

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
NORTHERN DIVISION

**Wicomico County Branch of the
National Association for the
Advancement of Colored People**
Post Office Box 1047
Salisbury, Maryland 21802

Caucus of African American Leaders
2216 Worcester Highway
Pocomoke City, Maryland 21851

**Watchmen with One Voice
Ministerial Alliance**
528 Booth Street
Salisbury, MD 21801

Dr. Eddie Boyd
1015 North Delano Avenue
Salisbury, Maryland 21801

Luc Angelot
634 Cook Drive
Salisbury, MD 21801

Amber Green
508 Dover Street
Salisbury, MD 21801

Monica Brooks
29022 Red Fox Drive
Salisbury, MD 21801

Plaintiffs,

v.

Wicomico County, Maryland
Serve on:
Paul D. Wilbur, County Attorney
Post Office Box 910
Salisbury, MD 21803-0870

Civil Action No. **23-03325-MJM**

**FIRST AMENDED
COMPLAINT**

Wicomico County Board of Education)
Serve on:)
N. Eugene Malone, Jr., Chair)
2424 Northgate Drive, Suite 100)
Salisbury, MD 21801)
)
N. Eugene Malone, in his official capacity)
as Chair of the Wicomico County Board)
of Education,)
2424 Northgate Drive, Suite 100)
Salisbury, MD 21801)
)
Allen C. Brown, Sr., in his official capacity)
as Vice Chair of the Wicomico County)
Board of Education,)
2424 Northgate Drive, Suite 100)
Salisbury, MD 21801)
)
Dr. Bonnie Ennis, in her official capacity)
as Member of the Wicomico County)
Board of Education,)
2424 Northgate Drive, Suite 100)
Salisbury, MD 21801)
)
Kristin Hazel, in her official capacity)
as Member of the Wicomico County)
Board of Education,)
2424 Northgate Drive, Suite 100)
Salisbury, MD 21801)
)
Susan Beauchamp, in her official capacity)
as Member of the Wicomico County)
Board of Education,)
2424 Northgate Drive, Suite 100)
Salisbury, MD 21801)
)
David A. Plotts, in his official capacity)
as Member of the Wicomico County)
Board of Education,)
2424 Northgate Drive, Suite 100)
Salisbury, MD 21801)
)
John Palmer, in his official capacity)
As Member of the Wicomico County)
Board of Education,)
2424 Northgate Drive, Suite 100)

Salisbury, MD 21801)
)
Wicomico County Board of Elections)
Serve on:)
Katrina A. Purnell, President)
345 Snow Hill Road)
Salisbury, MD 21804)
)
Jared DeMarinis, in his official capacity as)
Maryland State Administrator of Elections,)
151 West Street, Suite 200)
Annapolis, MD 21401)
)
Michael Summers, in his official capacity)
as Chair of the Maryland State Board)
of Elections,)
151 West Street, Suite 200)
Annapolis, MD 21401)
)
William G. Voelp, in his official capacity)
As Vice Chair of the Maryland State Board)
of Elections,)
151 West Street, Suite 200)
Annapolis, MD 21401)
)
Janet Millenson, in her official capacity)
as Member of the Maryland State Board)
of Elections,)
151 West Street, Suite 200)
Annapolis, MD 21401)
)
Yaakove Weissmann, in his official capacity)
as Member of the Maryland State Board)
of Elections,)
151 West Street, Suite 200)
Annapolis, MD 21401)
)
Defendants.)
)

INTRODUCTION

1. This is an action brought by Black voters of Wicomico County and local community organizations promoting civil rights and democracy, challenging as racially discriminatory and unlawful the use of a dilutive at-large structure to limit opportunities for Black voters in elections for the Wicomico County Council and Board of Education and a racially discriminatory and unlawful redistricting plan (the “Plan”). Wicomico County has a long and disgraceful history of discrimination against Black residents, evident in pervasive segregation, overt racial polarization throughout the community, and unequal access to education, employment, housing, and government services based on race. Against the backdrop of this history and its continuing legacy, Defendants’ election practices and structure and the Plan work in concert with patterns of racial polarization in voting to empower Wicomico’s white majority to override and dilute the influence of Black voters, suppress Black candidacies, and deny Black residents equal opportunity to elect their chosen representatives. Defendants’ longstanding maintenance of this racially dilutive system has denied Plaintiffs their rights to vote free from discrimination and to fair representation in their government over the course of decades.

2. Although Wicomico County’s Black population accounts for nearly 30 percent of its overall population, and Black, Indigenous, People of Color (BIPOC) over 40 percent, the County and its School System are governed almost exclusively by white officials. That is, white officials hold all but a single seat among the seven on both the County Council and School Board, with the lone Black member on each elected from the single majority-Black district. Likewise, all state legislators representing Wicomico County are white, with the sole exception of the state delegate elected from the only majority-Black district ordered into effect by Maryland’s federal court through voting rights litigation. Furthermore, the County Executive, School Superintendent,

State's Attorney, Sheriff, Register of Wills, Court Clerk, and Judges of the Circuit, District and Orphan's Courts are *all* white.

3. Indeed, throughout the history of the County's hybrid at-large, single member election system for County Council and School Board, with two officials elected at-large and five from single member districts (the "5-2 system"), Black officials have been elected *solely* from the one majority-Black single-member district on each body. Instead of affording Black voters election opportunities comparable to their significant share of the population, Wicomico's 5-2 system marginalizes the Black electorate and entrenches the white electorate's ability to ensure that six officials for each body are elected by a white majority of voters, and only one by a Black majority. In this way, Defendants employ the partial at-large structure to perpetuate a legacy of discrimination in the County by limiting Black voters' opportunities to one majority-Black district among the seven seats available for Council and Board of Education members. This is unlawful.

4. Section 2 of the Voting Rights Act of 1965 prohibits any voting law or practice that results in a "denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301. As the U.S. Supreme Court has explained, "the essence of a Section 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives." *Thornburg v. Gingles*, 478 U.S. 30, 47 (1986); *Allen v. Milligan*, 599 U.S. 1, 17 (2023). A problem identified in *Gingles* that often plagues at-large election structures occurs when Black voters in the minority are submerged within the larger pool of white voters, diluting their votes and diminishing their ability to elect their chosen candidates. Factors considered when determining whether a challenged election structure violates Section 2 by suppressing Black voters' ability to "participate equally in the political process and to elect

candidates of their choice” include, among others: the history of voter discrimination in the area, the number of Black elected officials, racial polarization in elections, and socioeconomic disparities that persist in the community. 478 U.S. at 36-37. All of these factors confirm the discrimination inherent in the current system and the need for reform here.

5. To end this discrimination for Wicomico County’s Black residents, Plaintiffs seek to replace the unlawful system and the Plan with a racially fair plan of seven single member districts – two with majority Black population – in compliance with the Voting Rights Act of 1965. Specifically, Plaintiffs ask that the Court: 1) Declare that Defendants’ use of an at-large component within their election system for County Council and Board of Education elections discriminates against Black voters in violation of Section 2 of the Voting Rights Act of 1965, thereby declaring unlawful provisions of the Wicomico Charter and Maryland state law mandating this discriminatory system, including Md. Ann. Code, Educ. Art. §3-13A-02 and Wicomico County Charter §201; 2) Issue an injunction prohibiting Defendants from holding elections the Plan (Wicomico County Council Resolution No. 147-2021 and Legislative Bill No. 2021-07) or under the provisions providing for the 5-2 structure (Md. Ann. Code, Educ. Art. §3-13A-02 and Wicomico County Charter §201), and mandating that all future elections in Wicomico County be conducted under a racially fair seven-district election plan, in compliance with the Voting Rights Act; and 3) Award \$1 in nominal damages to each Plaintiff against Defendants Wicomico County and Wicomico County Board of Education, to redress Defendants’ longstanding violation of Plaintiffs’ fundamental voting rights pursuant to Section 2 and 42 U.S.C. §1983.

JURISDICTION AND VENUE

6. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1343 because Plaintiffs seek declaratory and prospective equitable relief under the federal Voting Rights Act of 1965, 52 U.S.C § 10301, and nominal damages under 42 U.S.C. §1983. Jurisdiction for Plaintiffs' claim for attorneys' fees, costs, expert witness fees and associated costs, and related non-taxable costs is based on 52 U.S.C. § 10310(e), 42 U.S.C. §1988, and 28 U.S.C. § 1920.

