No. 17-333

In the Supreme Court of the United States

O. JOHN BENISEK, EDMUND CUEMAN, JEREMIAH DEWOLF, CHARLES W. EYLER, JR., KAT O'CONNOR, ALONNIE L. ROPP, *and* SHARON STRINE,

Appellants,

v.

LINDA H. LAMONE, *State Administrator of Elections*, *and* DAVID J. MCMANUS, JR., *Chairman of the Maryland State Board of Elections*,

Appellees.

On Appeal from the United States District Court for the District of Maryland

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

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Frederick County

Sharon Strine
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Frederick County

Plaintiffs,

vs.

David J. McManus, Jr.,* **et al.,**
in their official capacities,

Defendants.

Case No. 13-cv-3233

Three-Judge Court

SECOND AMENDED COMPLAINT

* By operation of Federal Rule of Civil Procedure 25(d), David J. McManus, Jr., in his official capacity as Chair of the Maryland State Board of Elections, is automatically substituted for defendant Bobby S. Mack.

Plaintiffs Stephen M. Shapiro, Maria A. Pycha, O. John Benisek, Edmund Cueman, Jeremiah DeWolf, Charles W. Eyler, Jr., Kat O'Connor, Alonnie L. Ropp, and Sharon Strine, for their complaint against defendants Linda H. Lamone and David J. McManus, Jr., in their official capacities, allege by and through their attorneys, as follows.

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INTRODUCTION

1. This is a constitutional challenge to Maryland's 2011 congressional redistricting plan (the "Plan," attached as Exhibit A), and specifically to the "cracking" of Maryland's 6th Congressional District, which was purposefully and successfully flipped from Republican to Democratic control by strategically moving the district's lines by reason of citizens' voting records and known party affiliations.

2. Voters in Maryland and throughout the Nation ought to be able to organize politically, to support political campaigns, to register with their preferred political parties, and to vote for their preferred candidates without fear that—if they succeed in electing the public officials of their choice—they will be retaliated against by the legislature. Yet that is just what the Maryland legislature did when it enacted the Plan in 2011.

3. In 2010, registered Republican voters—comprising 32% of the party-affiliated registered voters in Maryland—were able to elect two of the eight members of the House of Representatives from Maryland, those from the 1st and the 6th Congressional Districts. But in 2011, the Democratic-controlled Maryland legislature violated the First Amendment and Article I of the Federal Constitution when it used data reflecting the political party memberships, party registrations, and voting histories of Republican and Democratic voters in the 6th and surrounding districts to gerrymander the 6th District for the purpose and with the effect of enhancing the effectiveness of votes cast in favor of Democratic candidates and diluting the effectiveness of votes cast in favor Republican candidates in the general election for a representative from the 6th District.

4. The legislature gerrymandered the boundaries of the 6th District to remove a net total of over 65,000 registered Republican voters from the district (and disburse them among surrounding districts with large Democratic majorities) and add a net total of over 30,000 Democratic voters to the district. The purpose and the effect of this cracking of the

6th District was to nullify the ability of Republican voters in the former 6th District to elect a Republican of their choice to Congress and to the prevent them from reelecting Representative Roscoe Bartlett, the 20-year Republican incumbent from the 6th District, in the 2012 general election. That purpose was achieved: In 2012 congressional election, the 6th District was flipped by the Plan from Republican to Democratic control. The district remained under Democratic control after the 2014 congressional election and is nearly certain to remain so in all future congressional elections under the Plan.

5. The Plan is widely regarded as one of the worst partisan gerrymanders in American history. Earlier in this case, Judge James K. Bredar of this Court acknowledged that "[i]t may well be that the 4th, 6th, 7th, and 8th congressional districts . . . fail to provide 'fair and effective representation for all citizens.'" *Benisek v. Mack*, 11 F. Supp. 3d 516, 526 (D. Md.) *aff'd*, 584 F. App'x 140 (4th Cir. 2014) *rev'd sub nom. Shapiro v. McManus*, 136 S. Ct. 450 (2015). And in separate litigation challenging the Plan on different grounds, Judge Paul Niemeyer observed that "[m]any obvious communities of interest are divided" and the 3rd District is so contorted that it is "reminiscent of a broken-winged pterodactyl, lying prostrate across the center of the state." *Fletcher v. Lamone*, 831 F. Supp. 2d 887, 902 n. 5 (D. Md. 2011) *summarily aff'd*, 133 S. Ct. 29 (2012).

6. The Plan is manifestly unconstitutional. The drafters of the Plan focused predominantly on the voting histories and political-party affiliations of the citizens of the State in deciding how to draw district lines. And it did so with the clear purpose and effect of diluting the votes of Republican voters and preventing them from electing their preferred representatives in Congress. In particular, the legislature succeeded in "cracking" the formerly Republican 6th District, where a Republican bloc of voters was divided by the Plan among the 1st, 6th, 7th and 8th Districts, giving the Democrats a majority in the new 6th District and allowing them to flip the seat to Democratic control.

7. A State violates the First Amendment when it "enacts a law that has the purpose and effect of subjecting a group of voters or their party to disfavored treatment by reason of their views." *Vieth v. Jubelirer*, 541 U.S. 267, 314 (2004) (Kennedy, J., concurring). A three-part analysis demonstrates that Maryland's 2011 partisan gerrymander violates the First Amendment in just this way.

a. *First*, the Maryland legislature expressly and deliberately considered Republican voters' protected First Amendment conduct, including their voting histories and political party affiliations, when it redrew the lines of the 6th Congressional District; and it did so with an intent to disfavor and punish those voters by reason of their constitutionally protected conduct.

b. *Second*, the Plan, in actual effect, has burdened Republican voters in the former 6th Congressional District. Republican voters in the former 6th District would have been able to elect a Republican representative in 2012 and 2014, but for the cracking of the district under the Plan. In other words, the vote dilution resulting from the cracking of the 6th District achieved its goal of preventing Republicans in the former 6th District from continuing to elect a Republican representative to the United States House of Representatives, as they had in the prior ten congressional elections.

c. *Finally*, the State cannot justify the cracking of the 6th District by reference to geography or compliance with legitimate redistricting criteria.

8. The injury inflicted on Republican voters in this case is, moreover, clear and perceptible. Prior to enactment of the Plan, Republican voters comprised a sufficiently great share of the 6th District that they were reliably able to elect a Republican representative. In the 70 years between January 1943 and January 2013, the district was represented in Congress by members of the Republican Party in four years out of every five, including for the entire two decades between 1993 and 2013. But after the Plan cracked the

6th District in 2011, Republicans kept *in* the 6th District and those moved *out* of the 6th District were no longer able to elect their preferred representative to the House—precisely as the mapmakers, legislators, and governor intended.

9. Maryland's 2011 redistricting plan therefore violates the First Amendment. The legislature adopted the contorted districts at issue here—and the shapes of the 1st, 6th, 7th, and 8th Districts in particular—with an eye to citizens' voting histories and party affiliations and with the purpose of punishing Republicans and preventing them from electing a Republican representative from the 6th District. The legislature succeeded in its efforts. And there is no plausible justification for the Plan's cartographic convolutions to save it from invalidation.

10. The Plan accordingly should be declared a violation of the First Amendment and of Article I, Sections 2 and 4 of the Constitution; the defendants should be enjoined from enforcing the Plan at any stage of any future election; and the legislature should be ordered to enact a new and valid plan within a reasonable time.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(a), and 2284(a) and 42 U.S.C. § 1983. It has the authority to issue declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202 and its general equitable powers.

12. Venue is proper in this district under 28 U.S.C. § 1391(b) because the defendants are domiciled in this district and because a substantial part of the events or omissions giving rise to the claims asserted occurred in this district.

THE PARTIES

A. The plaintiffs

13. Plaintiffs are qualified, registered voters in the State of Maryland. Together with other supporters of the Republican Party, plaintiffs have been harmed by the Plan's

unlawful partisan gerrymander because it burdens citizens by reason of their voting history and political party affiliation.

14. Stephen M. Shapiro is a citizen of the United States and a resident of and registered voter in Maryland. He was a registered Democrat but occasionally voted for Republican candidates prior to 2011. Before enactment of the Plan, Mr. Shapiro's residence was in the 8th Congressional District. Following enactment of the Plan, his residence remains in the 8th Congressional District. He has since continued occasionally to support Republican candidates and policies and will continue doing so from time to time.

15. Maria A. Pycha is a citizen of the United States and a resident of and registered voter in Maryland. She was a registered Republican and voted for Republican candidates prior to 2011. She has since continued to support Republican candidates and policies and will continue voting for Republican candidates for elective office. Ms. Pycha is the Vice Chair of the Baltimore County Republican Central Committee and served as the finance director for the campaign committee of the 2014 Republican nominee for United States House of Representatives from the 6th District, Dan Bongino.

16. O. John Benisek is a citizen of the United States and a resident of and registered voter in Maryland. Before enactment of the Plan, Mr. Benisek's residence was in the 6th Congressional District. Following enactment of the Plan, his residence remains in the 6th Congressional District. He was a registered Republican and voted for Republican candidates prior to 2011. He has continued to support Republican candidates and policies and will continue voting for Republican candidates for elective office.

17. Edmund Cueman is a citizen of the United States and a resident of and registered voter in Maryland. Before enactment of the Plan, Mr. Cueman's residence was in the 6th Congressional District. As a result of the Plan, his residence is now in the 8th Congressional District. He was a registered Republican and voted for Republican can-

didates prior to 2011. He has continued to support Republican candidates and policies and will continue voting for Republican candidates for elective office.

18. Jeremiah DeWolf is a citizen of the United States and a resident of and registered voter in Maryland. Before enactment of the Plan, Mr. DeWolf's residence was in the 6th Congressional District. Following enactment of the Plan, his residence remains in the 6th Congressional District. He was a registered Republican and voted for Republican candidates prior to 2011. He has continued to support Republican candidates and policies and will continue voting for Republican candidates for elective office. Mr. DeWolf is a member of the Washington County Republican Central Committee.

19. Charles W. Eyler, Jr., is a citizen of the United States and a resident of and registered voter in Maryland. Before enactment of the Plan, Mr. Eyler's residence was in the 6th Congressional District. As a result of the Plan, his residence is now in the 8th Congressional District. He was a registered Republican and voted for Republican candidates prior to 2011. He has continued to support Republican candidates and policies and will continue voting for Republican candidates for elective office.

20. Kat O'Connor is a citizen of the United States and a resident of and registered voter in Maryland. Before enactment of the Plan, Ms. O'Connor's residence was in the 6th Congressional District. Following enactment of the Plan, her residence remains in the 6th District. She was a registered Republican and voted for Republican candidates prior to 2011. She has continued to support Republican candidates and policies and will continue voting for Republican candidates for elective office. Ms. O'Connor serves as the Communications Chair for the Montgomery County Republican Central Committee.

21. Alonnie L. Ropp is a citizen of the United States and a resident of and registered voter in Maryland. Before enactment of the Plan, Ms. Ropp's residence was in the 6th Congressional District. As a result of the Plan, her residence is now in the 8th

Congressional District. She was a registered Republican and voted for Republican candidates prior to 2011. She has continued to support Republican candidates and policies and will continue voting for Republican candidates for elective office. Ms. Ropp formerly served as the Chair for the Frederick County Republican Central Committee.

22. Sharon Strine is a citizen of the United States and a resident of and registered voter in Maryland. Before enactment of the Plan, Mrs. Strine's residence was in the 6th Congressional District. As a result of the Plan, her residence is now in the 8th Congressional District. She was a registered Republican and voted for Republican candidates prior to 2011. She has continued to support Republican candidates and policies and will continue voting for Republican candidates for elective office. Mrs. Strine served as the campaign manager for the 2014 Republican nominee for United States House of Representatives from the 6th District, Dan Bongino.

B. The defendants

23. David J. McManus, Jr., is the chairman of the Maryland State Board of Elections, acting in his official capacity.

24. Linda H. Lamone is the Maryland State Administrator of Elections, acting in her official capacity.

25. The mission of the Maryland State Board of Elections is to ensure compliance with the requirements of Maryland and federal election laws by all persons involved in the election process. It bears responsibility for administering federal elections under the Plan.

CONCEPTUAL AND LEGAL FRAMEWORK

A. What partisan gerrymandering does

26. The crux of every partisan gerrymander is the dominant party's effort to dilute the effectiveness of the votes in favor of the disfavored party. *See generally* Nicholas O. Stephanopoulos & Eric M. McGhee, *Partisan Gerrymandering and the Efficiency Gap*,

82 U. Chi. L. Rev. 831, 834 (2015). This complaint refers to the political party that controls redistricting as the "dominant party" and to the party whose votes are intentionally diluted through redistricting as the "disfavored party."

27. The goal of a partisan gerrymander is to punish the disfavored party's supporters by reason of their support for the disfavored party, with the specific aim of preventing those supporters from electing their preferred elected officials. According to the Supreme Court, the goal is, in other words, "to subordinate adherents of one political party and entrench a rival party in power." *Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 135 S. Ct. 2652, 2658 (2015).

28. This end is achieved by drawing district lines so that the dominant party wins a large number of seats by narrow margins and the disfavored party wins a small number of seats by wide margins. These two strategies are often called "cracking" (splitting a party's supporters between districts so they fall short of a majority in each one) and "packing" (stuffing remaining supporters in a small number of districts that they win by wide margins). See generally *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994) (describing cracking and packing); Stephanopoulos & McGhee, *supra*, at 851 (same). All partisan gerrymanders work through some combination of packing and cracking. The net result is to dilute the efficiency and effect of the votes of the disfavored party's supporters.

29. Although partisan gerrymandering is nothing new (*see, e.g.*, Elmer C. Griffith, *The Rise and Development of the Gerrymander* (1907)), it has never before in the Nation's history so systemically undermined the Constitution's promise of representative democracy. *See generally* Thomas E. Mann & Norman J. Ornstein, *It's Even Worse Than It Looks: How The American Constitutional System Collided with the New Politics of Extremism* (2012). As a result of both increasing partisanship and more sophisticated voter data collection and analysis, map-drawers in recent decades have been able to create

redistricting plans in ways that crack and pack with unprecedented efficiency and accuracy. *See generally* Stephanopoulos & McGhee, *supra*, at 876; Samuel S.-H. Wang, *Three Tests for Practical Evaluation of Partisan Gerrymandering* 9-12 (Dec. 2015), perma.cc/W52P-MQG3 (forthcoming in the Stanford Law Review, vol. 68).

30. Severe gerrymanders are self-reinforcing and cannot be corrected through the political process. Incumbent state legislators have no incentive to fix an unfair gerrymander, which by definition benefits them and their colleagues in the State's federal delegation; and adherents of the disfavored party are unable to replace the entrenched legislators because their votes have been unfairly diluted. More broadly, gerrymandering has come to be seen as a national "war" in which singular state legislatures are unwilling to "disarm" unilaterally. *See, e.g.*, Jamie Raskin & Rob Richie, *Fair representation for all*, The Balt. Sun (Nov. 7, 2011), perma.cc/QLP5-6QP8.

B. Why partisan gerrymandering violates the Constitution

31. A successful partisan gerrymander of congressional districts violates the Constitution in two ways.

32. *First*, it violates the First Amendment when it burdens the supporters of a political party by reason of their protected First Amendment conduct—that is, by reason of the expression of their political views, the casting of their votes, and their affiliations with political parties of their choice. *See Vieth*, 541 U.S. at 314 (Kennedy, J., concurring).

33. That straightforward conclusion finds repeated support in the Supreme Court's precedents. If a burden were imposed on citizens "because of [their] constitutionally protected speech or associations," the Court has said, "[their] exercise of those freedoms would in effect be penalized and inhibited." *Elrod v. Burns*, 427 U.S. 347, 359 (1976). On that theory, "[a] burden that falls unequally on [particular] political parties, . . . impinges,

by its very nature, on associational choices protected by the First Amendment." *Anderson* v. *Celebrezze*, 460 U.S. 780, 793 (1983).

34. Thus, a redistricting map can violate the First Amendment when it "has the purpose and effect of burdening a group of voters' representational rights." *Vieth*, 541 U.S. at 314 (Kennedy, J., concurring). "If a court were to find that a State did impose burdens and restrictions on groups or persons by reason of their views, there would likely be a First Amendment violation, unless the State shows some compelling interest." *Id*.

35. *Second*, and for the same reasons, a successful partisan gerrymander violates the representational rights protected by Article 1, Sections 2 and 4. Although Section 4, also known as the Elections Clause, "grants to the States 'broad power' to prescribe the procedural mechanisms for holding congressional elections," the Supreme Court has admonished that it is not "a source of power to dictate electoral outcomes, to favor or disfavor a class of candidates, or to evade important constitutional restraints." *Cook v. Gralike*, 531 U.S. 510, 523 (2001) (citing *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 833-834 (1995); *Tashjian v. Republican Party of Conn.*, 479 U.S. 208, 217 (1986)).

36. As States undertake their duties under Article I of the Constitution, therefore, "no classification of the people can be made to advance the state legislature's preference for one class [of voters] to the detriment of another." *Anne Arundel Cty. Republican Cent. Comm.* v. *State Admin. Bd. of Election Laws*, 781 F. Supp. 394, 402 (D. Md. 1991) (Niemeyer, J., dissenting). That is because Article I, like the First Amendment, implies "[a] prohibition . . . against classifications that are based on how the voters voted and can be expected to vote, for the purpose of steering the outcome of an election." *Id.* at 403.

C. The burden imposed by a partisan gerrymander

37. The gerrymander in this case clearly and concretely "burdens the representational rights of the complaining party's voters for reasons of ideology, beliefs, or political

association." *Vieth*, 541 U.S. at 315 (Kennedy, J., concurring). Justice Kennedy found the claims in *Vieth* insufficient because the plaintiffs in that case failed to provide a "standard by which to measure the burden . . . imposed on their representational rights" on a statewide basis. *Id*. at 313. *Cf. LULAC v. Perry*, 548 U.S. 399, 404 (2006) (rejecting a redistricting claim based on a "sole-motivation theory," where the plaintiffs "explicitly disavow[ed]" a need to "show a burden, as measured by a reliable standard, on the complainants' representational rights").

38. The same cannot be said here. Maryland legislators and their mapmakers set out to crack the 6th District and thereby to prevent voters in that district from electing a Republican representative to Congress—*and they succeeded in doing so*. Maryland legislators and their mapmakers sorted many Republican voters in the pre-2011 6th Congressional District into the new 8th and 7th Congressional Districts, leaving other Republican voters in the new 6th Congressional District, all by reason of those voters' political party affiliations and voting histories. They did so with a purpose and actual effect of preventing those voters (both those moved out of and those left in the district) from electing their preferred representative to Congress.

FACTUAL ALLEGATIONS

A. The Plan was drafted in secret by known partisans and passed by the legislature and signed by Governor O'Malley with no Republican input and no opportunity for public review

39. The Plan was drawn up by the Governor's Redistricting Advisory Committee (the GRAC) and enacted into law without any meaningful Republican input.

40. The Plan was passed against the backdrop of pervasive gerrymandering throughout Maryland's recent history. In fact, the Democratic Party has maintained majority control over the House of Delegates and State Senate since 1920, and to a degree far greater than the party's statewide share of votes would predict.

41. The state legislature has been dogged by allegations of partisan gerrymandering for the past 20 years, in particular. In 1992, Maryland's highest court called the legislative redistricting plan "perilously close" to violating the state's constitution. *See Legislative Redistricting Cases*, 629 A.2d 646, 666 (Md. 1993).

42. In 2002, the Maryland Court of Appeals struck down the state legislative redistricting map for violating the "due regard" provision of the Maryland Constitution and instituted its own districting plan. *See In re Legislative Redistricting*, 805 A.2d 292, 328 (Md. 2002). The current legislative map was also drawn up by GRAC in 2011 and has faced persistent litigation since it was implemented. *See In re 2012 Legislative Districting of the State,* 80 A.3d 1073 (Md. 2013).

43. In early 2011, Governor O'Malley, a Democrat, appointed the five members of the GRAC, stacking it with reliably partisan confidantes:

a. Committee Chair Jeanne Hitchcock, who was Governor O'Malley's Secretary of Appointments and former Deputy Mayor of Baltimore;

b. Senate President Thomas V. Mike Miller, Jr., a Democrat;

c. Maryland House of Delegates Speaker Michael E. Busch, a Democrat;

d. Delegate James J. King, a former one-term member of the Maryland House of Delegates who served as a Republican but was chosen without input from Republican leadership; and

e. Richard Stewart, a private business owner who chaired Governor O'Malley's 2010 re-election campaign in Prince George's County.

44. The GRAC was tasked with drafting a recommended plan for the State's legislative and congressional redistricting in light of the 2010 census results. Although the GRAC held public hearings around the State in the summer of 2011 and received some 350 comments from members of the public, those hearings were mere window dressing.

45. In fact, the Plan was developed entirely in secret. The GRAC never discussed or revealed its own plan for the proposed map to the public. Instead, the committee members conducted their deliberations and calculations entirely behind closed doors. This was made possible because the GRAC—by design—was not required by law to abide by the Maryland Open Meetings Act.

46. The GRAC drew its proposed redistricting map with no input or participation from Republican lawmakers. The GRAC did, however, have access to the Maryland Board of Elections statistical data, which provides highly detailed geographic information about voter registration, party affiliation, and voter turnout across the State.

47. Precinct-by-precinct voting information available to the GRAC allowed the committee to analyze voting patterns and political affiliation at a granular level. The Maryland State Board of Elections posts a trove of statistics on Maryland voters, including voter registration by precinct, election day turnout by precinct and party, party share of vote by voting category, and voter consistency. This information, among other data, was used to shape partisan congressional districts with pinpoint accuracy.

48. The committee approved its final map on October 4, 2011, by a 4-to-1 vote. Former Delegate King—the lone Republican—cast the sole dissenting vote.

49. After receiving the GRAC's proposed plan on October 4, 2011, Governor O'Malley published a "substantially similar" final version on the evening of Saturday, October 15, 2011, just two days before the special session of the legislature he had called to approve it. *See* Annie Linskey & John Fritze, *O'Malley Unveils Proposed Congressional Map*, Balt. Sun (Oct. 15, 2011).

50. With no opportunity for public comment, the bill was introduced on the following Monday morning, approved by the Senate redistricting committee the same afternoon, and passed a vote of the Senate the next Tuesday morning. *See* Aaron C. Davis,

Maryland Senate Approves Gov. Martin O'Malley's Redistricting Map, 33 to 13, Wash. Post (Oct. 18, 2011). The House of Delegates followed a similarly expedited process, but a Republican parliamentary maneuver held up the vote for a day. *See* Annie Linskey & John Fritze, *O'Malley's Map Easily Wins House Approval*, Balt. Sun (Oct. 19, 2011).

51. On Thursday, October 20, 2011—barely 72 hours after it was proposed in the Senate—Governor O'Malley signed the Plan into law. *See* Annie Linskey & John Fritze, *O'Malley's Map Signs Congressional Map Into Law*, Balt. Sun (Oct. 20, 2011).

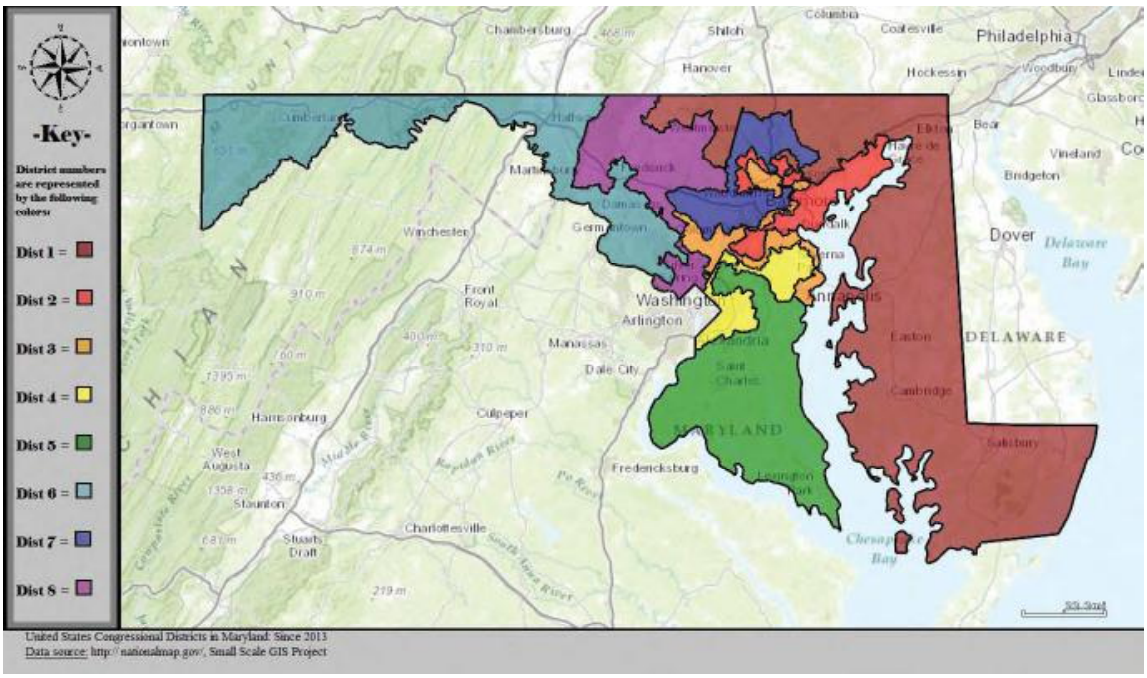
52. Not a single one of Maryland's 55 Republican legislators voted for the map at any stage of the process, including the nine Republican legislators on the Senate and House redistricting committees and former Delegate James King, who served on the GRAC. Through its public hearings and the inclusion of a Republican lawmaker, the GRAC attempted to create the appearance of bipartisanship and openness. But in reality, the Plan was drafted in secret, and Democratic lawmakers and committee members rushed it through the legislature hastily and with no input from their Republican colleagues.

53. Without intervention, the Plan will remain in effect through at least 2020.

B. The Plan produced a map that cracks and packs Republican voters, ignores traditional political boundaries, and divides communities of common political and social interests, with the result of preventing Republican voters in the pre-2011 6th District from electing a Republican representative

54. The Plan is widely regarded as one of the most gerrymandered in the Nation. A detailed analysis conducted by *The Washington Post* confirms that "Maryland and North Carolina are essentially tied for the honor of most-gerrymandered state" overall. *See* Christopher Ingraham, *America's most gerrymandered congressional districts*, The Wash. Post (May 15, 2014), perma.cc/9JP6-FDZD.

55. The following graphic depicts Maryland's 2011 redistricting plan.



56. The congressional districts are held together by narrow ribbons of territory and have evoked comparisons to a "praying mantis" (Ingraham, *supra*), a "Rorschach-like eyesore" (*Fletcher*, 831 F. Supp. 2d at 906 (Titus, J., concurring)), and a "broken-winged pterodactyl, lying prostrate across the center of the State" (*id.* at fn. 5). An unsigned editorial in *The Washington Post* decried that the Plan "mocks the idea that voting districts should be compact or easily navigable," explaining that, "[t]o protect incumbents and for partisan advantage, the map has been sliced, diced, shuffled and shattered, making districts resemble studies in cubism." *Md. redistricting maps are comic and controversial*, The Wash. Post (Oct. 29, 2011), perma.cc/A7BN-6LSD.

