UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(Northern Division)

BALTIMORE COUNTY BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*, Plaintiffs, v. BALTIMORE COUNTY, MARYLAND, *et al.*, Defendants.	Civil Action No. LKG-21-03232

PLAINTIFFS' STATUS REPORT PURSUANT TO ECF 59

Pursuant to the Court's March 9, 2022, Order directing Plaintiffs to file "a status report stating their views on whether the County's proposed map complies with Section 2 of the Voting Rights Act" (ECF 59), Plaintiffs explain below why the County's new proposed map fails to comply with Section 2 for many of the same reasons as the enjoined map. In particular, the proposed map includes neither "two reasonably compact majority-Black Districts" nor "an additional County District in which Black voters otherwise have an opportunity to elect a representative of their choice . . ." as required by the Court's February 22, 2022, Order. ECF 55.

The proposed map indisputably fails to include two majority-Black districts: Not only do Black voters comprise a minority of the newly-drawn District 2, they do not even comprise a *plurality*. As discussed in the Declaration of William Cooper (Ex. A), District 2's white citizen voting age population is 52.1% while the Black citizen voting age population is 41.7%. And as discussed below and in the attached expert analysis of Matthew Barreto (Ex. B), the proposed map still fails to remedy the deprivation of Black citizens' right to have "an equal opportunity to

participate in the political processes and to elect candidates of their choice." *Thornburg v. Gingles*, 478 U.S. 30, 44 (1986) (quoting S. Rep. No. 97-417, at 28 (1982)).

I. THE COUNTY'S NEW MAP UNLAWFULLY DILUTES THE BLACK VOTE

A. Binding and long-standing Section 2 law should be applied to the new map in the same manner as it was applied to the enjoined map.

1. The legal standards under Section 2 are undisputed and were applied by the Court in its February 22, 2022, Memorandum Opinion and Order:

> To prevail in a Section 2 case, plaintiffs must show: (1) the minority group is "sufficiently large and geographically compact to constitute a majority in a single-member district;" (2) the minority group "is politically cohesive;" and (3) "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986). If plaintiffs are successful in establishing the *Gingles* preconditions, the Court will also consider "the totality of the circumstances"—including the factors identified in the Senate Report accompanying the 1982 amendments to the Voting Rights Act—to determine whether, as a result of the districts, "the political processes leading to nomination or election in the State or political subdivision are not equally open to participation" by members of the minority group. *Id.* at 36 (quoting 52 U.S.C. § 10301(b)).

ECF 55 at 8.

2. The Court found Plaintiffs had shown a strong likelihood of success on the merits when measured against these standards:

> [P]laintiffs have shown that they have a substantial likelihood of success on the merits of their Section 2 claim, because they can demonstrate that: (1) the group of Black County voters located on the western side of the County is sufficiently large and geographically compact to create more than one reasonably compact majority-Black district; (2) the group of Black County voters "is politically cohesive;" (3) the White majority in the County votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidates; and (4) the totality of the circumstances, including the factors that the Supreme Court has instructed the Court to consider, show that Black County voters have less opportunity than White County voters to elect candidates of their choice to the Council.

Id. at 9-10.

3. The County's latest proposed redistricting map fails this Section 2 analysis for the same reasons as its prior map. Measured against the same standards and in light of the same

evidence, the County's new proposed map again fails to overcome Plaintiffs' proof of vote dilution through the three *Gingles* preconditions. In particular:

- Nothing about the newly proposed map has changed the County's demographics or voting history.
- Black voters in Baltimore County are sufficiently large and geographically compact to constitute a majority in ***two*** single-member districts. *See* ECF 55 at 10-13.
- Black voters are politically cohesive in the County. *Id* at 13-16.
- Data confirm that white-bloc voting in the County is routinely effective in defeating minority preferred candidates. *Id.* at 16-18.
- The "totality of the circumstances" in Baltimore County also have not changed. *Id.* at 18-21.

4. The County's proposed map continues to "pack" a large number of Black voters into a single district (District 4), which now would be 64.1% Black in voting-age population, and 66.0% Black in general population. Cooper Decl. ¶ 4. The remaining six districts retain a majority of white citizen voting age population. *Id.* and Ex. 1 thereto. And the County's proposed map achieves this result by continuing to "crack" majority-Black communities, including Woodlawn, Milford Mill, Randallstown, and Owings Mills. Cooper Decl. ¶ 5. Thus, on the identical basis articulated in the Court's prior decision, the County's latest councilmanic map (once again limited to a single majority-Black district) violates Section 2.

B. The County's new map does not present Black voters with a fair and realistic opportunity to elect candidates of their choice.

5. With its proposed map, the County has asserted that it can comply with Section 2 by increasing the Black citizen voting age population in District 2 from 31.2% to 41.7%, and by reducing the white citizen voting age population from 55.5% to 52.1%. Cooper Decl. ¶ 2. This amounts to making the violation of Section 2 a little less egregious but not curing it, then asking the Court to overlook the violation because it's not as bad as the violation originally proposed. There is no legal authority for such an approach.

6. The County presents no statistical or other analysis that the newly configured District 2 will present Black voters with "an opportunity to elect a representative of their choice." In particular, the County has not presented any performance data demonstrating that the new district would allow Black voters in the district to successfully form coalitions to successfully elect candidates of their choice. To the contrary, the racial polarization and white-bloc voting that exists in Baltimore County indicates that even a marginal numerical advantage of eligible white voters over Black voters would allow white-bloc voting to defeat Black-preferred candidates in District 2. Even if this were not so, however, it is not enough to look at demographics alone, particularly when assessing the fairness of a non-majority Black district. Careful, expert analysis must explore whether the County's new plan *performs* for Black voters, *i.e.*, whether the amalgamation of precincts rearranged into District 2 will vote to elect Black voters' candidates of choice.[1]

7. Plaintiffs' expert Dr. Barreto conducted a performance analysis of the newly proposed District 2 by taking the shapefiles of the new map, extracting the demographic and voting history, and running an analysis to see how the new districts would perform (*i.e.*, how they would vote) across the elections featuring Black candidates of choice. Here is a summary of his findings:

[1] Dr. Gimpel's report includes no such analysis. Ignoring the Court's findings with respect to the illegality of the County's prior map, it concludes, without presenting any statistical analysis or other evidence, that District 2 "would become an even stronger crossover or coalition district in which Black voters could elect their candidates of choice, including Black candidates, with crossover support from both other minority voters and White voters." ECF 57-6 ¶ 3.

