



Caroline County NAACP

August 24, 2022

Mayor Kimberly M. Jahnigen Abner
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Dear Mayor Abner:

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 Federalsburg community, to express our concerns, and to request a meeting with you, about the racially discriminatory and unlawful election system currently in place in Federalsburg.

The Town’s longstanding at-large election system has diminished and diluted the influence of Black voters such that no Black candidate in all Federalsburg history has been elected to the Town Council, despite burgeoning growth of the Black population to nearly half of Federalsburg’s population. The 2020 U.S. Census shows Federalsburg’s Black population has increased to approximately 47 percent of the Town’s total population, with People of Color making up approximately 53.2 percent of the population. This rich community diversity stands in stark contrast to the racial composition of the Town Council and the Mayor’s Office, which have been maintained as the exclusive preserve of white officials since the founding of Federalsburg. This is because the Town’s at-large election structure – in the setting of the Town’s history and amid racial polarization in voting patterns – enables the white plurality to bloc vote against candidates of choice of Black voters, shutting out Black candidates and ensuring continuation of an all-white government.

As discussed more fully below, we are deeply concerned about this, and request that you meet with us to begin a discussion about changes to the Town’s election system to enhance its fairness and bring it into compliance with the Voting Rights Act.

Factual Background

Federalsburg’s election system, as described in the Town Charter, was last updated in 2009. Since then, there have been six election cycles for members of the Town Council and Mayor, none of which resulted in the election of any person of color, notwithstanding the candidacies of strong Black candidates during this time,

including Roberta Butler and Angel Greene. As you know, the current system staggers elections every two years, with two members of the four-member Council elected by at-large vote of the entire electorate. Each Council member then serves a four-year term. Such staggering exacerbates the discrimination inherent in the at-large system by minimizing the impact of single-shot voting.¹ *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”). *See also 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.”)

The adverse consequences of continuing an all-white government in a diverse community like Federalsburg are all too predictable: Matters of concern to Black residents have been left unaddressed despite the growing Black population, with little effective communication and a widening disconnect between Black residents and white officials. For example, of key concern to members of the Town’s Black community is treatment of Black residents – especially young people – by the Federalsburg Police Department, which has become increasingly aggressive under the current Chief. Indeed, Chief Michael McDermott, whose record is touted by white officials as exemplary,² has publicly endorsed racist tweets and attacks on elected Black members of Congress as not “American” enough and the media as a “communist” cult, with no evident pushback from the Town. *See* “Federalsburg Police Chief says he agrees with Trump’s racist tweets,” A Minor Detail, July 15, 2019.³ Asked about McDermott’s racist tirade, the Town of Federalsburg declined to comment. *Id.*

Inattentiveness to the needs of Federalsburg’s Black residents also leaves unaddressed their concerns regarding the lack of transparency and communication

¹ S. REP. NO. 97-417, at 29 (1982).

² *Federalsburg names McDermott new police chief*, MY EASTERN SHORE MD (Nov. 12, 2018) available at https://www.myeasternshorem.com/times_record/news/federalsburg-names-mcdermott-new-police-chief/article_e62cd383-bf68-5dc8-9c25-24a9ca3e0974.html (“Chief McDermott is a great fit for the Town of Federalsburg’ said [then] Mayor Chuck Planner.”); Town of Federalsburg, *Mayor’s Minute Recap of the May 16th Workshop*, YOUTUBE (May 17, 2022), <https://www.youtube.com/watch?v=nfTgap7mnKg> (Mayor and Council naming May 15 as beginning of police week, paying tribute to the Federalsburg Police Department).

³ Ryan Miner, *Federalsburg Police Chief says he agrees with Trump’s Racist Tweets*, A MINOR DETAIL, available at <https://aminerdetail.com/federalsburg-police-chief-says-he-agrees-with-trumps-racist-tweets/>.

about Town functions, health care issues during the pandemic, housing, the educational needs of Black children and the lack diversity of among teachers in Federalsburg schools.