57. Several of the districts are essentially noncontiguous, split into two or more segments held together by narrow ribbons along major interstate highways. The 4th, 6th, 7th, and 8th Districts each consist of at least two distinct segments, one segment of which is more populous than the other and is socioeconomically, demographically, and politically

inconsistent with the other segment. In each of these districts, the larger and smaller sections are connected only in a technical sense by a narrow ribbon.

58. A car driving from Bethesda on a direct route along I-495, I-95, and I-83 through Baltimore to Towson—a mere 50 mile trip—would set out from Maryland's 8th District and in sequence pass through the 3rd District, 4th District, 5th District, 4th District, 3rd District, 2nd District, 3rd District, 7th District, 3rd District, 2nd District, 3rd District, 7th District, 3rd District, and 2nd District, until finally arriving in Towson. That's in and out of six congressional districts 14 times over just 50 relatively straight miles. And that's to say nothing of that fact that Towson—a town of just 55,000—is itself split among the 1st, 2nd, and 3rd Districts.

59. In addition to their visual irregularity, the districts do not respect traditional geographic or political boundaries or the composition of communities of interest. This is not an accident. The GRAC moved and split neighborhoods and communities in and out of districts based primarily upon the prevailing voting history and political party affiliation of the residents of those neighborhoods and communities.

60. As a result, the 2011 Plan has paired voters that do not share the most basic elements of a neighborhood or community: Voters grouped together in single, meandering districts have "different climate[s], root for different sports teams, and read different newspapers." *Fletcher*, 831 F. Supp. 2d at 906 (Titus, J., concurring). The 6th District, for example, brings together voters "who have an interest in farming, mining, tourism, paper production, and the hunting of bears . . . with voters who abhor the hunting of bears and do not know what a coal mine or paper mill even looks like." *Id.* at 906.

61. Between the 2000 and 2010 censuses, the population of Maryland grew by 9%, but six of the eight existing congressional districts remained within 3% of the ideal size of 721,529 people. Despite the relatively small adjustments needed to accommodate

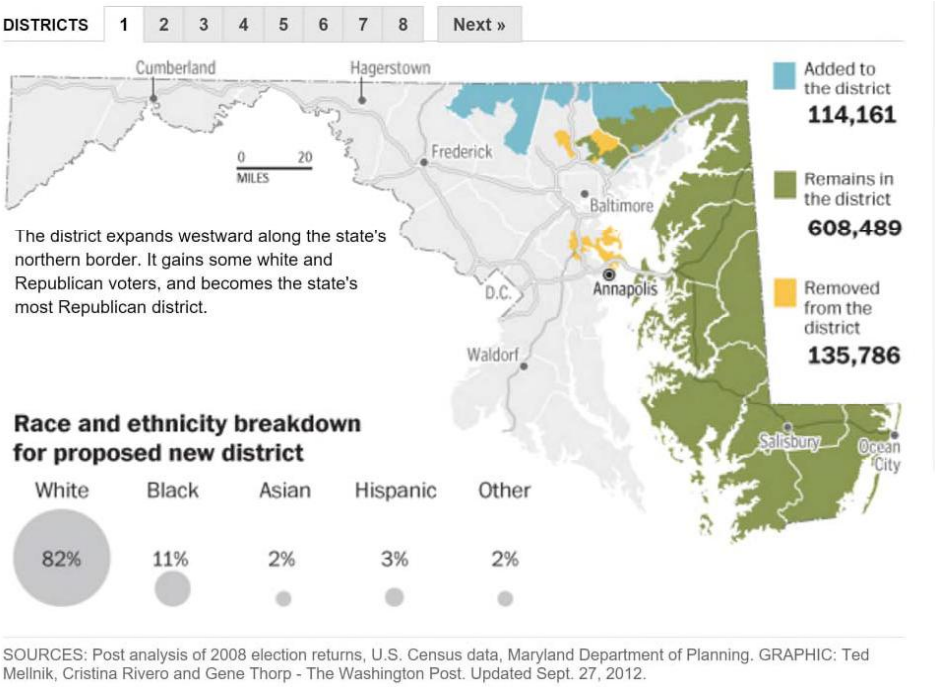
population growth, the Plan shuffled nearly one-in-three Marylanders from one district to another, scrambling the representation of 1.6 million people. See *Gerrymandered? Maryland voters to decide*, The Wash. Post (Sept. 27, 2012), perma.cc/CL96-PT25. This massive re-sorting of voters was intended to "pack" Republicans into the 1st District and "crack" Republicans in the 6th District, while maintaining close-but-safe margins in favor of Democrats in all other districts.

62. Prior to 2011, the Democrats Party held six House seats in Maryland, while Republicans held two. In 2012, the first election after the 2011 redistricting, Democratic challenger John Delaney routed 10-term Republican incumbent Roscoe Bartlett. Delaney was reelected in 2014, defeating Republican nominee Dan Bongino, whose campaign was managed by plaintiff Strine and whose fundraising was overseen by plaintiff Pycha.

63. The defeat of Representative Bartlett in 2012 left seven of Maryland's eight Congressional seats (87.5%) in the hands of Democrats, despite that Democratic candidates received just 63% of the popular vote across the State that year. The 2014 election produced even more inequitable results: Democrats held on to 87.5% of the congressional seats while receiving just 58% of the popular vote.

64. The **1st District** covers Maryland's Eastern Shore and stretches across a portion of the northern border of the State. It is the State's "packed" Republican district. Prior to 2011, this district included more of suburban Baltimore County, and it was closely contested, shifting into Republican hands by a narrow margin in the 2010 election. As a result of the 2011 redistricting, the 1st District has been flooded with Republican voters from the 6th District and is now the state's only Republican district.

65. The following map shows the changes to the 1st District made by the Plan.

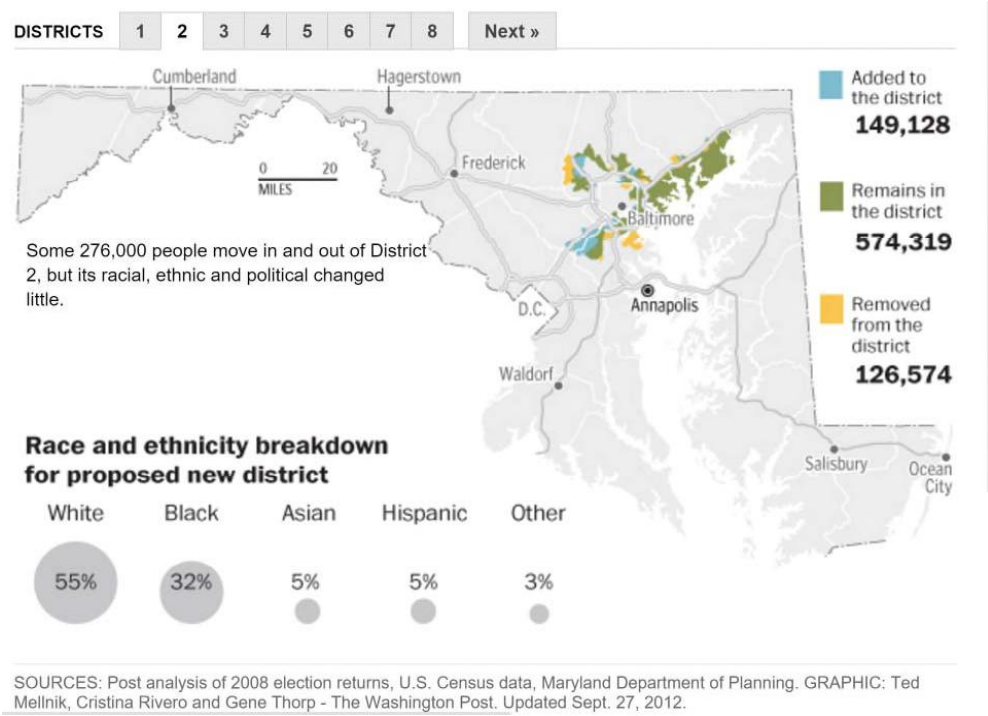


SOURCES: Post analysis of 2008 election returns, U.S. Census data, Maryland Department of Planning. GRAPHIC: Ted Mellnik, Cristina Rivero and Gene Thorp - The Washington Post. Updated Sept. 27, 2012.

66. The 2011 redistricting reduced the population of the district by approximately 23,000: 114,161 citizens were added and 135,768 were subtracted. In the 2010 election, the Republican candidate received 54.1% of the votes; in 2012, the same candidate received 63.42% and won the election by a 36-point margin. Wendy Rosen, the 2012 Democratic nominee in the 1st District, told *The Washington Post*: "The party made it almost impossible to have a chance to win [in the 1st District]." Aaron C. Davis, *For Maryland Democrats, redistricting referendum forces a look in the mirror*, Wash. Post (Sept. 30, 2012), perma.cc/8NZF-8QFW.

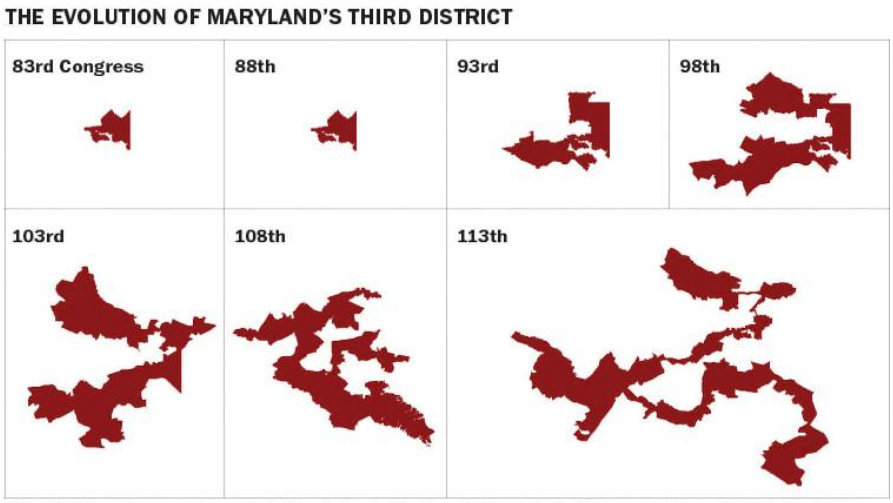
67. The **2nd District** defies easy physical description. It contains a number of areas in the vicinity of Baltimore that are essentially non-contiguous except for narrow ribbons of territory between them. The 2011 redistricting moved about 275,000 people in and out of the district, but it remains largely urban and safely Democratic. The Democratic margin of victory fell by 5.47% after the redistricting.

68. The following map shows the changes to the 2nd District made by the Plan.



SOURCES: Post analysis of 2008 election returns, U.S. Census data, Maryland Department of Planning. GRAPHIC: Ted Mellnik, Cristina Rivero and Gene Thorp - The Washington Post. Updated Sept. 27, 2012.

69. The **3rd District**, the second most gerrymandered district in the country (Ingraham, *supra*), has a long history of ever-worsening contortions. The following graphic depicts the evolution of the 3rd District over the past seven redistrictings.

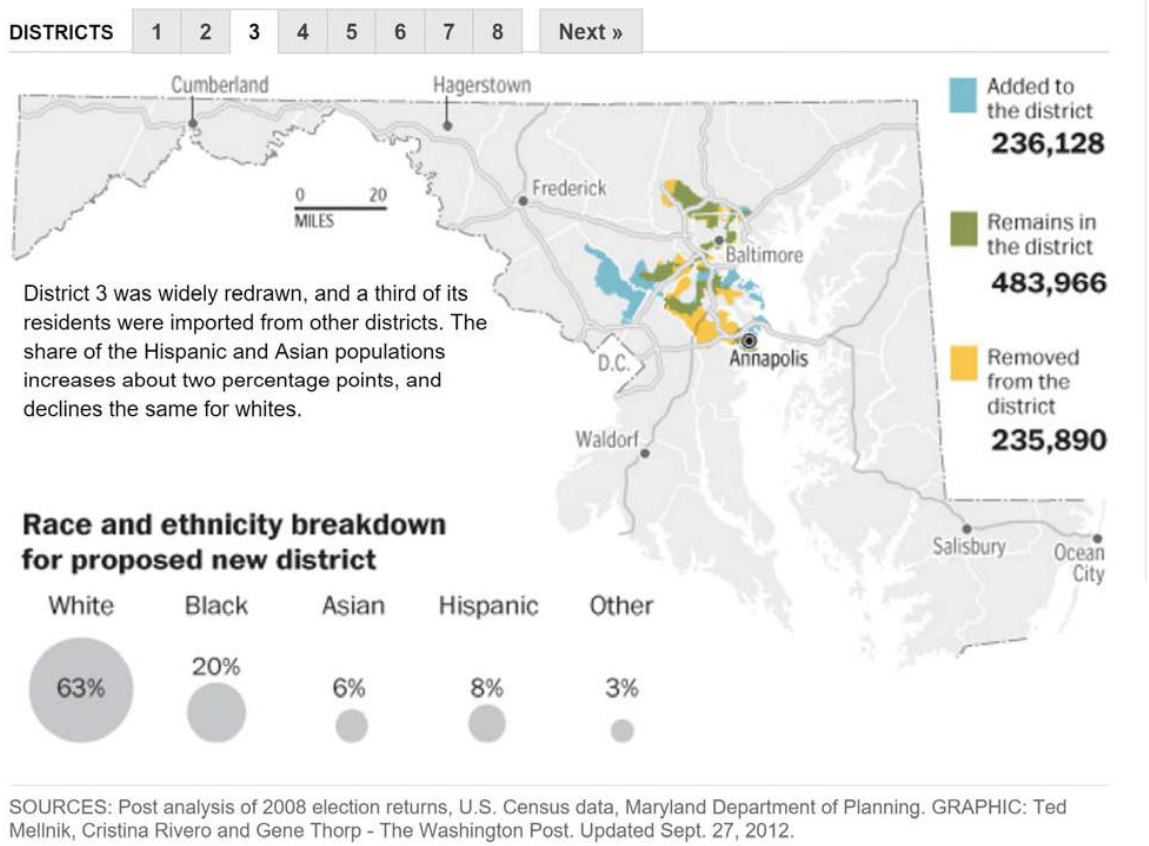


SOURCE: Shapefiles maintained by Jeffrey B. Lewis, Brandon DeVine, Lincoln Pritcher and Kenneth C. Martis, UCLA. Drawn to scale.
GRAPHIC: The Washington Post. Published May 20, 2014

70. As described in *Fletcher*, "[t]he District begins in Pikesville, a northwest suburb of Baltimore City; leaks eastward to capture the northeast suburbs of Baltimore City; then drops down into Baltimore City, taking a slice of the City on its way to Montgomery County, a northwest suburb of Washington, D.C.; then veers eastward in a serpentine manner to include Annapolis, a city on the Chesapeake Bay. . . . The Third District is rated at or near the bottom of all congressional districts in multiple measures of statistical compactness." 831 F. Supp. 2d at fn. 5.

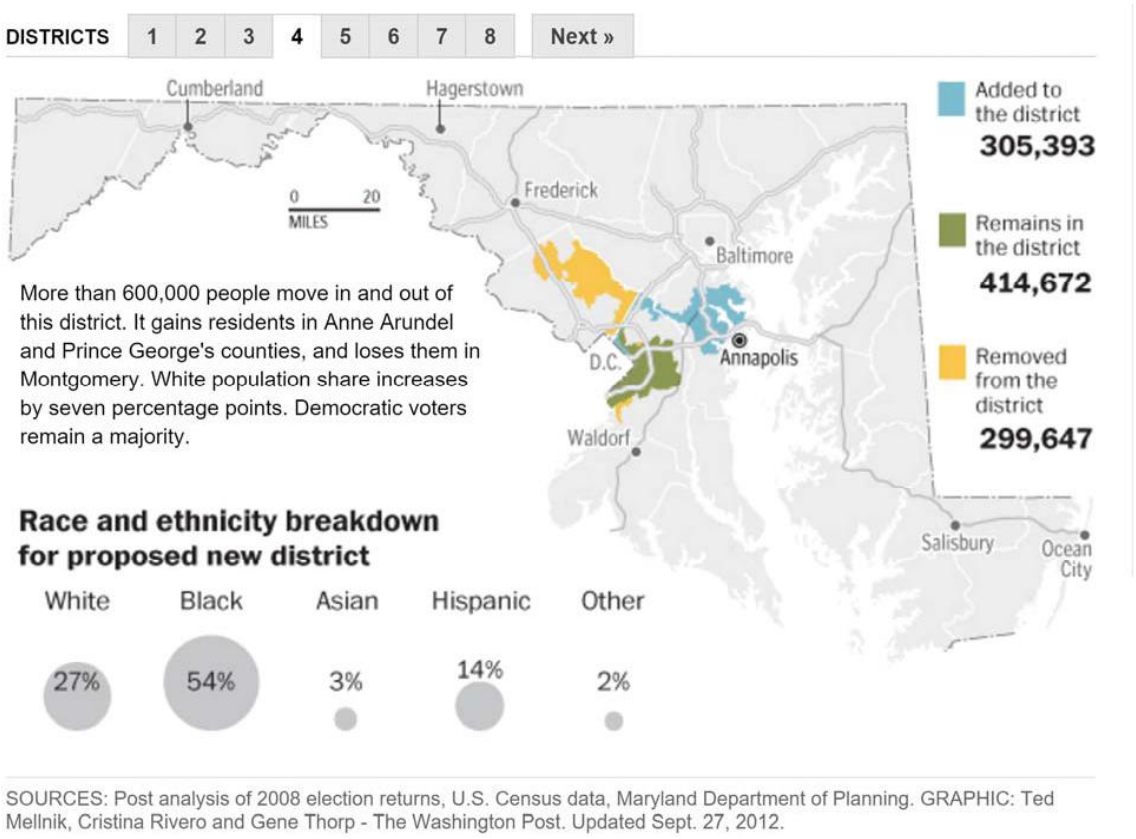
71. The 2011 Plan shuffled over 450,000 people in or out of the 3rd District. Although the district remains firmly Democratic, the party's margin of victory fell by 12.2% after the redistricting.

72. The following map shows the changes to the 3rd District made by the Plan.



73. The **4th District** features a long, narrow ribbon of territory connecting portions of Anne Arundel and Prince George's counties. In the 2011 redistricting, the largely Republican voters of Anne Arundel County replaced the heavily Democratic Montgomery County voters, many of whom were moved into the formerly Republican 6th District. The redistricting shifted more than 600,000 people in and out of the district. Although the 4th District remains safely Democratic, the party's margin of victory dropped by 10% between 2010 and 2012.

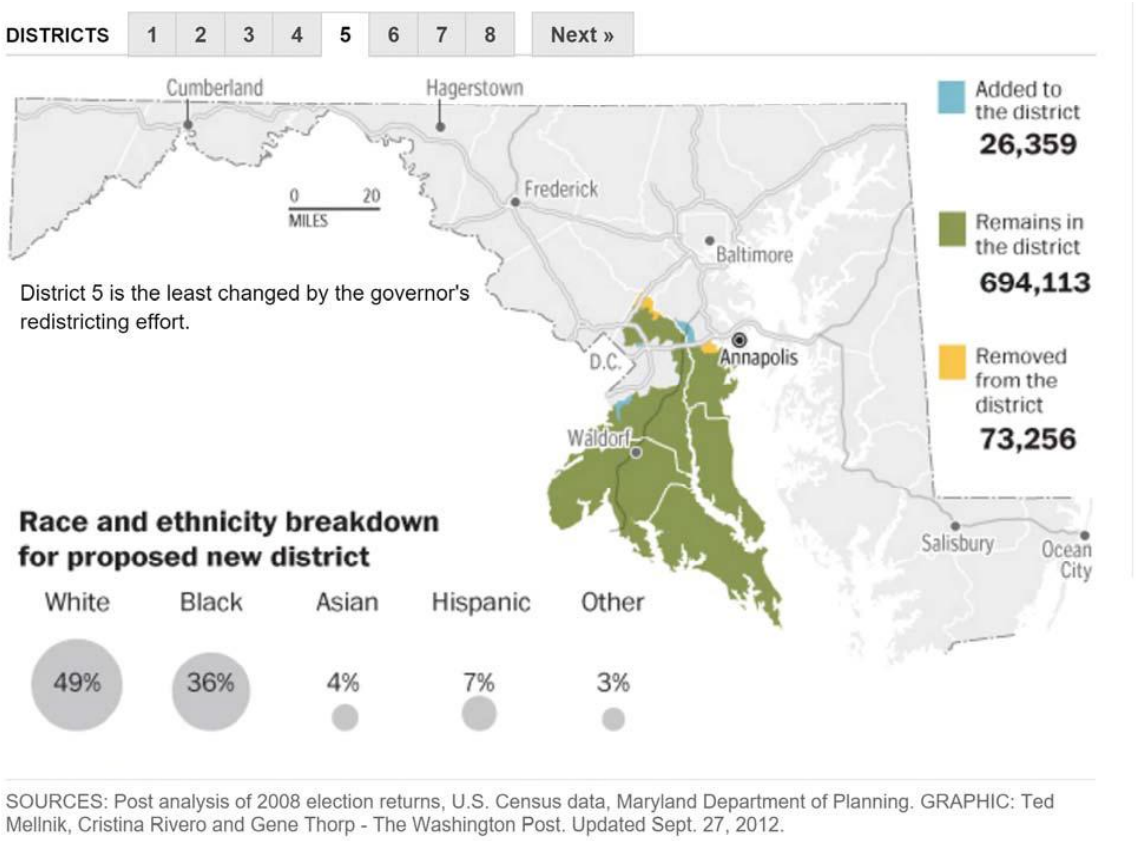
74. The following map shows the changes to the 4th District made by the Plan.



SOURCES: Post analysis of 2008 election returns, U.S. Census data, Maryland Department of Planning. GRAPHIC: Ted Mellnik, Cristina Rivero and Gene Thorp - The Washington Post. Updated Sept. 27, 2012.

75. The **5th District** comprises all of Charles, Saint Mary's, and Calvert Counties, as well as portions of Prince George's and Anne Arundel Counties. It has long been a safely Democratic seat and was the least impacted by the 2011 redistricting.

76. The following map shows the changes to the 5th District made by the Plan.



SOURCES: Post analysis of 2008 election returns, U.S. Census data, Maryland Department of Planning. GRAPHIC: Ted Mellnik, Cristina Rivero and Gene Thorp - The Washington Post. Updated Sept. 27, 2012.

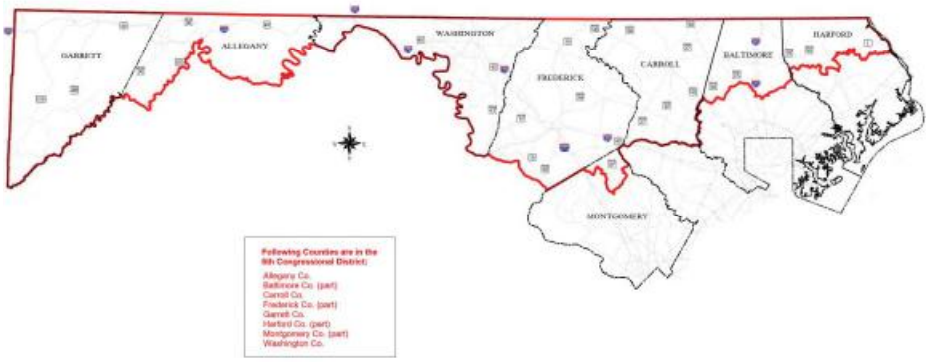
77. The **6th District** stretches nearly 200 miles, from the West Virginia border to the Capital Beltway. "[I]t is not a well-kept secret that the plan for the sixth congressional district was developed for the purpose of disadvantaging an incumbent Republican legislator." *Fletcher*, 831 F. Supp. 2d at 905-906 (Titus, J., concurring).

78. Historically, the 6th District was reliably Republican. In the 70 years between January 1943 and January 2013, the district was represented in Congress by members of the Republican Party in four out of every five years. Prior to the legislature's

2011 adoption of the Plan, the 6th District had been the State's *most* Republican district, represented for nearly 20 years by Republican Roscoe Bartlett, who won reelection in 2010 by a 28-point margin.

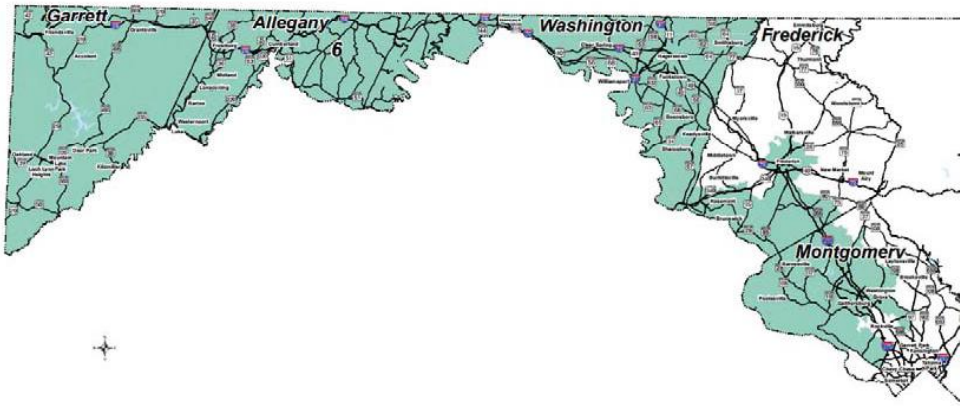
79. Under the 2001 redistricting map, the district included all of western Maryland and stretched across the northern border of the state to encompass other rural areas.

2002 CONGRESSIONAL DISTRICT 6
(Senate Bill 805 May 6, 2002)



80. Under the Plan, the 6th District no longer encompasses all of western Maryland and has been combined by a narrow, southward-stretching territory with portions of the Washington, D.C. suburbs, including Potomac.

Maryland 2011 Congressional District 6
Senate Bill 1
October 20, 2011



81. The redistricting cracked the 6th District by removing over 360,000 residents from the mostly-Republican northern counties of the district and adding nearly 350,000 residents from predominantly Democratic and urban Montgomery County. In particular, the Plan removed from the 6th District all of Carroll County, which had voted 68% Republican and 27% Democratic in the previous congressional election. The removal of Carroll County generated a loss of over 24,000 registered Republican voters from the district.

82. The Plan also moved specific, majority-Republican precincts of Frederick County to the 8th District, while leaving the majority-Democratic precincts of the county in the 6th District. This facilitated a loss of more than an additional 12,500 Republicans voters from the district. The Frederick County precincts that remained in the 6th District contained over 6,000 more registered Democrats than registered Republicans. In a county with a 12-point Republican majority in the previous Congressional election, the likelihood of producing such a one-sided transfer of voters by chance is zero.

83. The opposite pattern describes the transfer of voters from Montgomery County: Of the Montgomery County precincts that were added to the 6th District by the Plan, registered Democrats outnumbered registered Republicans by a two-to-one margin. Moving these cherry-picked portions of Montgomery County into the 6th District generated a gain of tens of thousands of Democratic voters.