Table 1: Performance analysis of elections with Black-preferred candidates

	D1	D2	D4
Hogan	55.0%	45.0%	32.5%
Brown	42.4%	53.3%	65.8%
Van Hollen	51.6%	57.2%	36.9%
Edwards	39.4%	37.4%	57.0%
Hogan	54.6%	50.2%	36.3%
Jealous	44.1%	49.0%	62.7%

Barreto Decl. at ¶ 7 .

8. As the data establishes, the new proposed District 2 is not "an additional County District in which Black voters otherwise have an opportunity to elect a representative of their choice." As explained by Dr. Barreto's previous analysis and testimony, Black voters overwhelmingly preferred Anthony Brown over Larry Hogan, Donna Edwards over Chris Van Hollen, and Ben Jealous over Larry Hogan. But as currently configured under the County's new proposed map, only Mr. Brown would have won in District 2. White bloc voting would have prevented Black voters from electing their candidate of choice in two of those three elections.

9. Plaintiffs do not deny that elections under the new proposed plan would be more competitive than under the County's initial, enjoined plan, because some Black voters were shifted from District 4 to District 2. But that is not enough. The data show that Black voters would still frequently be denied the opportunity to elect a representative of their choice, sometimes badly. *See Gingles*, 478 U.S. at 76 ("The relative lack of minority electoral success under a challenged plan, when compared with the success that would be predicted under the measure of undiluted

minority voting strength the court is employing, can constitute powerful evidence of vote dilution"). In other words, the County went from an egregious plan, where the County's white population (52% of the total County population) controlled 86% of council districts, to a slightly less egregious plan where the same white population still controls 86% of council districts.

10. Contrary to Baltimore County's argument (ECF 57-1 at 8-9), Plaintiffs properly emphasize the three elections featuring Black candidates as especially probative in the Section 2 analysis. *Lewis* did not reject reliance on Black-white elections in determining whether a proposed election district would perform for Black voters. In that case, the Fourth Circuit criticized the district court for refusing even to consider white vs. white elections, but it found that mistake to be harmless error and affirmed the district court's findings. *Lewis v. Alamance County, N.C.*, 99 F.3d 600, 606 (4th Cir. 1996). Here, both Plaintiffs and the Court considered elections involving only white candidates,[2] but, as Dr. Barreto testified, Black-white elections are more probative in assessing whether *Gingles* preconditions 2 and 3 have been met.[3]

C. The County's "crossover" district is not new, nor does it cure the Section 2 violation.

11. The County argues that it complies with this Court's order "to create an additional district that affords Black voters an 'opportunity to elect a representative of their choice….'" ECF

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[2] *See* Barreto Reply Decl., ECF 39-1 ¶¶ 15-17 & Fig. 1 (showing strong racial polarization in voting even in white v. white elections); ECF 53 at 29 (slide of Plaintiffs' preliminary injunction hearing presentation showing strong racial polarization in voting even in white v. white elections).

[3] Dr. Barreto's approach is consistent with how courts weigh relative value of Black-white and white-white elections, following the Supreme Court's lead in *Gingles*. *See, e.g., U.S. v. Charleston County, S.C.,* 365 F.3d 341, 350 (4th Cir. 2004) (recognizing that election contests between Black and white candidates are most probative of racially polarized voting); *LULAC v. Clements,* 999 F.2d 831, 864 (5th Cir. 1993) ("This court has consistently held that elections between white candidates are generally less probative in examining the success of minority-preferred candidates, generally on grounds that such elections do not provide minority voters with the choice of a minority candidate.") (collecting cases).

57-1 at 3. It bears emphasis that the County concedes that District 2, which it proposes as a crossover district, "was already a crossover district" in its earlier district map. ECF 57-1 at 6. The earlier map did not comply with the Voting Rights Act; the minor changes the County has proposed to District 2 do not bring it into compliance. Moreover, the County's argument as to the permissibility of crossover districts distorts and misapplies the law. Here, the County's proposed crossover district is not an acceptable or legal alternative to a second majority-Black council district under the circumstances present in this case.

12. While the Supreme Court has recognized that, in some settings, legislatures may employ crossover districts without a majority-minority population in order to improve the prospects that minority voters can elect candidates of their choice, that approach is valid only where the third *Gingles* precondition is not established, *i.e., where white-bloc voting does not work to defeat Black candidates*. Thus, the Supreme Court has explained that, while a crossover district might be used to address concerns like those to which Section 2 responds, the issue is whether there is a demonstration of "effective white-bloc voting." *Cooper v. Harris*, 137 S. Ct. 1455, 1472 (2017). If not, then the third *Gingles* precondition will not be established "and so 'majority-minority districts would not be required,'" and a crossover district could suffice. *Id.* The Court in *Cooper* thus found that racial considerations in district line drawing did not withstand strict scrutiny because the legislature made a legally incorrect assumption that a majority-minority district was required where there was no evidence of "effective white-bloc voting" in districts created without race-based considerations (i.e., districts that were not majority-minority). *Id.*

13. Here, however, this Court recognized that "Plaintiffs have similarly shown a substantial likelihood of satisfying *Gingles* precondition three—that the White majority in the County votes sufficiently as a bloc to enable it usually to defeat the minority's preferred

candidate." ECF 55 at 16. The Court reviewed Plaintiffs' evidence in detail, noting that it was "essentially unrebutted by defendants." *Id.* at 17. Under these circumstances, Section 2 compliance cannot be achieved merely by minor adjustments to district lines that purport to increase the potential viability of one district as a "crossover" district where white and Black voters could potentially join forces to elect Black-preferred candidates.

