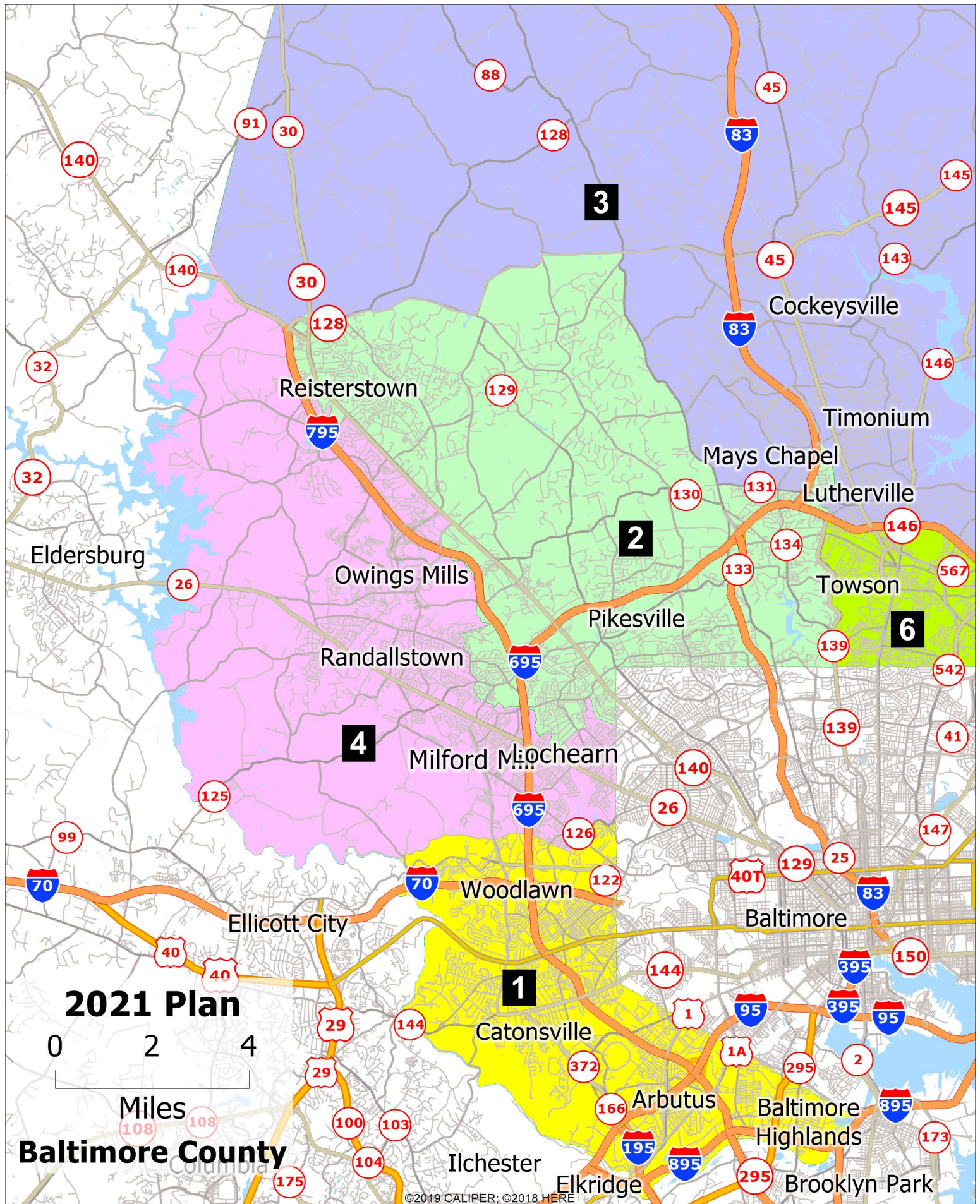
The most relevant impediment to two majority-Black districts is demographic concentration. Since districts are comprised of census blocks and the question is whether it is feasible to have two majority-Black districts, it makes sense to look at census blocks with a 50% or greater Black population. About 62% (158,300) of the County's Black population live within these majority-

Black census blocks. However, the total population of these census blocks is only 215,941. That means only about one in four people in the County live in a majority-Black census block.

The ideal size of two council districts is 244,764, meaning the total population of these majority-Black census blocks is 28,823 too small.³ Even assuming that both hypothetical districts were permitted the -5% deviation to 116,263 each, the total population is still 16,585 short of the required minimum 232,526 population to make the two districts.

