

EXHIBIT C

DECLARATION OF ANTHONY S. FUGETT

**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 ANTHONY S. FUGETT

1. I, Anthony S. Fugett, am over 18 years of age 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, and an individual named plaintiff in the above-captioned case.

3. I was born and raised in Baltimore City, then lived outside Maryland for some years, working as an executive with the International Business Machines (IBM) corporation. In 1993, I returned to Maryland to be closer to family and started my own computer company. Resisting efforts by bankers and realtors to steer me to Howard County or Baltimore City, I settled in Baltimore County and have made my home there ever since.

4. I am a longtime member and officer of the National Association for the Advancement of Colored People (NAACP), having served on the National NAACP Board of Directors from 1993 through 2001, as well as being an officer with the NAACP's Baltimore

County branch, one of the organizational plaintiffs in this case. Following my tenure on the National NAACP Board, and throughout the two decades from 2000 to 2020, I served in a leadership role with the Baltimore County NAACP, including two terms as President and one as First Vice President. I currently serve on the branch Executive Committee and am its immediate past President, succeeded by Dr. Danita Tolson in January 2021.

5. The Baltimore County NAACP is a non-profit membership-based civil rights organization, open to all county residents. Members pay annual dues to the organization, which are shared with the National NAACP and used to support the work of the branch. The Baltimore County NAACP currently has approximately 150 members, including myself, plaintiff Danita Tolson, and plaintiff Gerald Morrison, who is currently the branch's First Vice President. Our members reside throughout Baltimore County, with some members in each of the seven Council districts, although a large share of our members reside in Districts 1, 2, and 4, the districts impacted most adversely by the County's 2021 redistricting plan. That is, the branch has members, including Dr. Tolson, among those Black residents unfairly packed into District 4 in the Council plan, as well as members, including me, residing in communities cracked by the plan, such as Randallstown, Lochearn, Milford Mill and Owings Mills. We also have members, like Mr. Morrison, residing in District 6, which the County has made a strongly majority-white district, although it could instead be an "influence" district with population split evenly between white and BIPOC voters.

6. The mission of the NAACP is to "secure the political, educational, social, and economic equality of rights in order to eliminate race-based discrimination and ensure the health and well-being of all persons." The vision of the NAACP is "to ensure a society in

which all individuals have equal rights without discrimination based on race.” Our objectives are:

- a. To ensure the political, educational, social, and economic equality of all citizens.
- b. To achieve equality of rights and eliminate race prejudice among the citizens of the United States.
- c. To remove all barriers of racial discrimination through democratic processes.
- d. To seek enactment and enforcement of federal, state, and local laws securing civil rights.
- e. To inform the public of the adverse effects of racial discrimination and to seek its elimination.
- f. To educate persons as to their constitutional rights and to take all lawful action to secure the exercise thereof, and to take any other lawful action in furtherance of these objectives, consistent with the NAACP's Articles of Incorporation and this Constitution.¹

7. Since 2000, when I took the position as Baltimore NAACP Branch President, our organization has focused intensively on work to promote diversification of the overwhelmingly white Baltimore County government amid the County’s changing population. Such work has related both to political empowerment of Black residents and to challenging County policies that limit and discourage Black people from living in Baltimore County, such as the County’s use of its zoning power and housing restrictions as tools to remove Black residents, exclude new Black residents, and segregate those who do locate there. Because individual elected County Council members exercise enormous power over zoning decisions in their districts, housing policies and political empowerment are very much interrelated in Baltimore County.

8. For me, this work began when Dunbar Brooks, a civic activist and President of the Turner Station NAACP within Baltimore County, did an eye-opening presentation for us that he called “The Browning of Baltimore County.” The presentation highlighted how much Baltimore County’s population was starting to diversify, questioned why our governmental representatives

¹<http://www.naacp-bcountymd.org/about-us.html>.

nevertheless remained all white, and urged activists to try to change that. I remember Mr. Brooks, who worked as an urban planner for the Baltimore Metropolitan Council, said the County's Black residents were "crying out for representation," and that the NAACP could be in the forefront of the fight to realize that goal. Given his skills as a demographer, Mr. Brooks worked with the NAACP and colleagues at the ACLU of Maryland to assess the possibilities for enhancing opportunities for Black voters in the County through the 2001 redistricting process.

