

**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. SAG-23-0484

DECLARATION OF WILLIAM S. COOPER

I. INTRODUCTION

1. I, William Cooper, am over 18 years of age and am competent to testify. I have a B.A. degree in economics from Davidson College. For more than three decades I have worked as a private consultant serving as a demographic and redistricting expert for civil rights organizations and governmental entities, employed here as an expert for the Plaintiffs. I am compensated at a rate of \$150 per hour for my work.

A. Redistricting Experience

2. I have testified at trial as an expert witness on redistricting and demographics in federal courts in about 50 voting rights cases in 19 states, with most of these lawsuits resulting in changes to statewide legislative boundaries or local election district plans.

3. Since 2011, based in part on my testimony, federal courts have found a Section 2 violation based on the first factor (“Gingles 1”) in *Thornburg v. Gingles*, 478 U.S. 30 (1986) (discussed further below) in the following cases: *Montes v. City of Yakima, Washington*, 40 F.Supp.3d 1377 (E.D. Wash. 2014); *Pope v. Albany County, New York*, 94 F.Supp.3d 302

(N.D.N.Y. 2015); *NAACP v. Ferguson-Florissant School District, Missouri*, 201 F.Supp.3d 1006 (E. D. Mo. 2016); *Thomas v. Bryant*, 366 F.Supp.3d 786 (S.D. Miss. 2019), *Navajo Nation v. San Juan County, Utah*, No. 18-4005 (10th Cir. 2019), and *National Association for the Advancement of Colored People, Spring Valley Branch et al v. East Ramapo Central School District et al*, 462 F. Supp 3d 368 (S.D.N.Y. 2020); *Baltimore County Branch of the NAACP v. Baltimore County, Maryland*, 2022 WL 657562 (D. Md. Feb. 22, 2022).

4. In 2016, two redistricting plans that I developed for consent decrees in Section 2 lawsuits in Georgia were adopted – *Georgia NAACP v. Fayette County Bd. of Com’rs*, 118 F. Supp 3d 1338 (N.D. Ga. 2015) and *NAACP v. Emanuel County Bd. of Com’rs*, Civil Action No. 16-0021 (N.D.Ga. 2016).

5. In 2017, I served as a redistricting consultant to the State of Maryland in *Benisek v. Lamone*, 241 F.Supp. 3d 566 (D.Md. 2017) (three-judge-court). I filed a declaration and was deposed in that lawsuit.

6. I also served as a redistricting consultant to the plaintiffs in *Alabama State NAACP v. City of Pleasant Grove* in 2018 and 2019.

7. In 2022, I testified as an expert in redistricting and demographics in six cases challenging district boundaries under Section 2 of the Voting Rights Act: *Caster v. Merrill*, No. 21-1356-AMM (N.D. Ala.), *Pendergrass v. Raffensperger*, No. 21-05337-SCJ (N.D. Ga.), *Alpha Phi Alpha Fraternity v. Raffensperger*, No. 21-05339-SCJ (N.D. Ga.), *Baltimore County Branch of the NAACP v. Baltimore County*, No.21-cv-03232-LKG (Md.), *Christian Ministerial Alliance v. Hutchinson* No. 4:19-cv-402-JM (E.D. Ar.), and *Robinson v Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La.). I also testified at trial in 2022 as an expert on demographics in *NAACP v. Lee*, No. 4:21cv187-MW/MAF (N.D. Fla.), a case involving recent changes to Florida election law.

8. Since the release of the 2020 Census, county commission-level plans I developed as a private consultant have been adopted by local governments in San Juan County, Utah, Bolivar County, Mississippi, and Washington County, Mississippi. In addition, a school board plan I developed was adopted by the Jefferson County, Alabama Board of Education subsequent to my expert work in the case of *Stout v. Jefferson County Board of Education*, No. 2:65-cv-00396-MHH (N.D. Ala.).