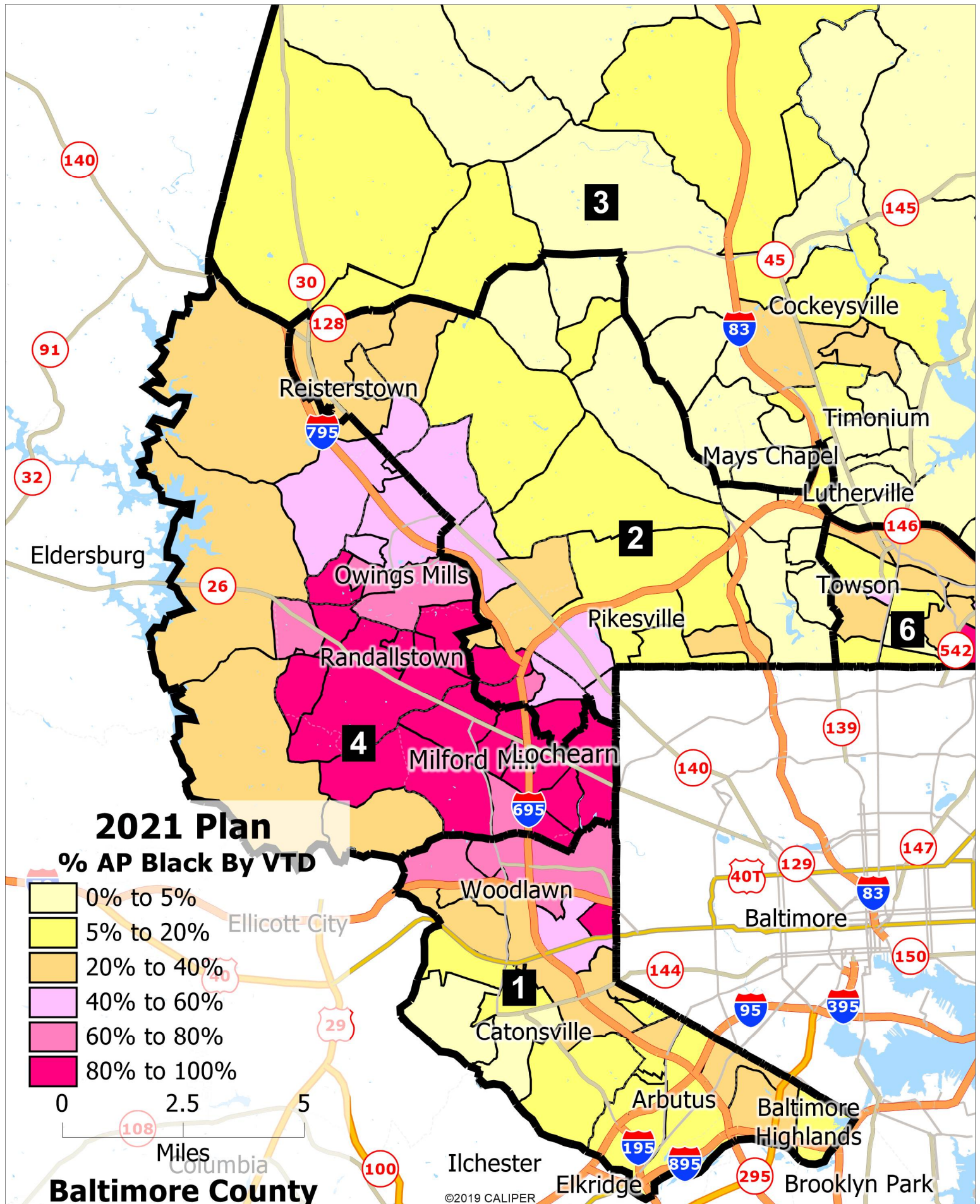
COOPER DECLARATION

EXHIBIT D-3



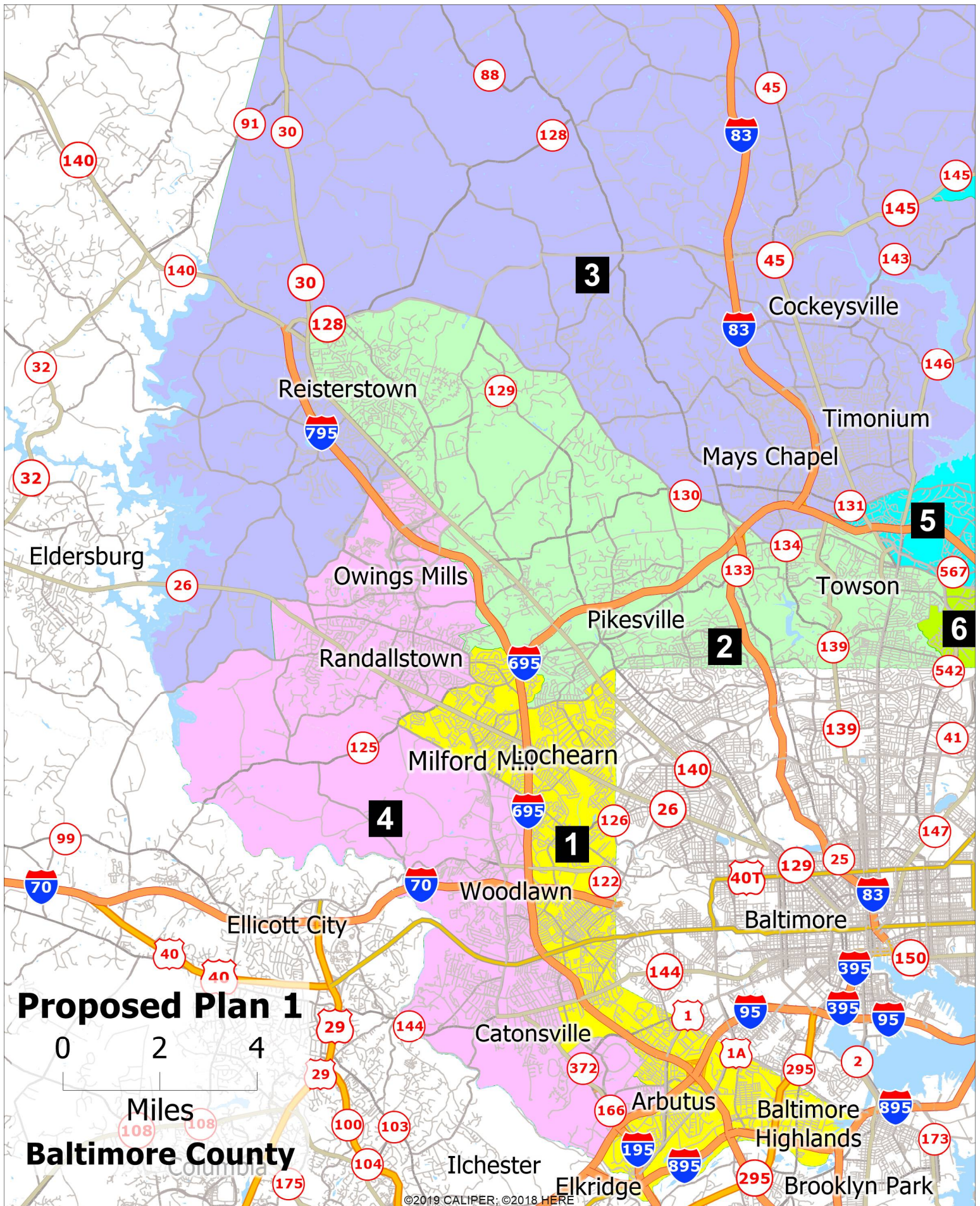
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EXHIBIT D-4



