



## REDISTRICTING, RECOVERY, AND RIGHTS

Establishing fair voting districts will aid in pandemic recovery and build a foundation for voting rights expansion in Maryland.

### EXECUTIVE SUMMARY

Maryland continues to face the fallout from the COVID-19 pandemic and is in the midst of redistricting across the state, to redraw voting lines after the release of the 2020 U.S. Census. Maryland must prioritize drawing voting lines at the congressional, state, and local levels that reflect the increased population of Black, Latinx, and other Voters of Color and provide an opportunity for fair representation and compliance with the Voting Rights Act of 1965. This compliance will ensure an expedited pandemic recovery for the state and construct the foundation for additional legislative action to expand voting access, increase funding for and create a robust, accessible electoral system.

### REMOVING PROTECTION

The right to vote has long eluded many who have envisioned participating in this unfulfilled promise. In the United States, the ballot holds tremendous power. This power is constantly threatened because when exercised, communities are vigorously engaged in their civic livelihoods through the election process and the choosing of their representative lawmakers. In 2013, protection of this valued process was undermined by the Supreme Court ruling in *Shelby County v. Holder*, 570 U.S. 529 (2013), with the court holding that a key provision – Section 4(b) – in the *Voting Rights Act of 1965* (VRA), 52 U.S.C. § 10301-10314 was outdated and unconstitutional. The ruling broadly effected a vast majority of jurisdictions in the south. Under Section 5 of the Voting Rights Act (The U.S. Department of Justice, 2020), states with a history of discriminatory voting laws were subjected to their voting rules being approved by the U.S. Justice Department or a federal court so that the states passed no new restrictions to hinder voters of color to cast a ballot. This “preclearance” protected against voter suppression, which disproportionately affects Black voters. Section 4(b) (The U.S. Department of Justice, 2020) of the

Voting Rights Act, which worked in conjunction with Section 5, revealed which states would be placed under preclearance by creating a formula to determine if a state maintained a test or device (e.g. pass a literacy test, of good moral character) that would restrict the opportunity to register and vote. In place since 1964, Section 4(b) was struck in *Shelby* and removed the power of the Section 5 preclearance requirement. The court ruled that a different constitutional preclearance requirement must be enacted by Congress in order to evoke the Section 5 provision.

## **FAIR VOTING DISTRICTS**

The scope of the VRA may have been diminished by the Court's 2013 decision, but Section 2 (The U.S. Department of Justice, 2020) extends protection to racial minority voters "to participate in the political process and to elect representatives of their choice". Participation in the political process means that citizens are allocated to voting districts that are representative of their geographical community and each district is relatively equal in size, required by the U.S Constitution<sup>1</sup>. The process of changing these voting districts is known as redistricting, and it applies to the federal, state, and local electorate. Redistricting dates to colonial times where district boundaries were drawn based on the borders of towns or groups of towns and counties (Spencer, 2020). The United States experienced extensive population growth in the 19<sup>th</sup> and 20<sup>th</sup> centuries, but that increase in population was not reflected in the creation of voting districts. Consequently, what existed was a lack of equal population in districts in the House of Representatives and state legislatures, disproportionately higher representation of rural districts and small towns, and disenfranchisement of Black voters in southern states and urban districts (Stebenne, 2019). Prior to the 1960's, redrawing the legislative and congressional boundaries fell to state legislatures, but legislatures continuously failed to engage in redistricting efforts. The civil rights era of the 1960's brought about a wave of legal challenges to the lack of redistricting efforts amidst population shifts, with several Supreme Court decisions (Stebenne, 2019). In *Baker v. Carr*, 369 U.S. 186 (1962), the court held for the first time that federal courts could consider constitutional challenges to state legislative redistricting plans and hear a claim that inequality of representation violated the Equal Protection Clause of the Fourteenth Amendment. This ruling meant that states could be challenged in the redrawing of their congressional and legislative redistricting plans if the population was not apportioned equally.

