

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)**

Caroline County Branch of the
National Association for the
Advancement of Colored People, et al.,

Plaintiffs,

v.

Town of Federalsburg, Maryland,

Defendant.

Civil Action No.

SECOND DECLARATION OF WILLIAM S. COOPER

1. I previously executed a Declaration on March 6, 2023, that was submitted by the Plaintiffs in this action in support of their Motion for Preliminary Injunction. (ECF 8-3). In preparing this supplemental Declaration, I reviewed Defendant Town of Federalsburg's Opposition to the Plaintiffs' Motion for Preliminary Injunction (ECF 16) including the accompanying resolutions through which the Town proposes to implement reform of the Town's election system for its upcoming 2023 election. I submit this Second Declaration to supplement my prior testimony in light of the Defendant's proposal.

A. Defendant Does Not Dispute Plaintiffs' Showing of Liability and Irreparable Harm

2. As an initial matter, I note that in responding to Plaintiffs' Motion, the Town makes no showing whatsoever to dispute or respond to Plaintiffs' proof that the Town's election system violates Section 2 of the Voting Rights Act. That is, in support of their motion, Plaintiffs submitted testimony from Black voters about their experience of racism in Federalsburg, as well as analysis from me and Professor Kassra Oskooii showing satisfaction of all factors set forth by the U.S. Supreme Court in *Thornburg v. Gingles* to establish that the Town's longstanding at-

large, staggered term election system violates Section 2. The Town offered no countervailing proof to dispute that showing, nor did it even mention it.

3. Instead of disputing the Plaintiffs' proof under *Gingles* that their rights to equal participation in the Town's political process have been violated, the Town claims that it is the process of addressing this violation by implementing election reform through its legislative process. However, as described below,¹ the Town's proposal fails to remedy the minority vote dilution established by the Plaintiffs.

B. Shortcomings in the Town's Resolution as a Remedial Plan

4. Resolution 23-04, enacted by the Town of Federalsburg on April 3, 2023 (but not final unless/until it survives a referendum period) states as follows:

The Town shall be divided into two (2) legislative districts for the election of members of the Council. Each legislative district shall contain two (2) Councilmembers who shall be elected by the registered voters of that legislative district only. The legislative districts shall be established on a map adopted by Resolution by a majority of the Mayor and Council.

- (i) Each legislative district shall consist of adjoining territory, be relatively compact in form, and include substantially the same population as other districts. Due regard shall be given to all constitutional standards in creating the legislative districts.
- (ii) From time to time as based on the latest U.S. Census Bureau data and after public hearing, the Mayor and Council may reestablish boundaries of the legislative districts for elections of the members of the Council.

5. While proposing to replace the at-large election structure previously in place in the Town with a system of two, two-member districts, the Resolution does not purport to adopt any specific election plan or map, and does not require that any plan ultimately adopted through further

¹ An additional concern for the Plaintiffs relates to the Town's use of its legislative process to accomplish reform in a way that leaves the remedy subject to referendum. Although I share this concern, because this is a legal issue outside my expertise, I will not address it here.

resolution provide the Town's Black voters with equal opportunity to participate in elections. That is, nothing in Resolution 23-04 requires or contemplates that the plan adopted by subsequent resolution include districts that afford Black voters a fair opportunity to elect candidates of their choice to the Town Council. As such, it is my opinion that the Resolution does not on its face provide a sufficient remedy for minority vote dilution as established by the Plaintiffs.

6. A second, separate inadequacy exists on the face of the Resolution even if it did incorporate a racial fairness requirement and an actual election plan establishing districts that would ensure Black voters opportunities to elect candidates of their choice proportional to their numbers in the population. That is, through its retention of staggered election terms, the Resolution would afford Black voters only half the election opportunities they are due this year, putting off for over two years the second half of the remedy to which they are entitled. This plan would almost inevitably delay full integration of the Council and would allow the white domination of government that the Plaintiffs are challenging to continue until yet another future election. Specifically, the Resolution states:

On the fourth Tuesday of September in 2023 an election shall be held between the hours of 7:00 a.m. and 7:00 p.m. under this Charter, for the election of the Mayor and two (2) Councilmembers each from a different district. On the fourth Tuesday in September 2025 an election shall be held between the hours of 7:00 a.m. and 7:00 p.m. under this Charter for the election of two (2) Councilmembers each from a different district.