7. Venue is proper in this Court pursuant to 28 U.S.C. §§ 90(a)(2) and 1391(b) because relevant acts occurred and will continue to occur within the Northern Division of the District of Maryland.

PARTIES

8. The National Association for the Advancement of Colored People ("NAACP") is a non-profit, non-partisan organization with over 300,000 members, including members residing in Wicomico County. The NAACP is the nation's largest and oldest grassroots-based civil rights organization. The NAACP's mission includes "eliminat[ing] racial hatred and racial discrimination," and removing "all barriers of racial discrimination through democratic processes." Protection of the franchise, promotion of fair elections, and equal access to education have been hallmarks of the NAACP's work throughout its history. Plaintiff Wicomico County Branch of the NAACP is a branch of the Maryland State Conference of NAACP Branches, which is in turn part of the national NAACP, and brings this action on behalf of itself and its members who reside and exercise their rights to vote in Wicomico County. Plaintiff Monica Brooks is the current President of the Wicomico County Branch of the NAACP.

9. The Caucus of African American Leaders (“CAAL”) is a Maryland-based consortium of organizations and individuals around the state, including the NAACP, elected officials, faith and community leaders, and the individual named plaintiffs, among others. The Caucus seeks to raise awareness about current civil rights issues impacting the Black community, particularly with respect to democracy and voting rights issues, by engaging in legal advocacy and encouraging the public to engage in local, state, and national elections to impact positive change. In addition to organizing demonstrations, and participating in legal causes, the Caucus hosts monthly meetings to discuss issues affecting the community, and solicits donations for other civil rights organizations. CAAL brings this action on behalf of itself and its members who reside and exercise their rights to vote in Wicomico County. Carl Snowden is CAAL’s founder and Convener, and the Caucus’s Convener of members across the Eastern Shore is Rev. James Jones.

10. Plaintiff Watchmen with One Voice Ministerial Alliance, based in Wicomico County, is a nondenominational alliance of pastors, faith leaders and ecumenical, representing churches on the Lower Eastern Shore. The goals of the organization are to give voice to the voiceless, to advocate for social justice, and to promote fair representation and voter engagement among all people, with a specific focus on Black residents of Wicomico County who have had their voices silenced through the County’s use of a discriminatory election system for decades. As part of their strategic goals, the group became Census 2020 ambassadors for initial groundwork and development of Census 2020 activities for faith-based organizations, and was recognized by the State of Maryland for the excellence of their work in this regard. The Watchmen bring this action on behalf of itself and its members who reside and exercise their rights to vote in Wicomico County. Rev., Dr. Lewis Watson serves as President of the Watchmen and as Pastor of First Baptist Church of Salisbury.

11. Plaintiff Eddie Boyd is a Black resident and registered voter of Wicomico County who lacks an equal opportunity to elect candidates of his choice to the County Council and Board of Education due to Defendants' use of the partial at-large structure. Dr. Boyd is a retired University Mathematics Professor who has advocated for equal voting rights for Black residents and challenged the illegality of at large elections in Wicomico County since the mid 1980s, including working with the U.S. Department of Justice in its 1987 challenge to the County's at-large elections. Dr. Boyd served for a decade as an appointed member of the Wicomico County School Board during the period before it was changed to an elective body, and thus has personal experience with the Board and school system reinforcing his conviction in the critical importance of fair representation for children and families involved in the public school system. As set forth below, Dr. Boyd's rights to be free from race discrimination in elections, guaranteed under the Voting Rights Act and 42 U.S.C. §1983, have been and continue to be violated by Defendants' challenged actions.

12. Plaintiff Luc Angelot is a Black resident and registered voter of Wicomico County who lacks an equal opportunity to elect candidates of his choice to the County Council and Board of Education due to Defendants' use of the partial at-large structure. Mr. Angelot, who is just 20 years old, is a recent graduate of Wicomico County public schools and thus has first-hand knowledge of current racial issues within the school system and the need for more diverse representation on the School Board than the current discriminatory system provides. Mr. Angelot ran for a seat on the School Board representing District 1, the majority-Black district in the 2022 elections. Although this required him to run against another Black candidate, which he would have preferred not to do, Mr. Angelot was convinced that he would not have any realistic opportunity to win election for one of the at-large seats, due to racial discrimination

inherent in the system. As set forth below, Mr. Angelot's rights to be free from race discrimination in elections, guaranteed under the Voting Rights Act and 42 U.S.C. §1983, have been and continue to be violated by Defendants' challenged actions.

13. Plaintiff Amber Green is a Black resident and registered voter of Wicomico County who lacks an equal opportunity to elect candidates of her choice to the County Council and Board of Education due to Defendants' use of the discriminatory partial at-large structure. Ms. Green is the executive director of the Fenix Youth Project, an organization in Salisbury that provides direct services for young people aged 14–24 who are unstably housed, homeless, or at risk of homelessness. The organization helps young people get involved in their community, and provides a safe space for young people to discuss what they need and how to make their community better. Ms. Green's work provides young people in the community the tools and resources to thrive. In 2022, Ms. Green ran for a seat on the County Council representing District 1, the majority-Black district. Although this required her to run against two other Black candidates in the Democratic primary, which she would have preferred not to do, Ms. Green was convinced that she would not have any realistic opportunity to win election for one of the at-large Council seats, due to racial discrimination inherent in the system. As set forth below, Ms. Green's rights to be free from race discrimination in elections, guaranteed under the Voting Rights Act and 42 U.S.C. §1983, have been and continue to be violated by Defendants' challenged actions.

14. Plaintiff Monica Brooks is a Black resident and registered voter of Wicomico County who lacks an equal opportunity to elect candidates of her choice to the County Council and Board of Education due to Defendants' use of the discriminatory partial at-large structure. Ms. Brooks is a small business owner in Wicomico County who also serves currently as President of the Wicomico County Branch of the NAACP. Her work gives her extensive exposure to racial

discrimination persisting today in Wicomico County, which she connects directly to the race discrimination and lack of fair representation perpetuated by Defendants' continued use of a racially dilutive election system. In 2022, Ms. Brooks ran for a seat on the County Council representing District 1, the majority-Black district. Although this required her to run against two other Black candidates in the Democratic primary, which she would have preferred not to do, Ms. Brooks was convinced that she would not have any realistic opportunity to win election for one of the at-large Council seats, due to racial discrimination inherent in the system. As set forth below, Ms. Brooks' rights to be free from race discrimination in elections, guaranteed under the Voting Rights Act and 42 U.S.C. §1983, have been and continue to be violated by Defendants' challenged actions.

15. Defendant Wicomico County is a charter county within the State of Maryland created for the provision of government services and operating under Maryland law. Since 1990, the County has employed a racially discriminatory partial at-large system for election of its seven-member County Council, with five members elected from single member districts and two members elected at large.¹ Wicomico County is responsible for drawing the single member districts map which applies to both the County Council and the Board of Education. In 2021, the Wicomico County Council passed the Plan by enacting Legislative Bill No. 2021-07 and Resolution No. 147-2021 to create the current map. Wicomico County is majority white, and since the partial at-large system was established, six of the seven Council members have been white and have majority white electorates, as the system has been structured so that only one of the five single-member districts is majority Black in population. County Council elections are conducted on a partisan basis every four years, with the next regular elections

¹ The Council has codified the 5-2 structure. *See* Wicomico County Charter §201.

scheduled for 2026. From the time this election system was implemented until the present, it has denied and diluted the voting rights of Black Wicomico residents, including the Plaintiffs, as set forth below.