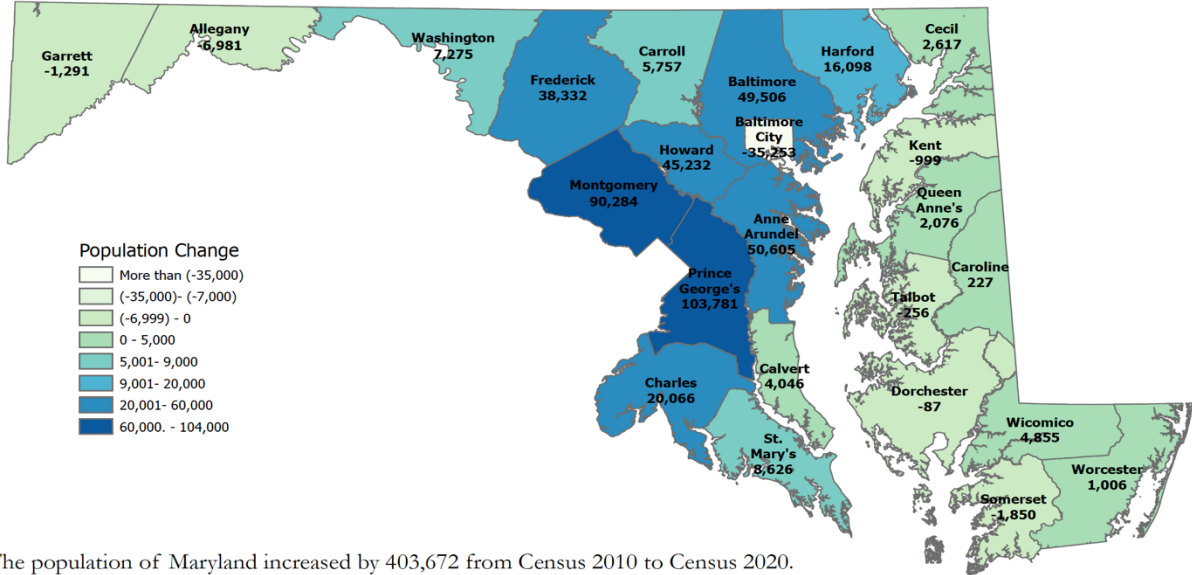
## **CHANGING POPULATION**

The migratory and propagating nature of people must be captured to ensure accurate representation. Redistricting occurs after the decennial U.S. Census

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<sup>1</sup> *Wesberry v. Sanders*, 376 U.S. 1 (1964) the Supreme Court held that Congressional districts must have roughly equal populations if this is feasible.

survey and states utilize Census data to create congressional and legislative districts. The Census survey serves as the population count for the nation and also determines the apportionment of seats in the U.S. House of Representatives to which each state is entitled (The U.S. Census Bureau, 2021). The Census data is also used as a factor in the distribution of billions of dollars in federal funding annually. The 2020 U.S. Census showed that our nation’s resident population has grown 7.4% to 331.5 million (The U.S. Census Bureau, 2021). In Maryland, the population has grown by 7% since the 2010 U.S. Census to 6.2 million residents (The U.S. Census Bureau, 2021). Within Maryland, the jurisdictions experiencing the largest population growth in that time span were Frederick County at 16.4%, Howard County at 15.8%, and Charles County at 13.7%, followed by Prince George’s County at 12% and Anne Arundel County at 9.4% (Maryland Department of Planning, 2021). The counties experiencing the largest decline were Allegany County at -9.3%, Somerset County at -7%, and Baltimore City at -5.7% (Maryland Department of Planning, 2021). Maryland has also strengthened its position as a racially diverse state with growth in BIPOC residents. Individuals identifying as Black/African American grew 7.1%, American Indian and Alaska Native grew 56%, Asian grew 32%, Latinx grew 55.1% and multi-racial grew 192.6% (Maryland Department of Planning, 2021). The changing demographics of the state underscores the importance of communities having the ability to elect legislators that best represent their needs, especially as Maryland recovers from the global COVID-19 pandemic.



The population of Maryland increased by 403,672 from Census 2010 to Census 2020.

<sup>2</sup> Source: U.S. Census Bureau's 2020 and 2010 Census Data  
 Prepared by the Maryland Department of Planning from U.S. Census Bureau's P.L. 94-171 data. Released August 12, 2021

