EXHIBIT A

DECLARATION OF MATTHEW A. BARRETO

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

FIFTH DECLARATION OF MATT BARRETO, PH. D.

1.   I have previously executed four declarations that were submitted in this action. The first was executed on January 18, 2022 (ECF 28-3), the second on February 7, 2022 (ECF 41-1), the third on March 10, 2022 (ECF 60-2), and the fourth on March 17, 2022 (ECF 68-2). Additionally, I testified via Zoom on February 15, 2022 and on March 21, 2022 as part of the Court's hearings on Plaintiffs' Motion for Preliminary Injunction and the parties' subsequent submissions.

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

3.   I listened carefully to the questions posed by the Court at the hearing on March 21, 2022, and have gone back to reanalyze my data specifically for the County's proposed remedial District 2 to assess its ability to elect Black candidates of choice.

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4.   I have also read the supplemental declarations of Council Member Izzy Patoka (ECF 74-1) and Dr. James Gimpel (ECF 74-2) filed March 22, 2022 by the County.

5.   It continues to be my conclusion that the County's proposed remedial District 2 would not provide Black voters with a meaningful opportunity to elect a Black candidate of their choice.

6.   The County claims that 41% Black voting age population is sufficient for Black voters to comfortably elect candidates of their choice in its proposed remedial District 2 and simultaneously that District 4 needs to be maintained at 61% Black voting age population (actually 64 % Any Part Black VAP, as Mr. Cooper has shown) in order to allow Black voters to comfortably elect candidates of their choice. There is a logical inconsistency here. If the County cannot reduce the Black population in District 4 to under 60%, then how can it credibly argue that a 41% Black district is sufficient? It cannot. Neither half of that argument is true. In fact, both District 4 and District 2 can allow Black voters a meaningful opportunity to elect candidates of their choice if they are majority Black and the Black citizen voting age population is approximately 10 percentage points higher than the White CVAP (as in the Plaintiffs' proposed maps, for which the margin between the Black and White VAPs is even larger).

7.   To conduct racially polarized voting analysis and make conclusions about Black voters' cohesiveness, White bloc-voting against Black voters' candidates of choice, or White crossover voting, courts require statistical analysis to determine the extent of racially polarized voting. This analysis laid out in the *Gingles* decision requires ecological inference regression analysis to draw conclusions about voting patterns by race or ethnicity. The County has not offered any analysis at all of the extent of racially polarized voting (in District 2 or elsewhere).

8.   I have conducted and presented racially polarized voting analysis that makes clear that Black voters in Baltimore County are cohesive and that White voters bloc-vote against Black candidates of choice. For that analysis, it is essential to examine contested elections in which a Black candidate emerges. In its decision of February 22, 2022, the Court concluded that the 2014 Hogan-Brown General Election; 2016 Van Hollen-Edwards Primary; and 2018 Hogan-Jealous General Election were the most probative of racial polarization in Baltimore County because they included a Black candidate versus a White candidate in a contested election. The County offers no evidence to rebut Plaintiffs' evidence, or the Court's findings, that voting patterns in Baltimore County are racially polarized (Table 2, first Barreto declaration).

9.   Further, when we focus our analysis just on western Baltimore County, Council Districts 1, 2, 4, we find the same patterns of racially polarized voting with White candidates voting against Black candidates at very high rates. *Id.*, Table 3. In these contested Black vs. White elections, there is no evidence of ample White crossover voting to vote in coalition with Black voters. In fact, the evidence is to the contrary, demonstrating that Whites vote heavily against Black candidates of choice.

10.   Based on the request from the Court on March 21, 2022, Dr. Oskooii and I have rerun our racially polarized voting analysis to focus just on the County's proposed remedial District 2. In this map, White voters undisputedly outnumber Black voters. In fact, when only concentrating on the citizen voting age population, Whites are a majority of all eligible voters within County remedial District 2, as shown in William Cooper's testimony and reports. Whether the County likes the U.S. Census Bureau's American Community Survey CVAP numbers or not, they can not argue that people who are not citizens are not eligible to vote, and that, according to

the U.S. Census Bureau, 37% of Hispanic adults are not citizens,[1] therefore reducing their share of voters. Meanwhile, 99% of White adults are citizens[2] and eligible to vote, therefore increasing their share of eligible voters. This further advantages Whites as a larger voting bloc in County remedial District 2.

11.   The County argues that Black candidates of choice can still win, even though White voters are a majority. If there were ample White crossover voting, these voters would provide enough votes to Black voters' preferred candidates to create a coalition to elect a Black candidate of choice. Sadly, this is not the case in Baltimore County's proposed remedial District 2. According to ecological inference analysis, 81.2% of White voters in the County's remedial District 2 voted in favor of White Republican Larry Hogan in November 2018 – even if that meant crossing party lines in order to support the White candidate. In contrast, among Black voters in this same district, 86.7% voted in favor of Black Democrat Ben Jealous. The result is clear and uncontested; performance analysis of proposed remedial District 2 shows that despite very strong Black voting for Jealous, Whites bloc-vote against Jealous, so the Black candidate of choice would fail to win the County's District 2.

