

September 28, 2021

VIA ELECTRONIC MAIL

Baltimore County Redistricting Commission  
[CouncilmanicRedistricting@baltimorecountymd.gov](mailto:CouncilmanicRedistricting@baltimorecountymd.gov)

Dear Baltimore County Redistricting Commission Members:

We write on behalf of the Baltimore County Branch of the National Association for the Advancement of Colored People and the American Civil Liberties Union of Maryland to express our concerns about unlawful minority vote dilution inherent in the redistricting plan the Commission currently is planning to recommend to the Baltimore County Council, and to propose an alternative plan from our organizations that would correct this serious problem.

As the Commission has recognized, over the past decade Baltimore County has enjoyed a tremendous period of demographic diversification in its population, with Black, Latinx and Asian populations each growing significantly, enabling the County to boast a Black, Indigenous, People of Color (BIPOC) population now making up fully 47 percent of the County's overall population<sup>1</sup> – up from 25 percent in 2000, and 35 percent in 2010.<sup>2</sup> Such changes afford Baltimore County a rich diversity among residents with respect to race, ethnicity, culture, perspective, and experience, much more so than in the past.

Importantly for present purposes, these demographic changes also bring with them corresponding responsibilities under the federal Voting Rights Act, in order to ensure that the County's redistricting process and election system are racially fair, affording all voters – old and new, Black, Brown and white – realistic opportunities to fully participate in the electoral process and to elect candidates of their choice. To achieve racial fairness and comply with the Voting Rights Act, the redistricting plan proposed for the County should – *to the greatest extent possible* – be one that

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<sup>1</sup> See U.S. Census Bureau, Baltimore County data, *available at* <https://www.census.gov/library/visualizations/interactive/race-and-ethnicity-in-the-united-state-2010-and-2020-census.html>

<sup>2</sup> See Baltimore County website, County Demographics, *available at* <https://www.baltimorecountymd.gov/departments/economicdev/meet-baltimore-county/stats-and-figures/county-demographics.html>

reflects the overall diversity of the County, and that gives residents opportunities to elect their chosen candidates roughly proportionate to their numbers in the population.

Yet, in its public deliberations, this Commission has made *no mention whatsoever* of the requirements of the Voting Rights Act in formulating its recommended plan.

### **Baltimore County's Existing Election System**

As you know, the seven-member Baltimore County Council is elected every four years from seven single-member districts, while the County Executive is elected at large. Until 2001, all of the seven Council districts were created to encompass majority-white populations, and as a result, in election after election, only white candidates were elected to County office from these districts, as is also true for the at-large County Executive position. The total exclusion of Black candidates from elective office reflected racially-polarized voting and the continuing legacy of race discrimination in Maryland and the County, and raised immense concerns among Black residents. Such concerns deepened as the County's Black population grew and County government nevertheless remained all white. Thus, in 2001, civil rights activists, including our two organizations, urged the County Council during the decennial redistricting to craft a plan incorporating measures to ensure compliance with the racial fairness requirements of the Voting Rights Act. The Council ultimately agreed with our position, and to achieve this goal for the first time adopted a plan creating one district, designated District 4, with a majority-Black population.

In the election immediately following that plan's adoption, County voters made history by electing the first-ever Black representative to the Council from the majority-Black district. Consistently since that time, over five election cycles, District 4 voters have chosen a Black Councilmember to represent them, demonstrating the success of this approach in allowing Black voters to elect their representatives of choice. Meanwhile, however, every one of the remaining majority-white districts has continued to elect only white representatives – again showing the persistence of racially polarized voting and the importance of districting in addressing resulting minority vote dilution.

### **Requirements of the Voting Rights Act**

As noted above, the Voting Rights Act requires election systems to be designed so that voters within a cohesive racial minority, just like those in the white majority, are afforded an effective and realistic opportunity to elect officials of their choice, to an extent roughly proportional to their numbers in the population. Section 2 of the Act prohibits the use of voting practices that are purposefully discriminatory, as well as those that "result" in discrimination. *Thornburg v. Gingles*, 478 U.S. 30, 35 (1986). According to the Act's legislative history and its interpretation by the Supreme Court, the key question in analyzing a vote dilution claim under Section 2 is whether, based on the totality of circumstances, the challenged plan provides voters in a racial minority with "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice."<sup>3</sup> 42 U.S.C. § 1973(b) (2006).