9. I have worked with the ACLU of Maryland on local redistricting plans in Maryland on numerous occasions, including drafting illustrative plans submitted by the ACLU to municipal and county officials in Baltimore County (2022), Chestertown (2019), Salisbury (2015), Cambridge (2011), Annapolis (2011), and Somerset County (2011). Usually, we worked collaboratively with government officials, and plans I developed either were adopted outright or influenced the plans ultimately adopted, most recently in Chestertown.

10. I also provided consulting services to the ACLU of Maryland in the mid-2000s regarding prison gerrymandering in Somerset County. This project was an important catalyst leading to the 2010 passage of Maryland Assembly of the State's first-in-the-nation's *No Representation Without Population Act* to provide more accurate representation in government. By counting persons incarcerated in state prisons in their home districts rather than their place of incarceration for redistricting purposes, this law did away with artificial inflation of voting population in districts where prisons are located, and has since been followed in numerous other states and local governments.

11. I was the demographer for the plaintiffs in *Cane v. Worcester County*, 840 F. Supp. 1081 (D. Md. 1994), a Section 2 case from the Eastern Shore, in which the Court ruled, in part based on my testimony, that the County's election system illegally diluted the Black vote, in

violation of the Voting Rights Act. Specifically, I testified, and the District Court found, that Worcester County’s Black community was sufficiently large and geographically compact to create a majority in a single-member-district, so as to satisfy the first precondition to Section 2 liability established by the Supreme Court in *Thornburgh v. Gingles*, 478 U.S. 30 (1986).

12. For more information on my testimony as an expert witness and experience preparing and assessing proposed redistricting maps for Section 2 litigation and other efforts to promote compliance with the Voting Rights Act of 1965, see the summary of my redistricting work in **Exhibit A**.

B. Purpose of Declaration

13. The attorneys for the Plaintiffs in this case asked me to determine four things:

- (a) Whether it is possible to create two reasonably compact and contiguous districts with a Black¹ voting-age majority population (“BVAP”) under a four single-member district plan for Federalsburg Town Council, so as to satisfy *Gingles* 1; and
- (b) Whether it is possible to create one reasonably compact and contiguous district with a Black voting-age majority population (“BVAP”) under a two two-member district plan for Federalsburg Town Council, so as to satisfy *Gingles* 1; and
- (c) To compare measures of socio-economic status for Blacks and non-Hispanic Whites in Federalsburg, as reported in the *American Community Survey 5-Year Estimates* dataset produced by the U.S. Census Bureau (“Census Bureau”), so as to determine if Black residents of Federalsburg suffer continuing effects of past discrimination in their socio-economic status, a factor identified by the Senate as significant in assessing liability under the Voting Rights Act.

¹ In this declaration, “Black” and “African American” are synonymous, as are “Latino” and “Hispanic.” White and non-Hispanic White are also synonymous.

Unless otherwise noted, “Black” means Any Part Black. “BVAP” means Any Part Black voting age population, i.e. voting age persons who self-identified in the 2020 Census as single-race Black or Black plus one or more other races, including Black Hispanics.

It is my understanding that following the U.S. Supreme Court decision in *Georgia v. Ashcroft*, 539 U.S. 461 (2003), the “Any Part” definition is an appropriate Census classification to use in most Section 2 cases.

- (d) To compare measures of socio-economic status of the Black population in Federalsburg with the Black population in the nine-county Eastern Shore region.

C. Expert Summary Conclusions:

14. Based on my analysis, my conclusions, which I explain below, are as follows:
- Black residents in Federalsburg are sufficiently numerous and geographically compact to comprise two districts with majority-Black voting age populations in a four-district plan.
 - Black residents in Federalsburg are sufficiently numerous and geographically compact to comprise one two-member district with a majority-Black voting age population in a two-district plan.
 - As reported in the 5-Year 2015-2019 American Community Survey, in Federalsburg, non-Hispanic White people significantly outpace Black people across most key indicators of socio-economic well-being.
 - As reported in the 5-Year 2015-2019 American Community Survey, the Black population in Federalsburg and the Black population throughout the Eastern Shore trail their White counterparts in terms of socio-economic well-being.