9. As it does now, Baltimore County then had a government made up of seven single-member districts for the County Council and a County Executive elected at large. While 2000 Census data showed the County was by then 20% Black in voting-age population, never in history had any Black candidate been elected to any County office—a rarity among Maryland counties with significant Black populations. In fact, as far as I am aware, only one candidate had ever even run for Baltimore County office before that time, a 1990 race by Black Democratic candidate Harold Gordon against incumbent Democrat Melvin Mintz in what was then District 2, running from Pikesville through Randallstown. Mr. Gordon lost in the primary by a two-to-one margin in a district that was approximately 57% white and 40% Black, with nearly all of his votes coming from Black residents.² Other than Mr. Gordon, I know of no Black residents who *ever* ran for County office before 2000, so convinced were they that any such candidacies would be a lost cause against the County's entrenched white majorities.

10. An example that helps explain why prospective Black candidates in the County have, over time, been discouraged from running for office played out memorably for Black

² See Larry Carson, *Larger county council sought: Adding districts in Baltimore County would increase chance for a black to be elected*, Baltimore Sun, Mar. 27, 1991, available at <https://www.baltimoresun.com/news/bs-xpm-1991-03-27-1991086226-story.html>.

Baltimore Countians in the four years straddling the 2000 Census, when an extremely well-qualified Black Circuit Court Judge, Alexander Wright, ran for retention to the judgeship to which he was twice appointed by Governor Parris Glendening. Although contested judicial elections were rare, Judge Wright's 1998 appointment by Governor Glendening as Baltimore County's first African American judge³ sparked discord among certain white lawyers in the County who contended, quite outrageously in my view, that the Governor was prioritizing diversity over talent. This created a racially-charged atmosphere surrounding the 2000 judicial election as the two newly-appointed sitting judges seeking retention—a white woman, Kathleen Cox, and Judge Wright, a Black man—were challenged for the two seats by a white male attorney, in an unusual judicial election contest. Notwithstanding his superb qualifications for the judgeship he held, Judge Wright lost in the 2000 nonpartisan primary election, placing third among the three candidates both on Democratic and Republican primary ballots. Securing less than 70% of the vote totals of his white opponents, Judge Wright failed to even advance to the general election. In this, he became the first sitting Baltimore County judge to lose an election in over 60 years—since 1938. To me, the message was clear: Judge Wright lost that election because he was a Black man, and the rest of us should take note.

11. Nevertheless, given his stellar record and the strong support Judge Wright had from Governor Glendening and from many people throughout the legal community outside Baltimore County, when a new judicial vacancy opened following his 2000 loss, Governor Glendening reappointed him to a second Baltimore County circuit court judgeship in 2001. Once again, a

³ See, e.g., J. Jacobson, *Perseverance pays as first black circuit judge Alexander Wright Jr. joins Balto. Co. court*, Baltimore Sun, June 23, 1998, available at: <https://www.baltimoresun.com/news/bs-xpm-1998-06-23-1998174032-story.html>

white lawyer challenged the sitting judges in the 2002 retention election, and again, Judge Wright came out the loser—this time placing fourth to three white candidates in the general election.⁴ Following Judge Wright’s second loss, I was contacted by the Baltimore *Sun* for comment on behalf of the NAACP, and spoke my mind about what I thought then, and, sadly, what I believe remains true in Baltimore County today:

“Discrimination tends to rear its ugly head all too often in Baltimore County,” Anthony S. Fugett, president of the Baltimore County branch of the National Association for the Advancement of Colored People, said yesterday. He said race was one of the few viable explanations for Wright's loss.⁵

12. Judge Wright’s notorious experience was sufficient to prevent most Black candidates from running for office in any majority-white district in the County over the course of the following years. For example, no Black candidate has ever run for the at-large County Executive position, and no Black candidate has run for County Council in any majority-white Council district since Harold Gordon’s loss in the District 2 primary in 1990.