16. Defendant Wicomico County Board of Education is the governing body of the Wicomico County Public Schools. Historically, all members of the Board of Education were appointed by the Maryland Governor. However, in 2016 – despite protests from members of the Black community about the racial discrimination inherent in the 5-2 election system – the Board initiated a change from the appointed system to an elective system, reducing the number of Board members who represent the Black community, now limited to the single majority Black district, District 1. This was accomplished through a Wicomico County Council proposal to the Maryland state legislature that was then submitted to and approved by Wicomico County voters through a county-wide popular referendum. Following the referendum, the election structure for the Board was enacted into state law, at Md. Ann. Code, Educ. Art. §3-13A-02, and codified into local law as Wicomico County Charter §201. Pursuant to these provisions, five Board members are elected from single-member districts, and two are elected at large, every four years on a nonpartisan basis, using the same election structure used for the County Council. As with the Council, the School Board under this system has consistently had six white members and one Black member. The next Board of Education elections are scheduled for 2026. Since 2021, elections for the Wicomico County Board of Education have been conducted under the Plan enacted by Wicomico County through Legislative Bill No. 2021-07 and Resolution No. 147-2021. The Board of Education is a suable entity that has waived its Eleventh Amendment immunity from suit on all Plaintiffs’ claims up to \$400,000, pursuant to Md. Code Ann., Cts. Jud. Proc. Art., §5-518, and is a necessary party to this litigation. Since

this change in 2016, Defendant Board of Education has injured the Plaintiffs by use of the unlawful 5-2 system to engage in race discrimination with respect to its elections as set forth below.

17. Defendants N. Eugene Malone, Jr., Allen C. Brown, Sr., Dr. Bonnie H. Ennis, Kristin Hazel, Susan W. Beauchamp, David A. Plotts, and John Palmer are the current members of the Wicomico County Board of Education. Each member was elected using the Plan's Board of Education districts map enacted by Wicomico County Council Legislative No. Bill 2021-07 and Resolution No. 147-2021. Each member is sued in his or her official capacity only, for purposes of prospective injunctive relief, pursuant to *Ex Parte Young*, 209 U.S. 123 (1908). Each has an interest in this legal challenge to the structure of election system by which they are elected, and thus they are necessary parties.

18. Defendant Wicomico County Board of Elections oversees elections for the County and is charged with guaranteeing that every eligible citizen in Wicomico County is given the opportunity to register and vote to ensure a democratic process. Currently, the Board of Elections administers Wicomico County Council and School Board elections in violation of the Voting Rights Act and its obligation to ensure all County voters equal election opportunities, injuring the Plaintiffs as set forth below.

19. Defendant Jared DeMarinis is the Maryland State Administrator of Elections, responsible, together with members of the State Board of Elections, for administration and enforcement of all election laws in the state of Maryland, including §3-13A-02, governing election of members of the Wicomico County Board of Education. Pursuant to this statute, Mr. DeMarinis administers Wicomico County School Board elections in violation of the Voting Rights Act and his obligation to ensure all County voters equal election opportunities, injuring the Plaintiffs as set

forth below. Mr. DeMarinis is sued in his official capacity only, for purposes of prospective equitable relief, pursuant to *Ex Parte Young*, 209 U.S. 123 (1908).

20. Defendants Michael G. Summers, William G. Voelp, Janet Millenson, and Yaakov Weissman are members of the Maryland State Board of Elections, responsible, together with Defendant DeMarinis, for administration and enforcement of all election laws in the state of Maryland, including §3-13A-02, governing election of members of the Wicomico County Board of Education. Pursuant to this statute, the State Election Board members administer Wicomico County School Board elections in violation of the Voting Rights Act and their obligation to ensure all County voters equal election opportunities, injuring the Plaintiffs as set forth below. Defendant State Board Members are sued in their official capacities only, for purposes of prospective equitable relief, pursuant to *Ex Parte Young*, 209 U.S. 123 (1908).

FACTS GIVING RISE TO THIS ACTION

Wicomico County Characteristics and Election System

21. Wicomico County, incorporated in 1867, is a Maryland charter county governed since 2006² by a County Executive and County Council. Its Council consists of seven members, five of whom are elected from single member districts, and two elected at-large. This election system was put in place for Council elections in 1990. *See* Charter of Wicomico County, § 201(A).

22. The Wicomico County Board of Education is a separate governmental entity from the County itself, with responsibility for leading the Wicomico County Public School System. The school system operates 26 schools and learning centers, educating more than 15,000 students from Pre-K through Grade 12.

² Prior to 2006, the County was governed by an elected County Council and an appointed County Administrator.

23. The 2020 U.S. Census shows that Wicomico County's Black population has increased over the last three decades to 30% of the County total population as of 2020, up from 22.3% of the total in 1990, with Black, Indigenous and People of Color (BIPOC) making up nearly 41% of the County's current population, up from 23.7% in 1990. Whereas Wicomico's white population was 76.3% in 1990, by 2020 it had declined significantly to 59.3%. The growth of Wicomico's Black population is also reflected in its share of the eligible voting population, *i.e.*, residents over 18 years of age. Census data for 2020 shows that Wicomico County has a Black voting-age population of 28%, while the white voting age population is just over 60%. Nevertheless, due to the racially dilutive structure maintained by Defendants, the Wicomico County Council remains, as it has since 1990, 86% white, and just 14% Black.

24. According to data available from 2022, the Wicomico County School System is even more diverse than the County at large. That is, as of that year, students of color made up a clear majority – about 63% – of the total county public school population.³ In contrast, the current Wicomico School Board is made up of one Black person out of seven, or 86% white, and just 14% Black.

25. Prior to 1990, Wicomico County had a five-member County Council, elected at large, that was all white throughout history with the single exception of a short period from 1978 to 1981 when a Black Councilman named Emerson Holloway served.⁴ The Council was then the governing body of the County, with no elected County Executive, only an appointed

³ See Maryland State Department of Education Division of Assessment, Accountability and Performance Reporting, Maryland Public School Enrollment by Race/Ethnicity and Gender and Number of Schools September 30, 2022, available at: https://marylandpublicschools.org/about/Documents/DCAA/SSP/20222023Student/2023_Enrollment_ByRace_Ethnicity_Gender.pdf.

⁴ Mr. Holloway died in office, and was replaced by the County with a white candidate, returning the Council to all-white control.

County Administrator. In 1987, the United States Department of Justice sued Wicomico County challenging the five-member at-large system under Section 2 of the Voting Rights Act.⁵ The County vigorously defended the lawsuit, but part way through the litigation altered its election system through a popular referendum, expanding the County Council to seven members, with five elected from single member districts, and two elected at-large – the system still in place today.⁶

26. Three decades of elections since the system was changed in 1991 have shown strong evidence that voting in Wicomico County today remains extremely polarized by race, with the at-large positions for County Council consistently and without interruption diluting minority vote, despite significant growth in the County's Black population. At the same time, there have been significant changes in the County's governing structure that further justify remedial action. Most notably in 2006 the County implemented an elected County Executive system of

⁵ *United States of America v. Wicomico County, Md.*, Civil Action No. MJG-87-2557 (D. Md. 1991) (unpublished and unavailable electronically.)

⁶ Although the Justice Department argued that even the remaining at-large structure diluted Black votes, the County said it was important to retain some at-large representation on the Council because Wicomico at the time had no elected County Executive. Notwithstanding the change from all at-large system to the 5-2 system, the litigation nevertheless continued to trial. United States District Judge Marvin Garbis ruled, in an unpublished opinion, that the United States had failed to prove, at that point in time, that the at-large structure had resulted in minority vote dilution. In so ruling, Judge Garbis cited the 1978 at-large election to the Council of Emerson Holloway, and discounted evidence of racially polarized voting by excluding from the analysis a key 40% Black precinct showing polarization, for the stated reason that that precinct was “an outlier.” No appeal was taken was taken by the United States.

Two years later, in a separate private lawsuit brought by the NAACP and Black voters, a different three-judge federal district court disregarded Judge Garbis's unpublished ruling entirely – making no mention of it at all – in reaching the contrary conclusion that voting patterns across the Lower Eastern Shore, including specifically those in Wicomico County, were pervasively polarized by race, resulting in consistent minority vote dilution through the use of at-large structures. *Marylanders for Fair Representation v. Schaefer*, 849 F. Supp. 1022, 1059 (D. Md. 1994) (three-judge-court). A similar ruling was reached that same year by yet another federal district judge in the district, invalidating as racially discriminatory the at-large County Council election system in Wicomico's neighbor, Worcester County, again without mention of Judge Garbis's contrary ruling. *Cane v. Worcester County*, 840 F. Supp. 1041 (D. Md. 1994).

government alongside the County Council, eliminating the previously stated need for at-large leadership on the Council.