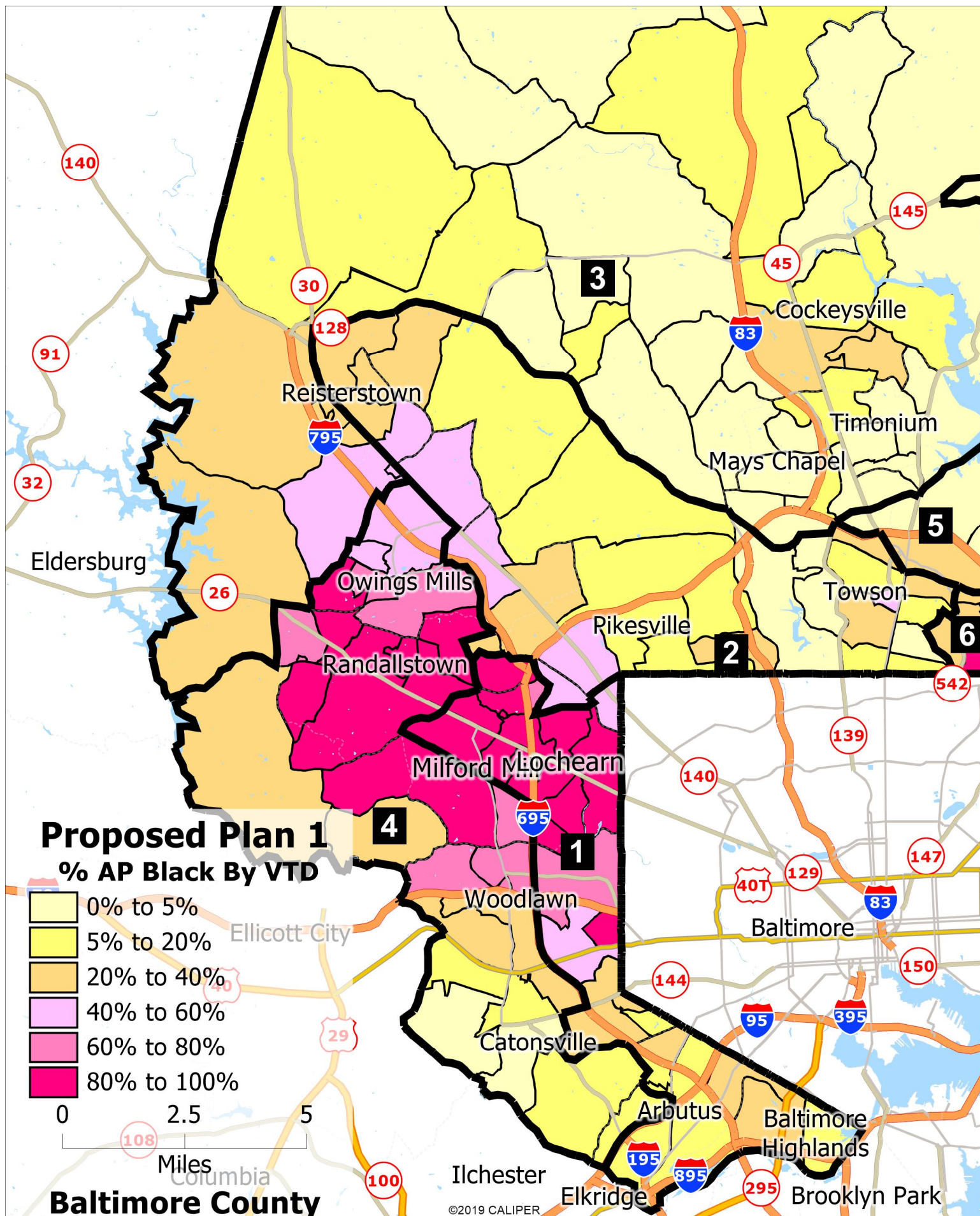
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EXHIBIT E-4



