

**UNITED STATES DISTRICT COURT
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-21-03232

**PLAINTIFFS' RESPONSE TO DEFENDANT BALTIMORE COUNTY'S
SUPPLEMENTAL DECLARATIONS**

During the March 21, 2022, evidentiary hearing in this case, the Court requested that Defendant Baltimore County submit evidence to support its claim that the County's remedial District 2 is a "crossover" district. Yesterday afternoon, the County submitted new supplemental declarations (ECF 74), but those declarations amount to little more than anecdote and inapposite statistics; the County has still not presented any evidence that white voters in District 2 (or anywhere else in the County) will "cross over" to vote for Black candidates of choice. Even if the County's lack of evidence were not dispositive—and it should be—the empirical statistics detailed in Dr. Barreto's attached declaration conclusively establish that the County's remedial District 2 does not come close to functioning as a crossover district.

Instead of responding to the Court’s inquiry, the two declarations the County has presented suggest (at best) only that (i) Black and “Jewish”¹ voters in the County’s remedial District 2 will vote for a white Democrat in a contest against a white Republican, and (ii) they voted for a Black candidate in a single, *uncontested*, nonpartisan Board of Education election.

First, Dr. Barreto’s statistical analysis confirms that there is not sufficient crossover by white voters in the precincts of the County’s remedial District 2 to provide Black citizens a reasonable opportunity to elect candidates of choice. According to ecological inference analysis, in the 2016 *Democratic primary* (where, by definition, all voters belong to the same party), 97.2% of white citizens in those precincts voted for the white candidate Chris Van Hollen, while only 2.8% voted for Black candidate Donna Edwards. Black citizens supported Donna Edwards at a rate of 81.2%—an undisputed indicator that she was the Black candidate of choice. Barreto Fifth Decl. ¶¶ 11, 12. This stunning 2.8% white vote in the County’s remedial District 2 demonstrates extremely strong racially polarized voting -- the *opposite* of crossover voting.²

In another example of very strong racially polarized voting, 86.7% of Black voters in the County’s remedial District 2 voted in favor of Black Democrat Ben Jealous in November 2018. In contrast, 81.2% of white voters in the County’s remedial District 2 voted in favor of white Republican Larry Hogan. Barreto Fifth Decl. ¶ 10. Those figures show whites voting in high percentages against Black candidates of choice; they are *not* crossing over.

¹ Dr. Gimpel suggests he sources his claim about “Jewish voters” to the “State of Maryland voter files.” ECF 74-2 ¶ 3. Of course, Maryland voter files do not contain information about religious affiliation, as that would be unconstitutional.

² In his latest analysis, Dr. Gimpel asserts that his “ecological regression” controls for “the share of Democratic party registrants in each precinct.” ECF 74-2 ¶ 11. This makes no sense as applied to the Edwards-Van Hollen race, which was a Democratic primary where all voters were affiliated with the Democratic party. And as Dr. Barreto discusses, the academic literature and courts find that controlling for party affiliation is an inappropriate effort to “explain away” the role of race in voting patterns. Barreto Fifth Decl. ¶¶ 14-15.

Moreover, the County's prior submission (ECF 67 at 14) asserted that changing district lines will not impact election performance because 75% of County voters are registered as Democrats (according to Dr. Gimpel, most of the County's Republicans are concentrated in the County's north and east sides, while, on the west side, over 65% of voters are registered as Democrats and approximately 20% as independents or third-party; ECF 72-1 ¶ 12). But party alignment does not equate to racial voting pattern. White voters in the County's proposed District 2 did not follow the party ticket and vote for Mr. Jealous. Instead, only 18.9% of white voters voted for Mr. Jealous, meaning a significant portion of white would-be Democratic voters *crossed party lines* to oppose the Black candidate of choice Ben Jealous, abandoning the Democratic party when its candidate was Black. This is not a crossover district.

Second, the Court has already found the election of Cheryl Pasteur to carry little probative value given the circumstances of her election and the direction provided by *Gingles*:

Ms. Pasteur states in her Declaration to the Court that her election to the County School Board was unique for several reasons: (1) her opponent did not fundraise or spend any money on his campaign; (2) her opponent did not participate in most of the candidate events; and (3) her opponent did not receive any endorsements in the race. *See generally* Decl. of Cheryl Pasteur ("Pasteur Decl."), ECF No. 39-3. And so, Ms. Pasteur's Declaration indicates that, while this election was technically contested, the White candidate did not mount a serious campaign. *Id.*

"Because loss of political power through vote dilution is distinct from the mere inability to win a particular election . . . [the Supreme Court has recognized that] a pattern of racial bloc voting that extends over a period of time is more probative of a claim that a district experiences legally significant polarization than are the results of a single election." *Gingles*, 478 U.S. at 57. Given this, Ms. Pasteur's important, but singular, victory does not negate the significant evidence before the Court demonstrating racially-polarized voting in the County.