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<sup>3</sup> In *Gingles*, 478 U.S. at 50-1, the Supreme Court held that to establish a violation of the "results" standard of Section 2, plaintiffs must show: (1) the minority group is sufficiently large and geographically compact to constitute a majority in one or more single member districts; (2) the minority is politically cohesive, *i.e.*, tends to vote as a bloc; and, (3)

In light of Baltimore County's diversifying population and the historical exclusion of BIPOC candidates from election to County office, this Redistricting Commission has cause to be acutely aware of the requirements of the Voting Rights Act in carrying out its work. Unfortunately, however, at Redistricting Commission meetings we have heard *no discussion at all* about the need to expand election opportunities for BIPOC voters,<sup>4</sup> raising alarm for us. For this reason, we call the Commission's attention to Voting Rights Act compliance as a being of the *highest priority* in its work.

To be blunt, **unless its vote dilution problem is remedied, we believe the map the Commission proposes to recommend to the Council would clearly violate the Voting Rights Act, and, if adopted, will subject the County to legal liability for race discrimination in violation of the Act.**

Census data from 2020 reflects that the racial makeup of Baltimore County's voting age population (VAP)<sup>5</sup> is 55.2 percent white; 29.8 percent Black, 6.0 percent Latinx, and 7.0 percent Asian, with the remainder other or mixed race. *See* Exhibit 1. But without conscious choices by redistricting officials to alter district boundaries through the current process, white residents will retain a majority in *six of seven* Baltimore County councilmanic districts – *nearly 86 percent*. While creation of a single majority-Black district was arguably sufficient to achieve compliance with the Voting Rights Act in 2001, this is no longer true today, when the Black VAP has increased to nearly 30 percent, and the total BIPOC VAP is just shy of 45 percent. *Id.* The current system offers BIPOC voters a fair opportunity to elect candidates of their choice just 14.3 percent of the time – that is, exclusively in District 4 – far lower than is justified.

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the majority also votes as a bloc "usually to defeat the minority's preferred candidate." The other Senate factors "are supportive of, but not essential to, a minority voter's claim." *Id.* at 48 n.15. In *Johnson v. De Grandy*, 512 U.S. 997, 1018 (1994), the Court confirmed the *Gingles* analysis and held that the ultimate determination of a Section 2 violation is to "be assessed 'based on the totality of circumstances.'" The analysis under *Gingles* and *Johnson* has been adopted and consistently applied in the Fourth Circuit, the federal circuit in which Maryland lies. *E.g.*, *United States v. Charleston County*, 365 F.3d 341 (4th Cir. 2004).

<sup>4</sup>Instead of discussing the obvious benefits gained through racial diversification of the County's population and government and how to capitalize on these gains through redistricting, Commission members have focused questions on why the County's white population is dropping in proportion to its Black population, where white people might be going, and where new Black residents are coming from. *See, e.g.*, August 24, 2021 Redistricting Commission Meeting, video available at <http://baltimorecountymd.ig2.com/Citizens/Calendar.aspx?View=List>, starting at 24:50 minute mark (*e.g.*, querying about "outflow of white citizens"; "Where did they go?"; "In my almost century of living here, I have never seen such an outflow of white citizens to other subdivisions."; "It doesn't surprise me that there's an outflow, but 70,000 people? Wow."; "Baltimore City lost a lot of African Americans. Did most of them come here?")

<sup>5</sup> Because it is well settled in the case law that voting age data should be used in redistricting, *e.g.*, *City of Rome v. United States*, 446 U.S. 156, 186 n.22 (1980) (voting age population statistics are "probative because they indicate the electoral potential of the minority community"); *Ketchum v. Byrne*, 740 F.2d 1398, 1402 (7th Cir. 1984), *cert denied*, 471 U.S. 1135 (1985); *Romero v. City of Pomona*, 665 F.Supp. 853, 864 (C.D. Cal. 1987); *City of Port Arthur, Texas v. United States*, 517 F. Supp. 987, 1015-18 (D.D.C. 1981)(three-judge court), our analysis and proposal focus on voting age data, rather than general population statistics.