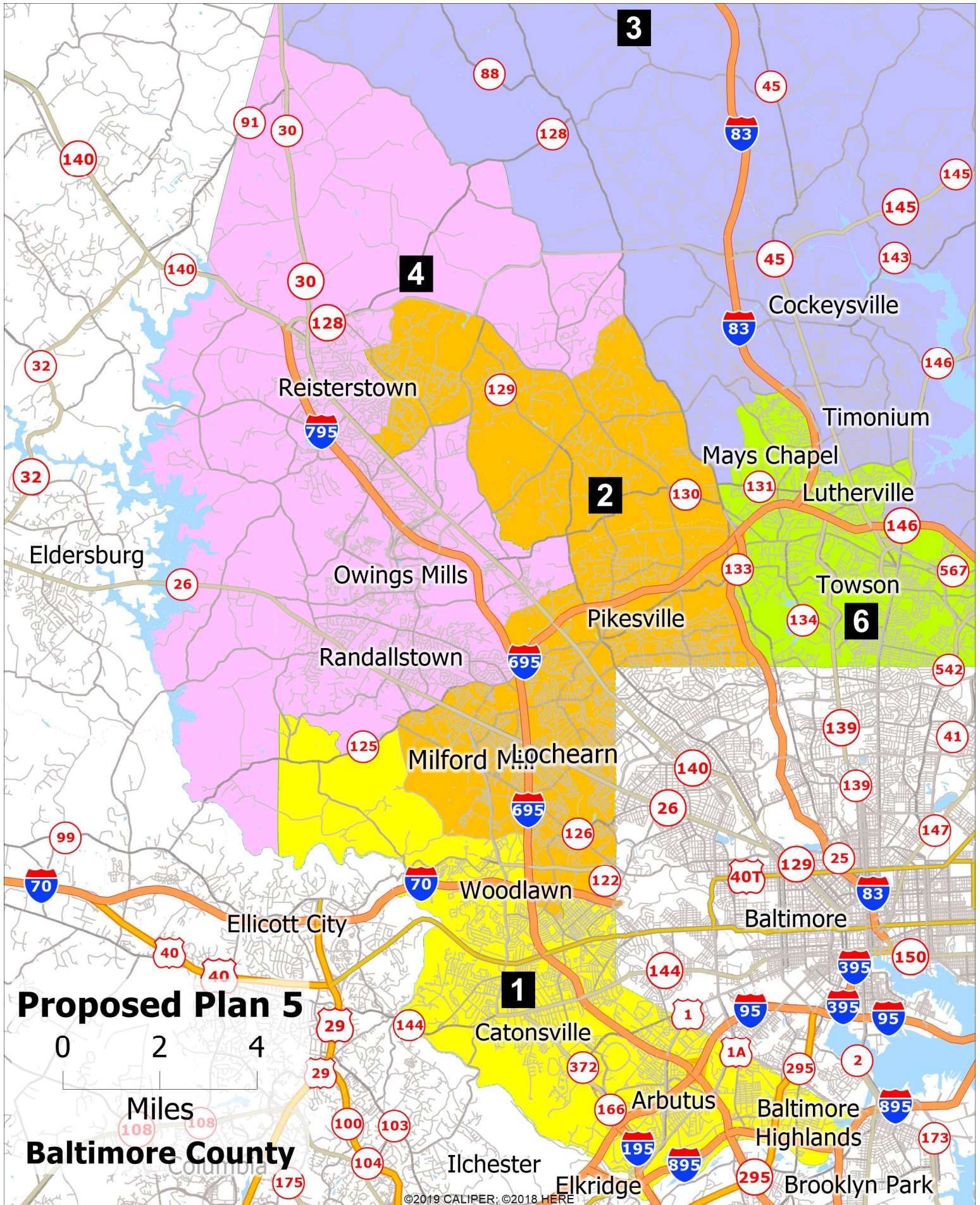
COOPER DECLARATION

EXHIBIT E-5



COOPER DECLARATION

EXHIBIT F-4



COOPER DECLARATION

EXHIBIT F-5

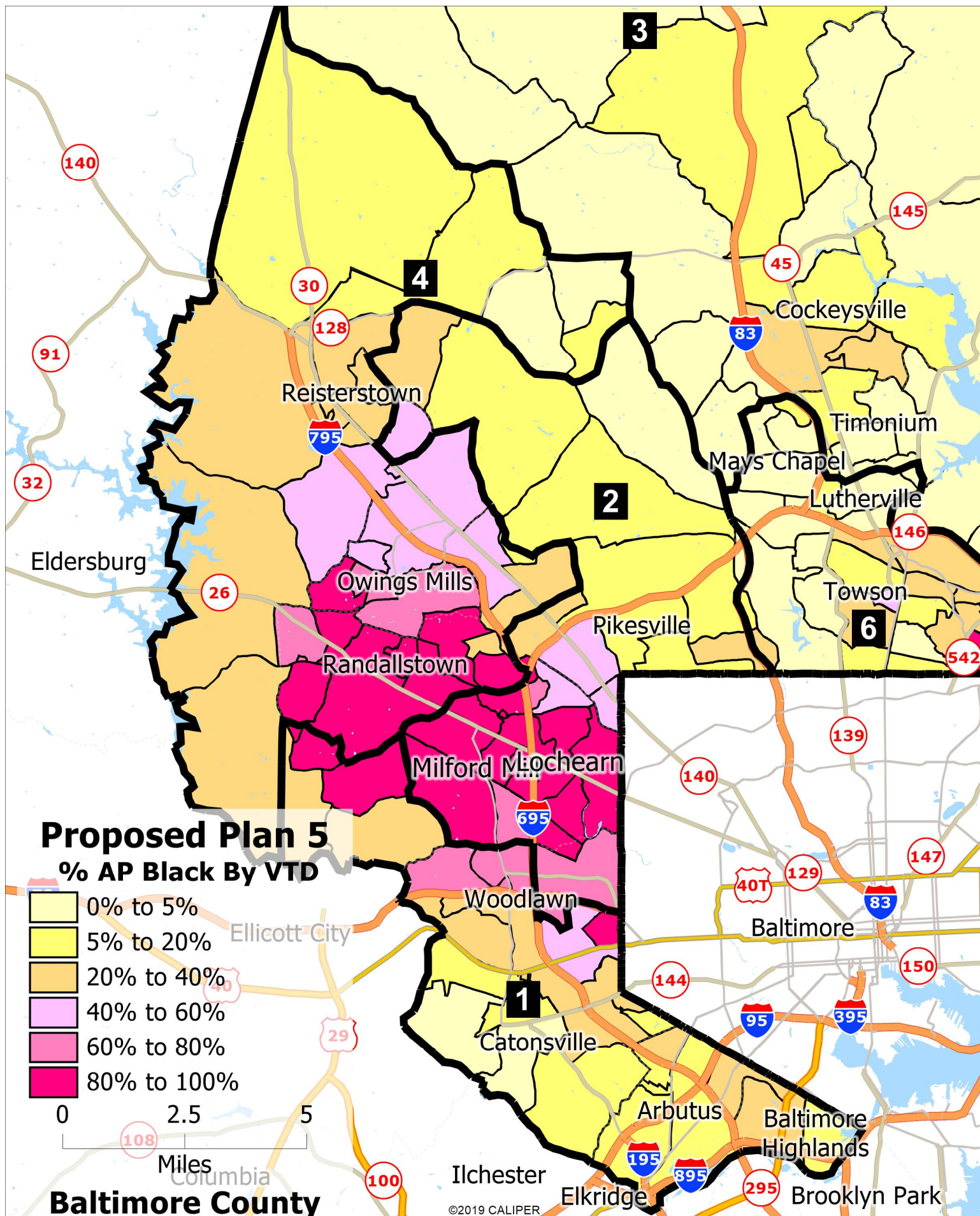


EXHIBIT G

DECLARATION OF CHERYL PASTEUR

**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. LKG-21-3232

DECLARATION OF CHERYL PASTEUR

1. I, Cheryl Pasteur, am over 18 years old and am competent to testify. I submit this declaration upon personal knowledge in support of Plaintiffs' motion for preliminary injunction in this matter.

2. I am a Black registered voter residing in Baltimore County, Maryland.

3. I currently serve as the Vice Chair of the Baltimore County Public Schools Board of Education. I have been an educator in Baltimore City and County for over 36 years. In Baltimore County, I have been a classroom English teacher, an English department chair, a specialist in the Equity Office, and assistant principal at G.W. Carver Center for the Arts and Technology, Sudbrook Middle Magnet, and Randallstown High School. I served as the principal at Old Court Middle School and Randallstown High School. I was also an FBI agent from 1983 to 1988. I have taught at both the University of Pittsburgh and Morgan State University.

4. In 2018, I ran for and was elected to the Board of Education from councilmanic District 2. My opponent in the race was Anthony Glasser. As explained further below, Dr. Glasser essentially did not mount a campaign.

5. Prior to 2018, all Board of Education members were appointed by the Governor. Although I had been recommended for the position twice, I was never appointed. The decision was made in 2018 to make seven board seats elected positions, one for each County Council district.