12.   Further evidence of the lack of White crossover voting comes in the 2016 Democratic primary. Focusing only on the County's remedial map District 2, White Democrat Chris Van Hollen defeated Black Democrat Donna Edwards by 20 points. Looking at the

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[1]
https://data.census.gov/cedsci/table?q=B05003I%3A%20SEX%20BY%20AGE%20BY%20NATIVITY%20AND%20CITIZENSHIP%20STATUS%20%28HISPANIC%20OR%20LATINO%29&g=0500000US24510
[2]
https://data.census.gov/cedsci/table?q=B05003H%3A%20SEX%20BY%20AGE%20BY%20NATIVITY%20AND%20CITIZENSHIP%20STATUS%20%28WHITE%20ALONE,%20NOT%20HISPANIC%20OR%20LATINO%29&g=0500000US24005

ecological inference analysis, we find that White voters gave 97.2% of their votes to Van Hollen
and only 2.8% to Edwards. In contrast, Black voters provided 81.2% of their votes to Edwards
and just 18.6% to Van Hollen. This clearly demonstrates that there is not sufficient White
crossover voting in the remedial district as drawn by the County to give Black voters a meaningful
opportunity to elect Black candidates of their choice.

Figure 1: Visual example of Lack of White Crossover voting in Democratic Primary D2
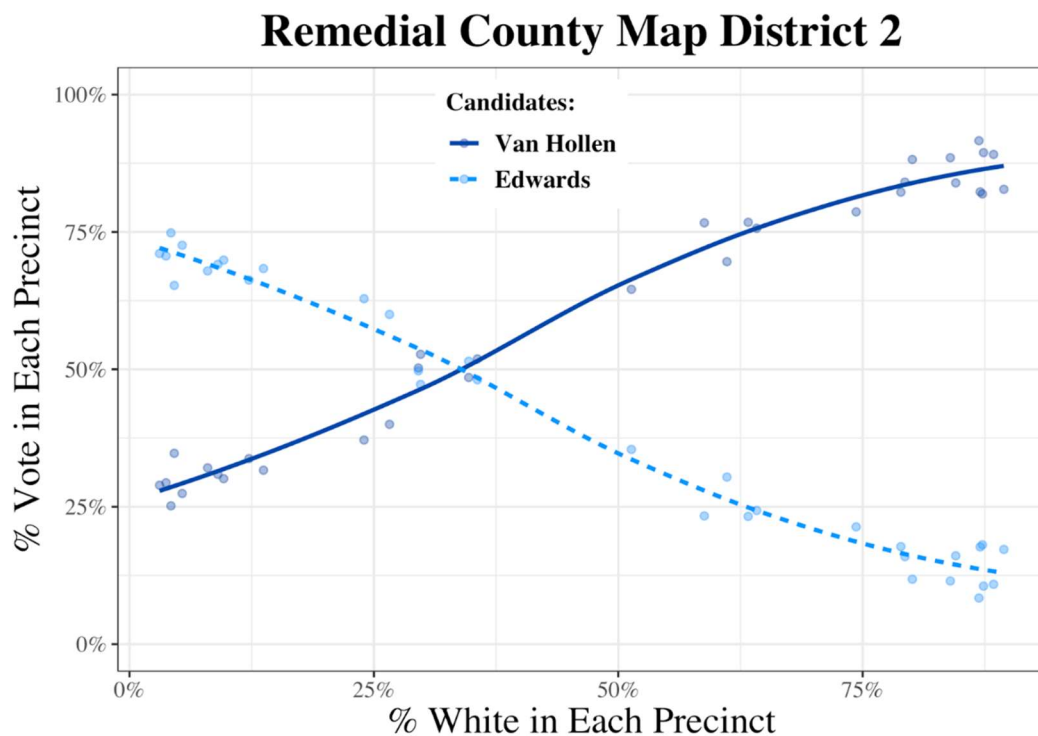
13.   Dr. Gimpel mistakenly attempts to "control" for party/partisanship in discussing
racially polarized voting. But partisanship is irrelevant to the analysis of racially polarized voting.
Indeed, Courts have historically only asked - do Black and White voters support different
candidates, not *why* they support their candidates. Indeed, volumes of political science published
literature suggests that it was racist attitudes which pushed more and more Whites into the
Republican Party from the 1960s to today. The most recent analysis of voting patterns in modern

elections confirm that partisan voting is strongly driven by racial attitudes from the elections of

Barack Obama to Donald Trump.[1] If partisanship can simply explain away racially polarized

voting, then the implication is that no plaintiff could bring a successful voting rights case where

Blacks vote Democrat and Whites vote Republican. Dr. Gimpel's analysis here is not only wrong,

it is misguided and attempts to confuse the question posed by the Court.