D. Methodology and Sources

15. **Exhibit B** describes the sources and methodology I have employed in the preparation of this report. Briefly, I used the *Maptitude for Redistricting* software program as well as data and geographic shapefiles from the U.S. Census Bureau.

16. For the calculation of ideal population size, as it pertains to districts in the plaintiffs' illustrative election plans, I rely on the 2020 prison-adjusted dataset prepared by the Maryland Department of Planning, as required by the *No Representation Without Population*

*Act.*² Elsewhere all population references are based on the 2020 Census PL94-171 Redistricting File published in electronic format by the Census Bureau in August 2021.

E. Organization of Declaration

17. The remainder of this declaration is organized as follows: **Section II** reviews Federalsburg demographics and socio-economic characteristics, as well as placing those characteristics for Federalsburg within the context of the larger Eastern Shore. **Section III** presents two illustrative plans that I prepared, based on the 2020 Census. Illustrative Plan 1 contains two majority-Black districts in a single-member four-district plan. Illustrative Plan 2 contains one majority-Black district in a two-district plan, with two council members elected from each district.

II. DEMOGRAPHIC PROFILE OF FEDERALSBURG

A. Location and 2020 Census Population

18. Federalsburg is a relatively small town on Maryland’s Eastern Shore, located in the southern part of Caroline County near the Dorchester County line.

19. It is my understanding that there has never been a Black town council member in Federalsburg. The Black population in Federalsburg has grown in recent years, and there has been a sizable Black community in town for decades. Under the 2000 Census, Federalsburg had a population of 2,620, of whom 37% were Black – sufficient to create a single-member majority-Black district in a four-district plan.

20. According to the 2020 Census, Federalsburg has a total population of 2,833.³ As shown in **Figure 1** (on the next page), non-Hispanic Whites (46.8%) and African Americans

² <https://redistricting.maryland.gov/Pages/data.aspx>

(47%) constitute an almost equal share of the population. Persons of other races account for the remaining 6.1% of the 2020 population. Latinos, who may be of any race, represent 4.2% of the overall population. Reflecting an older population demographic, 51.2% of the voting age population is NH White, with Black persons of voting age comprising 43%.

Figure 1

**Federalburg – 2020 Census
Population by Race and Ethnicity**

	2020 Population	Percent	2020 Voting Age Population	Percent
Total Population	2,833	100.00%	2,019	100.00%
NH White	1,327	46.84%	1,034	51.21%
Total Minority	1,506	53.16%	985	48.79%
Latino	120	4.24%	79	3.91%
NH Black	1,221	43.10%	819	40.56%
Single-race Black	1,237	43.66%	830	41.11%
Any Part Black	1,332	47.02%	869	43.04%

21. The Black population in Federalburg is concentrated in a geographically compact area around the outskirts of the downtown area, while the White population lives primarily in a geographically compact area in the center of town.

22. Decennial Census data shows sparse growth but increasing diversification in Federalburg over the past 20 years, with the Black, Indigenous, People of Color (BIPOC) population increasing from 41 percent in 2000 to 53 percent in 2020, and the Black population increasing from 37 percent to 47 percent over the same period. Meanwhile, the non-Hispanic White population dropped from 59 percent in 2000, to 54 percent in 2010, and then to 47 percent in 2020.

³ The prison-adjusted total population for Federalburg, which takes into account the home addresses of persons incarcerated in state prisons, is 2,858.

B. Socio-economic Characteristics – Racial and Ethnic Disparities

23. As detailed below, non-Hispanic Whites in Federalsburg consistently outpace African Americans across a broad range of socio-economic measures, as reported in the *5-Year 2015-2019 American Community Survey* (“ACS”).⁴ These disparities are summarized below and depicted with further detail in the charts and tables found in **Exhibit C**, which highlight Black, Latino, and White categories.⁵

(a) Education

24. Of persons 25 years of age and over in Federalsburg, 29.8% of Black people have not finished high school. By contrast, 20.8% of their White counterparts are without a high school diploma. See **Exhibit C, pp. 21-22**.

