



Caroline County NAACP

January 26, 2023

VIA ELECTRONIC MAIL

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND

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118 N. Main Street
Federsburg, MD 21632

Dear Mayor Abner and members of the Council:

In follow up to the Town of Federsburg's January 23 public hearing on election reform, we write on behalf of the American Civil Liberties Union of Maryland, the Caroline County Branch of the NAACP, the Caucus of African American Leaders, and members of the Federsburg community, to express concern about the lackadaisical approach to reform expressed by Town officials during the hearing, and to remind you of the legal peril the Town faces if it fails to promptly reform the racially discriminatory at-large election system that has prevented any Black person from election to office in the Town's 200-year history.

To recap the background in this matter: Representatives of the ACLU of Maryland, the Caroline County NAACP, and the Caucus of African American Leaders first reached out to the Town by letter on August 24, 2022, detailing the Voting Rights Act violations inherent in the Town's at-large election system.¹ Thereafter, we met with Mayor Abner and other Town officials on October 5, 2022 to initiate discussion about this problem and to map a course to correct the violations without the time and expense necessitated by legal action. Officials welcomed this collaborative approach, and at the conclusion of our meeting, the Mayor represented that over the coming months, she and other Town officials would solicit feedback from the community about adopting a district system, and how many districts would best suit the Town. Town officials also embraced a recommendation we made about aligning municipal elections with state or federal elections to increase engagement and turnout among both Black and white voters.

¹ The letter can be found at: https://www.aclu-md.org/sites/default/files/aclumd_naacp_cc_caal_letter.pdf

On October 17, 2022, the Town Council held a meeting for the purpose of discussing our proposal to change from at-large to district elections. At that meeting, Federalsburg’s Black community came out overwhelmingly in support of changing the system, with Black residents courageously stepping forward to provide heartfelt testimony describing the discriminatory impact the at-large system has had on their lives. Dr. Willie Woods, the president of the Caroline County NAACP, testified that there are needs of the Black community that are not being met, and there is no better way to address those needs than to have direct representation by someone from the community who has a seat at the table of the Town government.²

The October 17 meeting concluded with the promising possibility that the Town Council and the Mayor would work toward ending the at-large election system and begin a process to identify the number of districts for a district-based system in Federalsburg. Districting and election date alignment options were advertised on the Town website, input was solicited, and a public hearing to discuss the proposals was scheduled for January 23 of this year. In the time between the October and January meetings, the NAACP and ACLU were in touch with the Town and community members to make sure this process remained on track and to gauge the views of residents about the districting and election alignment options. Given the representations made to us by Town officials that the Council *unanimously* favored reform of the at-large system through districting and understood the urgency of the need for reform, our expectation was that the public hearing in January would take elimination of the at-large system as a given. Accordingly, we expected the Council’s focus at this meeting would be on: 1) deciding which districting proposal best fit the Town’s needs; and 2) charting a path forward for implementing the changes.

Instead, during this hearing, members of the Town Council dismissed the urgency Black residents feel about reforming Federalsburg’s discriminatory election system, suggesting – outrageously – that Black residents are themselves to blame for the Town’s all-white Town government, due to their “lack of engagement” with an election system that unlawfully discriminates against them. Council members even went so far as to raise arguments against a district-based remedy with contentions that districts would segregate the Town and pit districts against each other based on race, ignoring the obvious realities: the Town *is* racially segregated and elections *are* racially polarized. It may be hard for officials to hear, but Black residents have informed Town officials forthrightly that they currently experience a failure of communication with the Town’s all-white government and believe the needs of the white community are prioritized over those of Black community. It is the at-large system, not the prospect of election districts that is the cause of these entrenched problems.

² The October 17 hearing can be heard at: <https://cms8.revize.com/revize/federalsburg/Recording-2022-10-17--18-04-01.mp3>.

To be sure, there could be alternative ways to remedy the Town’s voting rights violations beyond districting. But to make any alternative at-large system a viable remedy for minority vote dilution, the staggering of terms – which itself enhances systemic discrimination – would have to be eliminated.³ However, at the January 23 meeting the Council forcefully rejected the possibility of doing that. The bottom line is that Town officials may not have it both ways: To keep the at-large system and use an alternative system to remedy vote dilution rather than districts, staggered terms must be eliminated.⁴

In candor, the discussion of alternative election systems at the January 23 meeting seemed more of a disingenuous distraction than an exploration of a real possibility, given how unprecedented these systems are in Maryland. Nevertheless, we are happy to provide information about these systems:

One alternative that was discussed was cumulative voting, where voters may cast multiple votes for the candidates of their choosing. Under this form of voting, a voter gets as many votes as there are council members. Therefore, in an election for a four-member council, all council candidates run in a pool at-large, and each voter can cast four votes in any manner they choose: one vote for each of four candidates, all four votes for one candidate, or some combination thereof. This form of voting gives BIPOC candidates a better chance of being elected, especially in racially polarized elections where Black voters can “single shoot” their votes for one or two candidates of their choosing. In this way, cumulative voting offsets the vote dilution inherent in the winner-take-all effect of an at-large system. As noted, however, for this system to remedy vote dilution, Federalsburg would need to consolidate its elections so that every councilmember is elected in one election. Staggered elections would render cumulative voting an ineffective remedy for existing vote dilution in the Town, continuing a system in which white voters retain more power than Black voters.