13. There are just a handful of recent contests in Baltimore County involving Black candidates against white candidates of which I am aware, all but one involving state offices. Unfortunately, the Black candidates in these elections also met with failure, reinforcing the view among Black residents that such contests are unwinnable. Three examples of this are among the elections analyzed by Professors Matt Barreto and Kassra Oskooii in their report demonstrating the extreme racial polarization that persists in Baltimore County voting. These elections include the 2014 and 2018 gubernatorial races in which Black Democrats Anthony Brown and Benjamin

⁴ Notably, Judge Wright was subsequently appointed by Governor Martin O’Malley to an at-large seat on the Maryland Court of Special Appeals, where contested elections are not permitted, and he served with distinction for over a decade.

⁵ J. Rockoff and S. Hanes, *Judge’s loss spurs questions of racism*, Baltimore Sun, Nov. 7, 2002, available at <https://www.baltimoresun.com/news/bs-xpm-2002-11-07-0211070051-story.html>

Jealous both lost to white Republican Larry Hogan in Baltimore County, as well as the 2016 Democratic primary for U.S. Senate in which sitting Black Congresswoman Donna Edwards lost to sitting white Congressman Christopher Van Hollen in the County. In each of these contests, the Black candidate was strongly supported by Black County voters but lost the election badly due to white bloc voting. This occurred whether in a primary election among Democrats alone, as in the 2016 Senate primary, or in general elections in which white Democrats crossed party lines to support a white Republican over a Black Democrat, as in the two gubernatorial elections.

14. Two other instances I know of when a Black candidate has sought office in a majority-white area of Baltimore County involved State legislative contests in 2018. First, in that year's Democratic primary, Black activist Linda Dorsey Walker ran for the House of Delegates in majority-white State Legislative District 11, and lost overwhelmingly to three white candidates. Also in 2018, Black Democrat Carl Jackson sought election to the House of Delegates in State Legislative District 8, another majority white district. Mr. Jackson came in third in the Democratic primary, and thus moved on to the general election, but was beaten there by his two Democratic colleagues (one white and one South-Asian) and a white Republican challenger.⁶

15. I am aware of just one exception to the pattern of Black candidates losing in majority-white districts, but that is an outlier explained by the sole white candidate's failure to mount a campaign in a down-ballot election: In 2018, Cheryl Pasteur, an extremely well-qualified Black candidate who, among other qualifications, had been a classroom English teacher, an English department chair, specialist in the Equity Office, and assistant principal at Carver Center

⁶ Subsequent to his election loss, a vacancy opened in District 8 in 2019, and Carl Jackson was appointed to the open Delegate seat by Governor Hogan, at the recommendation of the Democratic Central Committee. Del. Jackson holds that seat now and, should he choose to run, will face voters for the first time as an incumbent in 2022.

for the Arts and Technology, Sudbrook Middle Magnet, and Randallstown High School and had served as the principal at Old Court Middle School and Randallstown High School, was elected to the County School Board from District 2. With a campaign supported by hundreds of volunteers, Ms. Pasteur defeated an optometrist who did not mount an active campaign (for example, he did not even respond to the Baltimore Sun's candidate questionnaire).