Resolution at Section C2-1 (a). This is unfair, given that Federalsburg's Black community is sufficiently large, geographically compact and politically cohesive to elect two council members at present but has historically been completely shut out of election opportunities. Indeed, as I stated in my initial declaration, Federalsburg's Black community has been sizable enough for more than two decades to elect candidates of choice to local office, but has been foreclosed from doing so by the Town's discriminatory election system. *See* ECF 8-3, Cooper Decl. ¶¶19-22.

Election reform now to bring the system into compliance with the Voting Rights Act can and should allow the Town's Black voters to fully realize their right to *equal* voting opportunities in the 2023 election. The Town's Resolution would not do this.

7. I have some experience in a case similar to this in which a local government unsuccessfully sought to use staggering to put off full integration of its City Council with assurances that full compliance with the Voting Rights Act would be achieved in the future. *Montes v. City of Yakima*, No. 12-CV-3108-TOR, 2015 WL 11120964 (E.D. Wash. Feb. 17, 2015), *reconsideration denied by* 2015 WL 11120965 (E.D. Wash. Mar. 19, 2015). I was the demographer for the plaintiffs in the *Montes* case, in which Latine voters challenged the City's at-large, staggered term election system for its seven-member council. In seeking to determine how best to remedy the discrimination inherent in the City's election system, the court reviewed options submitted by the City first, then from the plaintiffs.² The City's proposed plan included a hybrid plan including both at-large and district seats, employed "limited voting", and retained staggering for all future elections. The plan I created for the plaintiffs included seven single member districts and eliminated staggering, at least for the initial election scheduled for 2015.

8. As in Federalsburg, the City of Yakima's existing use of staggering in its election system meant that in the 2015 election – the first to be held under the new plan – only some candidates would be up for election, while other incumbents would remain in office until 2017. In rejecting the City's proposal and accepting the plaintiffs' plan instead, the court found this delay in the City's full compliance with the VRA to be unacceptable. What was particularly striking about the court's decision there was that in rejecting the City's proposed remedy as too

² A third election plan submitted by an intervenor also evaluated and rejected.

little, too late, the court not only rejected the use of staggering in the upcoming election,³ but ordered that all seven positions be up for election in 2015 – even though that meant cutting short the terms of some incumbents whose terms were not set to expire until 2017. In so doing, the court found that the incumbents had little claim to continue in office because they had been elected in the first place under an election system that denied equal voting rights to Latine voters.

C. Plaintiffs’ Proposed Remedial Plans Would Bring the Town Fully Into Compliance with the Voting Rights Act This Year.

9. As set forth in my March 6 Declaration, the Plaintiffs have proposed two alternative remedial Plans that I created, either of which would fully protect Black voters and bring the Town into compliance with the Voting Rights Act in 2023. ECF 8-3, at ¶¶ 39-50. Defendant has not disputed this. Each of Plaintiffs’ plans would allow the Town’s Black voters opportunities equal to those of white residents to elect two candidates of their choice to the Town’s four-member council, and to do so in this year’s election. In my opinion, either of these plans is far superior to the Town’s vague and non-binding Resolution – which even under a best-case scenario employs staggering in a way that limits Black voters to only half a remedy for Federalsburg’s Section 2 violation, allowing white residents to continue to dominate the Town’s government for more at least another election cycle into the future.

10. Moreover, unlike in the *Montes* case where the court found it necessary to eliminate staggering and cut incumbent officials’ terms short to achieve a full remedy during the 2015 election, Plaintiffs’ remedial plans can be implemented in 2023 without such disruption. That is, if the four-district plan is chosen, 2023 elections can be held in the plan’s two majority

³ The court did not permanently eliminate staggering for future elections, and the *Montes* plaintiffs did not ask that it do so. Rather, the Court indicated that the City was free to resume staggering if it chose to do so after the 2015 election was carried out in an election system that fully cured the City’s VRA violation.

Black districts in order to bring the Town into compliance with the Voting Rights Act. If the plan including two two-member districts is selected, this year's election can be structured to elect two Council members from the one district that is majority Black in population. In this way, the staggering the Town seeks to retain can remain in place, while also providing Federalsburg's Black voters the full and fair election opportunities they are due and bringing the Town into compliance with the Voting Rights Act in this bicentennial election year.⁴

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

May 1, 2022

A handwritten signature in cursive script that reads "William S. Cooper". The signature is written in black ink and is positioned above a horizontal line.

William S. Cooper

⁴ As in *Montes*, the Town could alter this arrangement in future elections, once its existing Voting Rights Act is cured.