6. To my knowledge, Dr. Glasser did not have substantial experience in education, nor did he claim any such experience during the campaign. He was an optometrist at the time he ran for the board.

7. Over the course of the election cycle, I raised and spent approximately \$5,000 for my campaign for the County School Board. According to his campaign finance reports, Dr. Glasser raised and spent \$0 on his campaign. The relevant report is attached as Exhibit 1.

8. During the campaign, four candidate forums were held for community members to meet the candidates and hear them speak. I attended all four; Dr. Glasser attended only one. At that one, which was the one held in my community, I spoke first at some length, after which Dr. Glasser said little more than that he agreed with me. There were also a number of other community meetings and “citizens’ nights out.” I attended several; I am unaware of any Dr. Glasser attended.

9. We distributed hundreds of pieces of literature describing my background and commitment to Baltimore County Public Schools. I canvassed numerous neighborhoods in the district, often with the support of other elected and campaign officials. Having taught and lived in the area for decades, I was able to find numerous places in the areas around Old Court and Winands Roads, which are more heavily populated by African Americans, to place signs. I was also able to place signs in two locations in the Greenspring Valley area. My signs were the only ones I recall seeing for the second district’s school board representative.

10. The Teacher's Association of Baltimore County (TABCO) held scheduled interviews for interested candidates in order to select which candidates it would endorse. I attended this interview and received TABCO's endorsement. Dr. Glasser did not attend the interview.

11. The Baltimore Sun sent out an editorial questionnaire to all candidates running in the Board election. I provided answers to all questions; to my knowledge, Dr. Glasser did not respond to the questionnaire. I received the Sun's endorsement.

12. I recruited and coordinated over 200 volunteers over the course of my campaign. Many of these volunteers were my former students, some from as far back as when I first started my teaching career in the 1970s. To my knowledge, there were no volunteers for Dr. Glasser until election day and few if any then.

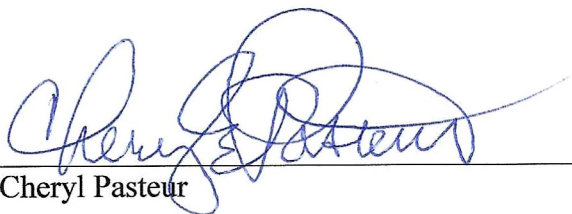
13. Because there were only two candidates for the Board from District 2 at the time of the primary, we were not on the ballot until the general election. This fact did not deter me from campaigning every day, door-to-door, leading up to the primary and between the primary and the general elections (with a fractured ankle). I was constantly thinking that I had to campaign harder than my opponent regardless of my credentials. I was exceedingly appreciative of any support I received. My volunteers came out to make sure I had a chance of winning. The final result literally brought me to my knees, because my team and I were not sure that, at the end, my experience and commitment would be enough.

14. My experiences on the Board have demonstrated my resilience and commitment to the children of Baltimore County. I survived the battering I endured (primarily from white people from outside of the district) while campaigning and during my three years on the Board. I am proud to have represented District 2 on the school board for the past three years.

15. As an educator and as a member of the County School Board, I have frequently heard parents on the west side of the County, where the student population is much more heavily Black than in the rest of the County, say that they feel neglected by the County Schools and the County government. I believe that is in part a result of the County's history of racism and because of ongoing racism. This racism is countywide and must be faced head on if we want better!

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

Executed on February 5, 2022


Cheryl Pasteur

PASTEUR DECLARATION

EXHIBIT 1



Name of Entity : Glasser, Anthony Citizens for

Entity Number : 01012701

Filing Period Name : 01/09/2019 Annual

Report Due Date : 01/16/2019

Campaign Finance Report Summary Sheet**Part 1**

Transaction Period → This Report covers transactions beginning 02/26/2018 and ending 01/09/2019 .
Date Date

☒ Final Report (Check if you intend to close the account. This cannot be a final report if a cash balance or outstanding obligation remains)

☐ Amendment # _____ (Date amendment is being filed _____ .)

Part 2**Electoral**

Bank Account Name	Bank Account Number	Bank Account Balance*
*As of the report transaction ending date. Total		\$0.00

Part 3**Receipts**

Contributions – Schd 1, Col A	\$0.00
Ticket Purchases – Schd 1, Col B	\$0.00
Federal Committees – Schd 1, Col C	\$0.00
Political Clubs – Schd 1, Col D	\$0.00
MD Candidate and Slate Accounts – Schd 1A, Col E	\$0.00
MD Party Central Committees – Schd 1A, Col F	\$0.00
MD Political Action Committees – Schd 1A, Col G	\$0.00
Non-Federal Out-of-State Committees – Schd 1A, Col H	\$0.00
Other – Schd 1B, Col I	\$0.00
Loans – Schd 3, Col K	\$0.00

Enter Total in Part 4 (Total Receipts)

Expenditures

Salaries & Other Compensation – Schd 2, Col N	\$0.00
Rent & Other Office Expenses – Schd 2, Col O	\$0.00
Field Expenses – Schd 2, Col P	\$0.00
Media – Schd 2, Col Q	\$0.00
Printing & Campaign Materials – Schd 2, Col R	\$0.00
Direct Mailing by Mail House – Schd 2, Col S	\$0.00
Postage – Schd 2, Col T	\$0.00
Purchase of Equipment – Schd 2, Col U	\$0.00
Fundraising Expenses – Schd 2, Col V	\$0.00
Transfers Out – Schd 2, Col W	\$0.00
Loan Repayment – Schd 2, Col X	\$0.00
Other – Schd 2, Col Y	\$0.00
Returned Contribution – Schd 2, Col Z	\$0.00

Enter Total in Part 4 (Total Expenditures)

■ Current ■ Amended ■ Deleted

Failure to provide all the information required by this form will be regarded as a **FAILURE TO FILE**.



Name of Entity : Glasser, Anthony Citizens for

Entity Number : 01012701

Filing Period Name : 01/09/2019 Annual

Report Due Date : 01/16/2019

Part 4

Prior Balance	\$0.00	Report calculated cash balance from Part 4 of your prior report.
	+	
Total Receipts	\$0.00	Total of Part 3 Receipts
	-	
Total Expenditures	\$0.00	Total of Part 3 Expenditures
	=	
Cash Balance	\$0.00	This is your report calculated cash balance. Carry forward this balance to your next report.