25. For ages 25 and over in Federalsburg, 6.7% of Black people have a bachelor’s degree or higher – about one-half of the 13.4% rate achieved by White people. See **Exhibit C, pp. 21-22**.

(b) Housing

26. Over three-quarters of Black households (83.5%) rent their residences in Federalsburg, as compared to a rental rate of about two-fifths (42.2%) for White households. See **Exhibit C, pp. 53-54**.

⁴ The 2015-2019 ACS is the last time period in which the socio-economic data was unaffected by the pandemic. The ACS is an ongoing survey conducted by the U.S. Census Bureau that gathers information annually about jobs and employment, educational attainment, housing, and other topics.

⁵ In this section, for simplicity, the term “White” refers to non-Hispanic White people. The term “Black” refers to single-race Black people, including people who identify as Black Hispanics. There is not a separate category for non-Hispanic Black or Any Part Black in the 5-Year American Community Survey.

27. About 6.6% of Black households in Federalsburg live under crowded conditions (defined by the Census Bureau as more than one person per room), as compared to 1.5% of White households. See **Exhibit C, pp. 55-56.**

(c) Income

28. In Federalsburg, Black median household income is \$28,427 – about 60% of the \$47,411 median income of White households. See **Exhibit C, pp. 32-33.**

29. Black people in Federalsburg experience a poverty rate that is about two and a half times the poverty rate for White people. Nearly one-third (30.3%) of Black people live below the poverty line, as compared to 12.2% of White people. See **Exhibit C, pp. 28-29.**

30. Reflecting the high Black poverty rate, more than twice as many Black households rely on food stamps compared to White households, with 69.2% of Black households participating in the Supplemental Nutrition Assistance Program (SNAP), as compared to 30.3% of White households in Federalsburg. See **Exhibit C, pp. 45-46.**

(d) Employment

31. The Black unemployment rate (for the working-age population ages 16-64, expressed as a percent of the civilian labor force) is 14.4%, which is nearly three times the 5.0% unemployment rate recorded for Whites. See **Exhibit C, pp. 47-50.**

32. Just 9.3% of Black people in Federalsburg are employed in management or professional occupations, as compared to 24.1% of White people. See **Exhibit C, pp.51-52.**

C. Socio-economic Characteristics - Federalsburg vis-a-vis the Eastern Shore

33. Federalsburg is near the geographic center of Maryland's Eastern Shore.⁶ It is therefore not surprising that the Black-White socio-economic disparities in Federalsburg generally mirror disparities found in the nine-county Eastern Shore region as a whole.⁷

(a) Education

34. Of Black persons 25 years of age and over, 29.8% in Federalsburg have not finished high school compared to 17.8% on the Eastern Shore. The nine percentage point Black-White diploma gap in Federalsburg (29% vs. 20%) is about the same as the Shore-wide Black-White diploma gap – 17.8% versus 8.6%. Compare **Exhibit C, pp. 21-22** with **Exhibit D, p. 21-22**.

35. Of Black persons 25 years of age and over, 6.7% in Federalsburg have a bachelor's degree or higher. Black persons with a college diploma in Federalsburg are at just half of the White college graduate rate (6.7% vs/ 13.4%), as is the case for the Eastern Shore as a whole – 15.5% Black vs. 30% White. Compare **Exhibit C, pp. 21-22** with **Exhibit D, p. 21-22**.

(b) Housing

36. In Federalsburg, 16.5% of Black households are homeowners, as compared to a 40.3% Black homeownership rate on the Eastern Shore. As in Federalsburg, the Black-White homeownership gap on the Eastern Shore is wide (40.3% Black vs. 76.8% White). Compare **Exhibit C, p. 52-53** with **Exhibit D, pp. 45-46**.

⁶ The Eastern Shore Counties of Cecil, Kent, Queen Anne's, and most of Caroline lie to the north of Federalsburg. Talbot is to the west and Dorchester, Wicomico, Worcester, and Somerset are to the south.