14. To support its position, the County misreads and misapplies a number of Supreme Court decisions, most importantly the decision in *Bartlett v. Strickland*, 556 U.S. 1 (2009). In *Strickland*, the question was whether a proposed district could be treated as "effectively" a majority-minority district, for purposes of applying the first *Gingles* precondition, by combining less than a majority of Black voters with white voters who could be persuaded to cross over and join with them to elect the minority population's candidate of choice. The Court rejected that argument, ruling that Section 2 is not designed to promote district line drawing "for the purposes of forging an advantageous political alliance." *Id.* at 14-15 (quoting *Hall v. Virginia*, 385 F.3d 421, 431 (4th Cir 2004)). *Strickland*'s ***exclusive*** holding is that Section 2 cannot be invoked to require creation of a crossover district. The Supreme Court has ***never*** held that a Section 2 violation can be cured by using racially-based district line drawing to create a crossover district.

15. The County's argument turns the teachings of *Strickland* on their head. There, the Court warned *against* trying to assess whether racial considerations could be used to design a crossover district where minority voters would have sufficient white voter support to elect their preferred candidates. The Court viewed such an undertaking as not only problematic in terms of predicting electoral outcomes, but contrary to Constitutional limits on race-based districting. Those limits are overcome under the Voting Rights Act's straightforward demographic assessment

of the minority population's size and compactness. It was just such concerns that led the Court to reject any requirement for crossover districts under Section 2:

> We find support for the majority-minority requirement in the need for workable standards and sound judicial and legislative administration. The rule draws clear lines for courts and legislatures alike. The same cannot be said of a less exacting standard that would mandate crossover districts under § 2. Determining whether a § 2 claim would lie —*i.e.,* determining whether potential districts could function as crossover districts—would place courts in the untenable position of predicting many political variables and tying them to race-based assumptions. The Judiciary would be directed to make predictions or adopt premises that even experienced polling analysts and political experts could not assess with certainty, particularly over the long term. For example, courts would be required to pursue these inquiries: What percentage of white voters supported minority-preferred candidates in the past? How reliable would the crossover votes be in future elections? What types of candidates have white and minority voters supported together in the past and will those trends continue? Were past crossover votes based on incumbency and did that depend on race? What are the historical turnout rates among white and minority voters and will they stay the same? Those questions are speculative, and the answers (if they could be supposed) would prove elusive. A requirement to draw election districts on answers to these and like inquiries ought not to be inferred from the text or purpose of § 2. Though courts are capable of making refined and exacting factual inquiries, they "are inherently ill-equipped" to "make decisions based on highly political judgments" of the sort that crossover-district claims would require. *Holder,* 512 U.S., at 894, 114 S.Ct. 2581 THOMAS, J., concurring in judgment). There is an underlying principle of fundamental importance: We must be most cautious before interpreting a statute to require courts to make inquiries based on racial classifications and race-based predictions. The statutory mandate petitioners urge us to find in § 2 raises serious constitutional questions.

556 U.S. at 17.

16. Identical considerations dictate that the County's proposed crossover district be rejected as a remedy for the County's initial enactment of a redistricting plan that violated the Voting Rights Act. The County's arguments (based on nothing more than Dr. Gimpel's data-free speculation) that its modifications to the racial make-up of District 2 will provide Black voters sufficient electoral opportunity, provided they can attract enough crossover white voters, has no grounding in the Voting Rights Act's text or the precedents interpreting it. Read correctly, Supreme Court precedent establishes that a second majority-Black district is the appropriate cure

to the Section 2 violation here, in light of demonstrated white-bloc voting patterns in the County that satisfy the third *Gingles* precondition.[4]

17. The County notably quotes from the *dissenting* opinion in *Strickland*, but this Court's February 22 Opinion and Order instead cited Justice Thomas' more instructive concurrence.[5] The guidance from that opinion does not indicate that a new or improved crossover district will cure the Section 2 issues here. To the contrary, Justice Thomas observed that "[t]he special significance, in the democratic process, of a majority means ***it is a special wrong when a minority group has 50 percent or more of the voting population and could constitute a compact voting majority but, despite racially polarized bloc voting, that group is not put into a district***." *Id.* at 19 (emphasis added). Although the County correctly quotes his observation that crossover districts can coexist with Section 2 (ECF 57-1 at 6), the County omits the most critical limitation on this practice in the Section 2 context:

> States that wish to draw crossover districts are free to do so ***where no other prohibition exists***. Majority-minority districts are only ***required*** if all three *Gingles* factors are met and if § 2 applies based on a totality of the circumstances. In areas with substantial crossover voting it is unlikely that the plaintiffs would be able to establish the third *Gingles* precondition—bloc voting by majority voters. In those areas majority-minority districts would not be required in the first place; and in the exercise of lawful discretion States could draw crossover districts as they deemed appropriate.

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[4] The County also cites *Voinovich v. Quilter*, 507 U.S. 146, 154 (1993) as endorsing the "safe" majority-Black district 4. ECF 57-1 at 3. While that case surely recognizes that majority-Black districts are appropriate in response to Section 2 claims, the Supreme Court has noted that "in *Voinovich,* the Court stated that the first *Gingles* requirement 'would have to be modified or eliminated' to allow crossover-district claims." 556 U.S. at 15 (quoting *Voinovich,* 507 U.S., at 158.)

[5] The County claims that the February 22 Opinion and Order "clearly authorized the County to create a crossover district." ECF 57-1 at 8. Actually, the Court merely cited to and quoted from Supreme Court precedents, none of which stand for the proposition that a crossover district will overcome a Section 2 violation.

555 U.S. at 24 (emphasis added). As this Court has found, the evidence here demonstrates that all three *Gingles* factors (including the third precondition) are met and Section 2 applies based on a totality of the circumstances, making a second majority-Black district the appropriate remedy.