## CHALLENGES FACING MARYLANDERS

The state is working to eradicate the COVID-19 pandemic, but the virus has continued to inflict harm on communities. During the pandemic, the nation held a Presidential election and Maryland has upcoming statewide election cycle in 2022. It is imperative that all redistricting plans fully comply with the Voting Rights Act so that Marylanders have the opportunity to participate in the democratic process and elect lawmakers to best represent their interest during this tumultuous time. Since the start of the pandemic, Maryland has experienced over 515,000 cases of the virus resulting in 47,000 hospitalizations (Maryland Department of Health, 2021). The spread of the virus reverberated in the economy, significantly reducing employment opportunities and affordable housing availability. The unemployment rate for the state was a record low of 3.5% in December 2019 before climbing to a staggering 9.0% in April 2020 and was 5.9% as of August 2021 (Maryland Department of Labor, 2021). As the economy sputtered and many people were unable to work, pandemic related unemployment insurance claims totaled 465,760<sup>3</sup> between March 2020 and September 2020 (Maryland Department of Labor, 2021). The impact on employment translated to an unstable housing market. Maryland received \$401 million through round 1 of the Federal Emergency Rental Assistance Program (Maryland Department of Housing and Community Development, 2021). Of that assistance, \$143 million is allocated directly to the largest jurisdictions with the Maryland Department of Housing and Community Development administering the other \$258 million. As of July 31, 2021, \$59.5<sup>4</sup> million has been distributed with an average of payment amount of \$5,170 to families (Maryland Department of Housing and Community Development, 2021). As the economy stabilizes and communities strive to recover, Maryland redistricting commissions are steeped in electoral boundary drawing efforts across the state, certain to impact the recovery efforts and the 2022 election cycle.

## MARYLAND REDISTRICTING PROCESS

Upon the conclusion of the decennial census, Maryland is required by the U.S. Constitution to redraw its congressional and local legislative lines to maintain equal population<sup>5</sup>. The Maryland Constitution sets forth requirements of state legislative district boundaries<sup>6</sup> and mandates the Governor hold public hearings and present a legislative district plan to the Presiding officers of the General Assembly so that it

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<sup>3</sup> 465,760 represents the total of 439,550 Pandemic Unemployment Assistance (PUA) claims and 26,210 Pandemic Emergency Unemployment Compensation (PEUC). Data retrieved from Maryland Department of Labor UI Claims Download.

<sup>4</sup> Data retrieved from the Maryland Department of Housing and Community Development Emergency Rental Assistance Program (ERAP) dashboard. Dashboard is updated periodically, last updated August 16, 2021. Data subject to change.

<sup>5</sup> *Wesberry v. Sanders*, 376 U.S. 1 (1964)

<sup>6</sup> MD Const. art. III, § 2, § 3

is introduced as a bill<sup>7</sup>. The Governor created the Maryland Citizens Redistricting Commission (Maryland Citizens Redistricting Commission, 2021) for this iteration of redistricting and they will utilize the Census data and receive public input to draft proposed congressional and legislative maps. Separately, the Presiding officers of the General Assembly have created the Legislative Redistricting Advisory Commission (Maryland General Assembly, 2021), a bipartisan legislative commission to obtain feedback from Marylanders to propose their own legislative maps. Each commission is conducting public hearings across the state through November 2021. As hearings are held, many districts are of particular interest for Marylanders.

## **DISTRICTS RIPE FOR CHANGE**

The exponential racial population growth in our state over the last 10 years dictates that the new maps are drawn to reflect this reality and comply with the VRA. Based on 2020 U.S. Census formula and population data, Maryland has been apportioned 8 House of Representative seats<sup>8</sup>. Within the current 8 congressional districts, there are increases in the diversity for several different groups. The Latinx population saw an increase in all current districts, with the highest in the District 2, 5, and 7 (HaystaqDNA, 2021). The Black population grew in Districts 2, 3, and 6 (HaystaqDNA, 2021). Asian population growth occurred most in Districts 5 and 6. And other multi-racial groups grew mostly in Districts 1, 2, and 5 (HaystaqDNA, 2021). Share of white population decreased in all congressional districts.

Maryland has seen Black population growth in the northwest, northeast, and southeast sections of Baltimore County as well as areas in Charles County (HaystaqDNA, 2021). The Latinx population saw its greatest growth in Baltimore, Frederick and Montgomery counties (HaystaqDNA, 2021). This population shift underscores the need to ensure that local county districts are creating maps that conform to VRA, and the change in population. For example, Baltimore County has a seven-member County Council whose members reflected a majority white-voting age population up until 2001, when civil rights organizations, including the ACLU of Maryland, advocated the County Council to create one majority Black district. Then, the creation of a majority Black district addressed the requirements of the VRA. Due to the current continued diversification of the county, the county must draw lines to incorporate more “majority-minority” councilmanic districts and ensure that districts do not dilute the Black vote.