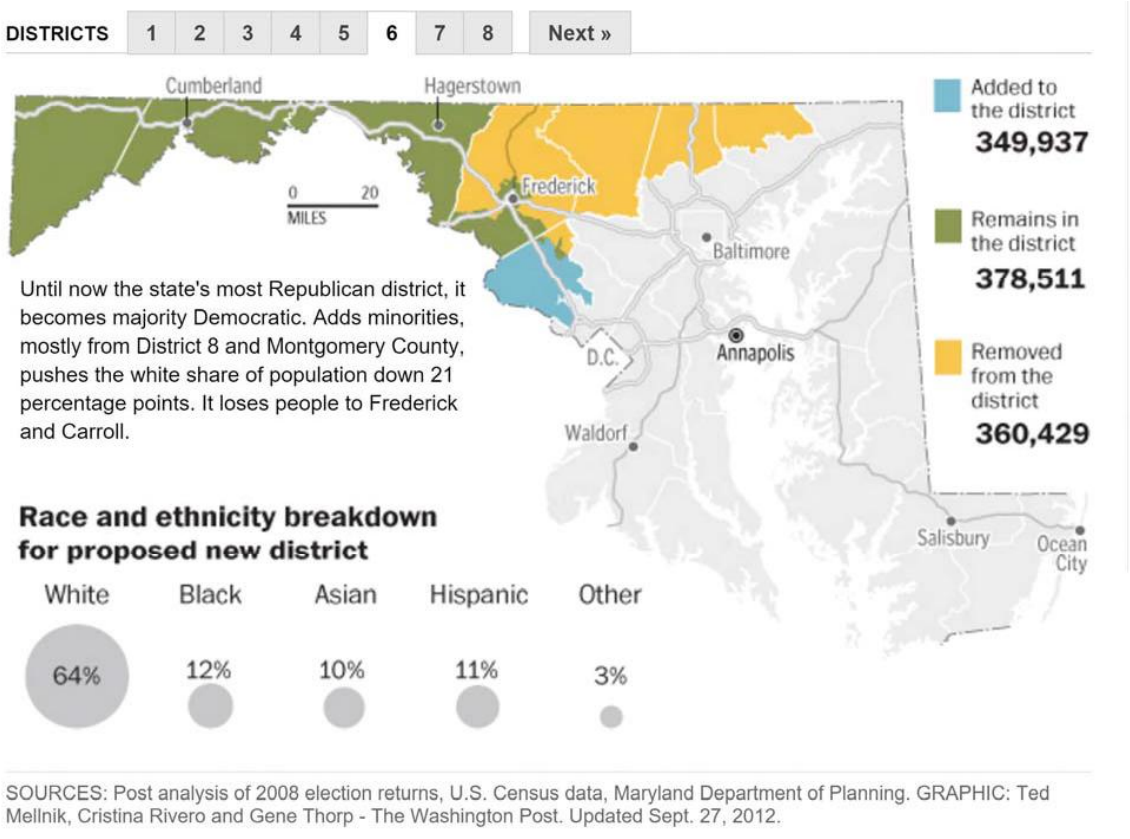
84. In total, the Plan accomplished a net transfer of over 65,000 Republican voters out of the district and over 30,000 Democratic voters into the district. *Compare* Eligible Active Voters on Precinct Register, 2010, perma.cc/QQP9-V7YX, *with* Eligible Active Voters on Precinct Register, 2012, perma.cc/V2QU-8SCE. As a result, whereas Republican voters had comprised 47% of all voters in the 6th District before the Plan, they comprise just 33% of 6th District voters after the Plan.

85. As Editorial Board of *The Washington Post* noted, the 6th District was "suddenly the scene of a competitive race" in 2012, "owing to a gerrymandered electoral map redrawn by Democrats in Annapolis." Editorial Board, *John Delaney for Maryland's 6th District*, The Wash. Post (Oct. 4, 2012), perma.cc/3NCN-Q38U.

86. Democrat John Delaney defeated Representative Bartlett in the 2012 election by a 21-point margin, as the long-time Congressman's share of the vote dropped from 61.45% to 37.9% in a single election cycle.

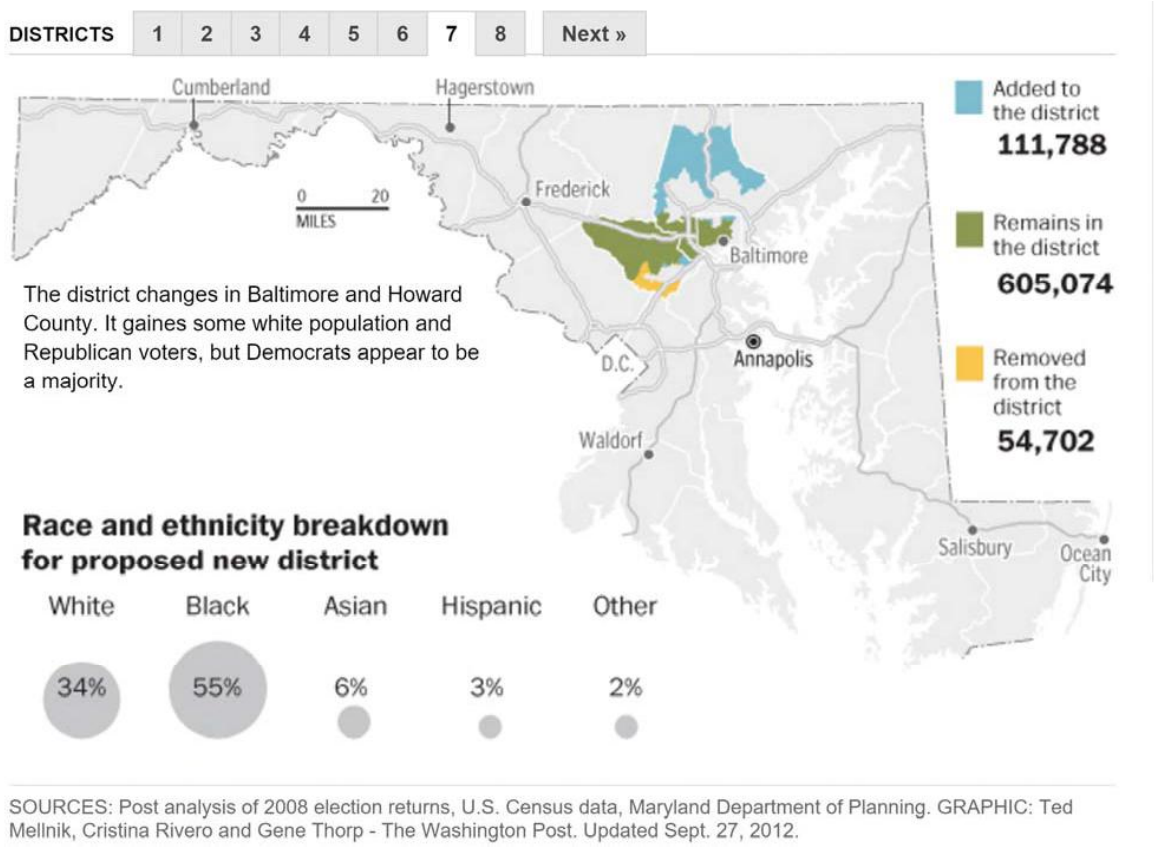
87. Representative Delaney won reelection in 2014, defeating Republican challenger Dan Bongino, whose campaign was managed by plaintiff Strine and whose fundraising was overseen by plaintiff Pycha.

88. The following map shows the changes to the 6th District made by the Plan.



89. The **7th District** covers about half of the City of Baltimore, including most of the predominantly black neighborhoods. It has always been safely Democratic. After the 2011 redistricting, the district was reconfigured to include heavily Republican portions of Baltimore County from the formerly Republican 6th District.

90. The following map shows the changes to the 7th District made by the Plan.

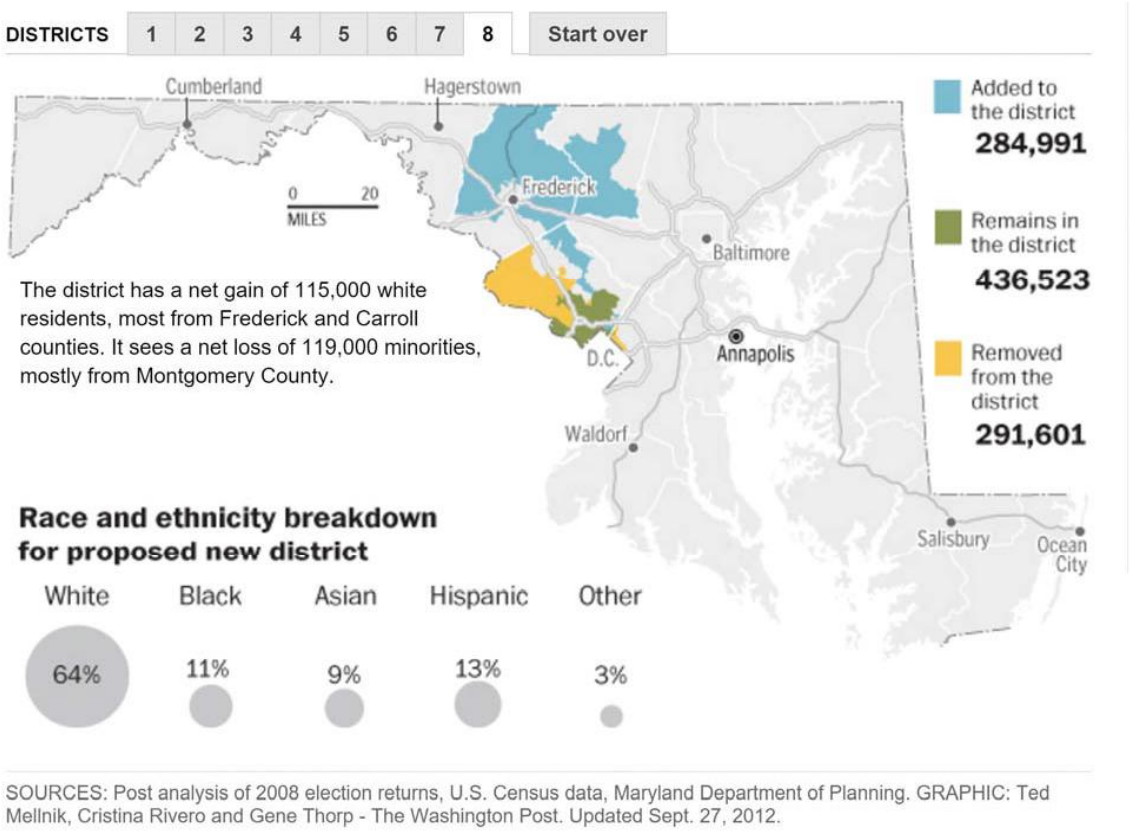


SOURCES: Post analysis of 2008 election returns, U.S. Census data, Maryland Department of Planning. GRAPHIC: Ted Mellnik, Cristina Rivero and Gene Thorp - The Washington Post. Updated Sept. 27, 2012.

91. The **8th District** was compact and coherent prior to 2011, encompassing most of Montgomery County. The 2011 redistricting altered the makeup of the district both geographically and culturally, adding 115,000 white residents, mostly from rural and predominantly Republican parts of northern Frederick and Carroll Counties, and removing 119,000 minority residents, mostly from Montgomery County. Tens of thousands of Democratic 8th District voters were swapped with Republicans from the 6th District in

order to facilitate the cracking of the 6th District. The 8th District remains safely Democratic, but the party's margin of victory fell by 17% after the district was redrawn.

92. The following map shows the changes to the 8th District made by the Plan.



SOURCES: Post analysis of 2008 election returns, U.S. Census data, Maryland Department of Planning. GRAPHIC: Ted Mellnik, Cristina Rivero and Gene Thorp - The Washington Post. Updated Sept. 27, 2012.

C. The purpose of the Plan was to burden Republican voters by reason of their political views, voting history, and political-party affiliation

93. The goal and purpose of the Plan was to dilute Republican votes by cracking the 6th District. The predominant purpose of the map, in other words, was to burden Republican voters in the former 6th District by reason of their political views, voting history, and political-party affiliation.

1. Direct and circumstantial facts

94. The contorted and essentially non-contiguous shapes of Maryland's most gerrymandered congressional districts suggest, in their own right, an intent to connect

rural Republican voting blocs with dominant urban Democratic voting blocs, thereby cracking otherwise geographically and politically contiguous Republican communities in the 6th District. No other purpose can explain the otherwise convoluted nature of Maryland's congressional districts. *Cf. Gomillion v. Lightfoot*, 364 U.S. 339, 341 (1960).

95. Democratic lawmakers conceded that Maryland's map was an act of political retaliation to unseat Republican incumbent Roscoe Bartlett: "Sen. Jamie B. Raskin (D-Montgomery) said . . . that given the way Republicans had stacked the deck in districts in North Carolina, Ohio and elsewhere," his party "had little alternative" except to gerrymander Maryland to the advantage of the Democratic Party. Davis, *Maryland Senate Approves Gov. Martin O'Malley's Redistricting Map*, *supra.*

96. In private briefings after the map was released, GRAC members assured Democratic lawmakers that the map would increase the Democratic Party's power in Congress. "Sen. C. Anthony Muse, the only Democrat to vote against the map, . . . said lawmakers have been told the map is beneficial to the Democratic Party." Brian Witte, *Md. Senate approves U.S. House redistricting bill*, Associated Press (Oct. 18, 2011). Delegate Curt Anderson, a Democrat who supported the Plan, described a briefing given by GRAC Chair Jeanne Hitchcock about the redrawn 6th District: "It reminded me of a weather woman standing in front of the map saying, 'Here comes a cold front,' and in this case the cold front is going to be hitting Roscoe Bartlett pretty hard." *See* Brian Witte, *Proposed redistricting map stirs political shakeup*, Associated Press (Oct. 4, 2011).

97. GRAC members openly acknowledged their intent to crack the 6th District. GRAC member Michael Busch, the Maryland House Speaker, said for example: "I think the numbers will show that [the Plan] makes [the 6th District] pretty competitive" in favor of Democrats, whereas it previously had been a safely Republican district. *Id*.

98. GRAC Chair Jeanne Hitchcock confirmed that purpose, noting that the 6th District was now "dominated" by the Democratic voters of Montgomery County. *Id.*

99. During the limited period of debate on the Plan, several Democratic lawmakers embraced the Plan's partisan gerrymander, while at the same time expressing frustration that the GRAC had implemented it at the expense of minority voters. "I have been one of the strongest proponents as a Democrat of drawing a seventh district for Democrats" said Representative Donna Edwards, who represents Maryland's 4th Congressional District. "But we can accomplish that in a different way . . . .Where I have a real disagreement is in making superior the political interests to the minority voting rights interests." *See* Aaron C. Davis and Ben Pershing, *Donna Edwards, Montgomery officials line up against redistricting map*, The Wash. Post (Oct. 11, 2011).

100. Democratic Delegate Emmett C. Burns, Jr., stated on the House floor that although he disapproved of how the map would affect minorities, he ultimately supported the Plan for a simple reason: "more Democrats in the House of Representatives." *See* Annie Linskey & John Fritze, *O'Malley's Map Easily Wins House Approval*, Balt. Sun (Oct. 19, 2011).

101. To achieve those expressly stated ends, legislators and their map-drawers deliberately drew lines based upon Republican voters' political views, voting history, and political-party affiliation in the mapmaking process.

102. The secrecy and other circumstances surrounding the Plan's enactment, the Plan's overall disrespect of traditional political boundaries and division of communities of interest, the non-compactness and non-contiguity of the Plan's districts, and on-the-record statements from legislators and members of the GRAC conclusively demonstrate that the primary consideration motivating lawmakers in adopting the Plan was their desire and

intent to dilute the votes of Republican Marylanders in the 6th District by reason of their political views, voting history, and political-party affiliation.

2. Statistical facts

103. The foregoing allegations, which demonstrate that the Plan was drawn in violation of the Constitution, are bolstered by statistical analyses that confirm that the cracking of Republican voters in the 6th District was not the product of chance or constitutionally acceptable considerations, but the result of a deliberate effort to disadvantage Republican voters by reason of their voting histories and political party affiliations.

104. One statistical tool to demonstrate vote dilution is to simulate a State's election using actual election results from other States throughout the Nation. *See* Wang, *supra*. This tool can help determine whether a disproportional election outcome is the product of deliberate manipulation by the legislature.

105. The Supreme Court has recognized in racial gerrymandering cases that proportionality "is a relevant fact in the totality of circumstances to be analyzed when determining whether members of a minority group have 'less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.'" *Johnson v. De Grandy*, 512 U.S. 997, 1000 (1994).

106. Applying that same observation to partisan gerrymanders, the normal-district simulation test asks whether a redistricting plan moves the seats-to-vote outcome *toward* partisan proportionality or *away* from it. If a plan moves the outcome away from proportionality, the test asks whether the change could have arisen as a result of normal variation in districting as practiced across the Nation.

107. Computer simulations looking at election returns nationwide can be used to ask a simple question: If a given State's popular House vote were split into *differently* drawn districts carved from the same statewide voting population and party-affiliation

breakdown, what would its Congressional delegation look like? *See* Wang, *supra*, at 28. Using statistical software on an ordinary laptop computer, it is possible to create millions of hypothetical combinations of districts from around the United States that add up to the same statewide vote total for each party.

108. Using this statistical tool—that is, evaluating the average of one million random combinations of eight districts from States throughout the Nation that add up to the same statewide vote total for each political party—one researcher has shown that the expected congressional delegation from Maryland in 2014, in the absence of impermissible gerrymandering, would ordinarily comprise 5 Democrats and 3 Republicans. The current composition of Maryland's House delegation is 7 Democrats and 1 Republican.

109. The next step in the statistical analysis is to ask whether the difference between the normal-district simulation test and actual observed election results are the product of chance or deliberate design. This is called the "zone-of-chance" test. *See* Wang, *supra*, at 24-38, 53. If the results fall within the zone of chance, it is evidence that the difference between the average simulation and actual election outcome can reasonably be attributed to chance. If the results fall outside the zone of chance, it is strongly suggestive (to a statistically-significant degree of confidence) that the imbalance is the product of deliberate legislative design.

110. The zone of chance test shows to a statistically significant degree of confidence that the difference between the simulated average for Maryland in 2014 and the actual elections outcome under the Plan is the product of a purposeful effort to dilute Republican votes by cracking the 6th District.

111. Other statistical tests demonstrate the same.

3. Chilling

112. The dilution of Republicans' votes in Maryland has chilled and manipulated political participation since 2011 in precisely the ways that the Supreme Court had warned against.

113. Gerrymanders that "pack" votes chill political participation because voters in packed districts understand that their votes "won't count" because they cannot affect the outcome. Voters in packed districts are thus discouraged from voting. Voters in packed districts also understand that other like-minded voters' votes "won't count" and thus are less likely to participate actively in campaigning for their chosen candidates.

114. The Plan has chilled protected political speech throughout the State in just those ways.

115. Vote "cracking" chills political speech in an even more pernicious way in Maryland because Maryland employs a closed primary registration system. For a voter to participate in a particular political party's primary, the voter must be a registered member of that party. Registered Republicans cannot participate in Democratic primaries, in other words, and registered Democrats cannot participate in Republican primaries.

116. In districts where the Democratic Party's candidate is very likely to win the general election, the only real opportunity to influence what person is ultimately elected is the Democratic primary race. Under the closed primary system, residents must register as members of the Democratic party in order to vote in the Democratic primary.

117. Some Maryland voters who would otherwise register as Republicans have been chilled from doing so. They have chosen, instead, to register (against their preferences) as members of the Democratic Party so that they can participate in the Democratic Party's closed primary. Others who do not register as Democrats against their preference are, the legislature's design, shut out of the Democratic primary and lose any

opportunity to influence meaningfully the outcome of the general election. Voters of that sort are prevented from playing any meaningful role in the selection of their representatives and are therefore directly discouraged from participating in the political process.

118. More broadly, the Plan has chilled participation in general elections. Voters who feel that the outcomes of elections are preordained by the legislature's map-drawing and discouraged from casting their votes or engaging in the political process at all.

119. The Plan thus "casts a chill, a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom." *United States v. Alvarez*, 132 S. Ct. 2537, 2548 (2012).

D. The Plan's burden on Republican voters cannot be explained by geography or compliance with legitimate redistricting criteria

120. The extreme partisan gerrymander at issue here cannot be explained or justified by reference to Maryland's geography or other legitimate redistricting criteria. It was possible to fashion a plan that does not crack the 6th District or pack the 1st District and that is as good as or better than the Plan in achieving equal population, compactness, respect for traditional political boundaries, and compliance with the Voting Rights Act.

121. In other words, the cracking of the 6th District would not have taken place without the legislature's targeting of Republican voters on the basis of their First-Amendment-protected conduct.

122. The GRAC's explanation for many of the changes the Maryland's congressional apportionment are implausible and contradicted by the Plan itself. The new 6th District, for instance, was purportedly drawn to "reflect the North-South connections between Montgomery County, the I-270 Corridor, and the westerns portions of the State." No such connections exist. The sham explanations provided by the GRAC and the Governor

are a pretext for the true purpose of the Plan: to dilute Republican votes and claim an additional congressional seat for the Democratic Party by cracking the 6th District.

123. The committee received numerous alternative plans from third-parties. Those alternative plans received little consideration from the GRAC or the Governor, even though many accorded better with common sense and would have produced results that, upon information and belief, were more consistent with traditional map-drawing and redistricting principles. *See* Exhibits B & C.

124. Upon information and belief, several alternative plans would have avoided cracking the former 6th District while better respecting traditional political and community boundaries and achieving equal compliance with the one-person-one-vote standard. The alternative plans also accorded better with the broadly-supported concepts of contiguity and compactness.

125. Under the plan submitted by the Maryland Republican Party, for example, Montgomery County and its more urban voters would have remained in the geographically compact 8th and 4th Districts around Washington, D.C., respecting the cohesiveness of a region that shares common political, social, and economic interests. The Republican 6th District would have encompassed the rural northern and western counties, which also share common interests; and Baltimore and its immediate surroundings would have occupied the entire 7th District.

126. The alternative plans would have better respected existing geographic and political boundaries, minimizing split counties and split communities of interest. In most cases, Frederick, Carroll, Anne Arundel, Harford, and Baltimore City Counties would all have remained undivided in their respective districts; under the current Plan, each is currently split between two or more congressional districts.

127. In keeping communities and political units that share common interests together, the districts in the alternative plans are unsurprisingly more contiguous and compact than the districts under the current Plan.

128. Upon information and belief, at least one of the alternative plans would have satisfied all of the constitutional requirements for congressional reapportionment without diluting either party's votes to a constitutionally significant degree.

CLAIMS FOR RELIEF

A. Violation of the First Amendment

129. Plaintiffs repeat and re-allege each and every allegation set forth in the preceding paragraphs as if set forth fully herein.

130. Plaintiffs and voters throughout the Nation should be able to organize politically, to support political campaigns, to register with their preferred political parties, and to vote in support of their preferred candidates without fear that—if they are successful in electing the public officials of their choice—they will be targeted and retaliated against by the legislature for the exercise of the First Amendment rights.

131. The Maryland legislature expressly and deliberately considered the voting histories and political party affiliations of Republican voters, including plaintiffs, when it redrew the lines of the 6th Congressional District as part of the Plan.

132. The legislature redrew the lines of the 6th District with an intent to burden and punish those voters, including plaintiffs, for their First-Amendment-protected conduct.

133. The Plan, in actual effect, has burdened Republican voters in the former 6th Congressional District, including plaintiffs, as a sanction for the exercise of their First Amendment rights. The cracking of the 6th District would not have taken place without the legislature's targeting of Republican voters on the basis of their First-Amendment-protected conduct; and Republican voters in the former 6th District, including plaintiffs,

would have been able to elect a Republican representative in 2012 and 2014, but for the cracking of the district under the Plan.

134. The State cannot justify the cracking of the 6th District by reference to geography or compliance with constitutionally legitimate redistricting criteria.

B. Violation of Article 1, Sections 2 and 4

135. Plaintiffs repeat and re-allege each and every allegation set forth in the preceding paragraphs as if set forth fully herein.

136. The Maryland legislature expressly and deliberately considered Republican voters' voting histories and political party affiliations, including those of plaintiffs, when it redrew the lines of the 6th Congressional District as part of the Plan.

137. The legislature redrew the lines of the 6th District with an intent to sanction those voters, including plaintiffs, for their voting histories and political party affiliations.

138. The Plan, in actual effect, has burdened Republican voters in the former 6th Congressional District, including plaintiffs. The cracking of the 6th District would not have taken place without the legislature's targeting of Republican voters, including plaintiffs; and Republican voters in the former 6th District would have been able to elect a Republican representative in 2012 and 2014, but for the cracking of the district under the Plan.

139. The Plan has thus had the effect of burdening Republican voters' representational rights by diluting the efficiency and effect of their votes.

140. The legislature, rather than Maryland's voters, has in effect chosen the representative to the U.S. House of Representatives for Maryland's 6th District.

141. The result is a violation of plaintiffs' representational rights, protected under Article I, Sections 2 and 4, of the United States Constitution.