18. In Baltimore County, the evidence establishes that the third *Gingles* precondition is satisfied, i.e., that white-bloc voting precludes a mere crossover district as an effective means to comply with Section 2. Indeed, the County contends that District 2, which it proposes as a crossover district to cure Section 2 concerns, "was already a crossover district" in its earlier district map. ECF 57-1 at 6. The County's approach of simply making it a "better" crossover district does not eliminate the Section 2 violation.

D. Requiring a second majority-Black district does not implicate the Equal Protection Clause.

19. The County's suggestion that requiring a second majority-Black council district raises Equal Protection concerns similarly distorts controlling precedent. The County cites *Johnson v. De Grandy*, 512 U.S. 997 (1994), as warning against reading Section 2 as requiring the "maximum" possible number of majority-Black districts, but that is not what Plaintiffs advocate (nor what this Court directed). Instead, the issue here is whether, applying the *Gingles* criteria, a second majority-Black district is necessary to avoid a Section 2 violation. A second such district would be proportional to the county's Black population, which the *De Grandy* decision recognized as an appropriate consideration when assessing minority vote dilution. 512 U.S. at 1000, 1014-15.[6]

[6] Similarly unavailing are the County's references to *Shaw v. Hunt*, 517 U.S. 899 (1996), and *Miller v. Johnson*, 515 U.S. 900 (1995), with allusions to constitutional Equal Protection concerns about racial considerations when drawing district lines. ECF 57-1 at 8. Voting Rights Act compliance has been long recognized as a sufficiently compelling interest to permit racial considerations when defining legislative voting districts, provided legal requirements are followed. *See e.g. Bush v. Vera,* 517 U.S. 952, 977 (1996) (compliance with VRA Section 2 considered a compelling state interest overcoming equal protection concerns).

E. The new map does not get a free pass because it is the County's second bite at the apple or because it has delayed curing its Section 2 violation.

20. This Court has found a likely violation. The proposed remedy has to actually cure the violation. If it does not cure the violation, then it is not an adequate remedy, and should be rejected.

21. In *McGhee v. Granville Cnty., N.C.*, the Fourth Circuit considered what to do when a legislative body was given an opportunity to devise an acceptable remedial plan:

> If the legislative body fails to respond or responds with a legally unacceptable remedy, "the responsibility falls on the District Court," *Chapman v. Meier*, 420 U.S. 1, 27, 95 S.Ct. 751, 766, 42 L.Ed.2d 766 (1975) (reapportionment case) to exercise its discretion in fashioning a "near optimal" plan. *Seastrunk v. Burns*, 772 F.2d 143, 151 (5th Cir.1985) (same).

860 F.2d 110, 115 (4th Cir. 1988). The path here is clear: the County has presented a legally unacceptable remedy and this Court should exercise its discretion to adopt a plan that fully remedies the violation.

22. As has been clear for *months*, and as demonstrated by Plaintiffs' proposed alternative maps 1 and 5, it is not difficult to draw a map that includes either "two reasonably compact majority-Black Districts" or "an additional County District in which Black voters otherwise have an opportunity to elect a representative of their choice." Now, with the assistance of their nationally renowned expert in demography, Plaintiffs are introducing an additional alternative that complies with the Voting Rights Act *and* accounts for the boundaries in the County's proposed new map. Cooper Decl. ¶ 7. By taking the County's new map and shifting a few precincts between Districts 4 and 2, this slightly revised version of the County's proposal demonstrates how readily the County could comply with the Voting Rights Act while still maintaining some discretion over how the boundaries are drawn. (It took Mr. Cooper an afternoon to complete Plaintiffs' new proposed alternative.) Given the County's legally unacceptable

remedial plan, "the responsibility falls on the District Court to exercise its discretion in fashioning a near-optimal plan." *McGhee*, 860 F.2d at 115 (cleaned up). Plaintiffs have provided multiple examples to assist the Court in that responsibility.

23. Finally, Baltimore County's pleas about how the Court must immediately act to accept its plan contrasts with its unhurried response to the Court's preliminary injunction. If Baltimore County wanted more time for its county council to effectuate whatever procedural steps it must, the new proposed map would not have been filed at the literal eleventh hour. The County provides no explanation for why the new proposed map, and the data and shapefiles necessary to analyze it, could not have been provided earlier. Yet, Baltimore County waited until 11:00 pm on the evening of March 8, 2022, to submit its new proposed map despite having had it available well in advance. Given this conduct, the County cannot equitably claim that the Court has no choice but to disregard the proper analysis under the Voting Rights Act because an emergency legislative session must be initiated immediately to adopt another illegal map. Plaintiffs do not want any disruption to the election deadlines currently in place; that is why we proposed alternative maps during the pre-suit redistricting process, filed suit the day after the now-enjoined map was adopted, filed a motion for preliminary injunction the afternoon leave was granted, and conducted expert analysis on the barely-improved new map within 36 hours of its filing. If timing is an issue, then it is a product of Baltimore County's dilatory tactics, which seem calculated to foreclose judicial review of its unlawful redistricting.

II. THE COURT SHOULD ORDER THAT THE UPCOMING COUNCILMANIC ELECTION BE CONDUCTED UNDER PLAINTIFFS' PROPOSED PLAN 1, PLAN 5, OR THE PLAN SUBMITTED WITH THIS STATUS REPORT

24. As the Court knows, March 22 is the deadline for candidates to file to run in the June 28, 2022, primary election. To give candidates time to determine whether they wish to run in

the districts established for this election, a final map should be in place by March 15 (unless the County moves the filing date).

25. Accordingly, this Court has the responsibility to fashion a new map that complies with the Voting Rights Act. *See McGhee v. Granville Cnty.*, 860 F.2d 110, 115 (4th Cir. 1988), supra at ¶ 21. In order that the 2022 County Council election may be conducted under a map that complies with the Voting Rights Act, the Court should order that either Plaintiffs' Plan 1, Plan 5, or the plan submitted with this status report, or such other map as the Court deems appropriate, be used by the County for the 2022 election.