27. What has not changed over the course of 32 years is the County's continued maintenance of a government in which 86% of elected Council members are white officials preferred by white voters, and just 14% are Black officials preferred by Black voters. Notably, almost half a century later, Emerson Holloway remains the *only* Black person *ever* elected at large to the Wicomico County Council, Board of Education, or as County Executive, despite numerous Black candidacies for those at-large positions.

28. Wicomico's hybrid at-large/district election structure discriminates against Black voters by keeping them from being able to elect their candidates of choice for County Council and Board of Education on equal terms with their white counterparts. The at-large structure used for two of the seven Council and Board seats, along with entrenched racially polarized voting in the community, empowers the white voting-age majority to override the will of the Black voting minority within the larger pool of candidates, such that Black preferred candidates always lose election to those positions. As a result, Black candidates are discouraged from running for the at-large positions; but even when they do run, they lose.

29. This systemic problem is clearly evidenced in the pattern of elections conducted for at-large Council and School Board seats since the plan's inception. Since this system was put into place for the County Council in 1990 (and currently codified at Wicomico County Charter §201), and for the School Board in 2016 (and currently codified at Md. Ann. Code, Educ. Art. §3-13A-02), *every single candidate* elected at large to each body has been white, as has every official elected to any district except the single majority-Black district. Although maintenance of a racially discriminatory system like this in and of itself discourages Black candidates from running for

office, the overwhelmingly white composition of Wicomico’s government has continued throughout this period notwithstanding the candidacies of strong Black candidates.

30. Plaintiffs seek to replace this discriminatory 5-2 system and the Plan with a fair system of seven single member districts, two majority Black in population. Given Wicomico County’s substantial Black population, and racial segregation in housing patterns, this is readily possible. Such a plan will enable Black voters to overcome discrimination inherent in the at-large structure, and provide equal election opportunities to all county voters.

Wicomico County’s History of Voter Discrimination and Disenfranchisement

31. Historically, the Lower Eastern Shore and Wicomico County have been at the center of numerous voting rights challenges where white government officials used their power to oppress Black residents through official voting practices or procedures that enhance discrimination against Black voters.

32. Key among the discriminatory practices used to discourage Black participation and turnout have included at-large election structures, anti-single-shot provisions such as designated-post and staggered-term requirements,⁷ property qualification requirements for voting, dual registration procedures for local and state elections, criminal disenfranchisement laws, and candidate slating and siting of polling places through all-white volunteer fire companies.

33. As early as 1901, Wicomico County election law imposed numerous restrictions making it more difficult for illiterate voters—who were disproportionately African American—to vote. Such restrictions included the listing of candidates’ names alphabetically without

⁷ As the Supreme Court long ago recognized, where voting is racially polarized, the staggering of election terms for candidates and designated post requirements for candidates running at large each exacerbates minority vote dilution because they “have the effect of forcing head-to-head contests between [Blacks] and Whites and depriving [Black voters] of the opportunity to elect a candidate by single-shot voting.” *United States v. City of Rome*, 446 U.S. 146, 185 (1980).

groupings by political party or party emblem and the prohibition on using sample ballots in polling places. A “dual registration” system was also in effect whereby citizens of some municipalities in the county were required to register to vote separately in order to vote in both municipal and countywide elections. It was not until 1990 that the dual registration requirements were finally abolished in all Wicomico municipalities.

34. As this Court has repeatedly recognized, in the context of this history, exclusion of Black voters and candidates has been endemic to at-large elections employed in counties and municipalities across the Shore. For example, in striking down as racially discriminatory a state legislative redistricting plan that used at-large, multi-member districts on the Lower Eastern Shore to prevent any Black candidate from the area winning election to the Maryland General Assembly, a three-judge panel of this Court noted:

Blacks in Wicomico, Dorchester, Caroline, and Talbot Counties rarely run for public office in majority white constituencies, and when they do, they usually lose. At the county level, no black has ever been elected to any of the countywide single-member offices (i.e., State’s Attorney, Clerk of Court, Register of Wills, or Sheriff). With only one exception, the four counties have never elected a black councilmember or commissioner at-large: Wicomico elected a black Republican County Councilmember, Emerson Holloway, in 1978, but he served just one term.

Marylanders for Fair Representation v. Schaefer, 849 F. Supp. 1022, 1059 (D. Md. 1994) (three-judge-court). *See also, Cane v. Worcester County*, 840 F. Supp. 1041 (D. Md. 1994) (invalidating as racially discriminatory Worcester County’s at-large election system which unlawfully diluted Black votes and excluded Black candidates from office throughout history).

35. In addition to discrimination faced from Wicomico County itself, Black residents were for many years shut out of elective state and municipal offices through use of at-large and non-resident voting schemes. Most notably, until the *Marylanders for Representation* case, no Black person had ever been elected to the Maryland General Assembly from the Eastern Shore.

Late in 1992, the State's use of at-large multi-member legislative districts on the Lower Eastern Shore was challenged by the NAACP under Section 2 as racially discriminatory. The Court agreed, ruling that the at-large structure unlawfully diluted the Black vote across the Lower Shore, in violation of the Voting Rights Act. *Marylanders for Fair Representation, supra*. To resolve the challenge, the State created a new single-member delegate district spanning portions of Wicomico and Dorchester Counties, leading to the election of Rudolph Cane, a Wicomico resident, as the first African American in history elected to the Maryland General Assembly from the Eastern Shore. To date, however, no Black Eastern Shore resident has ever been elected to the Maryland Senate, nor has any Black resident been elected to the House outside this single majority-Black district.

36. Wicomico County's seat, the City of Salisbury, also has a history of discrimination in the area of voting rights. In 1986, Black voters challenged Salisbury's at-large election system as violative of Section 2.⁸ At the time, nearly 20 percent of the City's population was Black, but no African American had ever been elected to one of the City Council's five at-large seats, nor to the Mayor's office. The case settled in 1987 by entry of a Consent Decree in which the City conceded that the at-large structure violated Section 2, and established a new minority opportunity district for one of the council seats. Since that time, a Black candidate has run and been elected to represent the district in every election.

37. Even after the 1986 challenge, however, the City of Salisbury, as well as the Wicomico County municipalities of Fruitland and Delmar, continued to employ non-resident voting schemes that empowered non-resident property owners – the great majority of whom were white – to vote in municipal elections, thus diluting the voting strength of resident Black

⁸ *Billy Gene Jackson v. City of Salisbury*, Civil Action No. Y-86-587 (D.Md.)

voters. In 1993, a group of resident Salisbury voters challenged Salisbury's non-resident voting scheme under the U.S. Constitution and Voting Rights Act; the case settled with the City amending its charter to discontinue the practice.⁹ Thereafter, under pressure from Black voters, neighboring Wicomico County municipalities also discontinued the non-resident voting practice and amended their charters in the wake of the Salisbury litigation.

38. Concerns about minority vote dilution in Salisbury resurfaced in 2012, as the City prepared to undertake the latest round of redistricting. Although the City's BIPOC population had grown to nearly 50 percent of the overall municipal population, the Mayor and Council were proposing to keep in place a system that afforded minority voters just one opportunity district on the five-member council. The NAACP intervened, arguing that the Voting Rights Act required that at least two council members should be elected from minority opportunity districts, and threatening a court challenge. After negotiations with the Salisbury Mayor, City Council and City Attorney, however, Salisbury altered its election system from a two-district system with one single-member majority-Black district and a majority-white four-member district, to a five-district system with five single-member districts, two majority BIPOC in population.

39. Across Wicomico County and its municipalities, the pattern is clear: Racially dilutive at-large elections structures have been and continue to be employed to retain white control, and to prevent election of any Black candidates. This holds true for the at-large positions on the Wicomico County Council and School Board, and also in Wicomico County's municipalities. In the Town of Delmar, for example, which continues to maintain an at-large election system and

⁹ *McLaughlin v. Caldwell*, Civil Action No. 93-Y-1599 (D. Md. 1993).

uses staggered terms to enhance discrimination, the government remains *all white*, despite the community's large BIPOC (43%) population.

40. Plaintiffs Amber Green, Luc Angelot, and Monica Brooks in their experience running for office in Wicomico view the racially discriminatory election system as unfairly pitting Black people in the community against each other, for the single district seat that is made available to them. Oftentimes young members of the community feel unable to run effective campaigns because there is a cultural reticence to challenging their elders in the community, who also may run for office. Having only one district where the Black community may seek representation to the Council or Board thus creates a generational divide, where representation of Wicomico's younger BIPOC population is lost.