⁷ The Census Bureau does not publish ACS regional data for the Eastern Shore as a whole. County-level data reported by the Census Bureau as median or mean averages, per capita, or in dollar amounts cannot be summed. In **Exhibit D**, I summed county-level data for the nine Eastern Shore counties, where appropriate.

(c) *Income*

37. The poverty rate for Black people in Federalsburg (30.3%) is higher than the Shore-wide Black poverty rate (21%). As in Federalsburg, the Black poverty rate on the Eastern Shore is about two and half times the White poverty rate (21% Black vs. 8.7% White). Compare **Exhibit C, pp. 28-29** and **Exhibit D, pp. 28-29**.

(d) *Employment*

38. The Black unemployment rate (for the working-age population ages 16-64, expressed as a percent of the civilian labor force) in Federalsburg is 14.4%, which is higher than the Shore-wide Black unemployment rate of 10.1%. As in Federalsburg, the Black unemployment rate on the Eastern Shore is more than double the White unemployment rate (10.9% Black vs. 5.1% White). Compare **Exhibit C, pp. 47-50** and **Exhibit D, pp. 47-50**.

III. PLAINTIFFS' ILLUSTRATIVE PLANS

A. Plan Development Background

39. I developed two draft plans in consultation with the attorneys for the Plaintiffs in the spring of 2022. These plans were submitted to the Town by the Plaintiffs in August of 2022, and I presented both plans at the October 17, 2022 meeting of the Town Council (via a remote video Zoom session). I also participated in a January 23, 2023 town hall meeting (via a remote video Zoom session), where I once again described the draft plans.

40. At both public meetings, I explained that the draft plans were just that – “draft” – and that there would be alternative ways to draw either a two-district plan (one majority-Black district) or a four-district plan (two majority-Black districts).

41. The two illustrative plans described below demonstrate that the Black population in Federalsburg is “sufficiently large and geographically compact” to meet the first prong of the so-called “*Gingles* test” established by the U.S. Supreme Court for analysis of Section 2 claims.

42. Both illustrative plans that I have developed adhere to traditional redistricting principles, including that they (a) satisfy Constitutional one-person one-vote requirements, (b) are reasonably shaped, compact and contiguous, (c) respect communities of interest, and (d) prevent dilution of minority voting strength.

43. The majority-Black districts in both illustrative plans encompass predominantly Black neighborhoods concentrated in a semi-circular fashion around the downtown area. Illustrative Plan 1 contains four single-member districts, with two majority-Black districts. Illustrative Plan 2 contains two two-member districts, with one majority-Black district.