Respectfully submitted,

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Dated: March 10, 2022

EXHIBIT A

DECLARATION OF WILLIAM S. COOPER

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(Northern Division)

BALTIMORE COUNTY BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*, Plaintiffs, v. BALTIMORE COUNTY, MARYLAND, *et al.*, Defendants.	Civil Action No. LKG-21-03232

THIRD DECLARATION OF WILLIAM S. COOPER

1. I previously executed two other Declarations that were submitted in this action. The first was submitted on January 18, 2022, (ECF 28-2) and the second on February 7, 2022, (ECF 41-2). Since then, I have reviewed Defendant Baltimore County's Motion for Approval of Proposed Redistricting Map and to Modify Preliminary Injunction (ECF 57), the accompanying proposed Councilmanic Redistricting Map (ECF 57-3), and the Supplemental Declaration of Dr. James G. Gimpel, Ph.D. (ECF 57-6).

2. The County's new proposed map fails to create two majority-Black districts, although this is readily possible. Instead, the County's revised District 2 includes a Black citizen voting age population of 41.7% and a white citizen voting age population of 52.1%. This represents only a 3.4% decrease in the white citizen voting age population from the version of District 2 included in the plan invalidated by the Court, as the previous District 2 had a white citizen voting age population of 55.5%. Although the new map increases the Black citizen voting age population

of the district from 31.2% to 41.7%, this is still significantly less than a majority of the district's vote-eligible population, and over ten points less than its white population.

3. The County states that when shares of Black, Hispanic, and Asian population are combined in its revised District 2, the district's non-white population would be 50.9%. Additionally, the County claims, when Multiracial, Biracial, Other race, Native American and Hawaiian/Pacific Islander population shares are included, the non-white share of the population in District 2 would be 54.2%. However, in this assessment, the County fails to use *citizen* voting age populations, a critical factor in determining the fairness of a remedial redistricting plan. Given that 42% of Baltimore County's Latinx population is made up of non-citizens, the demographic make-up of the population eligible to vote in the County's proposed District 2 – that is, citizen population of voting age – is majority white, at 52.1%.

4. As shown in Exhibit 1, a chart showing complete demographic information on the County's proposed remedial plan, the only majority-Black voting district remains District 4. The County still unnecessarily "packs" a supermajority of Black population into District 4, with the Black voting age population now equaling 64.1%, and its general Black population 66.0%. All six of the other Council districts in the County's newly proposed map retain a citizen voting age population that is majority white.

5. Additionally, the County's proposed map continues to "crack" majority-Black communities of interest, including Woodlawn, Milford Mill, Randallstown, and Owings Mills, as well as dividing numerous other communities throughout the County.

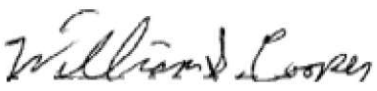
6. As I have shown in my previously submitted illustrative Plans 1 and 5, two reasonably compact majority-Black districts can be easily established with the County's Black

population distribution in line with court-accepted standards under Section 2. Yet, the County has failed to do so here.

7. In addition to the two illustrative maps Plaintiffs have already submitted, since receiving the shapefiles for the County's proposed map yesterday afternoon, I have attempted to adapt the new County map to create two fair majority-Black districts while keeping the vast majority of the County's plan intact. This adjusted map is attached hereto as Exhibit 2A, and a zoomed-in version showing the precincts shifted between Districts 2 and 4 is attached as Exhibit 2B. On this map, the districts the County proposed on the night of March 8th are outlined in red, and the districts I have drawn are shown by their color. This map is only a slight variation from the County's proposed map, shifting only eleven precincts. It keeps the County's proposed Districts 1, 5, 6, and 7 entirely intact, and shifts just one lightly populated precinct out of District 3, while creating a second majority-Black district (District 2) in addition to the existing majority-Black District 4. This variation on the County's map complies with all accepted standards under Section 2 of the Voting Rights Act, including through its creation of two solid majority-Black districts, with a 53.8% Black voting age population (52.0% CVAP) in District 2, and a 53.2% Black VAP (51.6% CVAP) in District 4. Full data on this map is shown in Exhibit 2C, and compactness scores are shown in Exhibit 2D.

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

Executed on March 10, 2022



William S. Cooper

EXHIBIT 1

Population Summary Report (2020 Census)
Baltimore County March 8, 2022 Proposal

District	Adusted Population	Deviation	% Deviation	2020 Population	Any Part Black	% Any Part Black	Single-race Black	% Single-race Black	Latino	% Latino	NH White	% NH White
1	120492	-1890	-1.54%	120183	36414	30.30%	33529	27.90%	10504	8.74%	56087	46.67%
2	117868	-4514	-3.69%	117592	51416	43.72%	48921	41.60%	7744	6.59%	51920	44.15%
3	120742	-1640	-1.34%	120644	10622	8.80%	9192	7.62%	6704	5.56%	90555	75.06%
4	120066	-2316	-1.89%	119717	78976	65.97%	75241	62.85%	7757	6.48%	26579	22.20%
5	122422	40	0.03%	122211	25709	21.04%	23347	19.10%	5933	4.85%	75955	62.15%
6	127655	5273	4.31%	127328	43557	34.21%	40487	31.80%	8897	6.99%	64768	50.87%
7	127428	5046	4.12%	126860	28666	22.60%	25076	19.77%	13953	11.00%	77399	61.01%
Total	856673		8.00%	854535	275360	32.22%	255793	29.93%	61492	7.20%	443263	51.87%