The Persistence of Racially Polarized Voting

41. Elections across the Eastern Shore, and in Wicomico County specifically, historically have been and continue to be deeply polarized along racial lines. Racially polarized voting occurs when members of a protected class prefer candidate choices that are not preferred by other members of the electorate. In Wicomico County, polarization prevails because there is a significant divergence between the candidates preferred by Black voters and those preferred by white voters.

42. White voters in Wicomico County typically vote in a politically cohesive manner, preferring white candidates over Black. The level of racially polarized voting is such that white voters, who hold the majority, vote sufficiently as a bloc consistently to defeat Black voters' candidates of choice, particularly in racially contested elections.

43. Likewise, Black voters in Wicomico County vote in a politically cohesive manner, manifested by the higher rates at which Black voters express their preference for Black candidates

in racially contested elections. Because Black voters are in the minority when elections are conducted at large, this polarization means their candidates of choice always lose in racially contested elections.

The Legacy of Racial Discrimination in Wicomico County Persists to the Present Day

44. Throughout Wicomico County's history, Black residents have been subjected to egregious racial discrimination and oppression deeply impacting their lives and socioeconomic conditions over generations. Wicomico County's history of discrimination includes segregation, racially-charged violence, and numerous barriers to the franchise for Black, Indigenous and Voters of Color. Members of the County's Black community bear present-day effects of longstanding societal discrimination, effects that are apparent across a wide spectrum of civic and economic life, including in the areas of economic opportunity, housing, education, health, and the criminal justice system. These discriminatory outcomes reflect our society's continuing failure to address its long history of public and private racism and discrimination, and they hinder Black voters' ability to participate effectively in the political process.

45. *Economic Opportunity & Housing:* Whites in Wicomico County consistently outpace African Americans across a broad range of socio-economic measures, as reported in the *5-Year 2015-2019 American Community Survey* ("ACS").¹⁰ For example:

- Black families live below the poverty level at three times the rate of white families, with more than a quarter of all Black Wicomico children living in poverty.
- Black family income is only 64 percent that of white Wicomico families,

¹⁰ 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.

- the Black unemployment rate is almost double that of whites,
- three times as many Black residents as white residents qualify for food stamps
- only half as many Black as white County residents own their own homes,
- Black households are twice as likely as whites to lack phone and computer access.
- Black residents are half as likely to have college degrees as white residents

46. These economic disparities are the result of a long history of racial discrimination and oppression, the persistence of residential, civic, and economic segregation as well as concerted past efforts by white County politicians to destroy the wealth and cohesiveness of Black communities.

47. Black people generally resided in geographically distinct areas of the county, including the area in and adjacent to the City of Salisbury commonly referred to as “the westside.” As historian Dr. Charles Chavis, Jr. recounts in his book, *The Silent Shore*, racial residential segregation has been a fact of life throughout the history of Wicomico County:

Following the Civil War, whites in Wicomico County looked to segregation to provide spatial and social separation from the Black community and to reinforce the racial hierarchy. This involved setting aside four neighborhoods for Black residents, including Cuba (1909), Georgetown, Jersey, and California, all of which were built on “undesirable” land near the Wicomico River and its affluents. . . . According to records of many local historians, police considered Cuba and Georgetown crime-ridden, and whites found them unattractive to the eye[.]¹¹

48. Until the 1960s, public accommodations, recreational facilities, and other aspects of life in Wicomico County were either segregated according to race or closed to Black people.

¹¹ C. Chavis, Jr., *The Silent Shore: The Lynching of Matthew Williams and the Politics of Racism in the Free State*, Johns Hopkins University Press, 2021, at p. 205 (hereafter, “*The Silent Shore*”).

- Some restaurant owners in Salisbury refused to serve Black people; at some restaurants, Black people were required to go to the back door to buy food to carry out.
- Motels and hotels were segregated by race.
- The private hospital in Salisbury maintained segregated wards for Black and white patients.
- Black people were restricted to sitting in certain sections of the balcony at movie theaters, separate from white patrons.
- Local bowling alleys and golf courses, all privately owned, were available to whites only.
- Black people generally swam on one side of Johnson Lake, the local public swimming area, and white swam on the other.
- Some white store owners in the county denied Black people admission altogether, while other retail establishments allowed Black people to purchase items but prohibited Black patrons from trying on certain clothing.
- Beauty parlors and barber shops, cemeteries and funeral homes were all segregated. Historically, with only a few exceptions, churches had exclusively white or exclusively Black memberships.

49. Most social clubs and civic and fraternal organizations in the county were and remain racially segregated. Still today, Wicomico County has two Elks Clubs – one which is Black in membership, and one which is white. The Veteran of Foreign Wars and Masonic Lodges have white and Black posts and chapters, respectively. The Kiwanis, Moose Club and Lion's Club, and Red Men's Lodge are nearly all white in membership.

50. White leadership of the County has periodically engaged in destruction of Black neighborhoods. Two state highway projects, first Route 13 and then Route 50, were used by white government officials to clear Black residents from their homes in the Cuba and Georgetown neighborhoods. As Dr. Chavis notes:

The twofold destruction of Georgetown was not so much about physical displacement as about dismantling Black wealth and social and economic power. Unlike Cuba, which was seen as a slum ... Georgetown boasted historic Black churches, Black businesses, and Black-owned homes. This community represented the most prominent Black business concentration in Wicomico County, if not throughout the lower Eastern Shore. Yet, like Greenwood in Tulsa, Oklahoma, Georgetown was all but erased after a highway was built through it.

The Silent Shore, at 207.

51. The bustling Black neighborhoods bulldozed by these highway projects were home to residences, Black churches and cemeteries, Salisbury’s “Colored High School”, Black-owned small businesses, Salisbury’s only Black-owned bank, a Black-owned funeral home and a Black-owned music hall. The residents were proud of their neighborhoods, which were well-kept and most of the residents owned their homes.

52. Following the destruction of these neighborhoods, Black residents moved west, to the only place locally where they could find housing in segregated Salisbury, a neighborhood called Jersey Heights, which by the 1970s was about 99 percent Black.

53. Starting in 1975, state and local planners started targeted the Jersey Heights neighborhood for a Route 50 bypass to alleviate traffic congestion to ocean beaches. Residents filed a federal lawsuit in 1997, *Jersey Heights Neighborhood Association v. Glendening*, alleging that the bypass route through Jersey Heights would unlawfully perpetuate a decades-long pattern of racial exclusion and discrimination in highway planning and construction in Wicomico County. 2 F. Supp. 2d 772 (D. Md. 1998), *aff’d in part, rev’d in part*, 174 F.3d 180 (4th Cir. 1999). The federal and state defendants fought the lawsuit aggressively while acknowledging that Wicomico County’s history of race discrimination “is both undeniable and deplorable” and that the “corrosive effects” of the historical legacy left to Jersey Heights residents were “not likely to be eradicated for generations, if ever.”

54. In reversing the dismissal (on procedural grounds), Fourth Circuit Judge Robert B. King emphasized, in a concurring opinion, that the segregation of Black residents in Jersey Heights and the repeated displacement of Black communities to make room for highways was “no

historical accident,” but the combined result of racial steering and site selection processes infected with race discrimination. Judge King went on:

Now, the residents of Jersey Heights are being forced to pay the price for the mistakes made by the builders of the original Route 50 – the very highway that decimated their former neighborhoods. . . . The residents’ sacrifice this time is for the convenience of the traveling public, particularly vacationers who utilize Route 50 for access to the ocean beaches of Maryland’s Eastern Shore each summer.

55. Notwithstanding the Plaintiffs’ victory in the Fourth Circuit, government officials persisted in their selection of the path through Jersey Heights for the Bypass, which skirts Salisbury today so that tourists can save a few minutes on route to the beach.

56. *Education:* Racial discrimination has also historically pervaded the Wicomico County Public Schools. Wicomico County’s school district remained strictly segregated long after *Brown v. Board of Education*, 347 U.S. 483 (1954) despite many efforts to implement desegregation plans in the early 1960s. In fact, it was not until 1974 – after the County was found in violation of the Fourteenth Amendment and Title VI of the Civil Rights Act and had its federal education funding terminated – that the County school district finally desegregated its west-side elementary schools.