142. The State cannot justify the cracking of the 6th District by reference to geography or compliance with constitutionally legitimate redistricting criteria.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully request that the Court:

A. declare the Plan unconstitutional and invalid, and the maintenance of the plan for any election of any kind a violation of plaintiffs' constitutional rights;

B. enjoin defendants and their employees and agents from administering, preparing for, and in any way permitting the nomination or election of any Member of United States House of Representatives from Maryland's 6th, 7th, or 8th Congressional Districts;

C. in the absence of a state law establishing a constitutional district plan for Maryland's congressional districts, adopted by the Legislature and signed by the Governor in a timely fashion, establish a redistricting plan that is valid under the law;

D. award plaintiffs their reasonable attorneys' fees, costs, and litigation expenses incurred in bringing this action; and

E. grant such further relief as the Court deems just and proper.

February 16, 2016

/s/ *Michael B. Kimberly*

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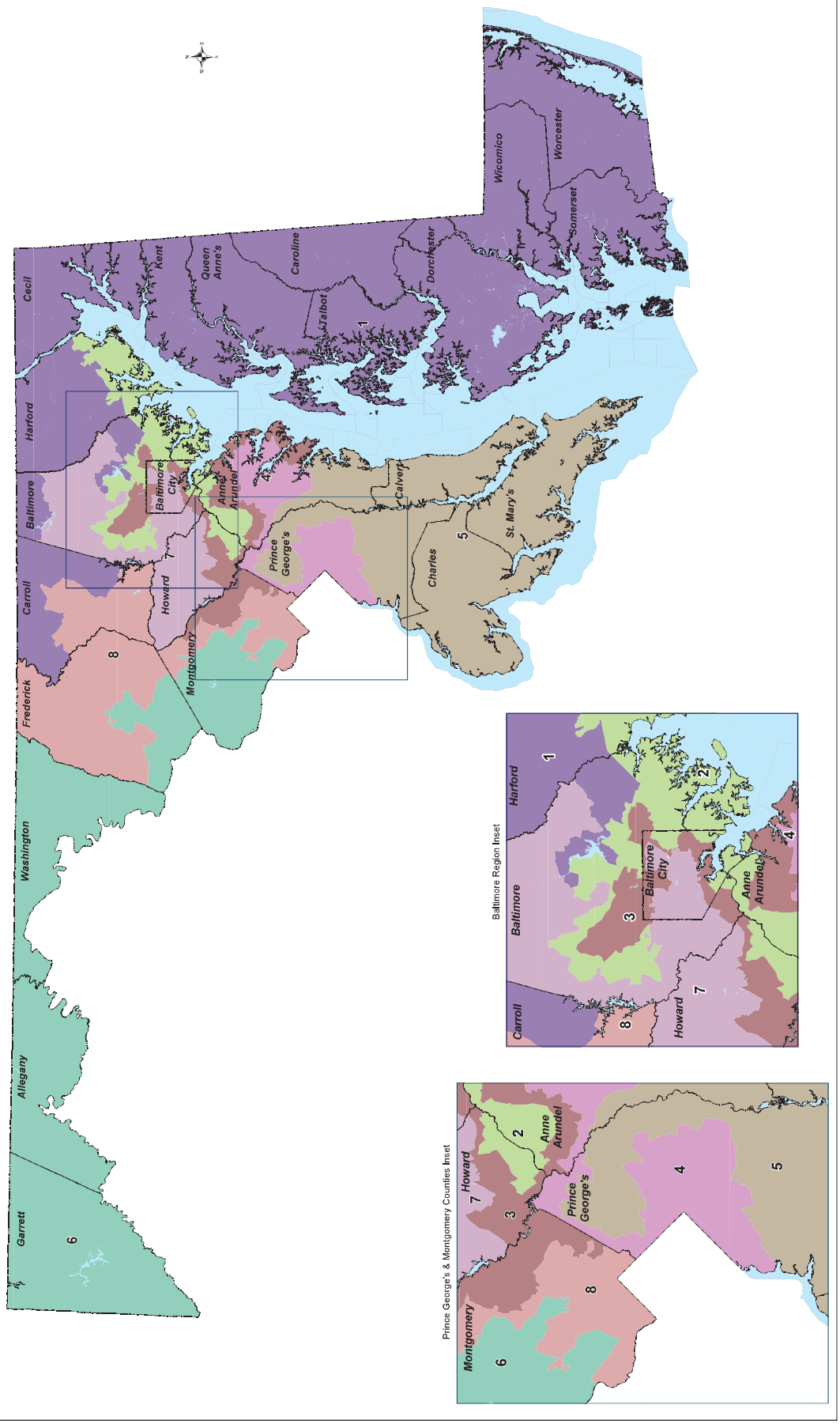
Maryland 2011 Congressional Districts

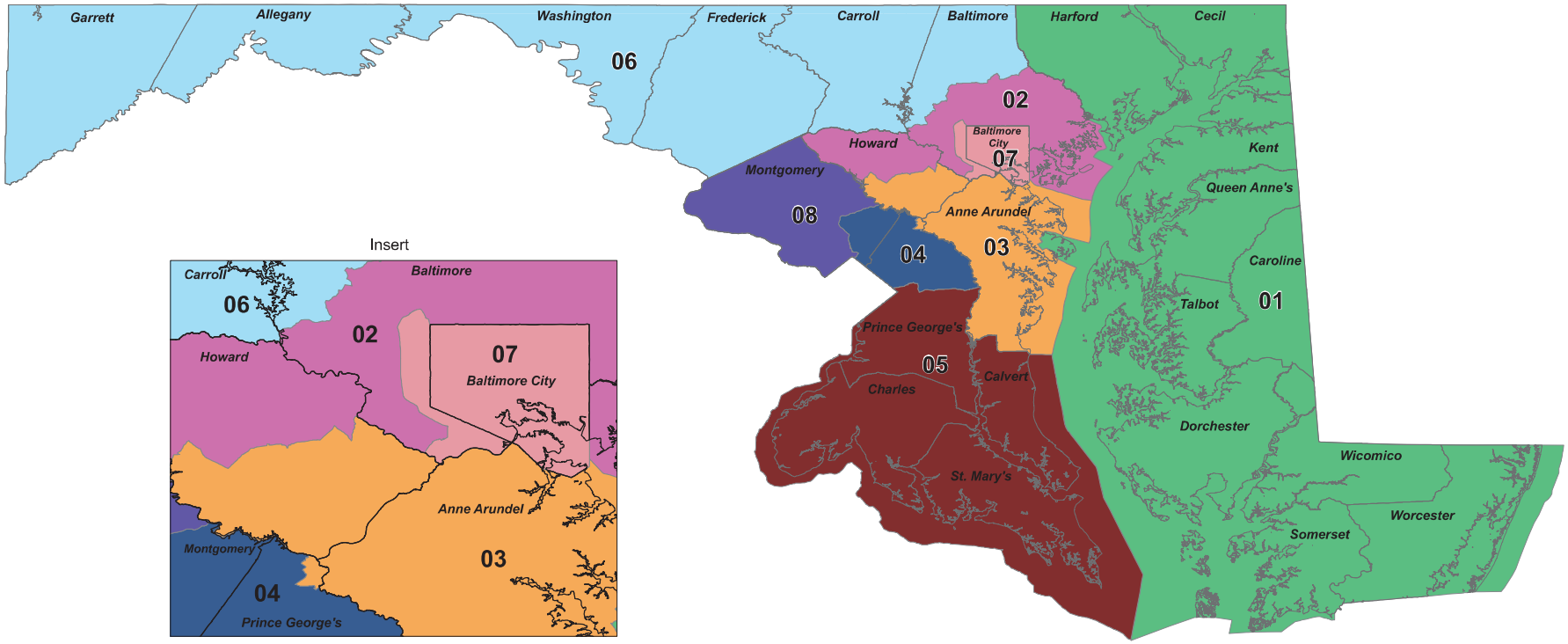
Senate Bill 1

October 20, 2011



Maryland Republican Party Congressional District Plan Update as Submitted to the Governor's Redistricting Advisory Committee

Submitted as a Block Equivalency file on September 19, 2011



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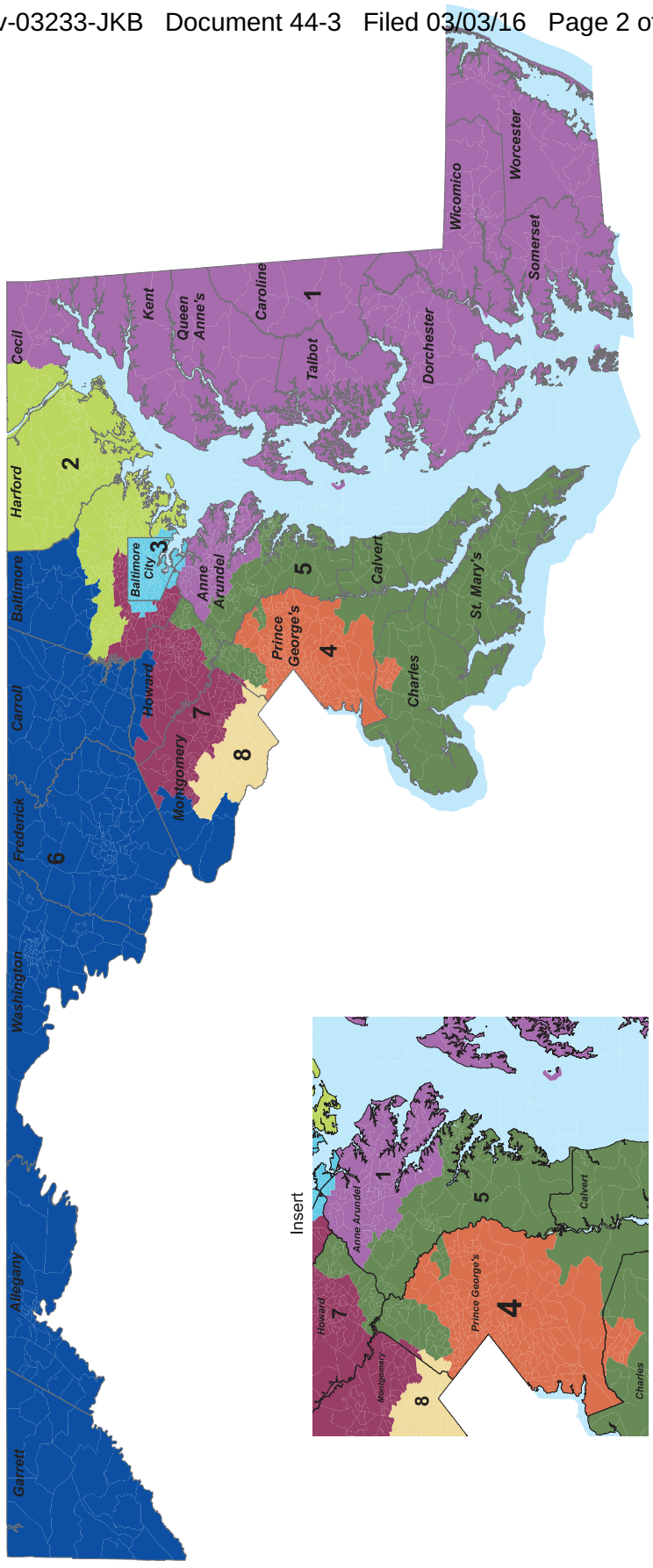
Steve Shapiro's Congressional District Plan B-1 Corrected as Submitted to the Governor's Redistricting Advisory Committee

Submitted as a Precinct Equivalency file on September 21, 2011



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Stephen M. Shapiro, et al. *Plaintiffs*, vs. David J. McManus, Jr., et al., *Defendants*.	Case No. 13-cv-3233 Three-Judge Court

JOINT STIPULATIONS

Pursuant to this Court's October 13, 2016 minute order, the parties file these Joint Stipulations of Fact and Law. The facts in these joint stipulations and exhibits attached hereto are intended to be received into evidence in lieu of further proof or testimony. The parties reserve their rights to contest the relevance of any stipulation or exhibit.

GLOSSARY OF TERMS

1. The "Governor" means former Maryland Governor Martin O'Malley.

2. The "Plan" means the map established by Senate Bill 1, which the Governor signed into law on October 20, 2011, and codifies the boundaries of Maryland's eight congressional districts today in effect.

3. The "GRAC" means the Governor's Redistricting Advisory Committee established by the Governor in July 2011.

4. The "District" means Maryland's Sixth Congressional District.

5. The "State" means Maryland.

6. The "Census" means the decennial United States Census mandated by Article I, Section 2 of the United States Constitution. As used in these stipulations, the "Census" additionally refers to the statement prepared by the President of the United

States pursuant to 2 U.S.C. § 2a showing the number of persons in each state and the number of representatives to which the state is entitled.

THE SIXTH DISTRICT BEFORE THE PLAN

7. The following individuals won election as United States Representative for the District between January 1943 and January 1993:

a. David J. Lewis, a Democrat, served 1911 through 1917;

b. Frederick N. Zihlman, a Republican, served 1917 through 1931;

c. David J. Lewis, a Democrat, served 1931 through 1939;

d. William D. Byron, a Democrat, served 1939 through 1941;

e. Katharine Byron, a Democrat, served 1941 through 1943;

f. J. Glenn Beall, a Republican, served 1943 through 1953;

g. DeWitt S. Hyde, a Republican, served 1953 through 1959;

h. John R. Foley, a Democrat, served 1959 through 1961;

i. Charles McCurdy Mathias, Jr., a Republican served 1961 through 1969;

j. J. Glenn Beall, Jr., a Republican, served 1969 through 1971;

k. Goodloe E. Byron, a Democrat, served 1971 through October 1978;

l. Beverly Barton Butcher Byron, a Democrat, served 1979 through 1993.

8. Republican Roscoe G. Bartlett challenged Beverly Barton Butcher Byron as United States Representative for the District in 1982, losing by a 49% margin. Bartlett won election as United States Representative for the District in each of the following years, with the indicated margins of victory over his Democratic challenger: 1992 (8.3%); 1994 (31.9%); 1996 (13.7%); 1998 (26.8%); 2000 (21.4%); 2002 (32.3%); 2004 (40.0%); 2006 (20.5%); 2008 (19.0%); 2010 (28.2%).

9. The District's total adjusted 2010 Census population was 731,715. *See* Exhibit 1.

10. There were 208,024 Republican and 159,715 Democrat registered eligible voters in the District on October 17, 2010. On that date, Republicans comprised 46.68% and Democrats comprised 35.84% of registered eligible voters in the District. *See* Exhibit 2.

11. There were 182,775 Republican and 144,398 Democrat registered eligible voters in the District on October 15, 2002. On that date, Republicans comprised 48.39% and Democrats comprised 38.23% of registered eligible voters in the District. *See ibid*.

12. There were 182,431 Republican and 156,841 Democrat registered eligible voters in the District on October 13, 2000. On that date, Republicans comprised 46.46% and Democrats comprised 39.94% of registered eligible voters in the District. *See ibid*.

13. There were 133,773 Republican and 135,818 Democrat registered eligible voters in the District on August 13, 1990. On that date, Republicans comprised 45.36% and Democrats comprised 46.05% of registered eligible voters in the District. *See ibid*.

14. There were 122,762 Republican and 121,918 Democrat registered eligible voters in the District on February 3, 1992. On that date, Republicans comprised 46.19% and Democrats comprised 45.87% of registered eligible voters in the District. *See ibid*.

THE DRAFTING OF THE PLAN

15. The Maryland State Board of Elections is responsible under Maryland law for administering federal elections under the Plan. It is the primary source of aggregated address-level voter registration data, address-level voter history, and official election results in Maryland. The Board keeps voter registration, voter history, and elections data that is available to the public. Certain files are available upon application and payment of a fee and others are available freely on the website.

16. The United States House of Representatives consists of 435 members apportioned among the States according to population after each decennial census. After the 2000 Census, Maryland was entitled to 8 representatives. After the 2010 Census, Maryland was entitled again to 8 representatives.

17. The Maryland State Department of Planning produced adjusted Census population data to comply with the No Representation Without Population Act of 2010. That data was made available as a Report of Maryland Precinct Population Data and required a correction. The GRAC had access to this report. A true and accurate copy of the report is marked with the Bates-number range MCM001135 to MCM001389 in documents exchanged by the parties. The parties stipulate that the matters of fact asserted, stated, or depicted in MCM001135 to MCM001389 are true and correct.

18. The Governor established the GRAC by executive order in July 2011. The GRAC was charged with holding public hearings around the State and drafting redistricting plans for the Governor's consideration to set the boundaries of the State's 47 legislative districts and 8 congressional districts following the 2010 Census.

19. The Governor appointed Jeanne D. Hitchcock to serve as chair of the GRAC. Hitchcock at the time served as Appointments Secretary in the Office of the Governor and had previously served as Deputy Mayor of Baltimore when the Governor served as Mayor.

20. The Governor additionally appointed to the GRAC: Democratic Delegate and Speaker of the House Michael E. Busch; Democratic Senator and President of the Senate Thomas V. Mike Miller, Jr.; Richard Stewart, a private business owner who had chaired the Governor's 2010 re-election campaign in Prince George's County; and former Delegate James. J. King, a Republican from Anne Arundel County. Linda C. Janey served on the GRAC's staff.

21. The foregoing list of GRAC members is exclusive; there were no other members of the GRAC.

22. The GRAC held 12 public hearings around the State in the summer of 2011 and received approximately 350 comments from members of the public concerning congressional and legislative redistricting in the State. Approximately 1,000 Marylanders

attended the hearings, which were held in Washington, Frederick, Prince George's, Montgomery, Charles, Harford, Baltimore, Anne Arundel, Howard, Wicomico, and Talbot Counties, and Baltimore City. True and accurate copies of the transcripts of these hearings are marked with the Bates-number range MCM000001 to MCM000704 in documents exchanged by the parties. True and accurate copies of written testimony submitted to the GRAC on the subject of congressional redistricting are marked with the Bates-number range MCM000705 to MCM000906 in documents exchanged by the parties.

23. The GRAC solicited submissions of alternative plans for congressional redistricting prepared by third parties for its consideration. True and accurate copies of the third party plan submissions retained by the Department of Planning for publication on its website are marked with the Bates-number range MCM000907 to MCM001134 in documents exchanged by the parties. The GRAC had access to these plans.

24. The Department of Planning prepared a Briefing Book and provided it to the members of the GRAC. A true and accurate copy of this Briefing Book is marked with the Bates-number range MCM001392 to MCM001824.

25. The GRAC had access to information contained in a spreadsheet of the addresses of the 2010 Maryland Congressional representatives maintained by the Department of Planning. A true and accurate copy of the spreadsheet is marked with the Bates-number MCM001391 in documents exchanged by the parties.

26. The GRAC and the Department of Planning solicited and accepted public comment. True and accurate copies of comments on the proposed Congressional plan between October 4 and October 11, 2011 via e-mail and web comment form in the form prepared by the Department of Planning are marked with the Bates-number range MCM002436 to MCM002853 in documents exchanged by the parties. True and accurate copies of e-mails as maintained by the Department of Planning in hard copy are marked

with the Bates-number range MCM002243 to MCM002435 in documents exchanged by the parties. True and accurate copies of letters received regarding the GRAC plan and maintained by the Department of Planning are marked with the Bates-number range MCM002854 to MCM002870 in documents exchanged by the parties.

27. The GRAC was exempt by law from the Maryland Open Meetings Act.

28. The GRAC prepared a draft plan using a computer software program called Maptitude for Redistricting Version 6.0. According to a 2010 promotional brochure produced by the program's publisher, Caliper Corporation, Maptitude for Redistricting allowed users to, among other things, "[c]reate districts using any level of geography," "[s]elect any number of summary data fields and compute totals and percents," "[a]dd political data and election results," and "[u]pdate historic election results to new political boundaries." *See* Exhibit 3.

29. The State Board of Elections maintains voter and voting data including address-level voter registration data, including by party affiliation; and address-level voter-history data. The State Board of Elections also makes publicly available votes cast during early voting, on election day, and by absentee or provisional ballot at various levels of aggregation. This information was available to the GRAC.

30. Data described in the immediately prior paragraph, including data reflecting Maryland citizens' political party affiliations and voting histories, can be used to determine how the outcome of historical elections would have changed in the District if the proposed plan had been in place in prior years, including in 2010.

31. One widely understood consequence of the Plan was that it would make it more likely that a Democrat rather than a Republican would be elected as representative from the District.

32. The GRAC completed its proposed map on October 4, 2011. The four Democrats on the GRAC voted in favor of the proposal. The sole Republican, former Delegate King, voted against it. The GRAC prepared a PowerPoint presentation to accompany its recommended plan, it is attached as Exhibit 6.

ENACTMENT OF THE PLAN

33. The governor announced on October 15, 2011 that he would submit to the legislature a map that was, for purposes of this litigation, substantially the same as the map proposed by the GRAC. The changes made to the proposed plan by the Governor or his staff are depicted in Exhibit 4.

34. On October 17, 2011, the Senate President introduced Senate Bill 1 on behalf of the governor at a special legislative session. The same day, the Senate Committee on Reapportionment and Redistricting and the House Rules Committee held a joint hearing on Senate Bill 1 and voted to approve the bill. An audiofile of these proceedings is attached as Exhibit 19. After adopting technical amendments immaterial to this litigation, the Senate passed the bill on October 18, 2011, and sent it to the House of Delegates, which, after adopting additional technical amendments immaterial to this litigation, passed the bill on October 19, 2011. The Senate subsequently concurred in the House's technical amendments, and the Governor signed Senate Bill 1 into law on October 20, 2011. The Congressional District Map established by Senate Bill 1 is attached as Exhibit 5.

35. Jeanne Hitchcock briefed the House and Senate Democratic Caucuses about the proposed plan on October 3, 2011. *See* Exhibit 6.

36. No Republican Senator or Delegate voted for Senate Bill 1 in committee or on the floor in recorded roll call votes.

37. One Democratic Senator, Sen. C. Anthony Muse, and five Democratic Delegates, Tiffany Alston, Aisha Braveboy, Alfred C. Carr Jr., Ana Sol Gutierrez, and Luiz

Simmons, voted against the Plan. All other Democratic Senators and Delegates voted in favor of the Plan.

38. A true and accurate copy of the legislative history of SB1 through SB6 of the 2011 Special Session of the Maryland General Assembly is available on the website of the General Assembly at www.mgaleg.maryland.gov (perma.cc/P2VD-6TQW). A true and accurate copy of documents from the bill files of SB1 through SB6 maintained by the Department of Legislative Services that do not appear on the Maryland General Assembly website are marked with Bates-number range MCM002871 to MCM002960 in documents exchanged by the parties.

39. Statewide referendum Question 5 on the 2012 ballot asked voters whether they were "for" or "against" the Maryland law "[e]stablish[ing] the boundaries for the State's eight United States Congressional Districts based on recent census figures, as required by the United States Constitution." There were 1,549,511 votes (64.1%) "for" the law and 869,568 votes (35.9%) "against" the law. Only two counties had more votes against than in favor of Question 5: Carroll (37,161 for and 42,459 against) and Garrett (5,423 for and 6,193 against). The results are available at perma.cc/NY6M-CALN.

PUBLIC STATEMENTS BY OFFICIALS CONCERNING THE PLAN

40. More than one month before the Plan was introduced in the legislature, Democratic Senator Richard Madaleno made the following statements in a series of taped interviews on September 13, 2011:

a. "What you see going on elsewhere is clearly in other states that are Republican controlled they are drawing maps to try to take out Democrats, so I think there is pressure on saying look, if they are playing that game elsewhere, then in states like Maryland where democrats control we've got to do the opposite." *See* Exhibit 7.

b. "This is a conflict between, what you could say, the heart and the mind of the Democratic party. The heart is 'Frank Kratovil had that seat [the 1st District] before, Frank Kratovil won before, he made hard votes on behalf of Barack Obama, we should find a way to reward our friend Frank Kratovil.' The head is telling you, 'Look, western Maryland, a new district focused toward western Maryland is one that you could actually pick up easier…' Do you reach out and help your good old friend Frank Kratovil, or do you go for where, in fact, you probably have a better chance at a pick up." *See ibid.*

c. "If you go with a competitive western Maryland district, the way that works is clearly that district comes further into Montgomery county, substantially into Montgomery county." *See* Exhibit 8.

d. "I think trying to achieve both makes it a little more difficult for everyone trying to draw the maps. But you're dealing with—one of the things that's interesting is—you're dealing with people like a Mike Miller or some of the staff of the legislature who have done this several cycles, so it's not like they are a bunch of people experimenting for the first time on how to do this." *See* Exhibit 9.

41. Donna Edwards, Democratic representative from the Fourth District, stated on October 11, 2011 in reference to the Plan: "I have been one of the strongest proponents as a Democrat of drawing a seventh district for Democrats. But we can accomplish that in a different way. . . . Where I have a real disagreement is in making superior the political interests to the minority voting rights interests." *See* Exhibit 10.

42. Democratic Senator C. Anthony Muse stated on the Maryland Senate Floor on October 18, 2011 (*see* Exhibit 11):

a. "[L]et's just be frank. As it stands, this plan dilutes minorities, minority power and parcels out minority populations—voters—to other very different communities in order to strengthen the chances of a Democrat being elected."

b. "Yes, the party walks away with maybe seven seats, but what do our minority populations walk away with?"

c. "I cannot support this map. It may well live up to the letter of the law, but surely not the spirit of the law nor the spirit of the democratic process. I think minorities lose with this map. Yes, the party gains. But honestly I believe the people, not the party, are the losers."

43. Democratic Senator Jamie Raskin stated on the Maryland Senate Floor on October 18, 2011 (*see* Exhibit 11):

a. "[T]his is not a Maryland problem with redistricting and gerrymandering. It's an American problem. All across America, people are complaining about extremely spliced and diced, curvy, swervy districts, where elected officials choose voters before voters choose elected officials. That's the system we've got in 50 states today, in the United States. And it's a process where we dress up partisan and political ambition on both sides of the aisle in high principal, but we can all tell what's really going on."

b. "To my distinguished colleagues on the other side of the aisle, the disappointment that they feel today is shared by Democrats in North Carolina, a state won by President Obama in 2008, which just had districts redrawn, ten majority Republican, three majority Democrat, with all the Democrats packed in there. In Ohio, a state that was won by President Obama in 2008, 12 majority Republican Districts have been drawn, four

> majority Democratic districts have been drawn. So they've gone way beyond anything that's been seen here. The basic problem is that we are trying to build a whole range in multiplicity of interests and factors into these single member districts, and we now have the convenience of computer technology to be able to accomplish very strange looking figures on the map."

44. Democratic Delegate Emmett C. Burns, Jr., stated on the House floor that he supported the Plan because it meant "more Democrats in the House of Representatives." *See* Exhibit 12.

45. Democratic Speaker Michael Busch said of the Plan, "I think you will have a very competitive 6th District when you didn't have that in the past." *See* Exhibit 13.

46. Democratic Delegate Curt Anderson described the October 3, 2011, briefing given by GRAC Chair Jeanne Hitchcock about the redrawn District: "It reminded me of a weather woman standing in front of the map saying, 'Here comes a cold front,' and in this case the cold front is going to be hitting Roscoe Bartlett pretty hard." *See* Exhibit 13.

47. Democratic Delegate Curt Anderson stated in an interview on October 17, 2011: "What we're doing is we are trying to get more, in terms of – currently we have two Republican districts and six Democratic Congressional districts and we're going to try to move that down to seven and one, with the additional Congressional district coming more out of Montgomery county and going into western Maryland that would give the Democrats more." *See* Exhibit 14.

48. Democratic Senator Jamie Raskin explained of the redistricting process on November 7, 2011: "Democrats control the redistricting process in Maryland" and with the Plan "hoped to pick up a seventh House seat through redistricting." *See* Exhibit 15.

49. House Speaker Michael Busch made the following statement regarding the District: "I think the numbers will show that it makes it pretty competitive, but I think the fact of the matter, that's reflective of the population growth in that area and the change that you see in voting behavior." *See* Exhibit 16.

50. Senate President Thomas V. Mike Miller made the following statements about the GRAC (*see* Exhibit 17):

a. "We recognized that Congressman Sarbanes lived in Baltimore County, but wanted to continue to represent the capital city Annapolis, and that was challenging."

b. "We recognized the fact that Congressman Ruppersberger, for example, is on the Intelligence Committee." "We tried to be sure that he represented both Aberdeen and Fort Meade, which was kind of challenging."

c. "We recognized that Congressman Hoyer lives in St. Mary's County and wants to represent Pax River, but also wanted to represent his alma mater, College Park, and that was challenging."

d. "If you are in public office, you don't want to give up a single precinct."

51. In a letter to the Governor dated October 20, 2011, Attorney General Douglas Gansler stated: "As indicated by those who participated in developing and adopting the redistricting plan, including the Redistricting Commission, the Governor, and the General Assembly, the boundaries of the newly adopted Congressional districts reflect a number of considerations, including a preference for joining communities of interest, keeping residents in their current districts, recognizing growth patterns, protecting incumbents, and partisan consideration." *See* Exhibit 18.

THE SIXTH DISTRICT AFTER THE PLAN

52. The Plan created eight congressional districts that were equal in population according to the adjusted 2010 Census data. The first seven of Maryland's congressional districts had an adjusted population of 721,529, and the Eighth District had an adjusted population of 721,528.

53. There were 145,620 Republican and 192,820 Democrat registered eligible voters in the District on October 21, 2012. On that date, Republicans comprised 33.32% and Democrats comprised 44.11% of registered eligible voters in the District. Exhibit 19.

54. Democrat John Delaney defeated Roscoe Bartlett in the election for representative to the United States Congress for the District in 2012 by a 20.9% margin.

55. Representative Delaney won re-election in 2014 with a 1.5% margin of the popular vote over his Republican challenger.