District	18+_Pop	18+_ AP Black	% 18+_AP Black	18+_NH AP Black	% 18+_NH AP Black	18+ Latino	% 18+ Latino	18+_NH AP Asian	% 18+_NH AP Asian	18+_NH White	% 18+_NH White
1	93945	27285	29.04%	26805	28.53%	6884	7.33%	11468	12.21%	46926	49.95%
2	91918	39632	**43.12%**	39137	42.58%	5084	5.53%	4383	4.77%	42206	45.92%
3	94983	7426	7.82%	7173	7.55%	4356	4.59%	7755	8.16%	73875	77.78%
4	93481	59922	**64.10%**	59130	63.25%	5226	5.59%	4902	5.24%	23259	24.88%
5	95858	17473	18.23%	17123	17.86%	3799	3.96%	9156	9.55%	63669	66.42%
6	101796	32477	31.90%	31806	31.24%	6217	6.11%	6855	6.73%	55219	54.24%
7	97530	19232	19.72%	18639	19.11%	8623	8.84%	2380	2.44%	64412	66.04%
Total	669511	203447	30.39%	199813	29.84%	40189	6.00%	46899	7.00%	369566	55.20%

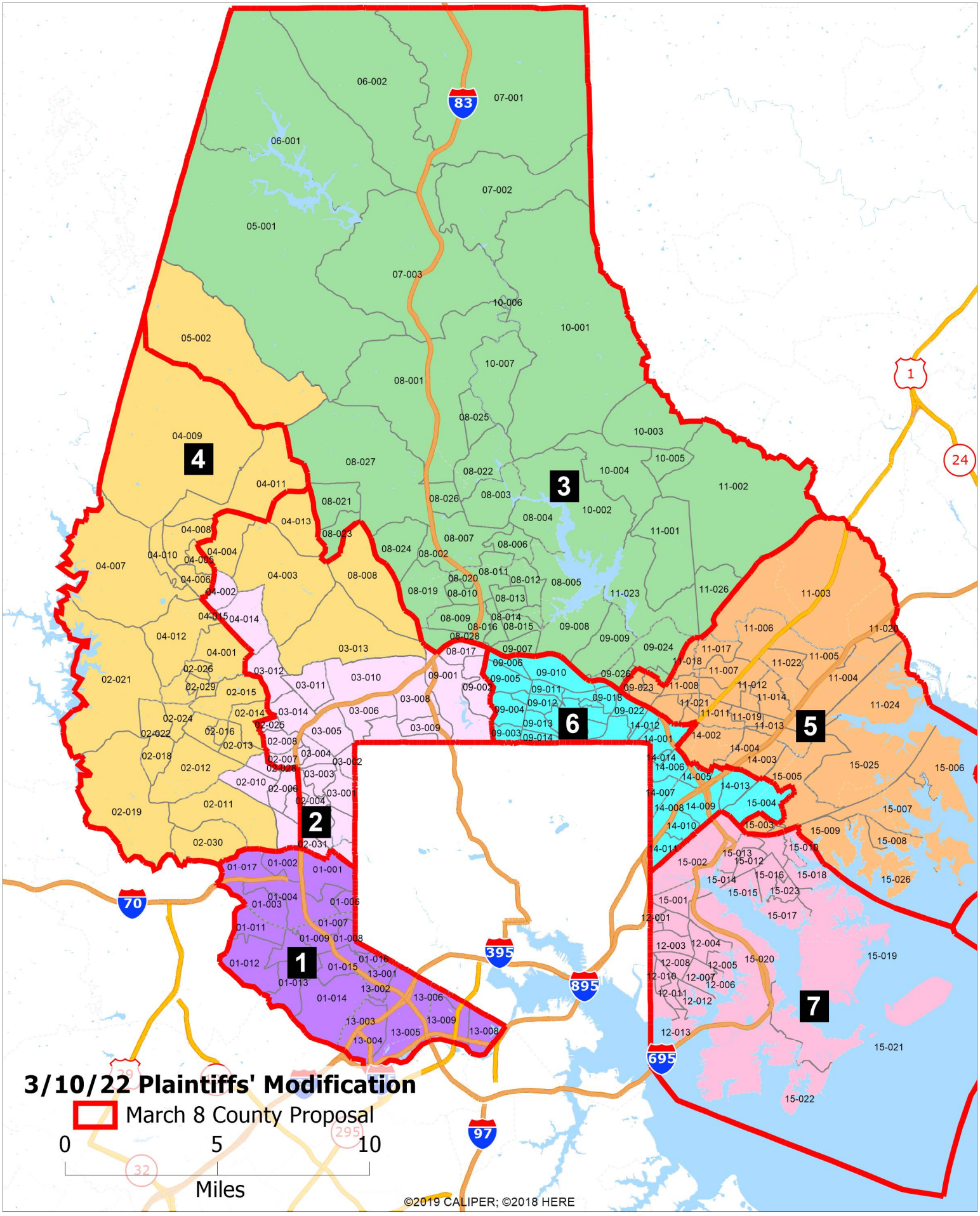
District	% NH Single-Race Black CVAP*	% Latino CVAP	% NH Single-Race Asian CVAP*	% NH Single-Race White CVAP*
1	29.86%	2.42%	6.23%	60.52%
2	**41.68%**	2.78%	2.90%	52.11%
3	7.03%	2.73%	5.64%	84.06%
4*	**62.24%**	2.33%	4.09%	30.35%
5	13.09%	1.86%	6.69%	78.04%
6	27.18%	3.80%	4.00%	64.06%
7	17.00%	3.06%	1.54%	77.19%

Note: Citizen Voting Age Population (CVAP) percentages are disaggregated from block-group level ACS estimates (with a survey midpoint of July 2017)

Source for CVAP disaggregation: Redistricting Data Hub

https://redistrictingdatahub.org/dataset/maryland-cvap-data-disaggregated-to-the-2020-block-level-2019/