Also notable, Federalsburg is the home of an increasing Haitian immigrant population, whose children are attending Federalsburg schools, and whose families make up a large segment of the Town's residents.⁴ But this growing community has little to no communication or representation through the Council or Mayor's Office. These residents have specific needs around translation, employment (primarily working in chicken processing plants), and other general needs that are being fulfilled by the Church of Nazarene and nonprofits on the Eastern Shore, rather than by their government.⁵ As with the concerns of Black residents generally, the campaign promises of members of the Council, and the Mayor have not mentioned issues that concern this segment of the Town's population.⁶

Requirements of the Voting Rights Act

Section 2 of the Voting Rights Act of 1965 prohibits the denial of the right to vote on account of race. A violation is established if the totality of circumstances show that "the political processes leading to nomination or election ... are not equally open to participation by members of [a given race] in that [those] members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(a)–(b). Section 2 has been the mechanism used for challenges to at-large election systems since its passage and there exists a long line of court precedent – in Maryland and across the country – enforcing Section 2 to reform election systems like this that have the effect of discriminating against BIPOC people. *See, e.g., Thornburg v.*

⁴ See Tom McCall, *A Haitian Church in Federalsburg*, MY EASTERN SHORE MD (Nov. 10, 2021), https://www.myeasternshorem.com/stardem/news/local_news/a-haitian-church-in-federalsburg/article_7135d301-9941-5d7f-85a7-2154fbc7d4e.html.

⁵ See Tom McCall, *supra*; (describing needs of the Haitian community around immigration services, public health concerning COVID-19, employment opportunities, learning English, other educational needs, and gaps in services that are being filled by the Church of Nazarene and nonprofits on the Eastern Shore); *see also* Dan Fesperman & Chris Guy, *Hopes of a better life take root in Delmarava*, BALTIMORE SUN (Apr. 18, 1999, 12:00 AM), <https://www.baltimoresun.com/news/bs-xpm-1999-04-18-9904170364-story.html> (describing the large and increasing immigrant population, in particular the Haitian population in Federalsburg, since the early 1990s); *see also* Federalsburg Historical Society, <https://federalsburghistoricalsociety.com/history> (last visited Jun. 28, 2022) (Federalsburg Historical Society, describing the history of the town, but ends before any mention of the Haitian community that began immigrating to the area); *see also* Town of Federalsburg, https://www.townoffederalsburg.org/about_us/index.php (last visited Jun. 28, 2022) (town website with no mention of the African American or the Haitian community that live in the town).

⁶ Federalsburg First, *Re-Elect Kimberly Abner*, FACEBOOK (Sept. 16, 2021), <https://www.facebook.com/FederalsburgFirst/photos/619886836062937> (campaign poster of Mayor Abner); Federalsburg First, *Re-Elect Kimberly Abner*, FACEBOOK (Sept. 10, 2021), <https://www.facebook.com/FederalsburgFirst/photos/616142109770743> (campaign poster of Mayor Abner).

Gingles, 478 U.S. 30, 47 (1986); *Cane v. Worcester Cnty., Md.*, 35 F.3d 921 (4th Cir. 1994); *United States v. Charleston Cnty., S.C.*, 365 F.3d 341, 348 (4th Cir. 2004); *Lewis v. Alamance Cnty., N.C.*, 99 F.3d 600, 618 (4th Cir. 1996).

Given the significant growth of Federalsburg's Black population and the Town's uninterrupted record of all-white government maintained by white bloc voting under the at-large election system, the Voting Rights Act requires reform of this system now.

The ACLU of Maryland, in collaboration with the NAACP, Caucus of African American Leaders, and community residents, has successfully advocated for redistricting changes and reform of at-large election systems to address minority vote dilution across the counties and municipalities of the Eastern Shore, including in Worcester County, Somerset County, the Cities of Salisbury and Cambridge, Towns of Berlin, Snow Hill, Pocomoke City, Princess Anne, Hurlock, Easton, and Chestertown. As a result of election reforms brought about through our advocacy and litigation, history-making change and community betterment occurred in each of these places, with Black voters finally breaking through white voting blocs to elect Black candidates to represent them for the first time. We are hopeful the same can happen in Federalsburg, and offer to collaborate with you to reform the Town's election system to enhance its racial fairness and comply with the Voting Rights Act. Failure to address this issue is indefensible as a matter of racial justice, and would clearly subject the Town to legal liability for minority vote dilution, so we urge you to act promptly to remedy this ongoing civil rights violation.

Reform Options for a More Representative Government

There is no single way to create a redistricting plan that complies with the Voting Rights Act, but the typical remedy for minority vote dilution inherent in an at-large election plan is through establishment of election districts, with one or more districts including a majority-minority population, roughly comparable to the minority's general population share. Here, given that the Town of Federalsburg is about half Black and half white with a four-member council, this means the at-large system could be reformed into a system of four single member districts with two districts including a Black majority, or alternatively, two two-member districts, one with a majority Black population. Both systems can be created in a way that complies with the Voting Rights Act and provides a fair opportunity for all voters to participate in the political process and elect their candidates of choice.

Working with an experienced demographer,⁷ we have created two illustrative plans to demonstrate these options. Our proposals show it is easily possible to craft a racially fair plan achieving Voting Rights Act compliance in Federalsburg, while

⁷ In creating these plans we worked with nationally-recognized demographer William S. Cooper, who has three decades of experience assisting governments and civil rights activists with adapting their election systems to meet Voting Rights Act requirements, including here on Maryland's Eastern Shore.