56. Representative Delaney won re-election in 2016 with, according to unofficial election results with some provisional and absentee ballots counted, a 14.4% margin of the popular vote over his Republican challenger.

EXHIBITS

57. Exhibit 1 reports the adjusted population of Maryland's eight congressional districts following the 2010 census under Maryland's 2002 redistricting map. The parties stipulate that the matters of fact asserted, stated, or depicted in Exhibit 1 are true and correct.

58. Exhibit 2 reports the number of eligible active voters in each of Maryland's eight congressional districts, and the respective political-party affiliations of those registered eligible voters, at various dates between 1990 and 2010. The parties stipulate that the matters of fact asserted, stated, or depicted in Exhibit 2 are true and correct.

59. Exhibit 3 is a true and correct copy of Caliper Corporation's 2010 promotional material for Maptitude for Redistricting. The parties stipulate that the exhibit is authentic.

60. Exhibit 4 depicts the changes made by the Governor to the map proposed by the GRAC on October 4, 2011. The parties stipulate that the matters of fact asserted, stated, or depicted in Exhibit 4 are true and correct.

61. Exhibit 5 depicts Maryland's eight congressional districts under the Plan. The parties stipulate that the matters of fact asserted, stated, or depicted in Exhibit 5 are true and correct.

62. Exhibit 6 is a true and correct copy of a PowerPoint presentation prepared by the GRAC to accompany its recommended plan. The parties stipulate that the presentation is authentic.

63. Exhibit 7 is a video depicting a September 13, 2011 interview with Senator Richard Madaleno. The parties stipulate that the video is authentic but make no stipulation as to the text preceding the video. The parties further stipulate that, as of the date of the filing of these stipulations, the video is available online at www.youtube.com/-watch?v=by_mclsHZv8.

64. Exhibit 8 is a video depicting a September 13, 2011 interview with Senator Richard Madaleno. The parties stipulate that the video is authentic but make no stipulation as to the text preceding the video. The parties further stipulate that, as of the date of the filing of these stipulations, the video is available online at www.youtube.com/-watch?v=7bTNNn6zLj8.

65. Exhibit 9 is a video depicting a September 13, 2011 interview with Senator Richard Madaleno. The parties stipulate that the video is authentic but make no stipulation as to the text preceding the video. The parties further stipulate that, as of the date of the filing of these stipulations, the video is available online at www.youtube.com/-watch?v=ddqQcOKzAT0.

66. Exhibit 10 is a true and correct copy of the article titled "Donna Edwards, Montgomery officials line up against redistricting map," written by Ben Pershing and Aaron C. Davis and published on October 11, 2011 in the *Washington Post*. The parties stipulate that the article is authentic.

67. Exhibit 11 is a true and correct audio recording of the Maryland State Senate floor proceeding held on October 18, 2011 audio file. The parties stipulate that the recording is authentic.

68. Exhibit 12 is a true and correct copy of the article titled "O'Malley's map easily wins House approval," written by Annie Linskey and John Fritze and published on October 19, 2016 in the *Baltimore Sun*. The parties stipulate that the article is authentic.

69. Exhibit 13 is a true and correct copy of the article titled "Redistricting panel targets Rep. Bartlett," written by Annie Linskey and published on October 3, 2011 in the *Baltimore Sun*. The parties stipulate that the article is authentic.

70. Exhibit 14 is a video depicting an October 19, 2011 interview with Delegate Curt Anderson. The parties stipulate that the video is authentic and that, as of the date of the filing of these stipulations, the video is available online at www.youtube.com/-watch?v=xPVKdKSgm9I.

71. Exhibit 15 is a true and correct copy of the opinion article titled "Fair representation for all," written by Jamie Raskin and Rob Richie and published on November 7, 2011 in the *Baltimore Sun*. The parties stipulate that the article is authentic.

72. Exhibit 16 is a true and correct copy of the article titled "Redistricting proposal would mean big changes for Western Maryland," written by Brian Witte and published on October 3, 2011 by the Associated Press. The parties stipulate that the article is authentic.

73. Exhibit 17 is a true and correct copy of the article titled "GOP, others find faults with proposed map," written by Annie Linskey and John Fritze and published on October 13, 2011 in the *Baltimore Sun*. The parties stipulate that the article is authentic.

74. Exhibit 18 is a true and correct copy of an October 20, 2011 letter from Maryland Attorney General Douglas Gansler to the Governor. The parties stipulate that the letter is authentic.

75. Exhibit 19 reports the number of eligible active voters and the respective political-party affiliations of those eligible active voters in each of Maryland's eight congressional districts on October 21, 2012. The parties stipulate that the matters of fact asserted, stated, or depicted in Exhibit 19 are true and correct.

76. Exhibit 20 is the audio recording of the October 17, 2011 Joint Hearing of the Senate Committee on Reapportionment and Redistricting and the House Rules Committee on Senate Bill 1. The parties stipulate that the recording is authentic.

Approved as to form and content:

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Appendix A - 1

SUMMARY REPORT - ADJUSTED 2010 CENSUS POPULATION COUNTS by EXISTING 2002 Congressional District
(Senate Bill 805, May 6, 2002)
TOTAL POPULATION by SINGLE RACE ALONE, UNADJUSTED HISPANIC ORIGIN and VOTING AGE (18+) POPULATION

Note: This report is based on Census 2010 P.L. 94-171 Redistricting Data (Maryland) and is **ADJUSTED** for the use of Maryland Redistricting pursuant to the "No Represenation Without Population Act" (SB 400\HB 496) passed into Maryland law in 2010. Maryland census data **must be ADJUSTED** for the purposes of creating congressional, state legislative, and local districting plans. Generally, the law requires that the census data must be adjusted to reassign Maryland residents in State & Federal correctional institutions to their last known address, and to exclude out-of-state residents in correctional institutions from redistricting.

Ideal Congressional District Population 2000: 662,061
Ideal Congressional District Population 2010: 721,529

Congressional District	2010 Census Total Population	Adjusted Total Population	Adjusted Person of One Race	Adjusted White Alone	Adjusted Black or African American Alone	Adjusted American Indian and Alaska Native Alone	Adjusted Asian Alone	Adjusted Native Hawaiian and Other Pacific Islander Alone	Adjusted Some Other Race Alone	Adjusted of Two or More Races	*Unadjusted Hispanic or Latino (of Any Race)	Adjusted Age 18 and Over Population
Maryland	**5,773,552**	**5,772,231**	**5,607,523**	**3,358,916**	**1,699,359**	**20,419**	**318,848**	**3,157**	**206,824**	**164,708**	**470,632**	**4,419,267**
Congressional District 1	744,275	743,067	728,841	616,597	85,055	1,829	15,762	349	9,249	14,226	25,756	572,931
Congressional District 2	700,893	703,824	683,250	403,318	237,593	2,795	25,940	457	13,147	20,574	34,981	538,131
Congressional District 3	719,856	716,808	696,372	491,212	143,592	2,360	37,966	533	20,709	20,436	48,832	563,890
Congressional District 4	714,319	715,674	692,333	183,321	405,203	2,942	49,483	369	51,015	23,341	101,103	535,642
Congressional District 5	767,369	768,464	743,610	392,052	286,841	3,443	32,220	451	28,603	24,854	60,279	582,239
Congressional District 6	738,940	731,715	716,025	644,122	42,961	1,737	16,201	292	10,712	15,690	31,237	556,721
Congressional District 7	659,776	664,091	647,949	218,189	374,878	1,954	44,488	246	8,194	16,142	22,951	510,878
Congressional District 8	728,124	728,588	699,143	410,105	123,236	3,359	96,788	460	65,195	29,445	145,493	558,835

Note: *No Hispanic designation was available for prisoners; therefore, the Hispanic totals were not adjusted.
The district totals include minor corrections in the assignment of census tabulation blocks to voting dsitricts/precincts. The corrections to the P.L.94-171 U.S. Bureau of the Census file were made by Maryland Department of Planning and Department of Legislative Services.
The 2010 Population for Congressional and Legislative Districts are derived and based on the assignment of voting district/precincts to district as provided by Local Board of Elections. and adjusted by Maryland Departments of Planning, Legislative Services and Public Safety and Correctional Services pursuant to the "No Represenation Without Population Act."

MDP **Report** prepared by the Maryland Department of Planning, Clearinghouse, Redistricting, May 2011.

Eligible Active Voters on Precinct Register

Election: 2010 GUBERNATORIAL GENERAL ELECTION
Election Date: 11/2/10

**As of 10/17/10*

Counts by County

	Dems	Reps	Grn	Con	Lib	UNA	OTH	Subtotal
Allegany	16,608	19,827	130	12	119	5,305	449	42,450
Anne Arundel	145,707	120,970	840	76	1,114	62,255	139	331,101
Baltimore City	289,776	32,027	1,404	29	701	40,231	1,340	365,508
Baltimore County	290,998	128,638	1,326	80	1,499	64,706	5,620	492,869
Calvert	23,171	22,464	119	11	149	9,860	526	56,300
Caroline	7,407	7,461	36	5	59	2,949	120	18,037
Carroll	33,156	54,327	255	51	304	16,309	799	105,201
Cecil	24,530	22,853	143	25	208	11,218	860	59,837
Charles	50,767	24,687	131	19	197	13,609	579	89,989
Dorchester	10,392	6,982	26	2	41	2,185	150	19,778
Frederick	52,181	57,958	359	32	453	26,637	78	137,698
Garrett	4,994	11,379	39	3	45	1,788	186	18,434
Harford	62,100	63,101	274	37	512	22,310	719	149,053
Howard	86,045	55,017	440	41	571	34,159	1,810	178,083
Kent	6,170	4,476	42	3	35	1,621	135	12,482
Montgomery	324,195	123,253	1,432	59	1,364	122,587	541	573,431
Prince George's	403,582	46,641	710	55	732	43,061	22,719	517,500
Queen Anne's	11,059	13,982	64	8	95	4,290	207	29,705
Saint Mary's	24,632	23,454	150	14	191	10,246	526	59,213
Somerset	7,222	4,329	21	3	26	1,537	120	13,258
Talbot	10,166	11,073	51	7	79	3,615	315	25,306
Washington	31,340	37,027	219	20	234	14,347	89	83,276
Wicomico	25,366	19,785	113	9	151	8,176	668	54,268
Worcester	15,715	13,903	68	5	105	5,273	441	35,510
	1,957,279	925,614	8,392	606	8,984	528,274	39,136	3,468,287

Eligible Active Voters on Precinct Register

Election: 2010 GUBERNATORIAL GENERAL ELECTION
Election Date: 11/2/10

**As of 10/17/10*

Counts by Congressional District

	Dems	Reps	Grn	Con	Lib	UNA	OTH	Subtotal
Congr. Dist: 01	196,183	196,411	1,036	119	1,459	71,932	4,044	471,184
Congr. Dist: 02	241,628	92,085	866	76	1,140	54,999	3,056	393,852
Congr. Dist: 03	240,852	114,282	1,450	69	1,439	73,626	2,361	434,079
Congr. Dist: 04	314,380	50,596	593	48	636	51,745	10,459	428,457
Congr. Dist: 05	277,134	118,109	952	78	1,138	63,593	13,036	474,040
Congr. Dist: 06	159,715	208,024	1,159	122	1,353	73,262	2,044	445,679
Congr. Dist: 07	283,827	64,222	1,255	53	872	51,025	2,735	403,989
Congr. Dist: 08	243,560	81,885	1,081	41	947	88,092	1,401	417,007
	1,957,279	925,614	8,392	606	8,984	528,274	39,136	3,468,287

Eligible Active Voters on Precinct Register

Election: 2010 GUBERNATORIAL GENERAL ELECTION
Election Date: 11/2/10

**As of 10/17/10*

Counts by Legislative District

	Dems	Reps	Grn	Con	Lib	UNA	OTH	Subtotal
Legis. Dist: 01A	6,625	14,648	48	3	59	2,345	221	23,949
Legis. Dist: 01B	8,645	10,640	71	7	50	2,780	241	22,434
Legis. Dist: 01C	9,068	10,495	66	9	76	3,242	181	23,137
Legis. Dist: 02A	9,818	13,237	69	8	75	4,605	21	27,833
Legis. Dist: 02B	8,685	11,385	61	4	73	4,358	25	24,591
Legis. Dist: 02C	9,602	7,346	68	4	62	3,887	33	21,002
Legis. Dist: 03A	22,637	17,650	160	13	175	10,070	33	50,738
Legis. Dist: 03B	12,488	13,874	80	6	93	6,747	22	33,310
Legis. Dist: 04A	16,305	24,898	116	12	176	9,314	24	50,845
Legis. Dist: 04B	8,233	14,470	54	11	79	4,386	187	27,420
Legis. Dist: 05A	17,260	27,915	143	32	160	8,156	390	54,056
Legis. Dist: 05B	11,855	14,641	110	5	107	4,197	429	31,344
Legis. Dist: 06	38,160	14,410	122	17	207	8,467	711	62,095
Legis. Dist: 07	36,391	28,505	157	18	264	11,081	815	77,232
Legis. Dist: 08	41,778	21,969	197	12	239	9,849	857	74,901
Legis. Dist: 09A	25,473	24,691	156	13	185	11,398	663	62,579
Legis. Dist: 09B	8,913	13,960	66	9	77	4,496	223	27,744
Legis. Dist: 10	58,976	7,324	148	7	143	7,746	616	74,960
Legis. Dist: 11	55,482	17,738	172	9	213	10,972	943	85,529
Legis. Dist: 12A	24,201	14,827	148	10	177	7,755	555	47,673
Legis. Dist: 12B	15,570	5,656	68	8	83	5,127	296	26,808
Legis. Dist: 13	40,483	21,181	191	19	262	15,595	761	78,492
Legis. Dist: 14	41,372	21,163	154	4	176	15,061	70	78,000
Legis. Dist: 15	41,210	22,611	134	9	164	20,967	76	85,171
Legis. Dist: 16	45,923	16,578	154	4	174	17,247	54	80,134
Legis. Dist: 17	38,071	14,753	188	8	213	17,098	81	70,412
Legis. Dist: 18	42,285	12,063	191	11	155	13,292	55	68,052
Legis. Dist: 19	40,334	15,656	151	8	148	13,550	58	69,905
Legis. Dist: 20	41,664	6,730	314	5	166	11,070	56	60,005
Legis. Dist: 21	40,762	12,164	159	6	235	10,134	2,948	66,408
Legis. Dist: 22	39,534	6,002	194	6	110	5,789	3,013	54,648

Eligible Active Voters on Precinct Register

Election: 2010 GUBERNATORIAL GENERAL ELECTION
Election Date: 11/2/10

*As of 10/17/10

Counts by Legislative District (cont'd)

	Dems	Reps	Grn	Con	Lib	UNA	OTH	Subtotal
Legis. Dist: 23A	36,624	9,514	69	15	86	5,276	2,899	54,483
Legis. Dist: 23B	24,904	3,199	29	2	35	2,586	1,161	31,916
Legis. Dist: 24	61,355	2,328	47	5	61	4,344	2,651	70,791
Legis. Dist: 25	63,076	3,393	42	8	61	4,562	2,688	73,830
Legis. Dist: 26	64,517	4,438	47	8	66	4,884	2,987	76,947
Legis. Dist: 27A	47,984	9,859	68	3	90	5,360	2,330	65,694
Legis. Dist: 27B	11,995	10,661	49	6	74	4,895	262	27,942
Legis. Dist: 28	49,853	23,866	127	19	189	13,285	557	87,896
Legis. Dist: 29A	11,919	11,119	57	3	62	4,409	256	27,825
Legis. Dist: 29B	11,640	10,650	80	11	120	5,288	257	28,046
Legis. Dist: 29C	10,046	10,450	69	5	77	4,541	217	25,405
Legis. Dist: 30	35,153	29,691	254	15	314	15,817	27	81,271
Legis. Dist: 31	33,151	26,264	161	22	207	13,040	34	72,879
Legis. Dist: 32	36,498	22,104	183	18	253	13,927	33	73,016
Legis. Dist: 33A	21,956	26,375	150	12	204	11,256	20	59,973
Legis. Dist: 33B	11,828	13,221	68	4	80	5,454	17	30,672
Legis. Dist: 34A	24,019	13,785	85	18	168	7,555	262	45,892
Legis. Dist: 34B	10,965	11,707	68	11	85	5,066	382	28,284
Legis. Dist: 35A	19,689	28,218	108	9	171	7,641	231	56,067
Legis. Dist: 35B	10,588	12,676	56	6	94	4,193	137	27,750
Legis. Dist: 36	33,774	32,599	195	26	286	13,347	860	81,087
Legis. Dist: 37A	13,637	5,505	42	3	59	2,872	196	22,314
Legis. Dist: 37B	22,930	24,045	100	14	147	7,652	578	55,466
Legis. Dist: 38A	11,813	8,924	42	5	52	3,225	272	24,333
Legis. Dist: 38B	24,512	21,720	116	8	165	8,547	713	55,781
Legis. Dist: 39	33,336	13,699	146	10	168	14,302	91	61,752
Legis. Dist: 40	47,643	3,736	417	5	125	6,354	218	58,498
Legis. Dist: 41	54,708	4,863	131	3	85	5,914	191	65,895
Legis. Dist: 42	36,874	21,479	323	7	274	9,754	888	69,599
Legis. Dist: 43	52,236	4,730	312	2	88	6,362	204	63,934
Legis. Dist: 44	44,381	3,713	159	6	83	5,546	224	54,112

Eligible Active Voters on Precinct Register

Election: 2010 GUBERNATORIAL GENERAL ELECTION
Election Date: 11/2/10

**As of 10/17/10*

Counts by Legislative District (cont'd)

	Dems	Reps	Grn	Con	Lib	UNA	OTH	Subtotal
Legis. Dist: 45	49,290	4,699	138	7	97	5,146	213	59,590
Legis. Dist: 46	41,518	10,286	247	6	223	10,909	290	63,479
Legis. Dist: 47	35,064	2,918	97	7	59	4,184	2,132	44,461
	1,957,279	925,614	8,392	606	8,984	528,274	39,136	3,468,287

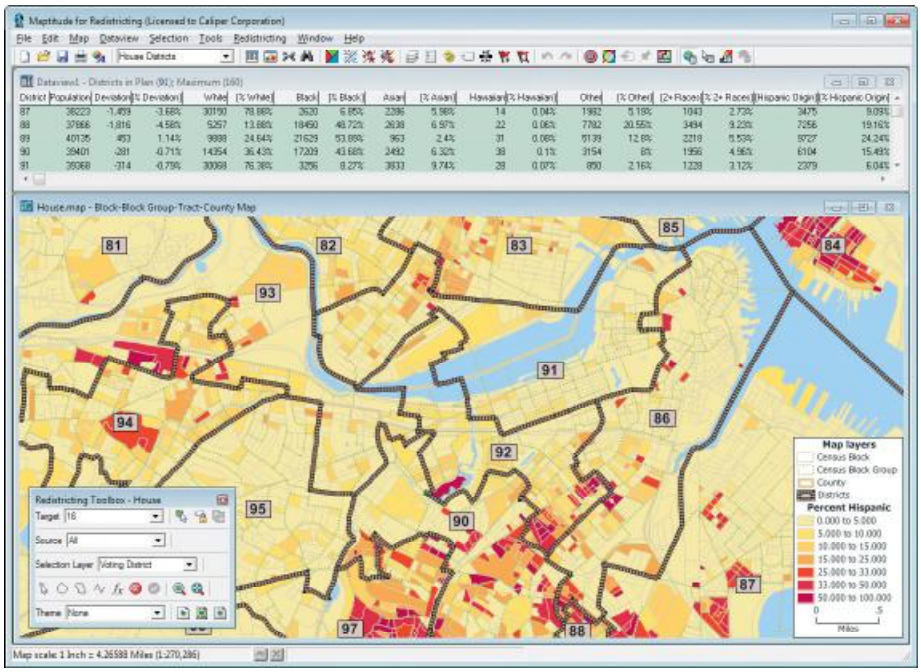
Counts by Age, Gender, and Party

**According to Maryland State Law, voters who will be 18 and eligible to vote by a General Election are eligible to Vote in the related primary.*
***Confidential Voters are not included in Age Range Statistics*

		Female						Male						Unspecified					
	TOTAL	17 & below	18-24	25-44	45-65	65 & above	Subtotal	17 & below	18-24	25-44	45-65	65 & above	Subtotal	17 & below	18-24	25-44	45-65	65 & above	Subtotal
Null	**2**	0	0	0	1	0	**1**	0	0	0	1	0	**1**	0	0	0	0	0	**0**
DEM	**1,957,025**	212	100,500	374,808	459,713	217,933	**1,153,166**	166	78,739	249,474	326,505	148,232	**803,116**	1	213	262	210	57	**743**
REP	**925,491**	109	36,035	140,337	188,084	88,680	**453,245**	121	39,898	149,800	205,755	76,358	**471,932**	0	85	106	91	32	**314**
GRN	**8,391**	3	671	1,911	740	124	**3,449**	3	947	2,624	1,188	175	**4,937**	0	3	1	1	0	**5**
CON	**606**	0	35	63	56	18	**172**	2	85	177	140	30	**434**	0	0	0	0	0	**0**
LIB	**8,982**	2	863	1,676	649	72	**3,262**	6	1,264	2,970	1,306	162	**5,708**	0	1	5	5	1	**12**
UNA	**528,252**	116	38,489	116,897	80,378	19,478	**255,358**	100	39,154	120,553	90,954	21,670	**272,431**	1	114	183	117	48	**463**
OTH	**39,133**	3	1,048	7,369	7,351	2,567	**18,338**	3	963	8,104	8,888	2,826	**20,784**	0	5	3	3	0	**11**
TOTAL	**3,467,882**	445	177,641	643,061	736,972	328,872	**1,886,991**	401	161,050	533,702	634,737	249,453	**1,579,343**	2	421	560	427	138	**1,548**

Maptitude® Software, Data, and Services for Redistricting

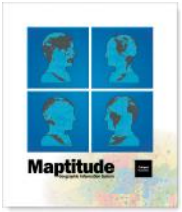
Maptitude for Redistricting™



Maptitude for Redistricting is the professional tool for political redistricting. It is used by a super-majority of the state legislatures, political parties, and public interest groups. Designed with the help of redistricting professionals, state legislatures, and political parties, Maptitude for Redistricting has the features redistricters want and is easy to learn and use.

Caliper Corporation has continued to improve Maptitude for Redistricting. The newest version represents a major leap forward with advanced features, the latest Census geography and data, one-button conversion of existing plans to the latest TIGER geography, new and enhanced reports, a state-of-the-art interface, open access to industry-standard file formats, interoperability with Google Maps and Google Earth, an updated manual, video tutorials, context-sensitive Help, web solutions, and more. Whether you are a current user or new to Maptitude for Redistricting, you will welcome this new version of the software as you prepare for the upcoming round of redistricting.

Maptitude for Redistricting includes all of the features in Caliper's Maptitude Geographic Information System (GIS) software. Maptitude is full-featured mapping and GIS software that has established new standards for performance and value for over a decade. It provides a complete set of mapping and spatial analysis functions, sophisticated geocoding, tools for complex data manipulation, and a large collection of nationwide geographic data.



Maptitude for Redistricting Key Features:

- Create districts using any level of geography
- Compute control field totals and deviations
- Select any number of summary data fields and compute totals and percents
- Display the plan as district boundaries or a thematic map
- Display the plan statistics in a scrollable data window
- Produce over 35 standard reports: add your own and customize ours
- Export the plan to an equivalency file in industry-standard file formats
- Import plans from other GIS software
- Merge sub-plans
- Compute measures of compactness
- Verify completeness and district contiguity, and zoom to problem areas
- Update historic election results to new political boundaries
- Create single-district map layouts and map books
- Save plans in an Internet-compatible format
- Complete support for Google Maps and Google Earth
- Includes all TIGER geographic layers with PL94-171 population and race data attached

Maptitude for Redistricting

Includes a Data DVD for your jurisdiction containing all of the geographic layers from the U.S. Census TIGER map files with the official PL94-171 population, race, Hispanic ethnicity, and voting age data attached:

- Census blocks
- Census block groups
- Census tracts
- Upper and lower chamber state legislative districts
- Congressional districts
- State boundary
- County boundaries
- Incorporated place boundaries
- Minor Civil Division (MCD) boundaries
- Elementary, secondary, and unified school district boundaries
- Indian reservations
- Voting districts
- Point and area landmarks
- Water landmarks
- Utility lines
- Railroads
- Street segments
- All line features from Census TIGER/Line® files
- In addition to the PL94-171 redistricting data, you will find Department of Justice definitions of race, special calculations such as "Any Part Black," counts of persons reporting multiple races, and more.

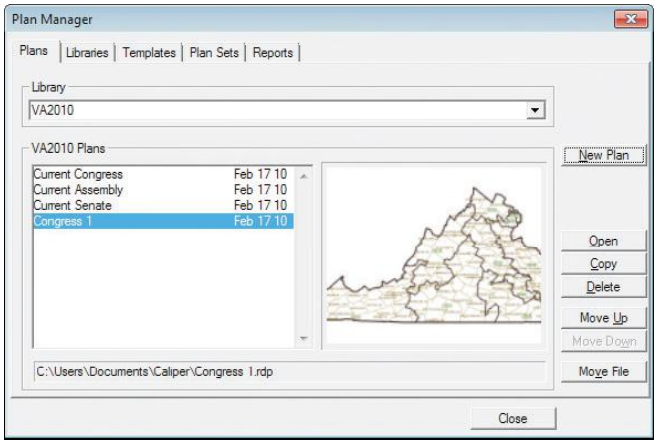
Caliper provides timely updates of new data as the Census Bureau releases them.

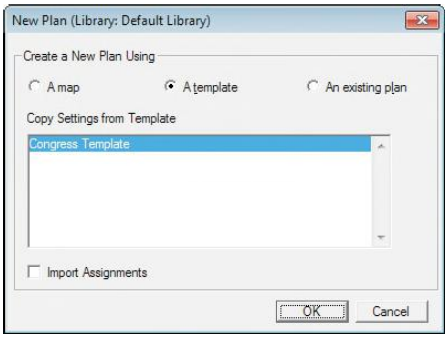
Maptitude for Redistricting includes everything you need to build and analyze redistricting plans.

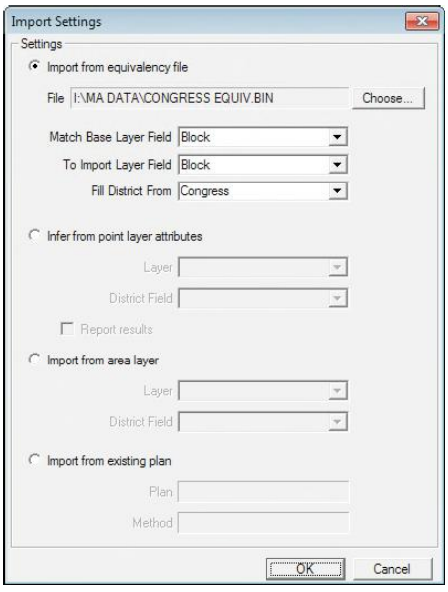
The Maptitude for Redistricting **Plan Manager** serves as your redistricting control center. Use it to organize plans, create any number of plan types (e.g., congressional, state house, senate, school district), and save them as Plan Templates. To create a plan, simply choose a template or an existing plan and enter a new name. Organize plans in libraries by plan type, user, security access, etc. Locate, copy, change settings, and password-protect plans. Group similar plans into plan sets and define report sets for batch printing.