Limited voting was also discussed as an alternative election method. Limited voting is similar to cumulative voting, but allows voters to cast fewer votes than there are

³ See *Marylanders for Fair Representation, Inc. v. Schaefer*, 849 F. Supp. 1022, 1061–62 (D. Md. 1994) (finding that Maryland’s “Resident Delegate statute requiring candidates to run for designated posts on the ballot frustrates single shot voting and “thus dilutes [B]lack voting strength on the Shore”); *City of Lockhart v. United States*, 460 U.S. 125, 135, 103 S. Ct. 998, 1004, 74 L. Ed. 2d 863 (1983) (“The use of staggered terms also may have a discriminatory effect under some circumstances, since it, too, might reduce the opportunity for single-shot voting”); *Collins v. City of Norfolk, Va.*, 883 F.2d 1232, 1236 (4th Cir. 1989) (“The Supreme Court has long recognized that at-large voting in a multimember political unit . . . may prevent minorities from electing representatives of their choice by diluting their voting strength. The potential for this type of discrimination may be enhanced by staggered terms.”).

⁴ As noted in footnote 3, the staggering of election terms promotes racial vote dilution, and so we recommend against continuation of this practice, irrespective of whether the Town opts for districts or an alternative system. It is simply not a best practice, and it has been eliminated in nearly all municipalities on the Eastern Shore at this point in time, without attendant problems of the sort Town officials expressed concern about during the January 23 meeting.

seats open for election. So if there are four open seats, voters would be limited to voting for fewer than four candidates. Like cumulative voting, limiting voting allows for BIPOC candidates to break through white voting blocs, but again, limited voting fails as a complete remedy unless all council seats are up for election at the same time.

Ranked choice voting is yet another alternative, where candidates are ranked in order of preference by voters. This alternative has its benefits: eliminating the need for strategic voting, allowing for greater voter choice, and most importantly, allowing BIPOC voters to more easily elect their candidate of choice. In Federalsburg, because elections are racially polarized, Black candidates would have a better chance of being elected under a ranked choice system. However, ranked choice voting is a fairly novel system of election and only exists in 62 jurisdictions anywhere in the United States.⁵ There are currently no jurisdictions in Maryland with ranked choice voting. Like other alternative methods of election, ranked choice voting would require more than two candidates to reduce the discriminatory effects of an at-large election system, and would therefore require Federalsburg to consolidate its elections and have every councilmember be elected in one election instead of staggering terms.

Unlike these alternative remedies, any of which would be unique to Federalsburg in all of Maryland, the tried and true remedy for overcoming minority vote dilution and creating a racially fair election system in a racially segregated and polarized municipality like Federalsburg is adoption of district-based system. As previously mentioned, over the course of three decades of work on the Eastern Shore, the ACLU of Maryland, the NAACP, Caucus of African American Leaders, and Black residents have successfully reformed discriminatory at-large election systems into racially-fair district systems in Worcester County, Somerset County, the Cities of Salisbury and Cambridge, Towns of Berlin, Snow Hill, Pocomoke City, Princess Anne, Hurlock, Easton, and Chestertown. These reforms enabled Black voters to finally break through white voting blocs to elect Black candidates to represent them for the first time. Federalsburg's Black residents deserve nothing less.

In Federalsburg, where the Black residents make up 43 percent of the voting age population, the proposed election districts drawn by William Cooper are compact, contiguous and population totals are properly apportioned among the districts. This creates the opportunity for Black voters to elect representatives of their choice roughly proportional to their presence in the population, and offers their community the promise that they can break the 200-year history of Federalsburg's all-white town government.

While the Town certainly need not implement either of the specific proposals drawn by Mr. Cooper, it must take action, and must take action urgently, to reform Federalsburg's existing at-large election system, which unlawfully shuts Black

⁵ For more information about ranked choice voting, see <https://fairvote.org/our-reforms/ranked-choice-voting-information/#broader-representation>.

voters and candidates out of the political life of their community, in violation of the Voting Rights Act.

Please contact us, or have your attorney contact us, by no later than February 10, 2023 or we will resume work on our legal options to remedy Federalsburg's voting rights violations.

AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION OF
MARYLAND

Sincerely,



Deborah A. Jeon
Legal Director



Nick Steiner
Staff Attorney

Cc: Lyndsey J. Ryan, Federalsburg Town Attorney
Dr. Willie G. Woods, President, Caroline County Branch NAACP
Rev. James Jones, Convener, Caucus of African American Leaders