Given current demographics, continuation of a system with just one majority-Black district would mean unlawfully “packing” BIPOC voters into District 4 and/or “cracking” them among other districts so they remain in the minority, affording them “less opportunity than other members of the electorate, to participate in the political process and to elect representatives of their choice.”<sup>6</sup> See, e.g., *Voinovich v. Quilter*, 507 U.S. 146 (1993); *Hall v. Virginia*, 385 F.3d 421, 429 n.12 (4<sup>th</sup> Cir. 2004). Where, as here, the BIPOC share of the County’s population justifies creation of multiple opportunity districts, and residential patterns within the community make it possible to create these districts, the Voting Rights Act *requires* it. **The redistricting plan the Commission currently intends to recommend to the County Council fails to meet this requirement.**

Accordingly, we make an alternative proposal<sup>7</sup> that would meet Voting Rights Act requirements by significantly expanding opportunities for BIPOC voters, commensurate with their increasing share of the County population.

### **The NAACP-ACLU Proposal**

There is no single way to create a redistricting plan that complies with the Voting Rights Act, and County officials will doubtless consider various options. While illustrative, our proposal shows it is easily possible to craft a racially fair plan achieving Voting Rights Act compliance, while still adhering to traditional redistricting principles, and satisfying all other legal and political requirements. **This is of critical importance for legal purposes.** All of the districts in our proposed plan are contiguous, and population totals are properly apportioned among the seven districts. No two incumbent commissioners running for reelection<sup>8</sup> are paired in any remedial district, meaning that this plan respects the existing Councilmembers’ interest in incumbency protection. And, *most important legally*, our plan creates two opportunity districts affording Black voters a solid opportunity to elect representatives of their choice, plus a third “swing” or “influence” district affording both white and BIPOC voters a realistic chance to elect their chosen candidates.

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<sup>6</sup> As the Supreme Court explained in *Voinovich*,

How such concentration or “packing” may dilute minority voting strength is not difficult to conceptualize. A minority group, for example, might have sufficient numbers to constitute a majority in three districts. So apportioned, the group inevitably will elect three candidates of its choice, assuming the group is sufficiently cohesive. But if the group is packed into two districts in which it constitutes a super-majority, it will be assured only two candidates. As a result, we have recognized that “[d]ilution of racial minority group voting strength may be caused” either “by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority.”

507 U.S. at 153-54, *quoting Gingles*, 478 U.S., at 46, n. 11.

<sup>7</sup>In conducting this analysis and creating this proposal, we worked with demographer William S. Cooper, who has more than three decades of experience doing this work, lending enormous expertise to our efforts.

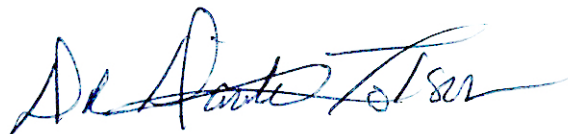
<sup>8</sup> District 1 Councilman Thomas Quirk has announced he is not running for reelection, so his home address is not relevant for redistricting purposes.

The NAACP/ACLU plan includes districts with demographics detailed in Exhibit 1, and mapped in Exhibits 2-3. Under our proposal, Districts 1 and 4 would each include a majority of Black voting age population, with District 1 being 54.12 percent Black VAP, 68.86 percent total BIPOC VAP; and District 4 being 53.14 percent Black VAP, and 68.64 percent total BIPOC VAP. District 6 would be almost evenly divided between white and BIPOC populations, with 48.96 percent white VAP, 35.48 percent Black VAP and 51.04 percent total BIPOC. As such, our proposal affirmatively addresses concerns about minority vote dilution and racial polarization, providing all voters and candidates in the County opportunities to participate in the election process and elect representatives of their choice, commensurate with their numbers in the population. This makes our plan a superior option over that currently proposed by the Commission which fails to meet these legal requirements.

For these reasons, we strongly urge you to reconsider your proposal and take the time necessary to reassess its obvious flaws and prioritize Voting Rights Act compliance before sending any redistricting plan on to the County Council. If you would like to discuss this matter, please contact us at 410-889-8550 x120, and we will be happy to make arrangements to do so.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dr. Danita Tolson".

Dr. Danita Tolson  
President, Baltimore County NAACP

A handwritten signature in brown ink, appearing to read "Deborah A. Jeon".

Deborah A. Jeon, Esq.  
Legal Director, ACLU of Maryland

cc: Baltimore County Council  
[countycouncil@baltimorecountymd.gov](mailto:countycouncil@baltimorecountymd.gov)

James R. Benjamin, Jr., Esq.  
[jrbjbenjamin@baltimorecountymd.gov](mailto:jrbjbenjamin@baltimorecountymd.gov)