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<sup>7</sup> MD Const. art. III, § 5

<sup>8</sup> Table 1. APPORTIONMENT POPULATION AND NUMBER OF REPRESENTATIVES BY STATE: 2020 CENSUS. Prepared by U.S. Department of Commerce and U.S. Census Bureau

## **VOTING RIGHTS POLICY CONSIDERATIONS**

As commissions create maps throughout the end of 2021 and approve maps during the legislative session in 2022, it is important to recognize the broader obligation to provide voting access, so that the redistricting lines hold meaning in the electoral process. There are several policy considerations that the state should consider to improve our voting system:

### ***Increase funding for election infrastructure***

The onset of the COVID-19 global pandemic during an election year exhibited that robust election structures must be created, so that voters have an opportunity to cast their ballots without hinderance. This includes funding for voting equipment, staffing, and materials.

### ***Robust voting accessibility options for maximum participation***

Racial gerrymandering is a concept that occurs when race is used as a predominant factor in drawing districts in a way not narrowly tailored to justify compelling state interest (as described in the Voting Rights Act). When states “pack” Black and other voters in color in one district or spread voters across multiple districts, with the effect of limiting their representation, this is the dilution of the minority voting block and an example of racial gerrymandering<sup>9</sup>, which discourages voter participation. In addition to fair district lines, the state should consider various policy options to improve voter participation including: additional drop boxes, early voting days, expanded vote by mail, and a seamless voter registration process. These policy changes will ensure maximum voter participation, especially in Black communities that have been historically impacted the most by vote dilution and lack of access to the ballot.

### ***Expanded right to vote and ballot access***

The Maryland General Assembly should prioritize the passage of SB 224<sup>10</sup>, which requires the state to provide Marylanders released from a correctional facility with a voter registration application and to inform individuals who are no longer incarcerated that they have the right to vote. The bill also requires the State Board of Elections (SBE) to adopt regulations establishing a program to facilitate voter registration and voting by Marylanders currently incarcerated in a correctional facility who still have their right to vote, such as those awaiting trial or who are not

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<sup>9</sup> To prove racial gerrymandering in litigation, a plaintiff must prove: (1) Racial considerations predominated over others (respecting political subdivisions, protecting incumbents, compactness, etc.) in placing voters in a district. (2) If plaintiffs prove race predominated, state must prove it did so for: (a) compelling government purpose; and (b) and did so in the narrowest possible way.

<sup>10</sup> <https://mgaleg.maryland.gov/mgaweb/Legislation/Details/sb0224>

incarcerated for a felony conviction. This access is needed for all Marylanders to fully realize and exercise their right to vote.

Redistricting is part of an electoral ecosystem that has a history of inequities, discrimination, and exclusion. The opportunity to draw fair districting lines to reflect the shifting population is key to Maryland's economic and social recovery and will construct the foundation for future expansion of voting rights to all in the state.

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## Key Terms<sup>11</sup>

**Census** – The counting and survey of every person in a population. In the U.S., a census is taken every ten years. The census is required by the Constitution for reapportionment and is used in the redistricting process.

**Census Bureau** – The federal government agency that administers the census.

**Gerrymandering** – Drawing of district lines to give one group an unfair advantage over another group. Gerrymandering is not the same as redistricting, but gerrymandering can occur during redistricting. Drawing majority-minority districts to comply with the Voting Rights Act is not gerrymandering.

**Packing** – An overconcentration of a minority population into a suboptimal number of districts. For example, packing occurs when a minority population makes up 90% of the

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<sup>11</sup> <https://redistricting.lls.edu/wp-content/uploads/Basics-English10.pdf>



district instead of two districts where the minority population makes up 50% of each district.

**Reapportionment** – The redistribution of seats in the U.S. House of Representatives based on changes in a state’s population. This occurs so that a state’s representation in Congress is proportional to its population. Reapportionment is not redistricting, although some states use the terms interchangeably.

**Redistricting** – The process used by governments to redraw political district boundaries and applies to all levels of government where district elections are held. Maps are redrawn every ten years after the Census to create districts with substantially equal populations to, at minimum, account for population shifts.

**Shelby County V. Holder**- 2013 Supreme Court decision held that Section 4(b) of the Voting Rights Act was unconstitutional because the formula to determine states’ history of discrimination was based on data over 40 years old, making it no longer responsive to current needs and therefore an impermissible burden on the constitutional principles of federalism and equal sovereignty of the states.

**Voting Rights Act (VRA)** – The federal legislation passed in 1965 to ensure state and local governments do not pass laws or policies that deny American citizens the equal right to vote based on race. Section 2 of the VRA protects voters from discrimination based on race, color, or membership in a language minority group in all election procedures.

**U.S. Census Bureau**- Federal agency authorized to collect and provide data about people and the economy.