57. Recent episodes of racial discrimination and division illustrate the persistence of racial discrimination in the school system. For example, in 2016 complaints from students and parents caused the U.S. Department of Justice to take the extraordinary step of intervening legally, after its investigation showed that Wicomico County Public Schools were engaging in discrimination against Black and Latino students. The investigation concluded that staff over-relied on school resource officers to address routine classroom management issues, with Black students overrepresented in the incidents, and that Black and Latino students, meanwhile, received harsher consequences than white students but were not misbehaving in more serious ways. Early

in 2017, the Wicomico school system entered into a settlement agreement with the Justice Department requiring ongoing reporting through 2019 to demonstrate measures taken to ameliorate the discrimination.

58. Notwithstanding this agreement, egregious incidents of racial threats and violence continue to arise in Wicomico schools. For example, in 2019, middle school and high school students in Mardela Springs complained to school officials that racist songs had been posted to a music sharing website used by students, including songs with lyrics celebrating slavery using racial slurs, and advocating whips to enforce white supremacy.¹²

59. Further, as recently as June of 2022, the high-school aged child of a white Wicomico School Board member posted a video of himself on social media brandishing what appeared to be a scoped rifle, threatening Black students and encouraging others to shoot at [n-word]s “for fun.”¹³ School system officials, calling the video shocking and revolting, disclaimed that it any way reflected “the feelings or teachings of the student’s school or Wicomico County schools.”¹⁴ Yet, despite calls that she resign, the student’s mother refused to resign from the School Board; instead forging ahead with an (ultimately) unsuccessful reelection campaign. The Wicomico County Sheriff’s Office investigated the incident and ultimately charged the student with a misdemeanor offense. Black parents expressed outrage about handling of the incident, calling it a hate crime. Salisbury City Council member April

¹² Racist Songs Under Investigation By Wicomico County Board of Education, WBOC (Jan. 7, 2019), *available at* https://www.wboc.com/archive/racist-songs-under-investigation-by-wicomico-county-board-of-education/article_4033692b-f43a-512b-8025-e008ae75d7e7.html.

¹³ *See* S. Berlin, Board Members Son Caught Telling Students to Shoot Black People ‘For Fun,’ Newsweek (June 17, 2022), *available at* <https://www.newsweek.com/board-members-son-caught-telling-students-shoot-black-people-fun-1716688>.

¹⁴ Wicomico County Sheriff’s Office Investigating Racist Threat Made Online By Parkside High School Student, WBOC (June 16, 2022), *available at* https://www.wboc.com/news/wicomico-county-sheriffs-office-investigating-racist-threat-made-online-by-parkside-high-school-student/article_fef30a1e-edb8-11ec-9986-f3104d924e80.html.

Jackson said: “There’s a double standard here because if this was one of our brown boys or brown young men, this would have been done a whole lot different.”

60. *Criminal Justice and Extra-Judicial Violence*: Wicomico County’s Black residents also regularly confront race discrimination with respect to police practices and law enforcement. Wicomico County Sheriff Mike Lewis – the County’s most powerful law enforcement official – has made a national name for himself via Fox News with racially divisive threats of “all out civil war” if gun safety laws he disagrees with are enacted at the state or federal level.¹⁵ Allegations about Lewis’s discriminatory police practices date back years before his election as Wicomico Sheriff, to his days as a Maryland State Trooper; amid an NAACP racial profiling lawsuit against the Maryland State Police, Lewis was featured in a New York Times magazine cover story about racial profiling and “what police say when they talk about race.”¹⁶

61. Lewis has also engaged in social media attacks on peaceful Black protesters, denouncing Black Lives Matter supporters as “fist wielding, black power activists.” In a 2021 Facebook post concerning a Black Lives Matter protest at Ravens Stadium, Lewis wrote: “Shame on every one of you who continues to blame the police and our state and federal government for

¹⁵ J. Swain, *Sheriffs Who Cheered Trump’s Attack on Press Have Their Own Media Run-Ins*, *The Guardian* (Sept. 8, 2018), available at <https://www.theguardian.com/us-news/2018/sep/08/sheriffs-donald-trump-media-scrutiny>.

¹⁶ J. Goldberg, *The Color of Suspicion*, *New York Times Magazine* (June 20, 1999), available at <https://www.nytimes.com/1999/06/20/magazine/the-color-of-suspicion.html>. The NYT story, which features a picture of Lewis as its cover, connects his thinking about race and law enforcement with his 1996 killing of a Black motorist during a traffic stop, and explains:

What depresses Mike Lewis is that he believes he is in possession of a truth polite society is too cowardly to accept. He says that when someone tells this particular truth, his head is handed to him. “The superintendent of the New Jersey State Police told the truth and he got fired for it,” Lewis says.

This is what Carl Williams said, fueling a national debate about racial profiling in law enforcement: “Today, with this drug problem, the drug problem is cocaine or marijuana. It is most likely a minority group that's involved with that.”

refusing to accept responsibility for your own failures and your own perceived inequities."¹⁷ Concerned local residents have decried Lewis's messaging: "At a time when there's a lot of racial turmoil ... for you to use that type of divisive rhetoric and then to expect trust and loyalty of people you are supposed to protect and serve is not going to happen," Black Wicomico resident Jamaad Gould, a 2018 at-large County Council candidate, told local media.¹⁸

62. Wicomico County also has a long history of periodic violence against Black residents. One significant example occurred in 1968 when a Salisbury police detective shot and killed a 22-year-old deaf Black man named Daniel Henry in 1968, who was killed after a struggle with law enforcement during which police shouted orders that he could not hear. When Black residents erupted in outrage following Mr. Henry's death, approximately 800 National Guardsmen and 400 state troopers descended on Salisbury, and a dusk-to-dawn curfew was imposed. Police patrolled the City's Black neighborhoods, aggressively deploying tear gas and police dogs, and used guns and a bayonet to arrest Billy Gene Jackson, a respected Black community leader – and later successful voting rights plaintiff – who was endeavoring to keep calm in the community at the time of his arrest. Following this incident, and the resulting state of emergency, Black citizens organized demonstrations to protest the City's decision to keep the detective who had killed Mr. Henry on its payroll. Although the officer involved was initially charged with manslaughter and suspended from active duty, he was later reinstated to his position on the police force.

63. Wicomico County has a grotesque history of extra-judicial efforts to promote white supremacy. The Ku Klux Klan has a long history in the County, and Salisbury University

¹⁷ Wicomico County Sheriff's Facebook post questioned, WBOC (Oct. 22, 2021), *available at* https://www.w boc.com/archive/wicomico-county-sheriffs-facebook-post-questioned/article_9d56ff0f-9e96-57ed-b315-8beefdc2aab4.html.

¹⁸ *Id.*

has documented KKK cross burnings in Sharptown; parades, rallies and recruitment efforts across the Eastern Shore; and organized Klans openly holding meetings, including in the Wicomico County municipalities of Salisbury, Delmar, Sharptown, and Mardela Springs. News reports from the 1920s estimate the Klan's vast membership on the Eastern Shore numbered around 9,000 members, including ministers, doctors, lawyers, and judges.¹⁹ And the County was notorious from the 1930s through the 1950s for anti-Black violence and discrimination:

In the 1930s, Salisbury acquired a reputation for harboring white mobs that ran through Black neighborhoods, wreaking destruction. Like the African-American communities of Tulsa, Oklahoma and Rosewood, Florida, [Salisbury's] Black communities of Georgetown and Cuba were also attacked, in their cases in the form of multiple incidents of targeted, systemic anti-Black violence, which served the same purpose of stoking Black fear and regaining control of Black bodies.

The Silent Shore, at 204.

64. The County also has a disgraceful history of lynching Black residents,²⁰ including episodes on May 31, 1898 when a Black 18 year old named Garfield King was hung and shot outside of the Wicomico County courthouse lawn and on December 4, 1931, when hundreds of white people (including law enforcement and prominent white officials) seized 23-year-old Matthew Williams from a hospital, hung him on the Wicomico County courthouse lawn and dragged his body through the Black neighborhood; and on the same day as the lynching of Matthew Williams, another Black man whose identity is unknown was found beaten to death.²¹

¹⁹ *Lynchings on Maryland's Lower Eastern Shore: Wicomico County*, Salisbury University: Library Guide, available at <https://libraryguides.salisbury.edu/c.php?g=1056210&p=8227628>.