Part 5

Value of In-Kind Contributions – Schd 1B, Col J	\$0.00
Value of In-Kind Expenditures – Schd 2, Col AA	\$0.00

Part 6**Administrative**

Outstanding Loan Balance – Schd 3, Col L	\$0.00
Outstanding Bills Due – Schd 3, Col M	\$0.00
Total Outstanding Obligations	\$0.00

Electoral

Outstanding Loan Balance – Schd 3, Col L	
Outstanding Bills Due – Schd 3, Col M	
Total Outstanding Obligations	\$0.00

Part 7

Under penalty of perjury, we declare that we have examined this report, including the accompanying schedules, and to the best of our knowledge and belief they are complete and accurate.

(Date) 01/17/2019

Signature of Treasurer

GLASSER, ANTHONY M

(Date) 01/17/2019

Signature of Chairman

Warning

Failure to provide all information required by this form will be regarded as a failure to file.

Amendments Summary

Report No	Filed date	Report Type	Filer
1	01/17/2019	Original	GLASSER ANTHONY M

■ Current ■ Amended ■ Deleted

Failure to provide all the information required by this form will be regarded as a **FAILURE TO FILE**.

EXHIBIT H

DECLARATION OF SENATOR CHARLES E. SYDNOR III

**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. LKG-21-3232

DECLARATION OF SENATOR CHARLES E. SYDNOR III

1. I, Charles E. Sydnor III, am over 18 years old and am competent to testify. I am one of the plaintiffs in this case, and I submit this declaration upon personal knowledge in support of Plaintiffs' motion for preliminary injunction in this matter.

2. I am a Black registered voter residing in Baltimore County, Maryland. I was born and raised in Baltimore and have lived in Catonsville since 2002.

3. I received my Juris Doctor and Masters of Policy Sciences degrees from the University of Maryland School of Law and University of Maryland Baltimore County, respectively, in May 2000. I received my Bachelor's degree with departmental honors from Johns Hopkins University and my A-course diploma from Baltimore Polytechnic Institute. I am admitted to practice law before Maryland and District of Columbia courts and the United States Supreme Court.

4. Since 2001, I have worked with a Columbia, Maryland-based affordable housing organization and am currently employed as an Associate General Counsel. Prior to my tenure

there, I clerked at the Circuit Court for Baltimore City and, while in law school, with the U.S. Department of Justice, Office of Justice Programs, Office for Civil Rights and U.S. Equal Employment Opportunity Commission.

5. I currently represent District 44 in the Maryland State Senate. I have been a member of the Senate since January 8, 2020. Previously, I represented District 44B in the Maryland House of Delegates from January 2015 until January 2020.

6. I was a recipient of Maryland Coalition Against Sexual Assault's Visionary Award (2022), the Maryland Nurses Association's Legislator of the Year Award (2020), the University of Maryland Francis King Carey School of Law Black Law Student Association's Graduate of the Year Award (2020), Maryland Consumer Rights Coalition's Most Promising Legislator Award (2017), Daily Record's Leadership in Law Award (2012), the University of Maryland Francis King Carey School of Law's Public Service Award (2000) and Johns Hopkins University's Student Excellence Award for Leadership and Service Award (1996).

7. In preparing this declaration, I have reviewed the Plaintiffs' Memorandum in Support of Preliminary Injunction; the Declaration of William S. Cooper; Oct. 25, 2021, Letter from Pikesville-Greenspring Community Coalition; Dec. 15, 2021, Letter from Greater Arbutus Business Association; Dec. 14, 2021, Letter from Paula W. Wolf; and the Declaration of James Gimpel, Ph.D.

8. In its brief, the County brings up community members' concerns asserting that one of the illustrative redistricting maps proposed by the Plaintiffs splits up communities of interest among different districts. Specifically, the County points to the southwestern communities of Arbutus, Lansdowne, and Catonsville, which are split between two different districts in Plaintiffs' Proposed Plan 1. However, the County ignores the fact that the other map Plaintiffs put forward

— Proposed Plan 5 — keeps all those communities intact and in a single district (District 1). The County expresses the same concern over the split of Pikesville between two districts in Plaintiffs’ Proposed Plan 1. Again, however, those concerns are alleviated in Proposed Plan 5, which keeps Pikesville together in one district (District 2). As Mr. Cooper expressly states in his declaration, Plan 5 was created with the purpose of keeping communities intact. It only splits three communities — Woodlawn, Reisterstown, and Essex — far fewer community divisions than exist in the redistricting plan adopted by the County.

9. The County fails to address Mr. Cooper’s observation that the map adopted by the County also splits up communities of interest — but in the County’s map the split communities are majority-Black communities. As adopted, Bill 103-21 “cracks” each of the majority-Black communities of Randallstown, Milford Mill, Owings Mills, and Lochearn between District 2 and District 4. By comparison, the Plaintiffs’ Proposed Plan 5 keeps those communities intact: District 2 encompasses all of Lochearn and Milford Mill, while District 4 includes all of Owings Mills and Randallstown. Even though the Plaintiffs provided the County with Proposed Plan 5 during early stages of the redistricting process, the County rejected the Plaintiffs’ proposal and instead kept those communities divided. The County did so even after the Council heard from numerous Black community members expressing their strong preference to keep their communities together at the Council hearings discussing mapping options and possibilities.

10. The Plaintiffs’ Proposed Plan 1, although it divides a few communities, was created to keep other communities of interest united. I have been told by constituents from Catonsville and other older communities inside the western part of the Beltway that they routinely feel disregarded by the County. Residents in these communities have told me they feel the County ignores their interests and acts as if their neighborhoods are part of the City rather than the County. Plaintiffs’

Proposed Plan 1 would unite those communities with other similar communities along the City border (including all of the communities inside the Beltway on the west side of the County), giving them a stronger coalition with similar interests to more effectively advocate for their needs.

11. The County's claimed concerns about communities being shifted from one district into another also ignore its own prior redistricting actions. For example, during the 2011 redistricting process, the County moved the communities of Woodlawn from then-District 4 to then-District 1.

