



April 18, 2008

Mayor Michael McDermott
City of Pocomoke City
101 Clarke Avenue
P.O. Box 29
Pocomoke City, Maryland 21851

Dear Mayor McDermott:

I write on behalf of the American Civil Liberties Union of Maryland and the Worcester County Branch of the NAACP, to express serious concerns with the election system currently in place in Pocomoke City.

The existing district election system in Pocomoke City is severely malapportioned, and also appears to violate the federal Voting Rights Act. The reason for this is unclear to us – whether the City has failed to redistrict periodically to keep pace with its legal and constitutional obligations, or whether the redistricting that has been done has been flawed. But what is clear is that Pocomoke’s current system violates the constitutional principle of one-person, one-vote. A secondary problem with the existing plan is its unnecessary packing of African-American population into district 2, raising problems under the federal Voting Rights Act.

One Person, One Vote

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution requires election districts to be as equal in population as possible. This requirement is known as the “one-person, one-vote” rule, and applies to all political subdivisions, including municipalities like Pocomoke City. *Board of Estimate of City of New York v. Morris*, 489 U.S. 688, 692 (1989), citing *Avery v. Midland County*, 390 U.S. 474, 479-81 (1968); *Ellis v. Mayor & City Council of Baltimore*, 352 F.2d 123, 124 (4th Cir. 1965).

As shown in the analysis attached as Exhibit 1, district 5 has roughly twice the population of district 4, thus giving voters of district 4 a disproportionate voice in the election. The overall deviation among the districts in Pocomoke’s election system is more than 60 percent – a variation that is constitutionally unacceptable. *Latino Political Action Committee, Inc. v. City of Boston*, 568 F.Supp. 1012 (D. Mass. 1983) (Districting plan was unconstitutional where there was 23.6 percent population variance between smallest and largest districts); *Kapral v. Jepson*, 271 F.Supp. 74 (D. Conn. 1967)(election plan unconstitutional where disparity between most populous district and least populous district was approximately two to one). The impropriety of a 60 percent disparity is especially

AMERICAN CIVIL
LIBERTIES UNION OF
MARYLAND FOUNDATION
3600 CLIPPER MILL ROAD
SUITE 350
BALTIMORE, MD 21211
T/410-889-8555
F/410-366-7838
WWW.ACLU-MD.ORG

OFFICERS AND DIRECTORS
ELLIOTT ANDALMAN
PRESIDENT

SUSAN GOERING
EXECUTIVE DIRECTOR

C. CHRISTOPHER BROWN
GENERAL COUNSEL

strong where, as here, there exists no justification for maintaining disparate districts. As illustrated in Exhibit 2, it is easy to create a five-district plan for Pocomoke City that meets one-person, one-vote requirements, while also accommodating incumbent council members.¹

Voting Rights Act

A second problem with Pocomoke City's election plan relates to racial imbalances present in the existing districts. According to 2000 Census data, Pocomoke City's overall population is more than 46 percent African-American, with a black voting-age population of nearly 42 percent. Given this significant demographic, at least two of the City's five electoral districts should be majority African-American in voting-age population (VAP). The current plan includes one district (district 2) with an excessively high – or “packed” African-American population, and one (district 4) that is just barely majority black. Since the plan needs to be redone for apportionment purposes anyway, we strongly suggest that this problem be rectified through a more balanced division of African Americans among the districts. Our illustrative plan demonstrates one way this can be done, so that district 2 has a 66.9 percent black voting age population, and district 4 has a 56.6 percent black VAP.

It is imperative that the problems with Pocomoke City's election system be corrected in advance of the next election.² Please contact me to let me know your thinking about this matter.

Sincerely,

Deborah A. Jeon
Legal Director

¹ This illustrative plan was prepared by ACLU demographer William Cooper. Mr. Cooper drew up this plan with due consideration to the incumbents now in office, thus taking care to create a plan that would cause the least possible disruption.

² Additionally, given the exceptionally poor turnout in the City's April 1 election, we believe you should consider doing away with the staggered terms. Consolidation of elections would encourage interest and turnout in municipal elections while also saving scarce city resources.

ec: Mr. Edward Lee, Worcester County NAACP
Mr. Carl Snowden, Office of the Attorney General
C. Christopher Brown, Esq.

AMERICAN CIVIL
LIBERTIES UNION OF
MARYLAND