²⁰ Wicomico County Truth and Reconciliation Initiative, Draft Resolution calling on the Salisbury City Council to formally apologize for the racial terror lynching of three black citizens of Salisbury, MD.

²¹ *The Silent Shore*, at 204.

65. *White Supremacy's Legacy*: This entrenched system of white supremacy dates back to Wicomico County's founding. For example, in the period after Reconstruction, Wicomico County became solidly Democratic due to the Party's strong support for government efforts to disenfranchise most Black people by raising barriers to voter registration.²²

66. One notorious example: in 1992, in the Wicomico County town of Mardela Springs, a Town official, Norman Christopher, disparagingly referred to the Martin Luther King holiday as "Buckwheat's birthday" in belittling county employees for taking the holiday off.²³ More than 200 Black residents gathered at a local church to protest the incident. Then-Wicomico County NAACP President Warren White, who was among the first calling for Christopher's resignation over the slur, received anonymous threats addressing Mr. White himself as "Buckwheat" and warning that he would be sorry if he did not desist in his advocacy.

67. For decades, Wicomico County's Winder marker, erected in 1965 to honor Confederate General John Winder, a war criminal responsible for the deaths of more than 13,000 Union soldiers from disease in Winder's Confederate prison, stood in the heart of Salisbury, only a few steps away from the place that Matthew Williams was lynched in 1931. It was only in 2020, after persistent advocacy by Plaintiff Amber Green and other local advocates, and over the opposition of members of the Town government and many residents, that County Executive Bob Culver made removal of the Winder marker one of his final official acts, mere weeks before he died.

Defendants' Resistance and Steps Backwards on Fair Representation

²²Levine, Mark V.; "Standing Political Decisions and Critical Realignment: The Pattern of Maryland Politics, 1872-1948"; *The Journal of Politics*, volume 38, no. 2 (May, 1976), pp. 292-325

²³ W. Thompson, "Gathering Protests Racial Slur by Shore Official Likening King to 'Buckwheat,'" BALTIMORE SUN (Jan. 28, 1992), available at <https://www.baltimoresun.com/news/bs-xpm-1992-01-28-1992028043-story.html>

68. Fully a decade ago, in 2013, Black County residents working with the Wicomico County Branch of the NAACP and the American Civil Liberties Union of Maryland, raised complaints about the discrimination inherent in Wicomico County's 5-2 election system, submitting a formal request that the United States Department of Justice renew its investigation of Wicomico County elections. The request traced the history of vote dilution in the County since 1990, and included detailed analysis of racial polarization in voting patterns since the 5-2 system was put into place. It further demonstrated that a fairer election plan of seven single member districts could overcome this pattern of discrimination, with two majority-Black election opportunities for Black voters. Despite substantial public support for this reform,²⁴ the County declined to take any action, leaving the discriminatory system in place for another decade.

69. To make matters worse, despite known concerns about racial vote dilution inherent in the County's 5-2 election system, the Wicomico County Public School system imported this racially discriminatory system into its governing structure in 2016, as codified in Md. Ann. Code, Educ. Art. §3-13A-02. As noted above, the seven-member Board of Education had been historically been appointed by the governor. This system allowed Black representation beyond that ever seen through Council elections, with two of the seven School Board seats sometimes being occupied by Black officials. But when white residents became unhappy with the appointed board, alleging that their interests were not fully represented, Defendant Wicomico County Board of Education entertained the option of change to an elected body, putting the matter up for popular referendum in 2016. Notwithstanding concerns expressed by Black residents such as Plaintiff Dr.

²⁴ See, e.g., Editorial: Wicomico's Voting Rights Choice, Baltimore Sun (June 3, 2013), *available at* <https://www.baltimoresun.com/opinion/editorial/bs-ed-wicomico-voting-20130603-story.html>; Editorial: Wicomico County should revisit voting districts; One-third of Wicomico residents are minorities, Daily Times (May 13, 2013).

Eddie Boyd, a longtime School Board member, that this change would result in racial vote dilution and a lack of fair representation on the Board, the elected system was approved by the majority white electorate and put into place by Defendant Board of Education. Since that time, only one Black School Board member has ever served at any time – the single member elected from the majority Black district.

70. Under Md. Ann. Code, Educ. Art. §3-13A-01 and Wicomico County Charter §201(B), Wicomico County is responsible for drawing the hybrid at-large, single member districts map that is used to elect both the County Council and the Board of Education. Under Wicomico County Charter §201(B), the boundaries of the districts must be established within two years of the publication of the Decennial Census figures of the United States Bureau of the Census.

71. In 2021, the Wicomico County Council Redistricting Committee drafted the Plan, a new hybrid at-large, single member districts map. The Committee made minor changes to the prior map. Fewer than 100 people were moved between districts and no members of the County Council or Board of Education were moved out of their districts.

72. Wicomico County Council meeting minutes show that, during deliberations, Redistricting Committee member Dr. William Nagel, argued that the hybrid at-large, single member districts map diluted Black representation. He noted that almost no BIPOC people have been elected to the at-large positions. He further stated that despite Black people accounting for 30% of the county population, Black voters were packed into a single district, giving Black voters just 14% of council seats. He argued that unless the County went to system with no at-large seats, it would be unable to improve equity. He recommended that the Charter Review

Committee, the body tasked with amending the Wicomico County Charter, consider changing Wicomico County's electoral system.

73. Nevertheless, on December 21, 2021, the Wicomico County Council enacted the Plan by adopting Legislative Bill No. 2021-07 and Resolution No. 147-2021, codifying the current the current hybrid at-large, single member districts map into law. Elections under the Plan have resulted in only one out of the seven Council and School Board seats being won by a Black candidate.

74. On information and belief, four Wicomico County officials elected in 2022 – including current County Executive Julie Giordano²⁵, at-large County Council member James Winn, and Board of Education members Kristin Hazel (at-large), and Susan Beauchamp (District 3) – are alleged to hold extremist anti-government views. They attended a six-week course in 2021 sponsored by the anti-government “Institute on the Constitution” with an instructor who served as a chaplain at the neo-Confederate League of the South, a white supremacist group identified by the Southern Poverty Law Center as an “explicitly racist” hate group embracing violence and warning Black people of a coming race war.²⁶ Separately, Board of Education member John Palmer (District 5) won election in a majority white district on a platform declaring the biggest problem facing Wicomico schools to be the “Marxist threat” of

²⁵ Since Ms. Giordano's election as County Executive in 2022, over Black candidate Ernie Davis, Wicomico County government has experience unprecedented internal turmoil. First, upon her election, Ms. Giordano sought to employ as a “special” County attorney failed gubernatorial candidate Daniel Cox, a divisive extremist who contributed to efforts to overthrow the United States government during the January 6 insurrection. When the County Council refused to approve that controversial appointment and others, Ms. Giordano decried the County Council as “vindictive”, and sued the body in state court, a lawsuit that is currently pending. Council President John Cannon called Giordano's lawsuit “political theater” and “a waste of taxpayer money.” See J. Kurtz, Wicomico Exec Sues County Council in Standoff Over Administrative Appointments, Maryland Matters (Aug. 8, 2023), *available at* <https://www.marylandmatters.org/2023/08/08/wicomico-exec-sues-county-council-in-standoff-over-administration-appointments/>.

²⁶ S. McNaught, “Candidates took ‘anti-government’ class,” Daily Times (Oct. 8, 2022).

the “woke movement” and falsely alleging indoctrination of Wicomico children with teaching of “Critical Race Theory.”²⁷ Plaintiff NAACP and other Black community members have expressed grave concerns about the consequences of allowing officials with anti-government and anti-truth leanings to dominate public offices in Wicomico County.