The custom menu system and redistricting toolbox let you:

- **Create a new plan** from a map, a template, or an existing plan. You only have to enter the settings once. From then on, you can create a new plan by picking the appropriate template or existing plan.
- **Import and merge plans** created by Maptitude for Redistricting or other redistricting software. You can also automatically convert a plan based on a previous version of TIGER geography to a plan using the latest version of TIGER geography. There is no need to export the old plan to an equivalency file and then import the equivalency file into the new plan. This makes it very easy to update your old plans to the most recent and most detailed Census geography.

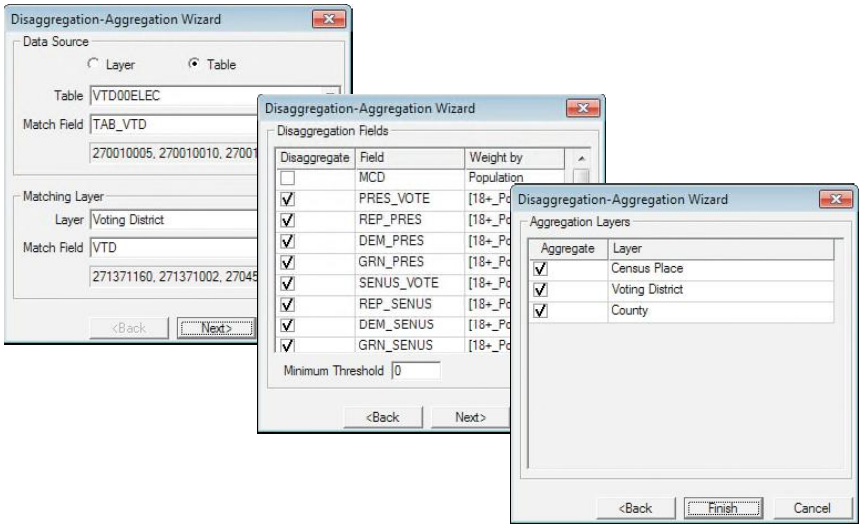






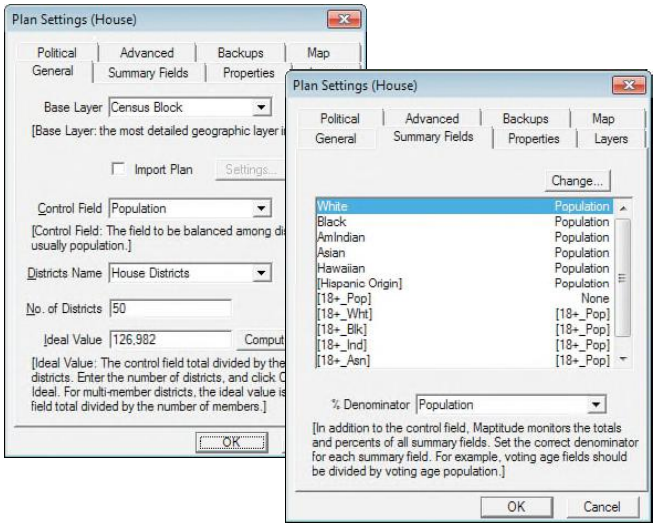
Maptitude for Redistricting

- **Add political data and election results** (usually reported at the precinct or VTD level of geography), and use the Disaggregation/Aggregation Wizard to quickly disaggregate the data down to Census Block geography and aggregate it up to all higher levels of geography. You can join in tables of data or overlay area layers (e.g., historic precincts) that contain the data.

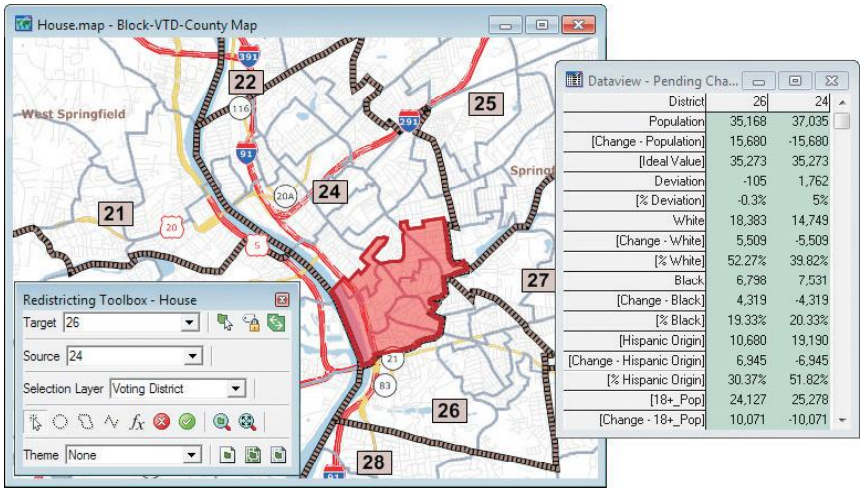


- **Designate the control field**, number of districts, ideal value, and summary fields, and set other plan properties including plan type, creation date, password protection, and backup strategy.

- **Include any number of data fields in the same plan**; one-button toggle between field sets lets you display only the data of interest at any particular time.

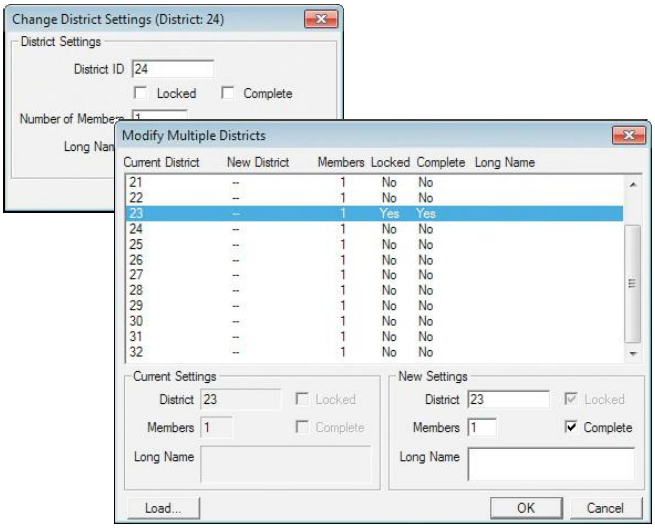


- **Add areas to a target district** using feature selection tools. Select by pointing, by circle, by lasso, by line, or by attribute values. Select features in any geographic layer, such as Census block, voting district, county, town, or school district. Limit the selection to unassigned areas, one district, or the entire jurisdiction. As you add areas to a district, Maptitude for Redistricting redraws the district boundaries and updates the control and summary fields to reflect changes to the current plan.

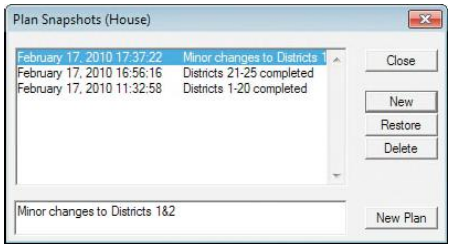


Maptitude for Redistricting

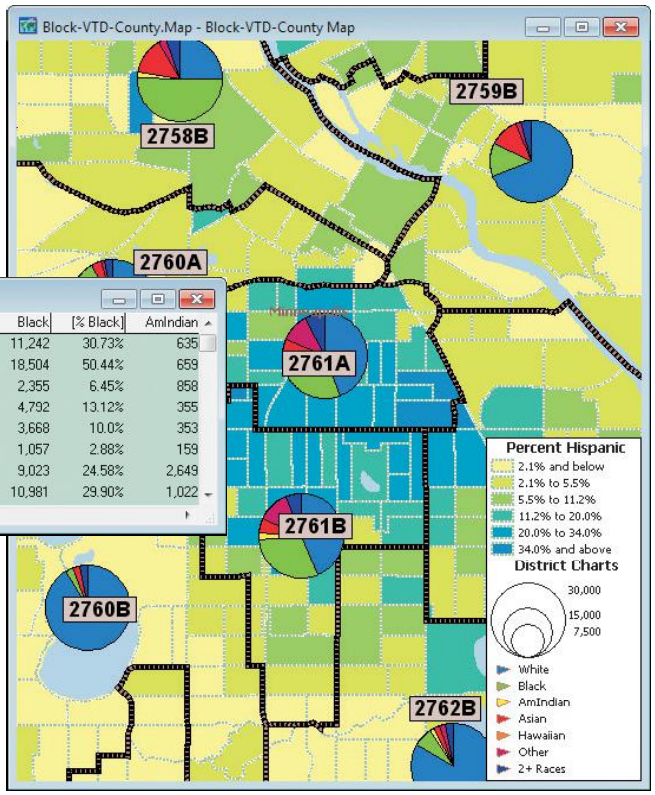
- **Easily manage districts:** rename districts, handle multi-member districts, assign both an ID and a long name to districts, lock districts, and mark them completed.

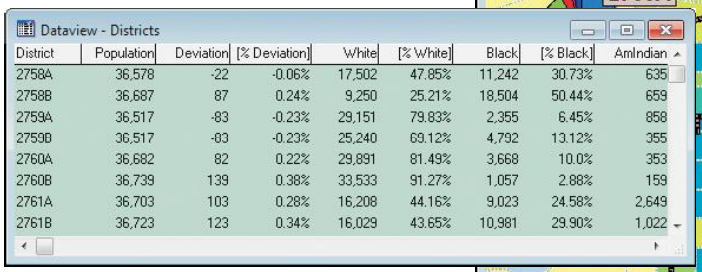


- **Capture the current status of a plan** as a snapshot. Each plan can have one or more snapshots organized by date and time under the same plan name. Return to any snapshot, and use it as a departure point in the evolution of the plan or as the starting point for a new plan.



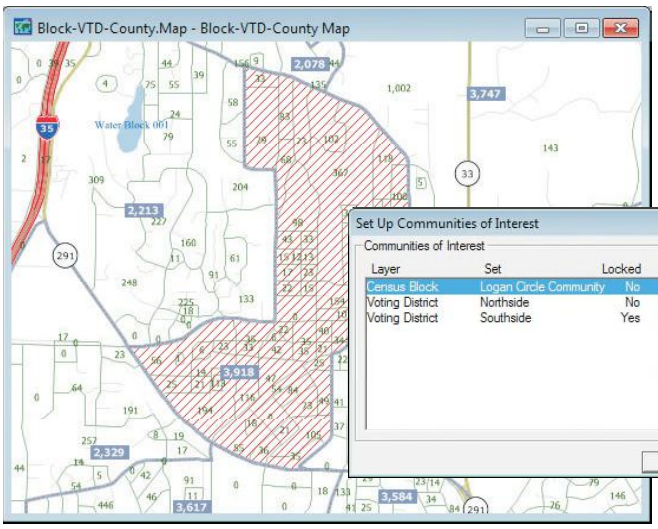
- **Display attributes for any layer** using labels or color, pattern, dot-density, scaled-symbol, or chart themes. Display summary information in a table that contains the district identifier, control field totals, deviation from the ideal value, and the totals and percentages for summary fields.





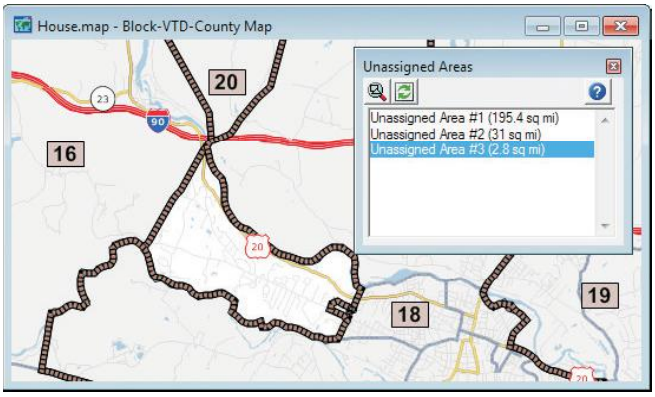
District	Population	Deviation	[% Deviation]	White	[% White]	Black	[% Black]	AmIndian
2758A	36,578	-22	-0.06%	17,502	47.85%	11,242	30.73%	635
2758B	36,687	87	0.24%	9,250	25.21%	18,504	50.44%	659
2759A	36,517	-83	-0.23%	29,151	79.83%	2,355	6.45%	858
2759B	36,517	-83	-0.23%	25,240	69.12%	4,792	13.12%	355
2760A	36,682	82	0.22%	29,891	81.49%	3,668	10.0%	353
2760B	36,739	139	0.38%	33,533	91.27%	1,057	2.88%	159
2761A	36,703	103	0.28%	16,208	44.16%	9,023	24.58%	2,649
2761B	36,723	123	0.34%	16,029	43.65%	10,981	29.90%	1,022

Maptitude for Redistricting

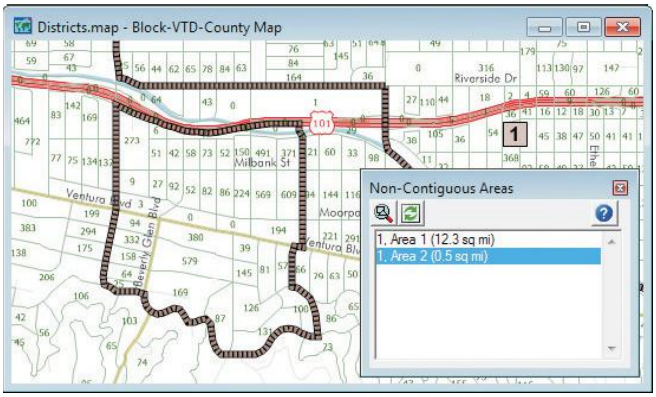


- **Identify communities of interest**, geographically cohesive areas such as cities, neighborhoods, or racial or ethnic enclaves that tend to have similar interests and vote as a bloc. Keep them intact within the same district, and lock them so that you cannot accidentally reassign them to different districts. Alternatively, for communities that you do split into multiple districts, run the Communities of Interest reports to calculate the total and percent population of the community in each district.

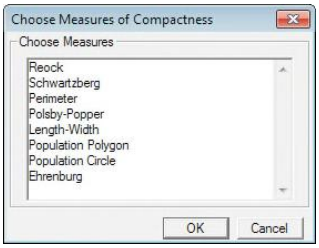
"(Previously) we did redistricting with software and hardware that was bulky, difficult to use, and extraordinarily expensive. Today, Maptitude software provides us far more flexibility, ease of use, and capability at a fraction of the cost. Following redistricting, we will be able to continue to use Maptitude for GIS/data applications ranging from school bus transportation to land use development issues."
Russell T. Larson
Delaware Controller General



- **Easily find unassigned areas** and assign them to the correct district. Automatically assign unassigned areas that are completely surrounded by the same district.



- **List all noncontiguous portions of a district**, zoom to each one, and easily assign them to the correct district.

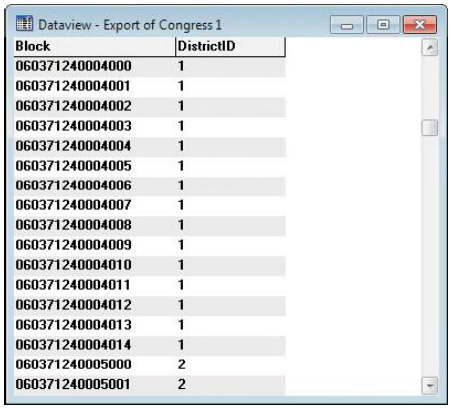


- **Compute measures of compactness** to assess or defend the districts in a plan. Maptitude for Redistricting computes all of the recognized measures of geographic compactness including the Reock, Schwartzberg, Perimeter, Polsby-Popper, Length-Width, Population Polygon, Population Circle, and Ehrenburg metrics.

Maptitude for Redistricting

"It's light years ahead. The software can do so much more, so much more quickly."
Karl Aro
Director, Maryland Department of Legislative Services

- **Export a plan to standard equivalency file** formats that can be read by other redistricting software and the Department of Justice. This is the best way to transfer a plan because every Census block is assigned to a district and there is no possibility for a mis-assignment.



Block	DistrictID
060371240004000	1
060371240004001	1
060371240004002	1
060371240004003	1
060371240004004	1
060371240004005	1
060371240004006	1
060371240004007	1
060371240004008	1
060371240004009	1
060371240004010	1
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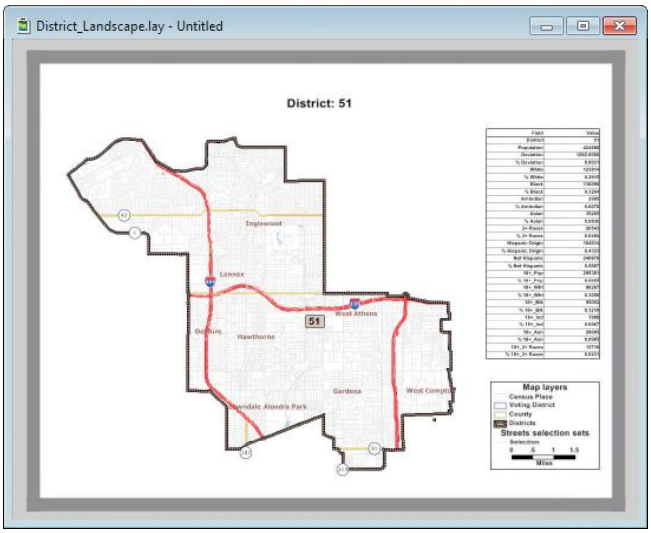
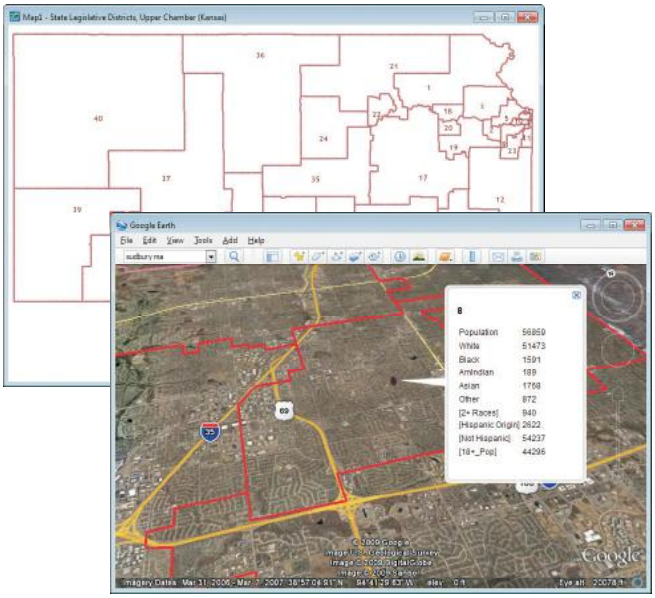
060371240005000	2
060371240005001	2



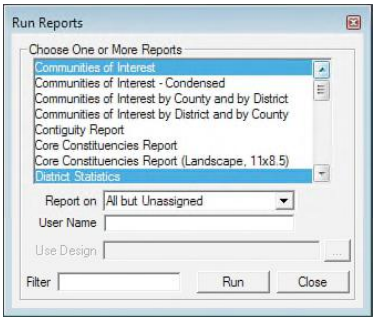
- **Create a map book** containing layouts for some or all of the districts. Display either a single district or the district and all adjoining districts, labeled with the district name, plan name, plan type, administrator, date created, and date last modified based on your settings.

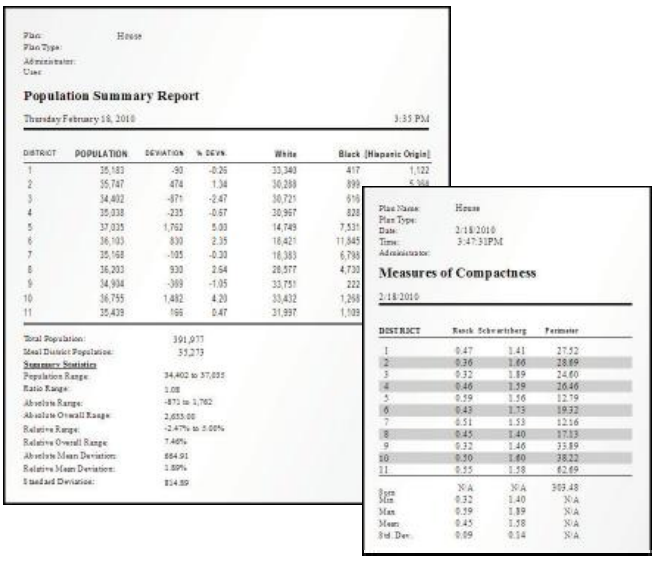
- **Integrate your plans with Google Maps** and Google Earth. Save your plans in the Google format (.KML or .KMZ) and add them to Google Maps or Google Earth. Use the built-in Google Earth toolbox to display Google Earth in Maptitude as part of your plan or display your plan in Google Earth.



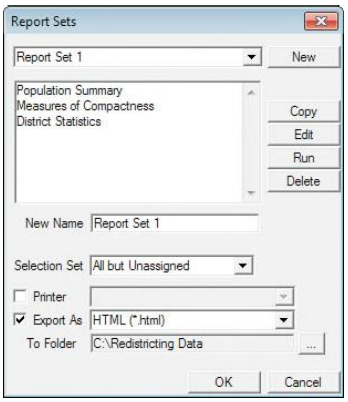
Maptitude for Redistricting

- **Generate and print over 35 reports** including population summary, error check, political subdivision splits, incumbents, plan statistics, plan components, plan comparison, communities of interest, measures of compactness, and more. Create custom reports and add them to the report menu.

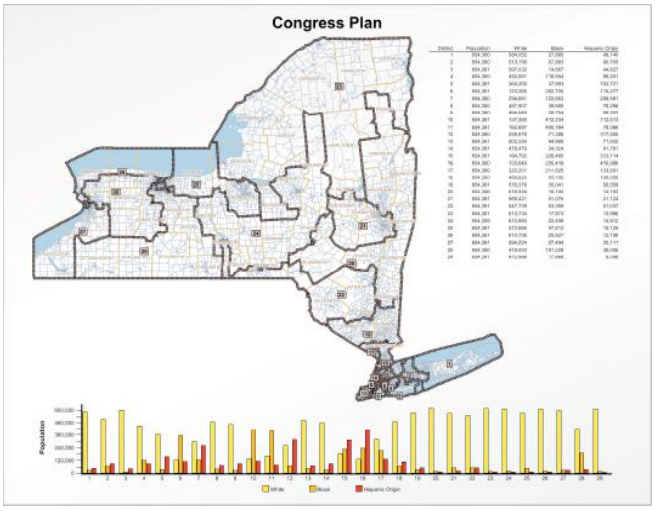




- **Group reports together into report sets** and save considerable time by producing the set of reports with the click of a button. Since report sets include the settings for the reports (e.g., additional fields to report on), they eliminate potential errors in the settings. The same report can appear in multiple report sets with different settings, and you can create as many report sets as necessary.



- **Print a completed plan** using page layouts that combine maps, data tables, and charts.



Works with Most Other GIS and Mapping Software

Interoperates with ArcGIS, Google Earth, Oracle Spatial, and MapInfo.

Maptitude supports over 50 file types and more than 100 GIS and CAD file formats allowing you to easily migrate your existing geographic data. You can map ESRI Shapefiles, Geodatabases, MapInfo TAB files, and Oracle Spatial tables directly, or use the built-in translators to import geographic data from a variety of other software packages and public sources. This extensive library of importers and exporters is one of the largest in the industry and comes at no additional charge. You can export plans (geography and data) to these other formats if your GIS department uses one of these other products.

You can use raster images such as satellite or aerial photographs directly in your maps. Maptitude includes toolboxes for quickly accessing online images from TerraServer-USA and Google Earth. You can use the images as a means of reference or in conjunction with the redistricting tools to draw your districts.

Easy to Learn and Use

"The difference between Maptitude and similar products is that it is shockingly easy to use."
Trudy Walsh
Government Computer News

Maptitude for Redistricting includes online help and detailed manuals packed with step-by-step instructions and tutorials. The Plan Manager leads you through the process of creating your first plan and speeds the creation of all additional plans. Other wizards help you create maps, display data using meaningful themes, and geocode information based on street address. In addition, Caliper offers training at your site or at our headquarters in Newton, Massachusetts.

Complete Organizational Solution

With the Maptitude for Redistricting Plan Manager you can easily manage an unlimited number of plans stored on a computer network. You can quickly find a plan by type, creator, date, key word, etc. The Plan Manager lets you distribute plans for viewing and perform plan management functions across your organization. Data and plans can be stored on individual machines or on one central server with access controlled by both Maptitude for Redistricting and the network administration software.

System Requirements

Maptitude for Redistricting runs on Microsoft Windows XP, Vista, or Windows 7. Minimum hardware includes a DVD-ROM drive and 1GB of memory. Disk space requirements vary by jurisdiction (200MB–1GB).