16. In saying these past examples discourage Black candidates from running for office due to the way Baltimore County has drawn its district lines, I speak not only as a political observer, but also from personal experience. Given my civic activism as a Baltimore County resident over more than two decades, I have thought very seriously about running for public office myself, especially since stepping down from the NAACP presidency in 2020. My residence, however, is in Owings Mills, in County Council District 2, a majority-white district both in the 2011 plan and under Bill 103-21, the newly-enacted 2021 plan we are challenging through this litigation. In the new Council plan, the voting-age population of Council District 2 is 55.6% white and just 31.2% Black. This means it is over 24 percentage points whiter than it is Black, with a white incumbent councilman who reportedly is running for reelection. Given racially polarized voting patterns in the County, which show up in election after election, I know it would not be possible for me to be a competitive candidate against the incumbent in this district as drawn. So, I cannot justify even trying. I am sure such reasoning is not unique to me and that other would-be Black candidates are discouraged from running in districts that the County maintains as majority-white, because they view the effort as futile, with the prospects for success there as negligible.

17. Along with the historical exclusion of Black officials from the upper tiers of Baltimore County government, consistent losses by the few Black candidates who risked running countywide or in majority-white districts within the County have reinforced the strong view among

Black residents and prospective candidates that such races are unwinnable, discouraging others from undertaking long-shot contests. Due to this record and because the County has refused to use its power to offset racial polarization in its elections by creating additional districts (despite periodic consideration of doing so to add a new majority-Black district, as Black candidate Harold Gordon and others advocated in 1991 and since), there continue to be very few Black candidates and Black elected officials in Baltimore County today.

18. In considering what can be done to overcome the lamentable lack of Black Baltimore County candidates and officials, one need look no further than what happened in 2002, after the County Council for the first time created a majority-Black district during its 2001 redistricting process. As I mentioned above, this occurred just after I took over as President of the County NAACP, when Dunbar Brooks began advocating for creation of a majority-Black Council district based on population changes along the County's west side. Not surprisingly, given the all-white Council's longstanding unresponsiveness to and unawareness of Black community concerns, creation of such a Black opportunity district had *not* been the Council's plan at outset of the 2001 redistricting process. In fact, even though the County had had a single-member district system for decades, it was apparent the notion of creating a majority-Black Council district had never even occurred to Councilmembers until we proposed it. The NAACP, aligning with the ACLU and other community partners, led the effort pushing for this change. Mr. Brooks created sample maps demonstrating ways the County could create a majority-Black district on the County's west side, with a Black voting-age population of at least 55%. We introduced this proposal in public hearings during the redistricting process, and ACLU lawyers working with us argued that such changes were required under the Voting Rights Act, to keep pace with population changes the County was experiencing. Fortunately, after much discussion during public meetings

and among legal counsel, the incumbent Council members at that time were persuaded that the County would be vulnerable to a voting rights lawsuit if they ignored our concerns, and the County agreed to alter its redistricting plan to create a majority-Black opportunity district for the first time in Baltimore County history.

19. As a result, the redistricting plan implemented by Baltimore County in 2001 established a first-ever majority-Black district in District 4. Once this plan was put into place, it was as if a logjam had suddenly broken: Whereas previously no Black candidates had ever sought a Council seat, Black candidates rushed forward to seek public office in that district. Four Black candidates sought the position in the Democratic primary, as well as a Black Republican contender – more Black candidates in that one district election than the combined total who had run for any County office in the history of the County. Ultimately, the 2002 election changes enabled our community to make history through election of Baltimore County’s first Black County Council member, Kenneth Oliver. This clearly showed what a difference racially fair redistricting can make in encouraging greater participation among minority candidates and in allowing Black voters to elect a candidate they consider representative of their interests.

20. Following that historic 2002 District 4 election, in election cycle after election cycle, numerous Black candidates have run for County Council in majority-Black District 4, and, in an uninterrupted pattern, the district’s voters have elected Black officials to represent them. Councilman Oliver served from 2003 through 2014, and current Council Chair Julian Jones has served from 2014 to date. Meanwhile, in *every one* of the remaining six council districts that have been maintained by the County as majority white, no Black candidate has run for Council, so exclusively white candidates have been elected. This pattern continued through the most recent

election in 2018, and seemingly will continue into 2022 and beyond, unless changes are made to alter the County's racially discriminatory election plan.