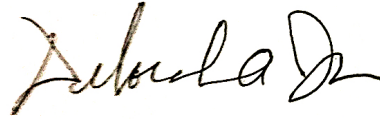
still adhering to traditional redistricting principles, and satisfying all other legal and political requirements. The districts in our proposed plans are compact, contiguous, and population totals are properly apportioned among the districts. *Most important legally*, our plans create opportunity districts affording Black voters two solid opportunities to elect representatives of their choice.

Illustrative Plan A, attached as Exhibit 1, creates four single-member districts, two with majority Black voting age population (“VAP”) – one at 70 percent, and the other at 56.5 percent, and two districts of a majority white VAP at 62.6 percent and 76.6 percent. Alternatively, Illustrative Plan B, attached as Exhibit 2, creates two, two-member districts, the yellow district marked “1” constitutes a Black VAP of about 63.5 percent, and a White VAP of about 32.3 percent. The green district, marked “2” would constitute a 20.7 percent Black VAP and a 71.8 percent White VAP. Data detailing each plan’s district demographics is shown the accompanying charts.

As noted, these proposals are intended to illustrate options the Town might implement; both affirmatively address concerns about minority vote dilution and racial polarization, and would provide all Federalsburg voters and candidates opportunities to participate in the election process and elect representatives of their choice, commensurate with their numbers in the population. While the Town certainly need not implement either of these specific proposals, it must take some action to reform Federalsburg’s existing at-large election system, which unlawfully shuts Black 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 September 13, 2022 to arrange a meeting so we can begin discussing ways we can work together to improve Federalsburg’s election system.