Direct Data Access for:

- Comma-delimited text (.CSV)
- dBASE/FoxPro/X-base (.DBF)
- ESRI ArcView 3.x Project (.APR) and Legend (.APL)
- ESRI File Geodatabase (.GDB)
- ESRI Personal Geodatabase (.MDB)
- ESRI Shapefile (.SHP)
- Fixed-format text (.ASC)
- GPS Playback (.GPS)
- MapInfo TAB (.TAB)
- Metadata (.MET)
- Microsoft Access (.MDB)
- Microsoft Excel (.XLS)
- Oracle Spatial Layer
- Oracle Table
- All ODBC sources (such as Access, DB2, Informix, Ingres, InterBase, NetWare SQL, Paradox, Progress, SQL Base, SQL Server, Sybase)
- Raster image files: ECW, GeoTIFF, JPEG, JPEG 2000, MrSID, Orthophoto, SPOTView, and TIFF

Import/Export Support for (Partial List):

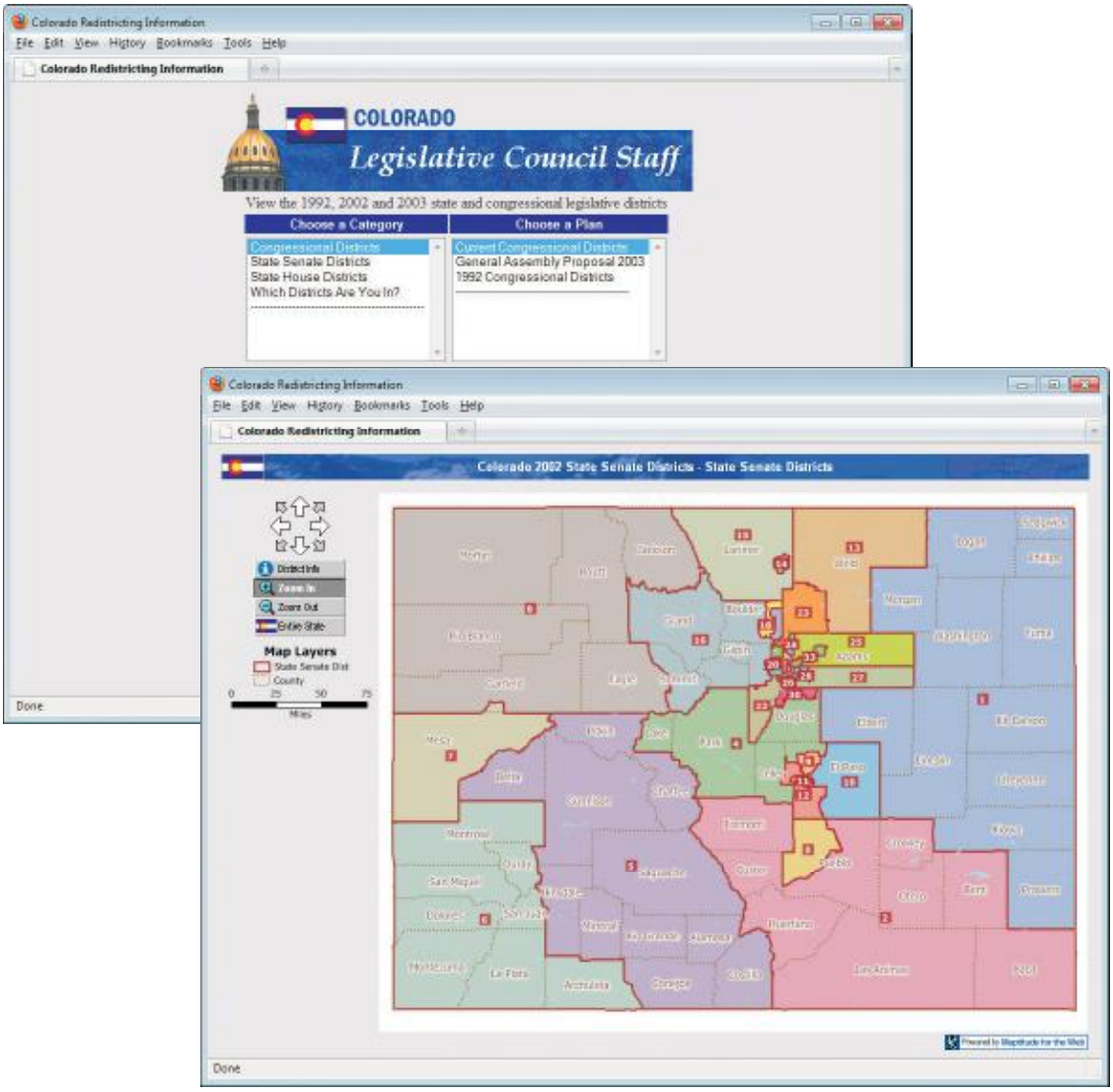
- AutoCAD (.DXF)
- Digital Elevation Models
- Digital Line Graph (.DLG)
- Enhanced Metafile (.EMF)
- ESRI Export (.E00)
- ESRI Ungenerate (.LIN/.PTS)
- Google Earth (.KML/.KMZ)
- HTML
- Intergraph Design (.DGN)
- Interim Terrain Data (.SLF)
- MapInfo Interchange (.MIF)
- Portable Network Graphics (.PNG)
- Spatial Data Transfer Standard (.DDF)
- TIGER/Line
- USGS Land Use and Land Cover (.GIR)
- Windows Bitmap (.BMP)
- Windows Media Video (.WMV)

Maptitude Web Plan Publisher™

Publish Your Plans on the Internet

Maptitude for Redistricting lets you save your plans (maps, data tables, charts, layouts, and reports) as JPEG, PNG, and HTML files for static Web publishing. Caliper software also lets you add your plans to Google Earth or Google Maps and add Google Earth images to your plans in Maptitude.

If you are looking for a more sophisticated presentation of your plans, Caliper Corporation's Maptitude Web Plan Publisher software makes it easy to publish your plans as interactive mapping applications on the Web. For example, users can locate their address on the map, pan and zoom, query the district assignments, and display tables of data from their browser.

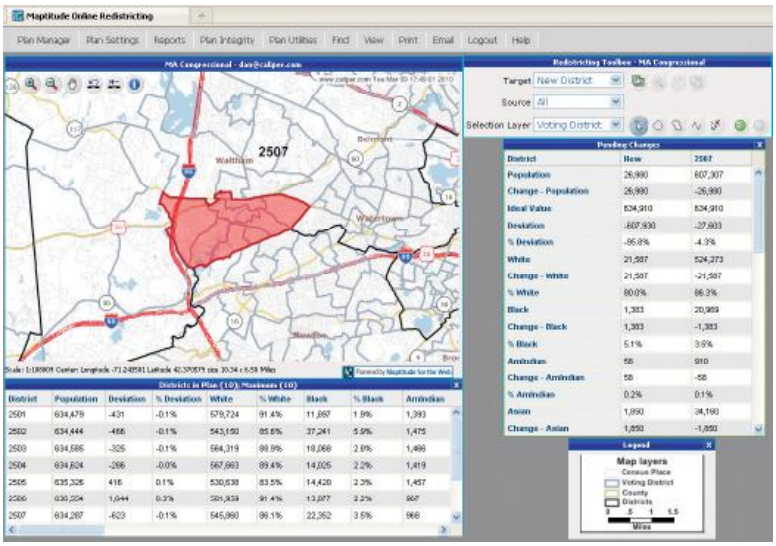


Maptitude Online Redistricting

Maptitude Online Redistricting™

Maptitude Online Redistricting is web-based redistricting software designed for governments or organizations that want to provide their members or the general public with a means to draw and report redistricting plans. Because the PC and online versions share common file formats, plans developed online can be electronically submitted to the central redistricting office, opened in the PC-based software, and analyzed to the full extent as if they had been created using the PC-based software.

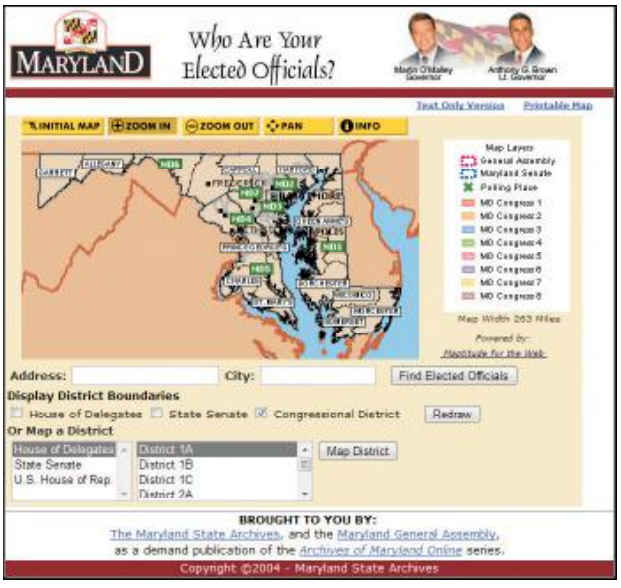
The Maptitude Online Redistricting screen contains the plan map, a dataview listing the existing districts and their statistics, and a dataview of pending changes based upon the user's current actions. The redistricting toolbox is similar to the toolbox in the desktop version, and the user can zoom, pan, and query the map using the mapping tools.



Custom Website Development

Custom Website Development

Caliper has extensive experience creating sophisticated websites for a number of large government organizations including the U.S. Census Bureau, the U.S. Department of Transportation, the Small Business Administration, and several state legislatures. Caliper can create custom web applications for your organization, such as "Who are your elected officials?" In this example, the user enters an address and the map zooms to that location and lists the elected officials with links to their websites.



Our Clients (Partial List)

Maptitude for Redistricting is used by a super-majority of the state legislatures, both national political parties, many state political parties, county and regional governments, city and local governments, elected officials, educational institutions, and public interest groups. For a more complete list, visit WWW.CALIPER.COM/REDISTRICTING/CLIENTS.HTM

National Organizations:

Democratic National Committee
Deptartment of Justice, Civil Rights Division
National Committee for an Effective Congress
National Republican Congressional Committee
Republican National Committee

State Organizations:

Alabama Democratic Party
Alabama House Majority
Alaska Division of Elections
Arizona House of Representatives
Arizona Independent Electoral Commission
Arizona Redistricting Commission
California Assembly Rules Committee
California Governor's Office
California Legislative Data Center
California Senate Minority Reapportionment
California Senate Office of Research
California State Assembly
Colorado Department of State
Colorado Governor's Office
Colorado House of Representatives
Colorado Legislative Council
Colorado Reapportionment Commission
Delaware Commissioner of Elections
Delaware Legislature
District of Columbia Republican Party
Georgia General Assembly
Georgia Office of Planning and Budget
Georgia Redistricting Services
Idaho Legislative Services
Illinois House Republican Caucus
Illinois Senate Republican Caucus
Kansas Legislative Research Department
Kentucky Legislative Research Commission
Louisiana House of Representatives
Louisiana Senate
Maine Judicial Center
Maine Legislature
Maryland Deptartment of Legislative Services
Maryland General Assembly
Maryland Office of Planning
Massachusetts House of Representatives
Massachusetts Republican Redistricting Taskforce
Massachusetts Senate
Michigan Democratic Party
Minnesota DFL
Minnesota Governor's Office
Minnesota Legislative Coordinating Commission
Minnesota Office of Planning
Minnesota Secretary of State
Minnesota Senate
Minnesota Supreme Court
Mississippi Community Policy Research
Mississippi Joint Reapportionment Committee
Missouri House of Representatives
Missouri Office of Administration
Missouri Office of Mgmt., Budget, & Planning
Missouri Senate
Nebraska Republican Party
Nevada Republican Party
New Hampshire GCIS
New Jersey Office of Legislative Services
New Mexico Republican Party
New York Empire State Development
New York Assembly Democratic Majority
New York Assembly Republican Caucus
New York Governor's Office
New York Office of Technology
New York Senate Majority
New York Senate Minority
New York State LATFOR
North Carolina General Assembly
North Dakota Legislative Council
Ohio Secretary of State
Oklahoma Governor's Office
Oklahoma Senate
Pennsylvania House Democrats
Pennsylvania Senate Democrats
Puerto Rico Supreme Court
South Carolina House of Representatives
South Carolina Senate
Tennessee Attorney General
Tennessee General Assembly
Tennessee Office of Legal Services
Texas Comptroller of Public Accounts
Texas General Land Office
Texas Legislative Council
Utah Republican Party
Vermont Legislative Council
Virginia Democratic Caucus
West Virginia Legislature
Wyoming Legislature

County & Regional Organizations:

Acadiana LA Regional Development District
Alabama Assoc. of County Commissioners
Alameda County CA Community Development
Alamosa County CO, County Clerk
Anne Arundel County MD
Anoka County MN
Barton County KS
Blount County AL, County Commission
Boone County WV Commission
Brooke County WV, County Commission
Butte County CA
Calvert County MD
Capitol Region LA Planning Commission
Cerro Gordo County IA
Chaffee County CO
Champaign County IL County Clerk
Clark County NV Manager's Office
Cobb County GA Elections
Comal County TX
Contra Costa CA Water District
Coweta County GA
Cumberland County ME
Elbert County CO
Forsyth County GA
Glenn County CA, Elections Department
Grand County CO
Hardee County FL
Hardin County KY
Harris County TX Tax Office
Hennepin County MN
Hood County TX
Jackson County MO Election Board
Jefferson County CO Clerk and Recorder
Johnson County KS
Kanawha County WV
Kent County DE
Kent County MI
Lincoln County MT
Los Angeles CA Superior Court
McCracken County KY
Miami-Dade County FL County Comms.
Mobile County AL Engineer's Office
Nassau County NY
Navajo Nation AZ
New Castle County DE
Nowata County OK, Clerk
Pasco County FL Supervisor of Elections
Pierce County WA, Elections
Polk County FL Supervisor of Elections
Putnam County FL Supervisor of Elections
Ramsey County MN
Saint Louis County MN
Saint Lucie County FL Supervisor of Elections
San Benito County CA
San Diego County Data Processing
Sanford/Lee County NC, County Commission
Santa Barbara County CA
Santa Cruz County CA, ISD Dept.
Stillwater County MT GIS
Summit County NJ Board of Elections
Sumter County FL Supervisor of Elections
Tate County MS
Trinity County CA
Trinity County TX
Vigo County IN
Westchester County NY

City Governments:

Albany NY, Common Council
Baltimore MD, City Council
Baltimore MD, Mayor's Office
Bloomington MN
Buffalo NY, City Clerk
Cambridge MD Commissioners
Champlain MN
Columbia MO
Dallas TX
Denver CO, Election Comm.
Jefferson MO
Lake Charles LA
Los Angeles CA Council
Minneapolis MN Metropolitan Council
New York NY City Council
New York NY Redistricting Comm.
Pasadena CA
Pensacola FL, Planning & Development
Phoenix AZ
San Francisco CA, Department of Elections
San Leandro CA
Temple TX
Villages FL
Westport CT

Educational Institutions:

Alabama State U. Ctr. for Leadership & Public Policy
Benedict College
Claremont McKenna College Rose Institute
Cronkite School of Journalism
CUNY Graduate Center
CUNY, Medgar Evers College
George Mason University
Georgia Institute of Technology
Georgia State University
Mississippi State University Stennis Institute
Princeton Univ. Woodrow Wilson School
Queens College
Rice University
UCLA, Dept. of Urban Planning
University of Florida
University of Georgia, Redistricting Services
University of Pennsylvania Law School

Other Redistricting Services

Caliper provides database development, hands-on training, software customization, web design, telephone support, on-site support, priority support, and other related consulting services on a time and materials basis.

About Caliper

Caliper Corporation is a leading developer of transportation and Geographic Information System (GIS) software and applications. Caliper software is used by more than 70,000 users in over 70 countries. Caliper is the developer of the U.S. Census Bureau's MAF/TIGER Partnership Software that has been used by Census Bureau partners to update the geography for the 2010 Census.

Ordering & Information

Please contact Howard Simkowitz, Director, Government Services, at 202-652-1024 or HSIMKOWITZ@CALIPER.COM for pricing and information. There are discounts for quantity purchases and for clients from the 2000 redistricting cycle. You can download an order form at WWW.CALIPER.COM/REDISTRICTING or call Caliper at 617-527-4700 to place your order.

What Others Have to Say

Maptitude for Redistricting was featured in a December 2003 *New Yorker* article, "The Great Election Grab," by Jeffrey Toobin.

> [Assistant professor of law and political science Nathaniel] Persily zeroed in even more closely, and a little donkey popped up inside one of the census blocks. "That's where the local congressman lives, a Democrat," he explained. "We have little elephants for the Republican incumbents." [Maptitude for Redistricting] seemed easy to use, justifying the boast, on the software company's Web site, that you could "start building plans thirty minutes after opening the box."

Maptitude for Redistricting was featured in a April 24, 2001 *Wall Street Journal* article, "Software Makes Redistricting Easier, Accessible," by Will Pinkston. Nearly everyone interviewed for the article uses Maptitude for Redistricting.

> In New Jersey, when a committee of five Republicans and five Democrats chosen by their parties couldn't agree on how to redraw the state's legislative boundaries, the state supreme court tapped Larry Bartels, a Princeton University professor, to break the impasse. After 10 days locked away in a hotel with the two sides, the professor emerged with a resolution: an entire state redistricting map drawn on a laptop computer, using [Maptitude for Redistricting].
>
> Cheaper software is letting independent consultants in the game, too. George Meier, former staff director of Florida's House reapportionment committee, had to requisition $600,000 in computer software and equipment in 1991 to draft new electoral district boundaries. This year, as a redistricting expert freelancing for cities and counties in Florida [using Maptitude for Redistricting], his overhead is considerably lower: He got everything he needs loaded onto his Dell laptop for under $4,000. And Baltimore civil-rights attorney Samuel L. Walters is using [Maptitude for Redistricting] to pitch his expertise to minority groups and local governments. Mr. Walters, who worked for the NAACP during 1991's redistricting, says he expects to quickly recoup his costs.

The Rose Institute at Claremont McKenna College conducts and publishes research primarily on California government and politics. Here is what the Rose Institute has to say about Caliper Corporation in its 2005 report, "Restoring the Competitive Edge: California's Need for Redistricting Reform and the Likely Impact of Proposition 77"

> [Caliper Corporation's] longstanding and generous support makes possible all of the Rose Institute's demographic, redistricting, and geographic information systems (GIS) research. Their outstanding, powerful and easy-to-use Maptitude software enables us to train our students up from GIS novices to expert users in only a few hours, and the software's extensive analytic capabilities provide the service and power needed for our work.

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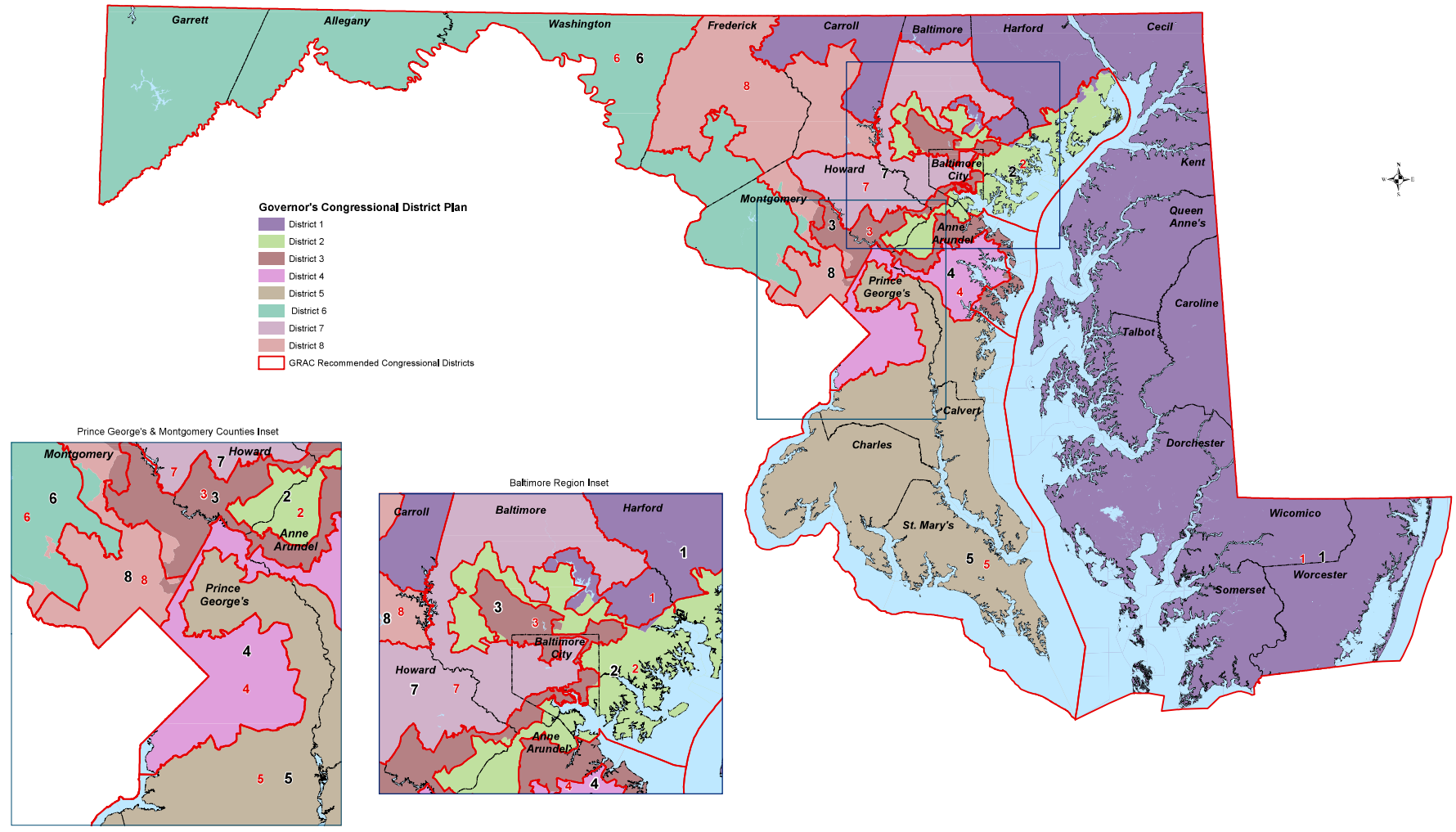
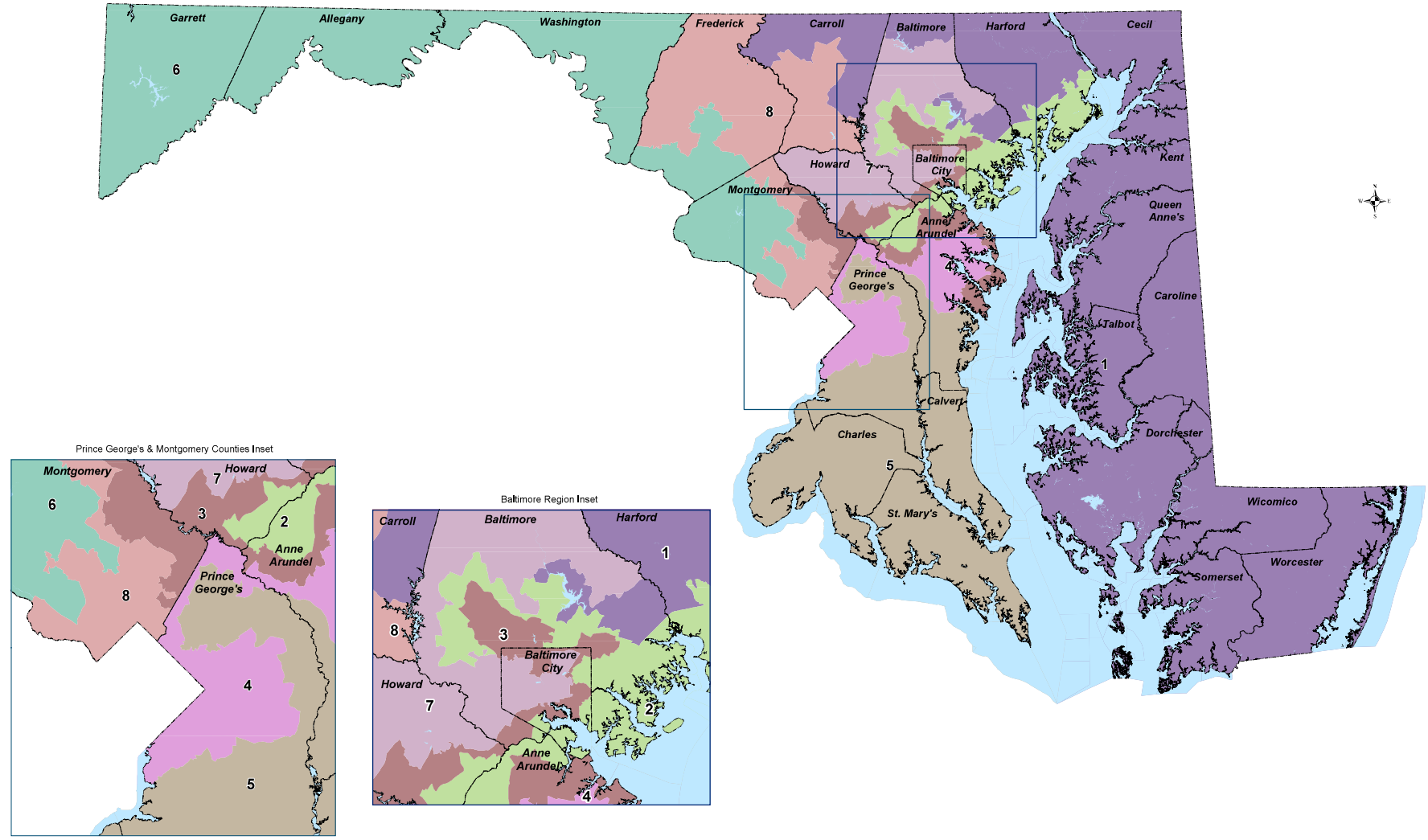
Governor Martin O'Malley's 2011 Congressional District Plan
& 2011 Governor's Redistricting Advisory Committee Recommended Congressional District Plan
October 15, 2011