21. While certainly not unique, my personal situation again provides a case in point. Whereas it would be futile for me to try to run for the Council in District 2 under Bill 103-21, the County's enacted plan, reconfiguring of the districts in a racially fair way could easily change that. For example, in Plaintiffs' illustrative Plan 5, discussed in William Cooper's Declaration, District 2 would become a second majority-Black district, and my Owings Mills home is in that district. In that plan, District 2 is 55% Black in voting-age population, and 35% white. This would be a significant change, completely flipping the district's demographics. If a plan like that were implemented, it would alter my thinking about the viability of my candidacy, even against a white incumbent. But while I am using my situation as an example, I want to be clear that this is not in any way just about me. Rather, my intention is to make the larger point that redistricting requiring changes aimed at making the system racially fair, as we are advocating in this lawsuit, could substantially change the way many Black voters and potential candidates think about our election system and about our government in Baltimore County.

22. This is what the Baltimore County NAACP, all of the plaintiffs in this case, and many others have argued throughout the 2021 redistricting process – that population changes in Baltimore County since 2001 clearly justify addition of at least one more majority-Black district to the current seven-district election system. As discussed in detail by our expert, William Cooper, Census data show that the County is now 48.1% Black, Indigenous and People of Color (BIPOC), as well as 32.2% Black. For that reason, the NAACP has worked since release of the Census data in August to collaborate with those in control of the redistricting process – meeting with elected officials, attending public hearings, providing testimony, submitting detailed redistricting

proposals and offering legal analyses to explain how all of Baltimore County would benefit by enactment of a plan that celebrates and empowers our diversifying population by drawing district boundaries in a way that expands election opportunities for minority voters and candidates. We have argued that the same diversification of our representative government that occurred in District 4 beginning in 2002 could continue and expand in Baltimore County now if the Council would consider our request to establish a second majority-Black district for the Council. As we believe and have argued to the County, such a change would doubtless bring forward more Black candidates, enabling the election of additional candidates of color to fully represent the County's rapidly diversifying population.

23. While the Baltimore County NAACP has been a leader in this effort, we have been far from alone. To the contrary, in addition to the NAACP and ACLU, a groundswell of residents from several organizations and from across the County actively engaged in the redistricting process throughout the fall, urging the County to act to protect the voting rights of *all* of its residents – not just its white residents – by expanding opportunities for BIPOC voters as the Voting Rights Act requires through adoption of a redistricting plan that includes at least two majority Black districts. Among the organizations working with us in urging the Council to reject the racially discriminatory packing and cracking inherent in the County's now-adopted plan have been the Baltimore County Coalition for Fair Maps, the Randallstown NAACP, the League of Women Voters of Baltimore County, Common Cause Maryland, and Indivisible Towson, all of which actively lobbied the County. Leaders and members of all these organizations have joined with individual County residents to present testimony at public hearings held by the Redistricting Commission and the County Council on their redistricting plans, as well as submitting letters, emails, and written testimony imploring the County to enact a redistrict plan with two or more

majority-Black districts to accurately reflect the growing diversity of Baltimore County. Indeed, opposition to Bill 103-21 remained overwhelming even after Council Chair Julian Jones widely circulated a video presentation of himself urging his constituents to turn out for the December 14 hearing to support Bill 103-21's proposal to pack the single majority-Black council district he represents (District 4) with nearly 75% Black voting age population rather than creating two majority-Black districts.

24. As County records show, 57 speakers registered to speak *against* Bill 103-21 at the December 14 hearing, with the vast majority directly challenging its unfairness to Black and BIPOC residents and its violation of the Voting Rights Act. While dozens of speakers at the hearing – including the Plaintiffs – implored the County to reject the plan as racially discriminatory and unlawful and to adopt a plan with at least two majority-Black districts, just a tiny few supported the plan's single super-majority-Black district as Councilman Jones had urged. Additionally, to further emphasize to the Council the depth of community opposition to Bill 103-21, on December 20, the day the Council had scheduled its final vote on the plan, the Baltimore County Coalition for Fair Maps hand delivered to each Council member hundreds of letters, emails, testimonies, and statements opposing Bill 103-21 as undemocratic, racially discriminatory, and unlawful.