EXHIBIT 2A


3/10/22 Plaintiffs' Modification
March 8 County Proposal
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Miles
©2019 CALIPER; ©2018 HERE
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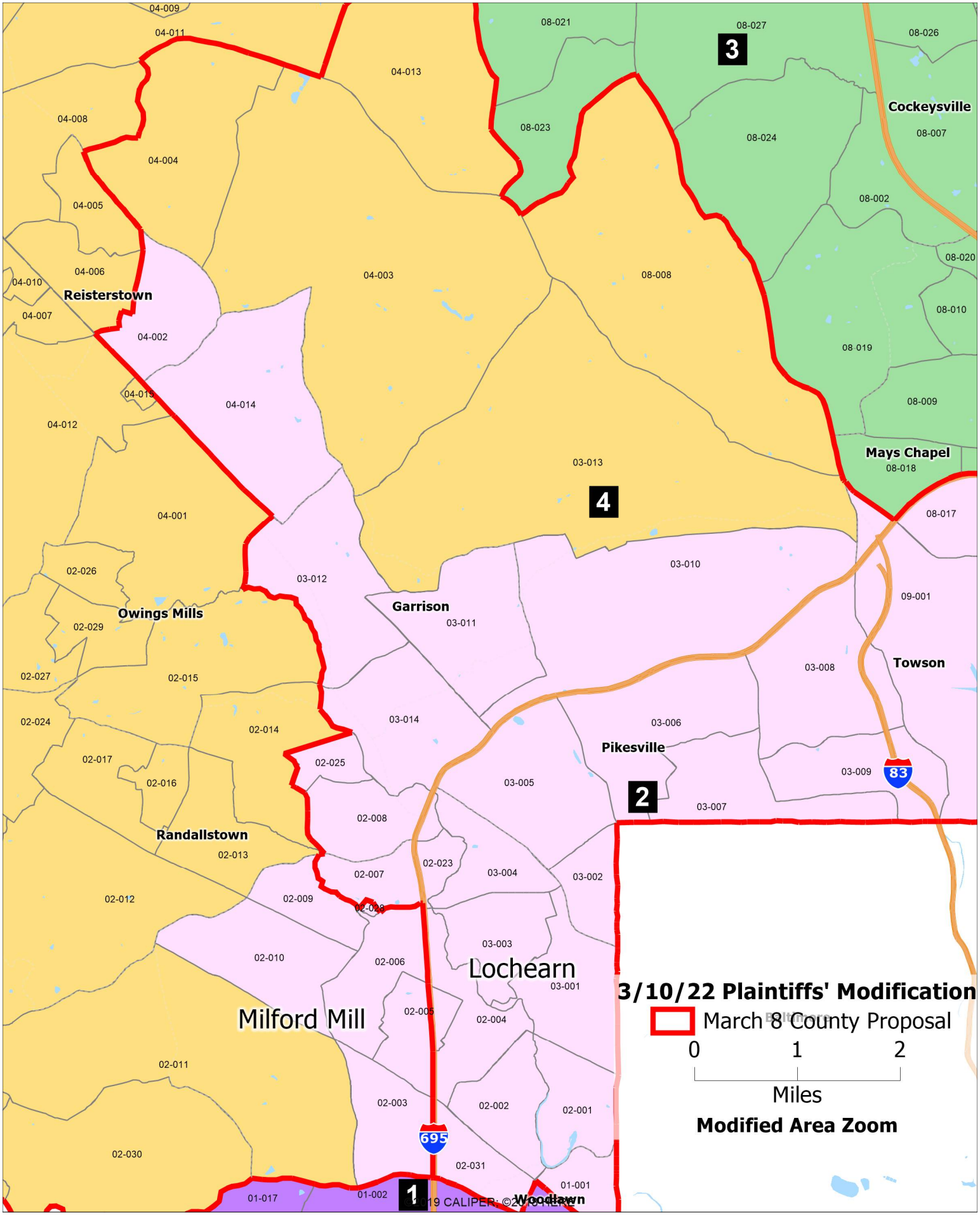
EXHIBIT 2B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4
2
1
Reisterstown
Owings Mills
Randallstown
Garrison
Pikesville
Towson
Cockeysville
Mays Chapel
Lochearn
Milford Mill
Woodlawn
695
83
3/10/22 Plaintiffs' Modification
March 8 County Proposal
0 1 2
Miles
Modified Area Zoom

EXHIBIT 2C

Population Summary Report (2020 Census)

Plaintiffs' March 10 Modification to Baltimore County March 8, 2022 Proposal

District	Adusted Population	Deviation	% Deviation	2020 Population	Any Part Black	% Any Part Black	Single-race Black	% Single-race Black	Latino	% Latino	NH White	% NH White
1	120492	-1890	-1.54%	120183	36414	30.30%	33529	27.90%	10504	8.74%	56087	46.67%
2	122134	-248	-0.20%	121792	65752	53.99%	62936	51.67%	8254	6.78%	41991	34.48%
3	119806	-2576	-2.10%	119708	10602	8.86%	9179	7.67%	6675	5.58%	89706	74.94%
4	116736	-5646	-4.61%	116453	64660	55.52%	61239	52.59%	7276	6.25%	37357	32.08%
5	122422	40	0.03%	122211	25709	21.04%	23347	19.10%	5933	4.85%	75955	62.15%
6	127655	5273	4.31%	127328	43557	34.21%	40487	31.80%	8897	6.99%	64768	50.87%
7	127428	5046	4.12%	126860	28666	22.60%	25076	19.77%	13953	11.00%	77399	61.01%
Total	856673		8.92%	854535	275360	32.22%	255793	29.93%	61492	7.20%	443263	51.87%

District	18+_Pop	18+_ AP Black	% 18+_AP Black	18+_NH AP Black	% 18+_NH AP Black	18+ Latino	% 18+ Latino	18+_NH AP Asian	_NH AP Asian	18+_NH White	% 18+_NH White
1	93945	27285	29.04%	26805	28.53%	6884	7.33%	11468	12.21%	46926	49.95%
2	94750	50947	**53.77%**	50347	53.14%	5451	5.75%	4032	4.26%	33914	35.79%
3	94213	7415	7.87%	7162	7.60%	4339	4.61%	7740	8.22%	73157	77.65%
4	91419	48618	**53.18%**	47931	52.43%	4876	5.33%	5268	5.76%	32269	35.30%
5	95858	17473	18.23%	17123	17.86%	3799	3.96%	9156	9.55%	63669	66.42%
6	101796	32477	31.90%	31806	31.24%	6217	6.11%	6855	6.73%	55219	54.24%
7	97530	19232	19.72%	18639	19.11%	8623	8.84%	2380	2.44%	64412	66.04%
Total	669511	203447	30.39%	199813	29.84%	40189	6.00%	46899	7.00%	369566	55.20%