75. Defendants’ 5-2 mixed at-large, district system, prevents even the most qualified candidates from winning elections at-large. This includes, the 2018 attempt by Black candidate Jamaad Gould to win election to one of the County Council at-large seats, where he finished fourth among four candidates, despite winning the great majority of the Black vote county-wide. Years earlier, former official Edward Taylor—who earned two military honors for his service in the Korean War, led an exemplary 35-year career in public education in the County, and represented the County’s minority district for 12 years from 1994–2006²⁸—ran for an at-large seat in 2010. Like Mr. Gould, however, Mr. Taylor finished last in the at-large General Election that year despite carrying *100 percent* of the African American vote. In every election since that time – in 2014, 2018, and 2022 – both Council members elected at large have been white. Indeed, since the 5-2 election system was put into place in 1990, the only Black candidate elected to any Council seat has been the one elected in the single majority-Black district.

76. Likewise, after the School Board changed from an appointed to an elected body using the 5-2 mixed at-large, district system, the same dilutive effect plaguing Council elections has been imported into the School Board. For example, in the first election conducted under the

²⁷ “Wicomico Candidates Talk How History is Taught, Book Censorship, Safety,” Delmarva Now (Oct. 24, 2022), available at <https://www.delmarvanow.com/story/news/local/maryland/2022/10/24/wicomico-county-board-of-education-candidates-2022-qa-book-bans-crt-school-safety/69575112007/>.

²⁸ *Councilman, Veteran Ed Taylor Speaks Tuesday, April 4*, Salisbury University (Mar. 17, 2006), available at <http://www.salisbury.edu/newsevents/fullstoryview.asp?id=2831>. Councilman Taylor, now deceased, also held three college degrees and spent 13 years as a deputy in the Wicomico Sheriff’s department.

new system for School Board in 2018, Black candidate Talana Watson ran for one of the at-large positions. She lost to two white candidates. In 2022 also, the two candidates elected at-large to the School Board were white. As with the County Council, since the change from an appointed to an elected school board, the only Black member has been the one elected from the majority-Black single-member district.

77. The adverse consequences of continuing nearly all-white governance over the County and its schools in a diverse community like Wicomico are all too predictable: Matters of concern to Black residents have been left unaddressed despite the growing Black population, with little effective communication and a widening disconnect between Black residents and white officials.

CAUSES OF ACTION

Count I

Violation of Section 2 of the Voting Rights Act of 1965 (All Plaintiffs Against All Defendants) (Declaratory and Prospective Equitable Relief Only)

78. Plaintiffs re-allege and incorporate by reference the allegations set forth in all prior paragraphs of this First Amended Complaint.

79. Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, applies to elections conducted for the Wicomico County Council and its Board of Education. In enacting the Voting Rights Act, Congress abrogated sovereign immunity in accordance with the Fifteenth Amendment, and thus the Voting Rights Act is enforceable against all Defendants named herein.

80. The hybrid at-large, single member district system established by the Wicomico County Charter for County Council and School Board elections by §3-13A-02 of the Education Article of the Maryland Code and Wicomico County Charter §201 violates Section 2 because,

under the totality of the circumstances, this system denies Black voters an equal opportunity to participate in the political process and elect representatives of their choice by diluting their voting strength.

81. The Plan, with hybrid at-large, single member districts map, was enacted by the Wicomico County Council in December 2021 through Legislative Bill No. 2021-07 and Resolution No. 147-2021, used to elect the Wicomico County Council and the Board of Education violates Section 2 because, under the totality of the circumstances, this map denies Black voters an equal opportunity to participate in the political process and elect representatives of their choice by diluting their voting strength.

82. The County's Black population is sufficiently large and geographically compact such that two properly apportioned electoral districts can be drawn within a seven-member single-member district plan in which Black residents would constitute a majority of the voting-age population.

83. Black voters in Wicomico County are politically cohesive. Racially polarized voting persists in elections in Wicomico County, directly impacting elections for members of the Wicomico County Council and Board of Education. The white majority typically votes as a bloc sufficient to defeat Black voters' preferred candidates.

84. The use of a partial at-large structure for electing members of the Wicomico County Council and Board of Education dilutes Black voting strength in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. That is, the at-large component of the system has in the past and will in the future result in a denial or abridgment of Black voters right to vote on account of their race, color, or ethnicity, by having the effect of canceling out or minimizing their individual voting strength in County elections. The totality of the circumstances demonstrates the existing

election system does not afford Plaintiffs an equal opportunity to participate in the political process and elect candidates of their choice equal to that afforded other members of the electorate, diluting Black voting strength in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

Count II

Violation of Section 2 of the Voting Rights Act of 1965 and 42 U.S.C. § 1983 (All Plaintiffs Against All Defendants) (Declaratory and Equitable Relief and Nominal Damages)

85. Plaintiffs re-allege and incorporate by reference the allegations set forth in paragraphs 1-77 of this First Amended Complaint.

86. Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, applies to elections conducted for the Wicomico County Council and its Board of Education. Section 2 is enforceable both directly, as in Count I, and indirectly, through 42 U.S.C §1983, as in this Count II, to seek additional relief, including nominal damages.

87. The hybrid at-large, single member district system established by the Wicomico County Charter for County Council and School Board elections by §3-13A-02 of the Education Article of the Maryland Code and Wicomico County Charter §201, violates Section 2 because, under the totality of the circumstances, this system denies Black voters an equal opportunity to participate in the political process and elect representatives of their choice by diluting their voting strength.

88. The Plan, with current hybrid at-large, single member district map, enacted by the Wicomico County Council in December 2021 through Legislative Bill No. 2021-07 and Resolution No. 147-2021, used to elect the Wicomico County Council and the Board of Education violates Section 2 because, under the totality of the circumstances, this map denies

Black voters an equal opportunity to participate in the political process and elect representatives of their choice by diluting their voting strength.

89. The County's Black population is sufficiently large and geographically compact such that two properly apportioned electoral districts can be drawn within a seven-member single-member district plan in which Black residents would constitute a majority of the voting-age population.

90. Black voters in the County are politically cohesive. Racially polarized voting persists in elections in Wicomico County, directly impacting elections for members of the Wicomico County Council and Board of Education. The white majority typically votes as a bloc sufficient to defeat Black voters' preferred candidates.

91. The use of a partial at-large structure for electing members of the Wicomico County Council and Board of Education dilutes Black voting strength in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301 and 42 U.S.C. § 1983. That is, the at-large component of the system has in the past denied and abridged Black voters' right to vote on account of their race, color, or ethnicity, by having the effect of canceling out or minimizing their individual voting strength in County elections. The totality of the circumstances demonstrates the existing election system has not afforded Plaintiffs an equal opportunity to participate in the political process and elect candidates of their choice equal to that afforded other members of the electorate, diluting Black voting strength in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, as enforced through 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs respectfully pray that this Court:

A. Enter a declaratory judgment that both the at-large component of the election system used to elect members of the Wicomico County Council and Board of Education, enacted through Md. Ann. Code, Educ. Art. §3-13A-02, Wicomico County Charter §201, and the Plan enacted through Resolution No. 147-2021 and Legislative Bill 2021-07, dilutes Black voting strength in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301;

B. Enjoin Defendants and their officers, agents, and employees, successors in office, and all other persons in active concert and participation with them, from conducting future elections for members of the Wicomico County Council and Board of Education under the hybrid at-large, single member system mandated by Md. Ann. Code, Educ. Art. §3-13A-02, Wicomico County Charter §201, and under the Plan enacted through Resolution No. 147-2021 and Legislative Bill 2021-07;

C. Order Defendants, their officers, agents, and employees, successors in office, and all other persons in active concert and participation with them to administer all future County and School Board elections using a method of election that complies with Section 2 of the Voting Rights Act;

D. Award each Plaintiff \$1 in nominal damages against Defendant Wicomico County and Wicomico County Board of Education, to remedy past discrimination they have suffered and to vindicate Plaintiffs' rights to equal election opportunities irrespective of race, pursuant to Section 2 of the Voting Rights Act as enforced through 42 U.S.C. §1983.

E. Award the Plaintiffs the costs of this action together with their reasonable attorneys' fees and reimbursement of expert witness fees and all other litigation costs pursuant to 52 U.S.C. § 10301, 42 U.S.C. §1988 and 28 U.S.C. §1920; and

F. Retain jurisdiction of this action and grant the plaintiffs any further relief which may in the discretion of the Court be just and proper.

Dated: January 30, 2024

Respectfully submitted,

/s/Deborah Jeon

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