12. When district lines are drawn, some communities will inevitably be split. This is necessitated by the requirements of the Constitution and Voting Rights Act in order to ensure equally populous and racially fair districts. In this case, however, it appears that Defendants are willing to fight to keep white communities together but unwilling to offer the same treatment to Black communities, in violation of their civil rights.

13. Additionally, the County's map does a disservice to its westside residents by packing an excessively high percentage of Baltimore County's Black population into a single district, District 4. As drawn, almost 75% of District 4's voting age population is Black. The County argues that such packing is necessary to ensure that Black-preferred candidates will get elected in the district. However, in my experience, this is unwarranted and instead serves to dilute Black voters' electoral power. In 2014 and 2018, I was elected to the Maryland House of Delegates from a district on the west and southwest side of Baltimore County that was 53% Black when it was created based on the 2010 census. My ability to win in that district demonstrates that the County's plan to pack District 4 with a Black voting age population of almost 75% is excessive and unnecessary for Black voters to elect a candidate of their choice. My new Senate district under the 2022 State Legislative Redistricting Plan is only 43% Black (although 60% non-white), yet I

am still optimistic that my chances of reelection to the State Senate are reasonable and fair. Based on my experience as a candidate and my knowledge of County voting patterns, I am confident Black candidates of choice can win election to the Baltimore County Council in districts with far less than a 75% Black voting age population – i.e., with a Black percentage far closer to 50% – as long as the district is sufficiently diverse and non-white.

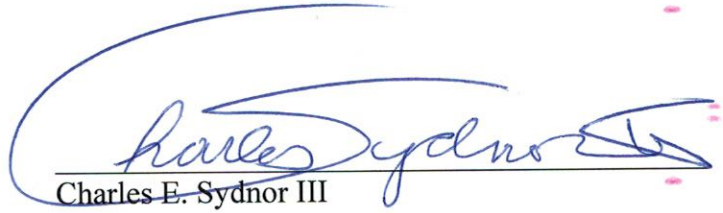
14. The County's plan creates one majority-Black district (District 4) and *six majority-white districts* (technically five that are majority-white and one that is 49.5% white but only 29.7% Black). As Mr. Cooper has demonstrated through his declaration and redistricting plans, and as I believe based on my experience as a candidate, none of the County's other districts have a sufficiently diverse population to allow a Black or non-white candidate a fair and realistic opportunity to succeed in an election, given existing patterns in the County of racially polarized voting. Instead, in each of the other six districts, the white population outnumbers the Black population by at least 19%.

15. What the County should do instead and what Plaintiffs advocate for, given the significant size and reasonable compactness of Baltimore County's Black population, is to create two majority-Black districts and allow its Black residents the opportunity to elect their candidates of choice outside of just District 4.

16. My personal experience also shows the patterns of racially polarized voting and bloc voting that exist in Baltimore County. During the 2014 and 2018 Democratic primaries in which I ran for the House of Delegates, Black candidates, including myself, consistently did much better in majority-Black precincts like 001-003, 001-004, 002-001 and 002-002 in 2014 and 2018 than in majority-white precincts like 001-007, 001-008 and 001-011, and our success generally correlated to the predominant race of the precinct.

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

Executed on February 5, 2022



Charles E. Sydnor III

EXHIBIT I

DECLARATION OF CHARLES MATTHEW HILL

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.)

Civil Action No. LKG-21-03232

BALTIMORE COUNTY, MARYLAND,)
et al.,)

Defendants.

DECLARATION OF CHARLES MATTHEW HILL

1. I, Charles Matthew Hill, am over 18 years of age and am competent to testify. I provide this declaration in support of plaintiffs' motion for preliminary injunction in this case.

Introduction and Qualifications

2. I am an attorney at the Public Justice Center (PJC), a nonprofit civil rights organization in Maryland, where I lead the Human Right to Housing Project, an initiative which seeks to protect tenants' rights to safe, habitable, affordable, and non-discriminatory housing, and to fair and equal treatment by Maryland's landlord-tenant laws, courts, and agencies. Through my work at PJC, I have represented hundreds of tenants facing eviction and substandard housing conditions, advocated to create Baltimore City's Affordable Housing Trust Fund with a dedicated funding source, acted as lead or co-counsel in a number of appeals involving landlord-tenant law, represented multiple classes of tenants in class actions challenging predatory landlord practices, and advocated successfully to change Maryland and Baltimore City laws to strengthen tenant

protections. Most importantly for purposes of this matter, I also serve as co-counsel representing the Baltimore County Branch of the National Association for the Advancement of Colored People (“Baltimore County NAACP”) among other complainants, in a HUD complaint and a settlement of that complaint that is currently in a monitoring phase. The agreement requires Baltimore County to dismantle longstanding policies that perpetuate racial segregation and discriminate against persons with disabilities.

3. Prior to working on the housing team at PJC, I was the Francis D. Murnaghan Appellate Advocacy Fellow at the organization. In that capacity, I represented parties and *amici* in state and federal courts on various poverty law and civil rights issues in the U.S. Court of Appeals for the Fourth Circuit, the Court of Appeals of Maryland, and the Court of Special Appeals of Maryland. I clerked for the Honorable Deborah S. Eyler on the Maryland Court of Special Appeals, after earning my Juris Doctor degree, *summa cum laude*, from American University’s Washington College of Law and a B.A., *summa cum laude*, from Loyola College. Before attending law school, I taught eighth grade at Mother Seton Academy in Baltimore City.

4. Among the awards and honors I have received are the following: 2018 Lorraine Sheehan Memorial Award from the Community Development Network of Maryland; 2017 Dickens Warfield Fair Housing Advocacy Award, Baltimore Neighborhoods Inc; 2011 Housing Justice Award, Housing Justice Network, sponsored by National Housing Law Project; 2011 Maryland Access to Justice Commission Outstanding Program of the Year Award to Tenants in Foreclosure Project of Public Justice Center. Additionally, I currently serve as a commission member of the Baltimore City Affordable Housing Trust Fund Commission, and a Board member at the Baltimore Regional Housing Partnership.

5. In preparing this declaration, I have reviewed the Plaintiffs' Memorandum in Support of Motion for Preliminary Injunction, the Declaration of Lawrence T. Brown (Plaintiffs' historical expert), and the Declaration of Troy Williams (Baltimore County's Diversity and Equity Officer).