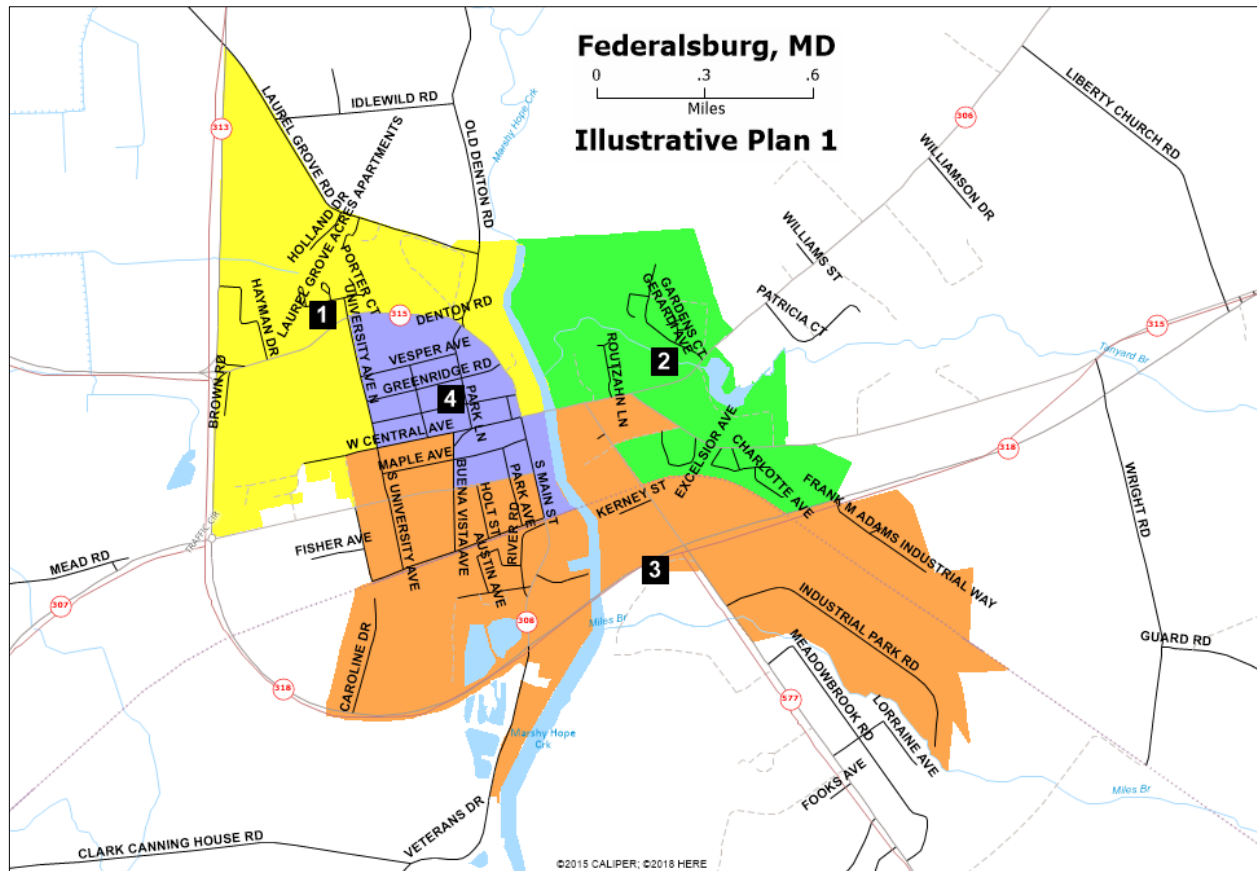
B. Plaintiffs’ Illustrative Plan 1

44. The map in **Figure 2** shows Plaintiffs’ Illustrative Plan 1. A higher resolution version of the Figure 2 map is in **Exhibit E-1**.

45. The map in **Figure 2** shows Plaintiffs’ Illustrative Plan 1. A higher resolution version of the Figure 2 map is in **Exhibit E-1**.

Figure 2

Plaintiffs’ Illustrative Plan 1



46. **Figure 3** shows summary population statistics for Illustrative Plan 1. **Exhibit E-2** contains detailed 2020 population statistics by district.

Figure 3

Illustrative Plan 1 Population Summary

District	Prison Adjusted Pop.	% Dev.	Population	18+ Pop	% 18+ AP Black	% 18+ NH White
1	718	0.42%	709	484	66.53%	30.37%
2	716	0.14%	709	514	57.78%	38.52%
3	711	-0.56%	705	514	29.18%	63.62%
4	713	-0.28%	710	507	19.72%	71.40%