ECF No. 55 at 17-18. The Court's prior consideration of the evidence concerning Ms. Pasteur is entirely consistent with *Gingles*. The County's submission ignores the Court's prior analysis and

offers no credible reason why Ms. Pasteur's virtually uncontested election in a nonpartisan school board race should displace the overwhelming evidence of racially polarized voting.

Third, the County's reliance on the elections of Izzy Patoka in 2018 and Vicki Almond in 2014 does not demonstrate crossover voting. It is beside the point that Black voters in the County's remedial District 2 will vote for a white Democrat in a contest against a white Republican. Rather, the question the Court posed is whether there are *white* crossover voters, not *Black* crossover voters. These results do not demonstrate that *white voters* will cross over to vote for a Black candidate of choice (like Mr. Jealous, Ms. Edwards, or Mr. Brown).

Indeed, when looking at the precincts the County identifies as having "the largest Jewish populations" and supposedly full of crossover voters, only a miniscule percentage vote for Black candidates of choice. For example, one of the precincts Mr. Patoka described as having a large Jewish population was 003-007, which is over 80% white. ECF 74-1 ¶ 15. The percentage of voters in that specific precinct who voted for Ms. Edwards in the 2016 primary was 12%. Barreto Fifth Decl. ¶ 20. Put another way, almost 90% of voters in that nearly all-white precinct voted as a bloc *against* the Black candidate of choice. As explained by Dr. Barreto, this precinct is representative of the pattern seen throughout the precincts identified by Mr. Patoka as having large Jewish populations. Barreto Fifth Decl. ¶ 20. That demonstrates extreme racially polarized voting, not crossover voting.

Fourth, the County's suggestion that District 4 must stay above the 60-65% range to remain "safe" for a Black candidate is disproven by the history of District 4 itself, as discussed in Chairman Jones' testimony. The 2002 map that created District 4 as the first majority-Black district contained only 55% Black voting age population. ECF 68-1, Ex. A ¶ 4. That is well below

what the County now says is necessary to be “safe” to prevent Black candidates from splitting the vote and allowing a white candidate to emerge.

For example, in the 2002 primary election in District 4, six candidates competed, two of whom were white and four of whom were Black. Contrary to the County’s theory, although the Black voting age population was 55%, there had never been a Black councilperson elected in the history of Baltimore County, and there was no Black incumbent, a Black candidate easily won the primary.³ And in the general election, the Black Democratic candidate Kenneth N. Oliver received 80% of the vote.⁴ Similarly, in the 2010 primary election in District 4 (which remained the same district with a 55% Black voting age population), seven candidates competed, five Black and two white. Two popular Black candidates, Councilman Oliver and now-Councilman Jones, finished first and a close second, with the white candidates far behind.⁵ In the general election, Councilman Oliver won reelection with 88% of the vote.⁶

These elections show that a Black candidate in a newly created majority-Black district with 55% Black voting age population was able to *easily* defeat white candidates in the primary and general elections, even when popular Black candidates were running against each other and white candidates emerged. Plaintiffs’ proposed Map 6 would unpack the County’s proposed

³ 2002 Primary election results, accessed March 22, 2022, <https://resources.baltimorecountymd.gov/Documents/Elections/2002primaryresults.pdf>.

⁴ 2002 General election results, accessed March 22, 2022, <https://resources.baltimorecountymd.gov/Documents/Elections/2002generalresults.pdf>.

⁵ 2010 Primary election results, accessed March 22, 2022, <https://resources.baltimorecountymd.gov/Documents/Elections/2010/countywideresults101006.pdf>.

⁶ 2010 General election results, accessed March 22, 2022, <https://resources.baltimorecountymd.gov/Documents/Elections/2010/county101206.PDF>.

District 4’s “super, supermajority” while continuing to give Black voters a sizable margin to elect their candidates of choice. Fifth Barreto Decl. ¶ 19.

In sum, the County’s proposed remedial District 2 is nowhere close to being a crossover district. The County’s latest submission provides *no* evidence that white crossover voting in remedial District 2 will allow a Black minority of voters a meaningful opportunity to elect their candidates of choice.

Respectfully submitted,

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