14.   In his newest declaration, Dr. Gimpel adds new analysis in which he reports for the

first time ever, precinct level regression analysis, controlling the percent of Democrats in a

precinct, while also controlling for the percent Black voters. This type of analysis is <u>not</u> racially

polarized voting analysis recognized by courts, or outlined in numerous political science published

research articles about how to conduct racially polarized voting analysis. In fact, courts have

regularly rejected regression analysis that attempts to control for partisanship in an attempt to

"explain away" the role of race in voting patterns. Likewise, I give this new analysis no weight at

all in shedding light on how Blacks or Whites voted in these elections, the central inquiry in this

case.

15.   The same majority-White precincts that the County claims provide evidence of

White crossover voting in favor of Cheryl Pasteur voted heavily against Donna Edwards in 2016

and voted heavily against Ben Jealous in 2018. As this Court found in its Memorandum and Order

of February 22, 2022, in Ms. Pasteur's school board race, she had virtually no opponent, running

against Anthony Glasser, who raised no money for his campaign, sought no endorsements, spent

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[1] Tesler, Michael. 2013. "The return of old-fashioned racism to White Americans' partisan preferences in the early Obama era." *The Journal of Politics.* Abramowitz, Alan and Jennifer McCoy. 2018. "United States: Racial Resentment, Negative Partisanship and Polarization in Trump's America." *The ANNALS of the American Academy of Political and Social Science*.

no money on campaign advertising, and barely campaigned.   Ms. Pasteur essentially ran

unopposed. Thus, the far more relevant elections are the contested elections with a Black candidate

running against a White candidate in a contested election. Dr. Gimpel's analysis of this election

tells us nothing about how a Black candidate would do in the County's proposed remedial District

2 in a contested election against a white opponent.

16.   In looking at one of the example precincts the County gives as evidence of so-called

White crossover voting, the facts suggest otherwise. Precinct 03-006 Pikeville Middle Cafeteria,

which is 87% White gave only 38.5% of the vote to Brown in 2014. By 2018 the degree of White

crossover voting declined even further to only 27.7% for Jealous. Perhaps even more devastating

to the County's argument, this same precinct provided only 10.6% of the vote to Edwards in the

2016 Democratic primary. When Black candidates of choice are present in contested elections,

White crossover voting disappears.

17.   The fact that Councilmember Patoka, a White Democrat, received large numbers

of votes from Black voters when he had no Black opponent and was running against a White

Republican (as he did in the 2018 election Dr. Gimpel analyzes), provides no indication as to

whether he would be Black voters' candidate of choice were he opposed by a strong Black

candidate. The same is true of Councilmember Vicki Almond's election victory over a White

Republican in 2014 (the other contested election Dr. Gimpel analyzes). If the County were so

confident that Black voters are ready to show strong support for Mr. Patoka as their candidate of

choice, why not just go ahead and make District 2 majority-Black? The reason is that once they

are a majority, Black voters will have a meaningful chance to elect their own Black candidate of

choice, as our racially polarized voting analysis has clearly demonstrated.

18.   Further, Dr. Gimpel has conducted no analysis of Jewish voting patterns in District 2. He claims to rely on Mr. Patoka's personal knowledge, but this is not a scientific inquiry and is not empirical analysis. Further, he has not proved that Whites as a group provide crossover voting, even if he can show that a subset of White Jewish voters support Democrats. There is no analysis whatsoever demonstrating that White voters, Jewish or otherwise, vote for Black candidates in an election in which they run against a White candidate. As noted above, many of these same precincts to which Dr. Gimpel points voted overwhelmingly against Ms. Edwards in 2016 and overwhelmingly against Mr. Jealous in 2018.

19.   As made clear in my performance analysis of Plaintiffs' Map 6 District 4, that majority-Black district will continue to provide Black voters with a meaningful opportunity to elect Black candidates of choice. Indeed, in all elections analyzed, Black candidates win contested elections against White candidates under Plaintiffs' proposed map for District 4. The argument that it needs to be packed with well over 60% Black voting population is inconsistent with its own history, as District 4 easily elected a Black candidate of choice when it was previously only 55% Black. Plaintiffs' map provides two clear Black- majority districts, both of which provide Black voters a meaningful opportunity to elect Black candidates of their choice.

20.   This pattern of voting strongly against Black candidates of choice is present across virtually all precincts which are super majority White in the list Mr. Patoka identifies. For example, precinct 03-007 which is over 80% White gave just 28% to Brown, 22% to Jealous and 12% to Edwards. Likewise, 03-013 which is 84% White gave just 35% to Brown, 28% to Jealous and 12% to Edwards. To the extent that some precincts on his list provide slightly higher support for Black candidates, it is only because those precincts have a sizable Black population, such as precinct 03-005 which is 38% Black or 03-011 which is 31% Black and as the full ecological

inference analysis shows, as the Black population percentage increases, the vote for the Black

candidate of choice increases at a very similar rate, evidence of very strong racially polarized

voting.

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

Matt Barreto
Agoura Hills, California

Executed on March 23, 2022