Sincerely,



Deborah A. Jeon
Legal Director

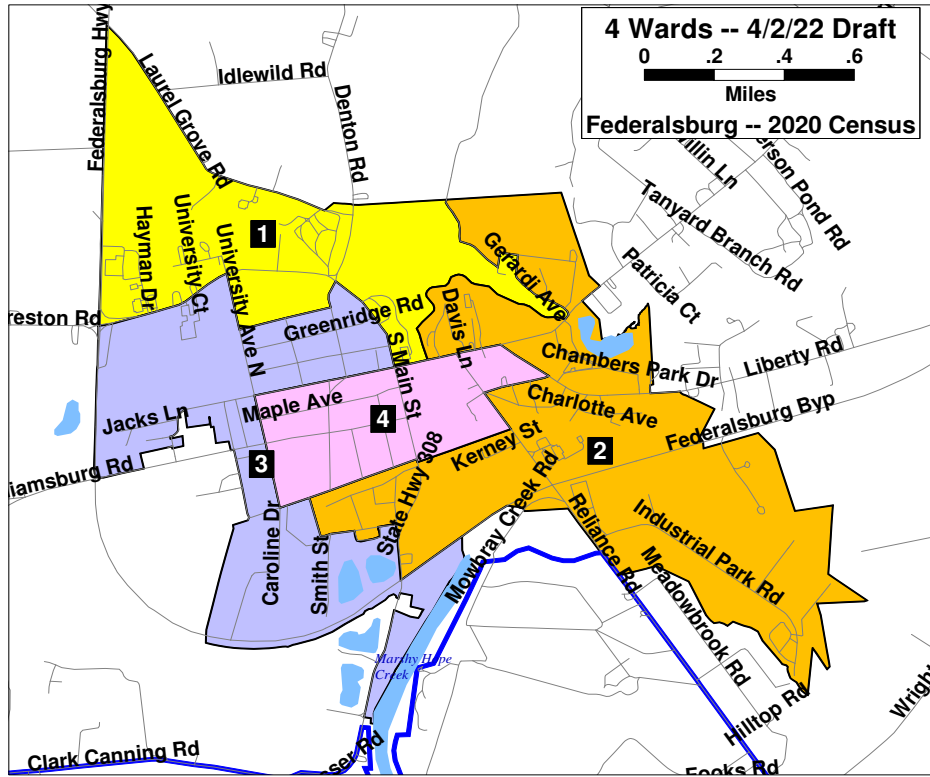


Nick Steiner
Staff Attorney

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MARYLAND

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

Exhibit 1

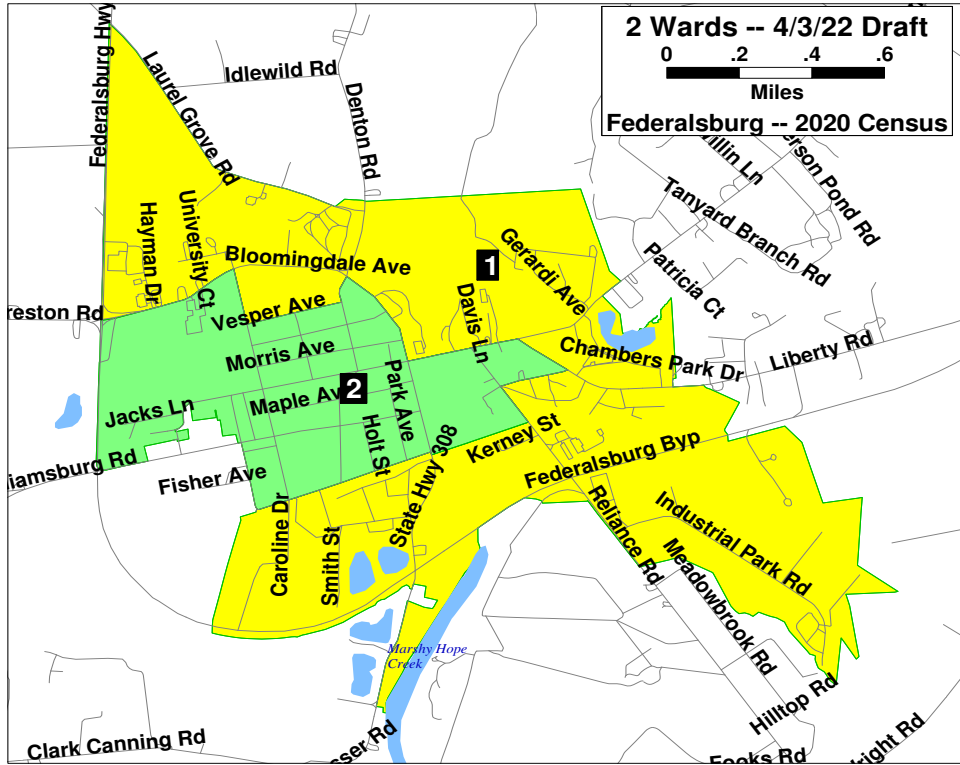


Population Summary Report (2020 Census)
Federalsburg, MD -- April 2, 2022 Draft

Ward	Adusted Population	Deviation	% Deviation	2020 Population	Any Part Black	% Any Part Black	Latino	% Latino	NH White	% NH White
1	712	-3	-0.42%	702	500	104.17%	23	3.28%	174	24.79%
2	736	21	2.94%	728	434	80.37%	29	3.98%	260	35.71%
3	706	-9	-1.26%	703	245	48.23%	39	5.55%	402	57.18%
4	704	-11	-1.54%	700	153	31.16%	29	4.14%	491	70.14%
Total	2858		4.48%	2833	1332	47.02%	120	4.24%	1327	46.84%

Ward	18+_Pop	18+ AP Black	% 18+_AP Black	18+ Latino	% 18+ Latino	18+_NH White	% 18+_NH White
1	480	336	70.00%	12	2.50%	127	26.46%
2	540	305	56.48%	19	3.52%	213	39.44%
3	508	152	29.92%	29	5.71%	318	62.60%
4	491	76	15.48%	19	3.87%	376	76.58%
Total	2019	869	43.04%	79	3.91%	1034	51.21%

Exhibit 2



**Population Summary Report (2020 Census)
Federalsburg, MD -- April 3, 2022 Draft**

Ward	Adjusted Population	Deviation	% Deviation	2020 Population	Any Part Black	% Any Part Black	Latino	% Latino	NH White	% NH White
1	1492	63	4.41%	1473	972	65.99%	55	3.73%	434	29.46%
2	1366	-63	-4.41%	1360	360	26.47%	65	4.78%	893	65.66%
Total	2858		8.82%	2833	1332	47.02%	120	4.24%	1327	46.84%

Ward	18+_Pop	18+ AP Black	% 18+_AP Black	18+ Latino	% 18+ Latino	18+_NH White	% 18+_NH White
1	1053	669	63.53%	34	3.23%	340	32.29%
2	966	200	20.70%	45	4.66%	694	71.84%
Total	2019	869	43.04%	79	3.91%	1034	51.21%

Ward	% NH Single-Race Black CVAP*
1	64.25%
2	17.04%

Note: Citizen Voting Age Population (CVAP) percentages are disaggregated from block-group level ACS estimates (with a survey midpoint of July 2017)

Source for CVAP disaggregation: Redistricting Data Hub
<https://redistrictingdatahub.org/dataset/maryland-cvap-data-disaggregated-to-the-2020-block-level-2019/>