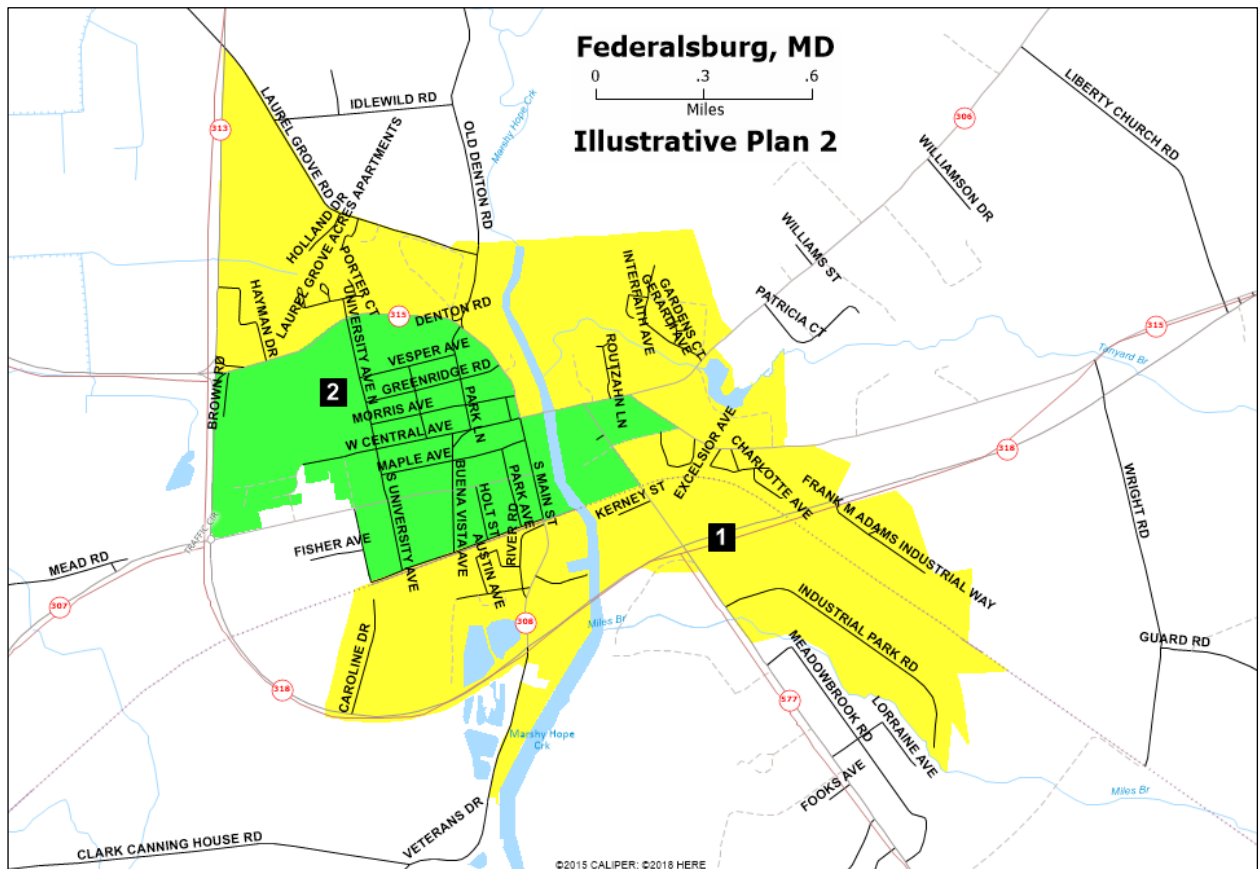
47. The overall deviation (positive plus negative) from the ideal district size of 715 in Illustrative Plan 1 is just under 1%. The two districts with majority Black voting age population are District 1 which is 66.5% BVAP, and District 2 which is 57.8% BVAP.

B. Plaintiffs' Illustrative Plan 2

48. The map in **Figure 4** shows Plaintiffs' Illustrative Plan 2. A higher resolution version of the Figure 4 map is in **Exhibit F-1**.

Figure 4

Plaintiffs' Illustrative Plan 2



49. **Figure 5** shows summary population statistics for Illustrative Plan 2. **Exhibit F-2** contains detailed 2020 population statistics by district.

Figure 5

Illustrative Plan 2 Population Summary

District	Prison Adjusted Pop.	% Dev.	Population	18+ Pop	% 18+ AP Black	% 18+ NH White
1	1420	-9	-0.63%	996	66.67%	29.72%
2	1438	9	0.63%	1023	20.04%	72.14%


50. The overall deviation (positive plus negative) from the ideal district size of 1,429 in Illustrative Plan 2 is 1.3%. District 1 is 66.7% BVAP.

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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:

Date: March 6, 2023



William S. Cooper