25. During the same time period in which the County has been conducting its redistricting for County Council, the State of Maryland has been doing the same for the Maryland General Assembly, which also impacts Baltimore County communities. The Baltimore County NAACP and other organizations involved in this case have also been monitoring the state redistricting process, although the NAACP's work with the state has been far less intensive than what we have done to try to expand Black voter opportunities at the County level, given the local nature of our organization. Several of the changes made to the state legislative plan benefit Black

voters on the westside of the County, such as inclusion in the plan of several majority-Black state senate and state delegate districts or subdistricts wholly contained within the County, instead of crossing City-County lines or shared between Howard County and Baltimore County.

26. Most notably, the state legislature's proposed redistricting plan adds a single-member majority-Black delegate sub-district within State Legislative District 11, which is in the Pikesville-Owings Mills area. In the previous state map, enacted in 2011, District 11 was a majority-white multimember district electing a senator and three delegates. As has been true historically, all three delegates elected in that district are white, as is the state senator. This is the district in which Black activist Linda Dorsey Walker ran unsuccessfully in 2018. Due the growing Black population in Owings Mills and that part of the County, the NAACP and others urged state redistricting officials to create a majority-Black subdistrict with District 11 in the 2021 redistricting plan. Initially, the redistricting committee's draft plan proposed to maintain District 11 as a majority-white multimember district. On December 22, 2021, the Committee held a public hearing on the plan, and members of the public, including Ms. Dorsey Walker, spoke out about this issue, specifically asking that a majority-Black subdistrict be created in Owings Mills to advance racial fairness for residents there. After considering this public input and consulting the Attorney General's Office about this issue, the final proposal released by the redistricting committee in early January and that is now advancing through the General Assembly *does* create a single majority-Black delegate district in District 11. According to comments by House Speaker Adrienne Jones, who represents Baltimore County in the state legislature and is a member of the redistricting committee, the Maryland Attorney General advised that creation of this district is necessary to be fair to Black Baltimore County voters and to comply with the Voting Rights Act.

27. In contrast to the fairness and responsiveness demonstrated by the Attorney General and State redistricting officials, the County Council completely rebuffed our efforts, ignoring the many people who testified at redistricting hearings and the multiple proposals and analyses we have submitted to the Council. In its final redistricting plan the County Council rejected outright the pleas of Black and BIPOC residents to create two majority-Black districts, disregarding the potential plans solving this issue that had been proposed by Plaintiffs and their counsel, while accommodating requests by white residents, such as by altering district lines after white residents of Towson and of Country Club Estates in Lutherville complained that initial redistricting plans split their community between two districts. This was true even though the Black community's concerns are rooted in federal civil rights law and the County's refusal to address these concerns exposes it to legal liability, while the white community concerns that have been accommodated by the Council do not.

28. At the end of the process, the County Council adopted, by unanimous vote, a blatantly unfair and discriminatory plan that maintains for the next decade an election system that will prevent election of Black candidates or other candidates of color in six of the seven Council districts, while packing a huge percentage of Black voters into a single super-majority-Black district. There could be no better example of the disrespect for Black voices, and the unresponsiveness to community concerns with which Baltimore County officials too often conduct themselves. Nor could there be a better explanation as to why it is so vitally necessary for the Baltimore County NAACP and the other Plaintiffs to bring this lawsuit seeking to change the system and to put a stop to Baltimore County's long pattern of race of discrimination.

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:

January 19, 2022

A handwritten signature in blue ink that reads "Anthony S. Fugett". The signature is written in a cursive style with a large initial 'A' and a distinct 'S'.

Anthony S. Fugett