Fair Housing Complaints Against Baltimore County

6. As Plaintiffs have alleged and Dr. Lawrence Brown has recounted in compelling detail in his declaration, Baltimore County has a long and egregious history of housing discrimination, achieved through the use of exclusionary zoning and openly discriminatory housing and development policies. These practices and policies were used throughout the 20th century, but have continued into the 21st century, to drive Black residents out of the County, segregate those who do live there, and prevent Black people from moving to the County.

7. One aspect of the County's racial discrimination in housing derives from the authority of the County Council, including home-district councilmanic privileges exercised by individual council members, to thwart development of open and affordable housing. Such actions include downzoning to prevent siting of family and rental housing, demolition of existing federally-assisted housing occupied by families, and the County's failure to acquire or operate any public housing or low-income housing. Over time, these practices have made Baltimore County far less successful than other suburban counties in Maryland in meeting the fair, affordable housing needs of low-income family households, who are disproportionately African American and/or Latinx, and have made Baltimore County the most segregated major suburban jurisdiction in Maryland.

8. Due to the County's record of race discrimination, in 2011 the Public Justice Center, along with the ACLU, Homeless Persons Representation Project, Maryland Legal Aid, and Disability Rights Maryland undertook representation of a fair housing organization called Baltimore Neighborhoods, Inc., the Baltimore County NAACP, and individual BIPOC and disabled residents, in filing an administrative action against the County with HUD, alleging extensive violations of the Fair Housing Act, Title VI of the Civil Rights Act, the Rehabilitation Act, and the Americans with Disabilities Act. In March 2016, HUD entered into a binding Voluntary Compliance Agreement (VCA) with the complainants and the County, requiring the County to undertake a myriad of actions, monitored by HUD, to address the race discrimination and segregation its policies perpetuated. I have been counsel in that case throughout the decade since its filing, and continue working on the matter today.

9. In his Declaration filed in this case, Baltimore County Diversity Officer Troy Williams says of the Compliance Agreement with HUD:

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."

10. While the County may have budgeted money for creation of affordable housing, the County has failed to meet its interim obligations under the VCA to facilitate the production of 1,000 "Hard Units" of affordable, accessible housing in "Opportunity Areas," i.e., 132 census tracts with high-performing schools, economic opportunities, and racial/economic diversity, within 10 years.

11. This is in large part because the County has failed to address the entrenched zoning and land use practices that have continued to kill affordable housing projects that would have counted as "Hard Units" under the VCA and would have furthered desegregation.

12. For example, Councilman David Marks had previously supported the proposed 56-Hard Unit project known as “Red Maple” in an Opportunity Area in Towson. However, at the first sign of community protest, Councilman Marks introduced Bill #100-20 & Resolution #111-20 in October 2020 to change the zoning/land use for the Red Maple property with the specific goal of preventing the project from moving forward.¹ The Marks legislation passed the County Council based on a deeply embedded culture of Councilmanic courtesy where zoning decisions are made exclusively by the Councilperson in whose district the project is sited, and other Councilmembers support those decisions without question.

13. An Administrative Law Judge later found that Marks’s legislation was insufficient to prevent Red Maple from moving forward, yet the County Board of Appeals, whose members are appointed by the County Council, reversed that decision. The matter is now pending before the Circuit Court for Baltimore County on appeal.

14. Similarly, during its 2020 Comprehensive Zoning Map Process (CZMP) which also includes a deeply embedded culture of Councilmanic courtesy, the Council rejected a zoning change needed to develop a 50-unit affordable housing project in Pikesville at St. Mark’s on the Hill.²

¹ C. Botelier, “Councilman introduces legislation, zoning change to alter proposed affordable housing project in Towson,” *Baltimore Sun*, Feb. 7, 2020, available at: <https://www.baltimoresun.com/maryland/baltimore-county/towson/cng-co-to-affordable-housing-east-towson-20200207-kk5rhqvxvkfcvrebwsj4fpsjila-story.html>

² A. Knezevich and T. Deville, “Baltimore County wants to expand affordable housing. Advocates say the still face significant obstacles,” *Baltimore Sun*, April 29, 2021, available at: <https://www.baltimoresun.com/maryland/baltimore-county/bs-md-co-affordable-housing-20210429-tke3tbkiw5ei3cv6zq67nvafhu-story.html>

15. According to affordable housing developers in the County, this version of “spot zoning”³ and NIMBY land use practices have had a chilling effect on the further development of Hard Units: “‘Until the political climate changes in Baltimore County, or they change their process, I don’t see us being able to build in Baltimore County,’ said Ellen Jarrett, director of housing and planning and development for Comprehensive Housing Associates Inc., a nonprofit that wanted to develop the Pikesville site.”⁴

16. Additionally, among many other failures to comply with the VCA, the County has purchased land in Opportunity Areas and changed its zoning such that no affordable housing units could be built; the County has failed to consistently require Hard Unit developers to comply with affirmative marketing requirements; and the County has failed to produce the required number of accessible units for persons with disabilities as well as to change its housing program policies to better identify and meet the needs of persons with disabilities.

17. As a result of the County’s failure to substantially change its land use and zoning processes, the County has failed to meet the interim unit requirements of the VCA with respect to Hard Units. As of December 31, 2021, the County reported that 544 total hard units have been approved for County financing – significantly short of the 570 units required a year earlier, at the conclusion of 2020, and of the 670 units required by the end of 2021. Even the 544 Hard Units reported by the County is likely an overstatement since it includes the 56 Red Maple units that the Board of Appeals has blocked pending appeal.

³ T. Deville, “A ‘slippery slope’: Baltimore County residents say council skirts zoning process, state law with targeted bills” *Baltimore Sun*, August 9, 2021, available at: <https://www.baltimoresun.com/maryland/baltimore-county/bs-md-co-special-bills-land-use-20210809-kzmaldxrrzbx7ioadw6k7uaoxi-story.html>

⁴A. Knezevich and T. Deville, *supra* at n.2.

18. These failures give rise to serious continuing concerns about Baltimore County's unwillingness to reform the zoning and land use structures that have furthered racial and economic segregation and led to its failures of compliance with the VCA, raising the possibility that enforcement action may be needed to bring the County into compliance with the agreement.

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

Date: 2/6/2022

DocuSigned by:

ESTEADAT952E4A2...
Charles Matthew Hill