District	% NH Single-Race Black CVAP*	% Latino CVAP	% NH Single-Race Asian CVAP*	% NH Single-Race White CVAP*
1	29.86%	2.42%	6.23%	60.52%
2	**52.02%**	2.66%	2.67%	42.16%
3	7.08%	2.74%	5.67%	83.94%
4*	**51.61%**	2.43%	4.34%	40.60%
5	13.09%	1.86%	6.69%	78.04%
6	27.18%	3.80%	4.00%	64.06%
7	17.00%	3.06%	1.54%	77.19%

Note: Citizen Voting Age Population (CVAP) percentages are disaggregated from block-group level ACS estimates (with a survey midpoint of July 2017)

Source for CVAP disaggregation: Redistricting Data Hub

https://redistrictingdatahub.org/dataset/maryland-cvap-data-disaggregated-to-the-2020-block-level-2019/

EXHIBIT 2D

Plan Name: Baltimore_March_10_Plan
Plan Type:
Date: 3/10/2022 Time: 1:19:18PM
Administrator:

Measures of Compactness

3/10/2022

DISTRICT	Roeck	Polsby-Popper
1	0.37	0.45
2	0.36	0.25
3	0.51	0.48
4	0.39	0.21
5	0.50	0.41
6	0.23	0.24
7	0.61	0.76
Sum	N/A	N/A
Min	0.23	0.21
Max	0.61	0.76
Mean	0.42	0.40
Std. Dev.	0.12	0.19

EXHIBIT B

DECLARATION OF MATTHEW A. BARRETO

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
(Northern Division)

BALTIMORE COUNTY BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *et al.*, Plaintiffs, v. BALTIMORE COUNTY, MARYLAND, *et al.*, Defendants.	Civil Action No. LKG-21-03232

THIRD DECLARATION OF MATT BARRETO, PH. D.

1. I have previously executed two declarations that were both submitted in this action. The first was executed on January 18, 2022 (ECF 28-3) and the second on February 7, 2022 (ECF 41-1). Additionally, I testified via Zoom on February 15, 2022 as part of the Court's hearing on Plaintiffs' Motion for Preliminary Injunction. Since then, I have reviewed Defendant Baltimore County's Motion for Approval of Proposed Redistricting Map and to Modify Preliminary Injunction (ECF 57), the accompanying proposed Councilmanic Redistricting Map (ECF 57-3), and the Supplemental Declaration of Dr. James G. Gimpel, Ph.D. (ECF 57-6).

2. As explained in my prior declarations, in this matter I have been working with Dr. Kassra Oskooii, tenured professor of Political Science at the University of Delaware.

3. On March 8, 2022, Baltimore County submitted a new map for consideration following the Court's finding that the redistricting plan it initially adopted violates the Voting Rights Act. However, this new map consisted of a PDF file and did not contain the necessary

shapefiles to allow an analysis. I asked counsel to communicate with Baltimore County and provide us with the shapefiles.

4. On March 9, 2022, I received shapefiles from Baltimore County that I was able to merge with election data, and then extract the list of election precincts assigned to each of the seven councilmanic districts by the new proposed map.

5. After having carefully reviewed the population demographics and the election results associated with the new map, my conclusion is that the County's revised map does not provide Black voters with a fair opportunity to elect candidates of their choice.

6. The population demographics in the new District 2 continue to keep the Black voting age population well below a majority (at 41%), while the white, non-Hispanic voting age population (46%) outnumbers the Black population. In maps submitted by the plaintiffs as part of their Motion for Preliminary Injunction, it was clear that two majority-Black VAP districts can be created in Baltimore County. The map offered by the County falls well short of this benchmark.

7. Beyond the population demographics, a far more important metric is performance analysis, which can determine if the amalgamation of precincts in Baltimore County's newly proposed District 2 will allow Black voters to elect candidates of their choice. Similar to the performance analysis we provided for the preliminary injunction hearing, Dr. Oskooii and I took the set of precincts which the County proposes in District 2 and evaluated critical elections in which Black candidates faced off against white candidates. Our conclusion is that from the standpoint of electability, the proposed map does not perform for Black voters' candidates of choice.

Table 1: Performance analysis of elections with Black-preferred candidates

	D1	D2	D4
Hogan	55.0%	45.0%	32.5%
Brown	42.4%	53.3%	65.8%
Van Hollen	51.6%	57.2%	36.9%
Edwards	39.4%	37.4%	57.0%
Hogan	54.6%	50.2%	36.3%
Jealous	44.1%	49.0%	62.7%

8. In particular, the proposed district does not give Black voters an opportunity to elect their candidates of choice in either one of the most recent elections: the 2016 Democratic primary election and the 2018 general election.[1] While the new district has increased the Black population in District 2, it has not increased it to the level needed to overcome white bloc in the area, and to allow Black voters to elect candidates of choice. Therefore, the Black population will very likely continue to see their preferred candidates lose out.

9. In contrast, the revised map proposed by Plaintiffs' expert William S. Cooper makes necessary changes to increase the Black voting age population, and our analysis suggests that it will create a district which gives Black voters the opportunity to elect candidates of their choice.

[1] "Courts have found recent elections to be the most probative" in determining if there has been a violation of Section 2 of the VRA. *U.S. V. Charleston County*, 316 F.Supp. 2d 268, n. 13 (D.S.C. 2003), aff'd 365 F.3d 341, 350 (4th Cir. 2004) *citing Ruiz v. City of Santa Maria,* 160 F.3d 543, 555 (9th Cir.1998); *Uno v. City of Holyoke,* 72 F.3d 973, 990 (1st Cir.1995); *Meek v. Metro. Dade County, Fla.,* 985 F.2d 1471, 1482–83 (11th Cir.1993).

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

Matt Barreto
Agoura Hills, California

Executed on March 10, 2022