Maryland 2011 Congressional Districts

Senate Bill 1

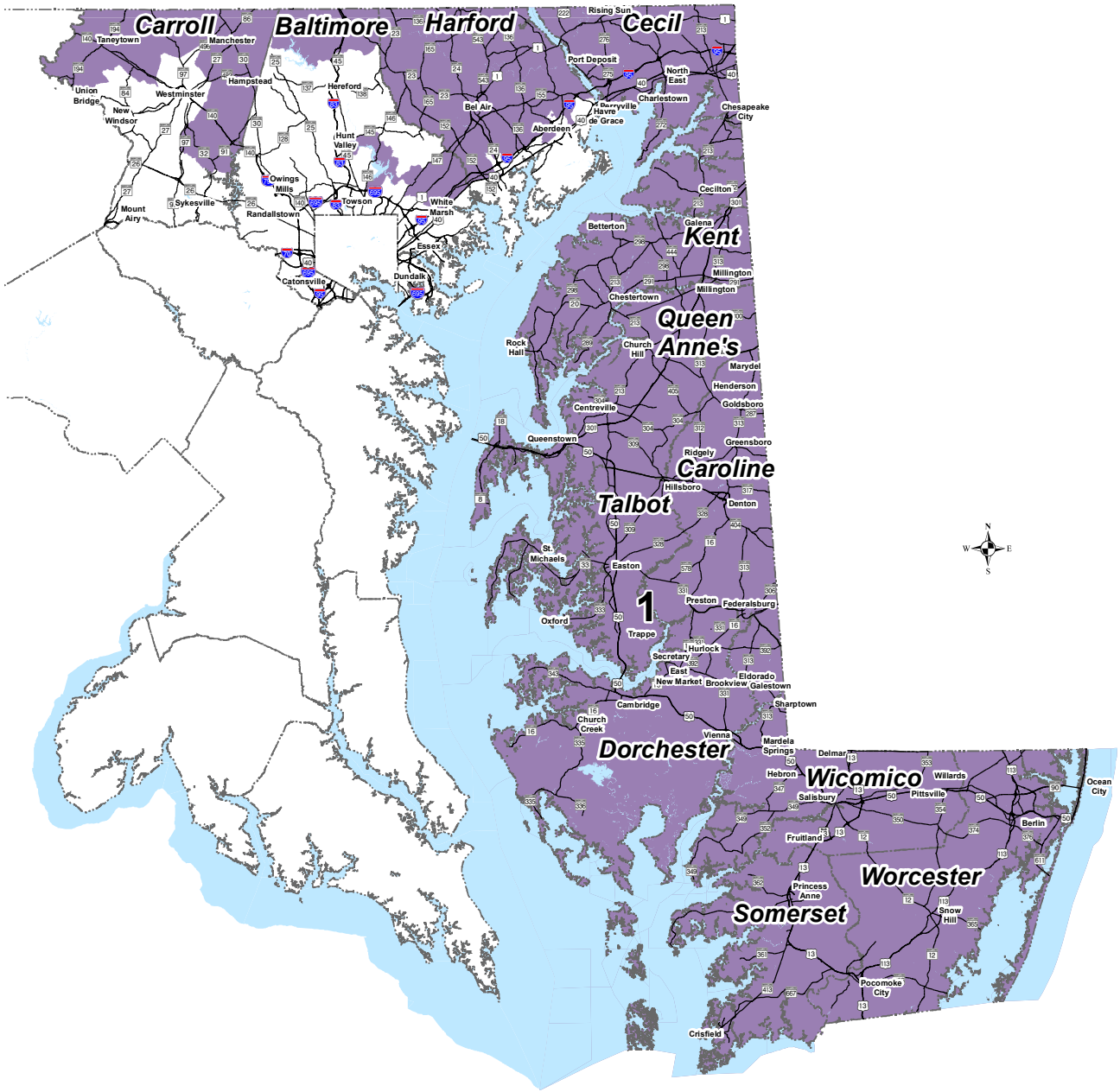
October 20, 2011



Maryland 2011 Congressional District 1

Senate Bill 1

October 20, 2011



Maryland 2011 Congressional District 2

Senate Bill 1

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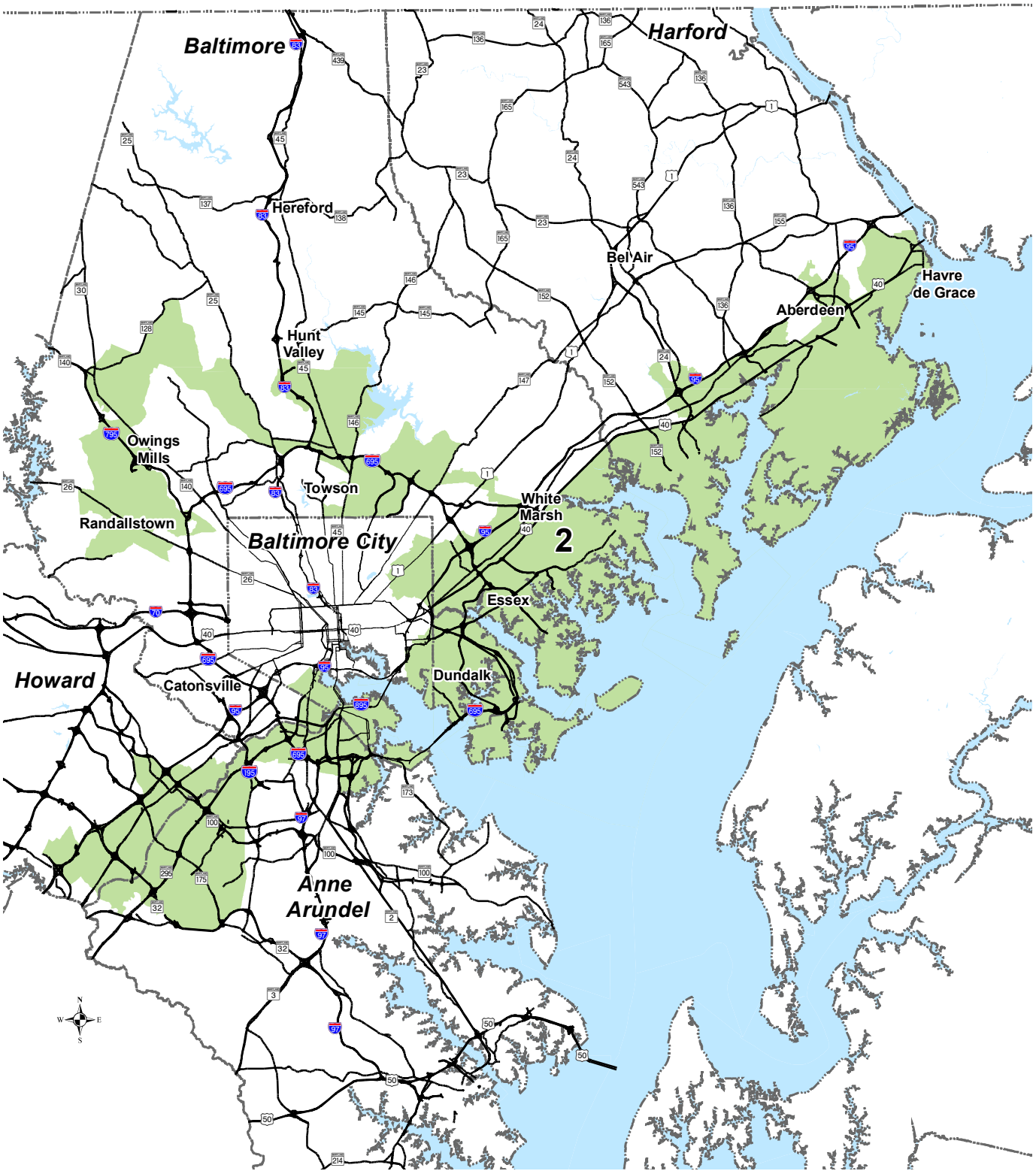
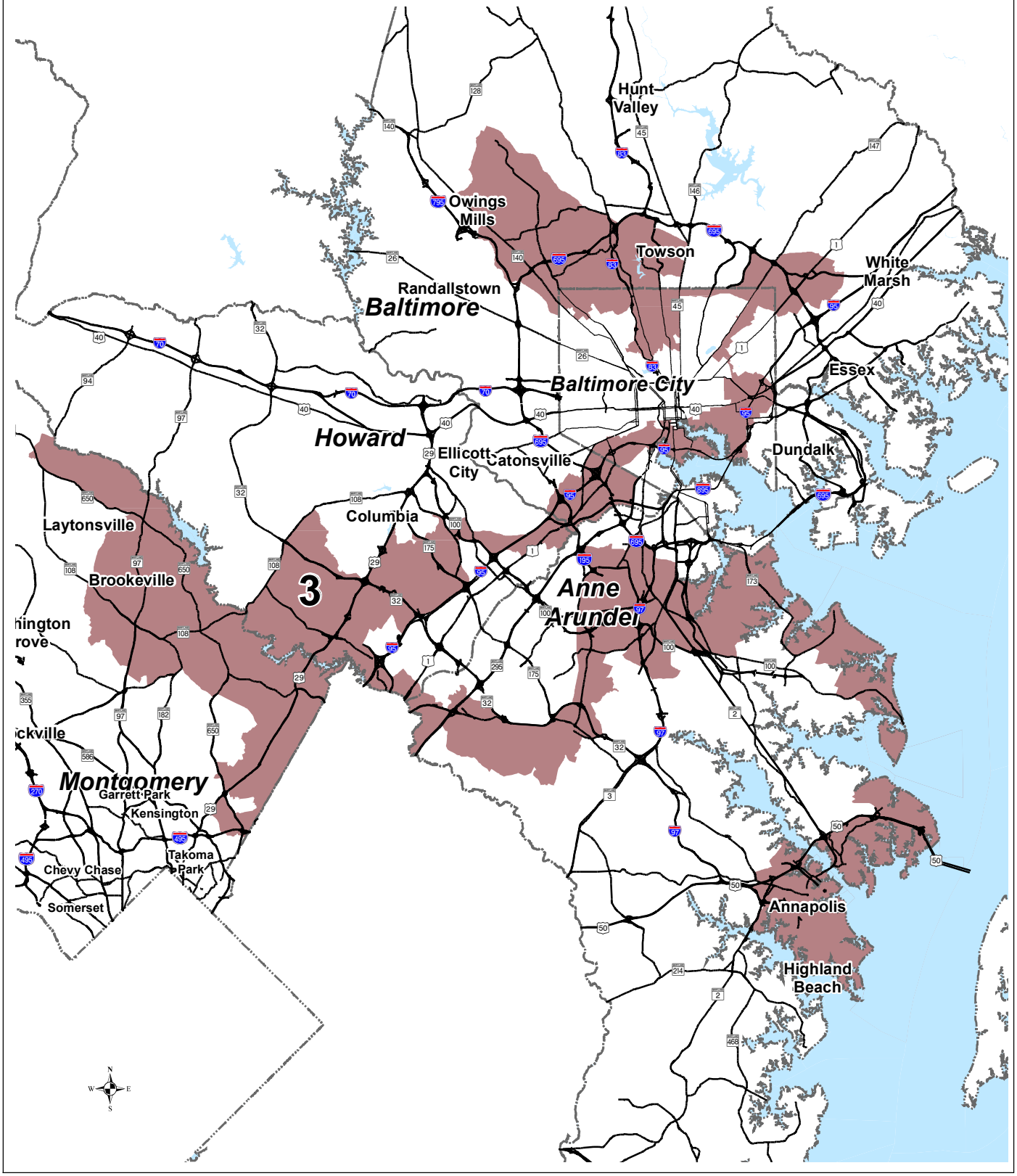


Maryland 2011 Congressional District 3

Senate Bill 1
October 20, 2011



Maryland 2011 Congressional District 4

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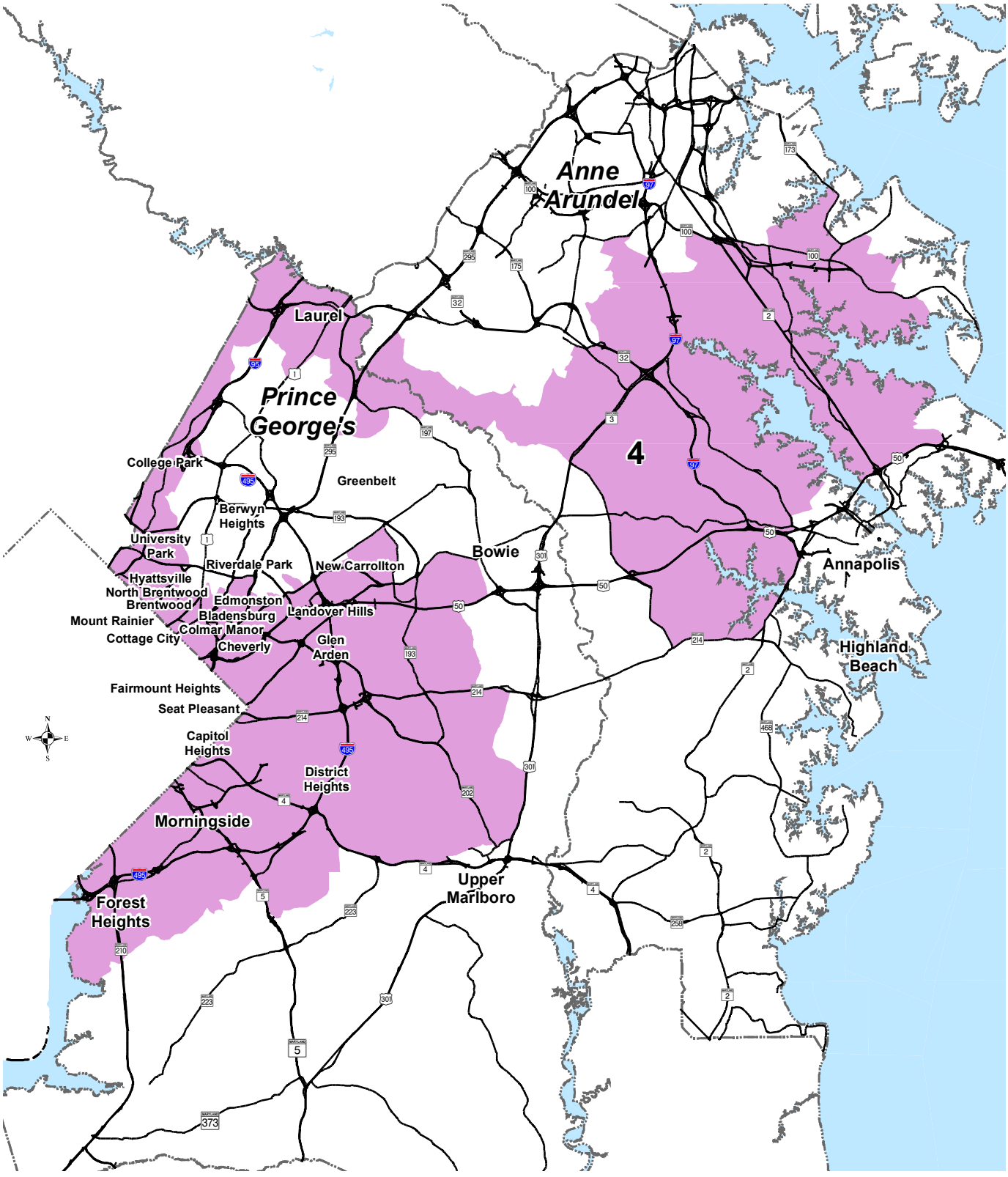
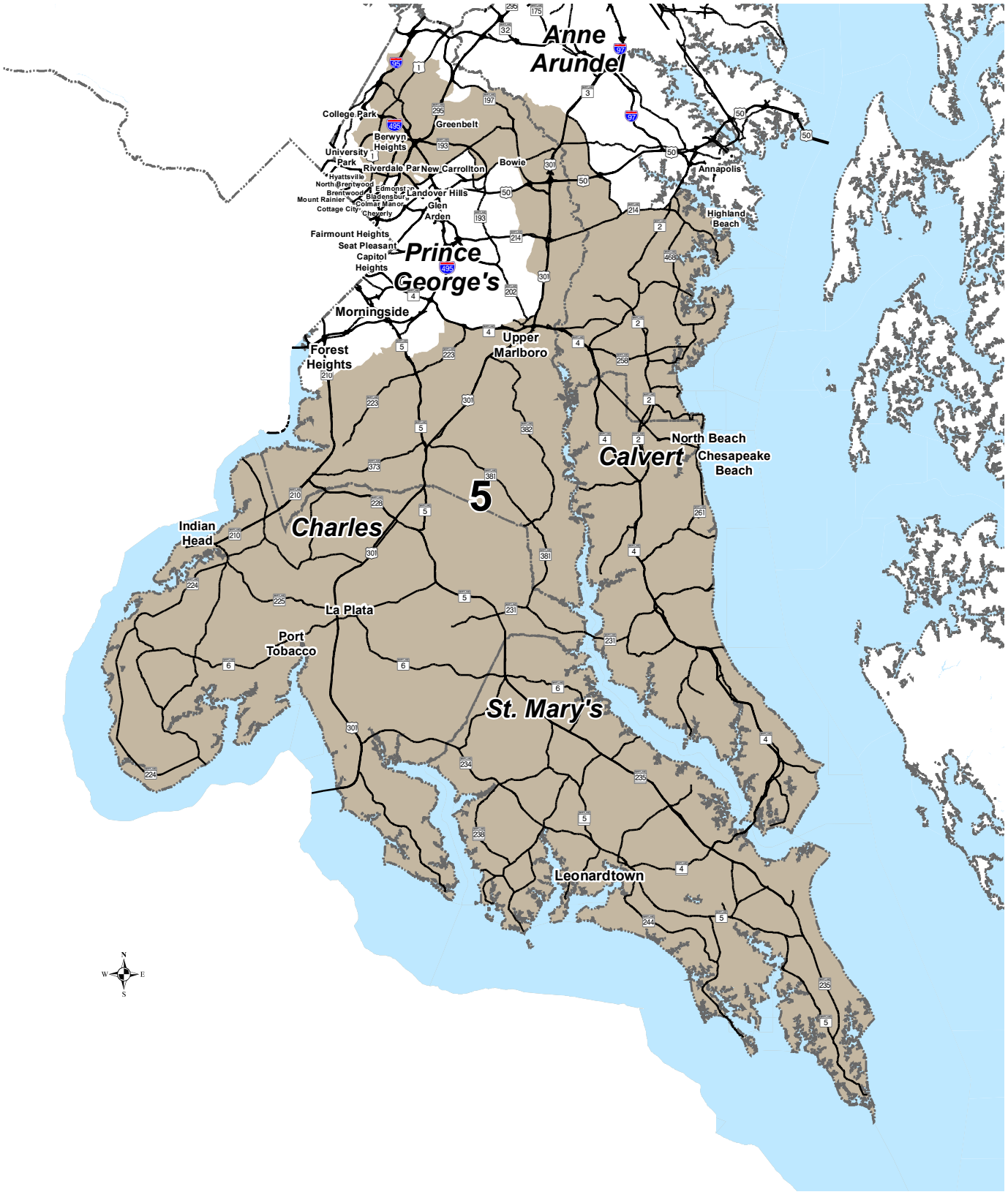


Maryland 2011 Congressional District 5

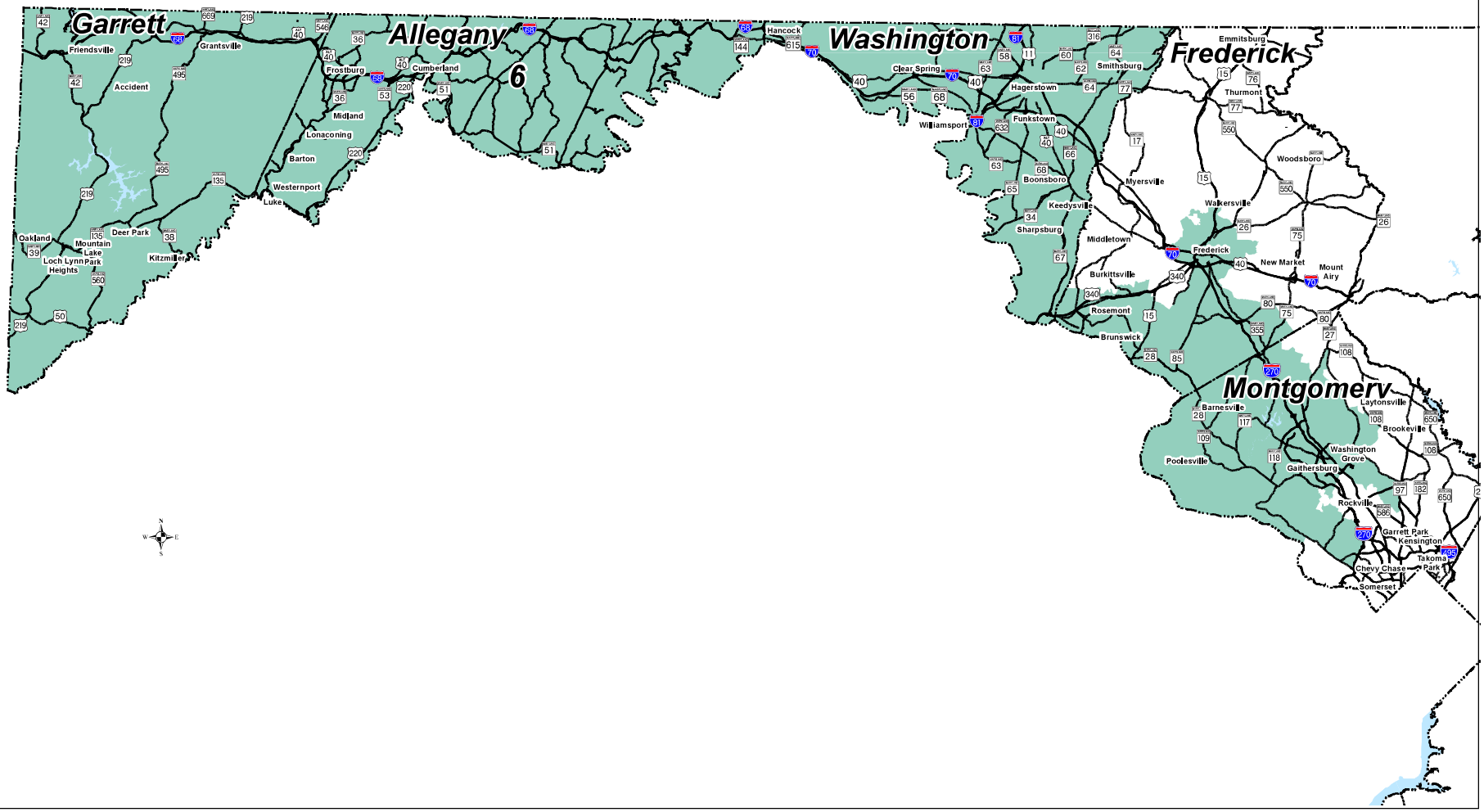
Senate Bill 1
October 20, 2011



Maryland 2011 Congressional District 6

Senate Bill 1

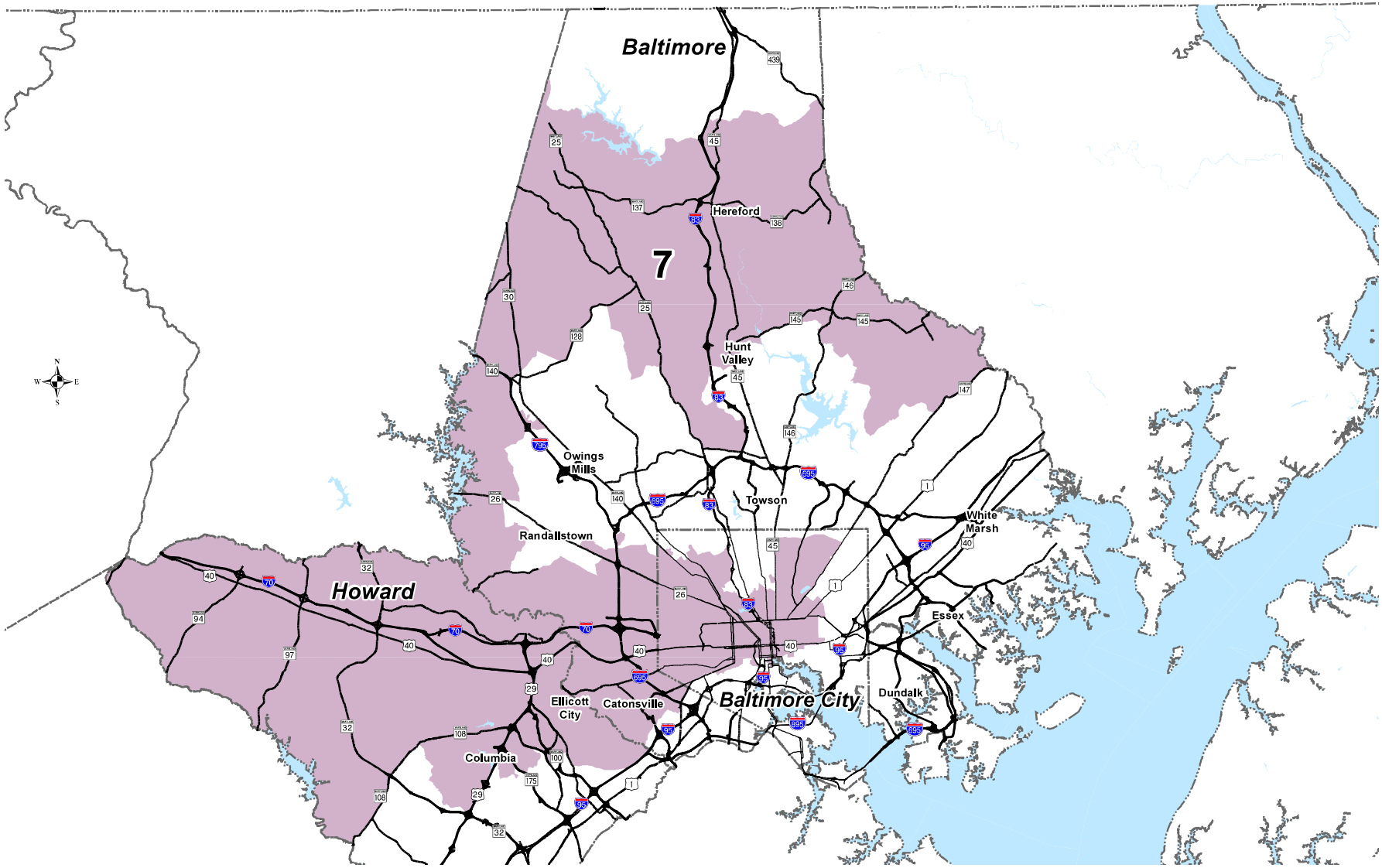
October 20, 2011



Maryland 2011 Congressional District 7

Senate Bill 1

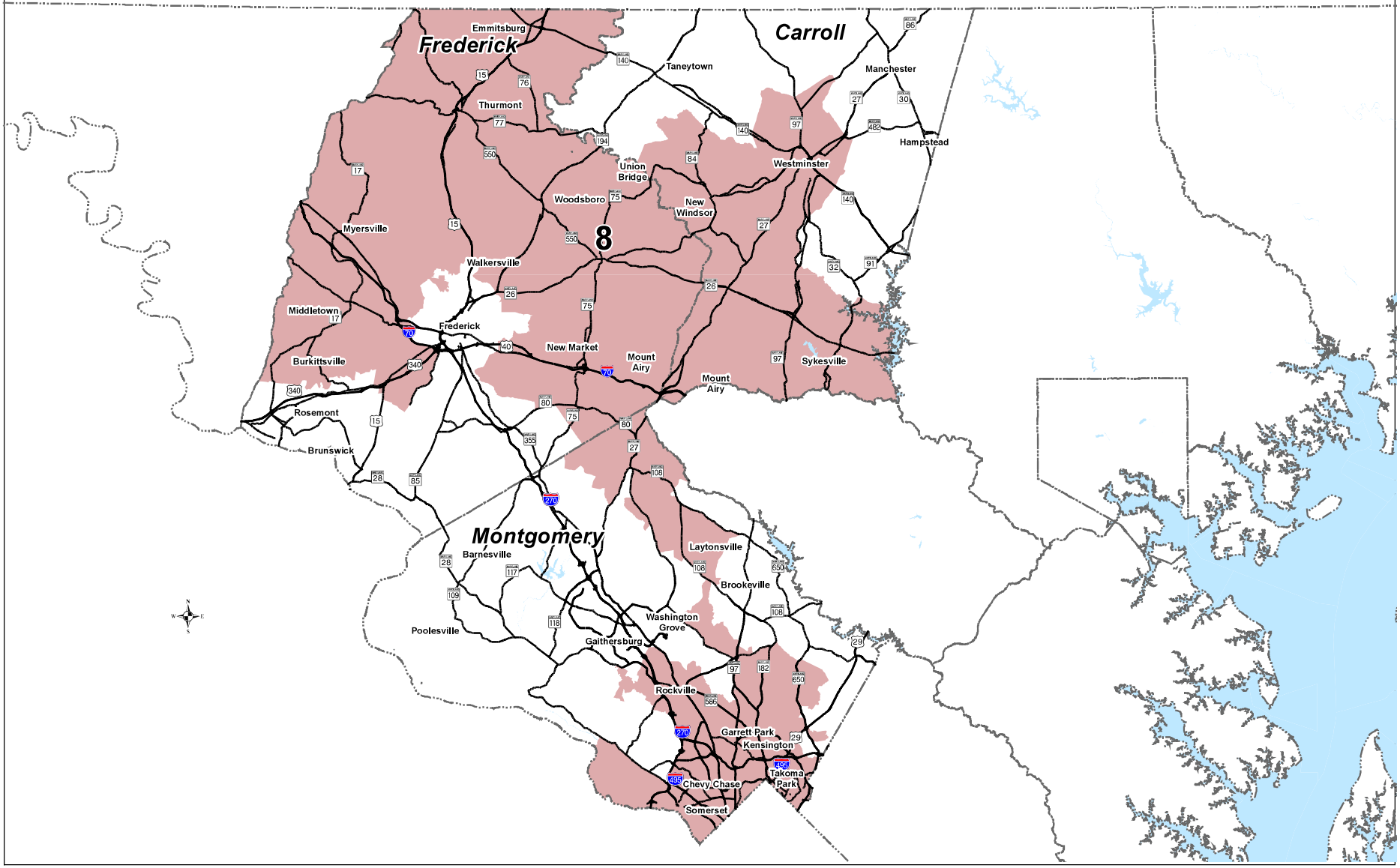
October 20, 2011



Maryland 2011 Congressional District 8

Senate Bill 1

October 20, 2011



Recommended Congressional Plan

Governor's Redistricting Advisory Committee

Exhibit 32

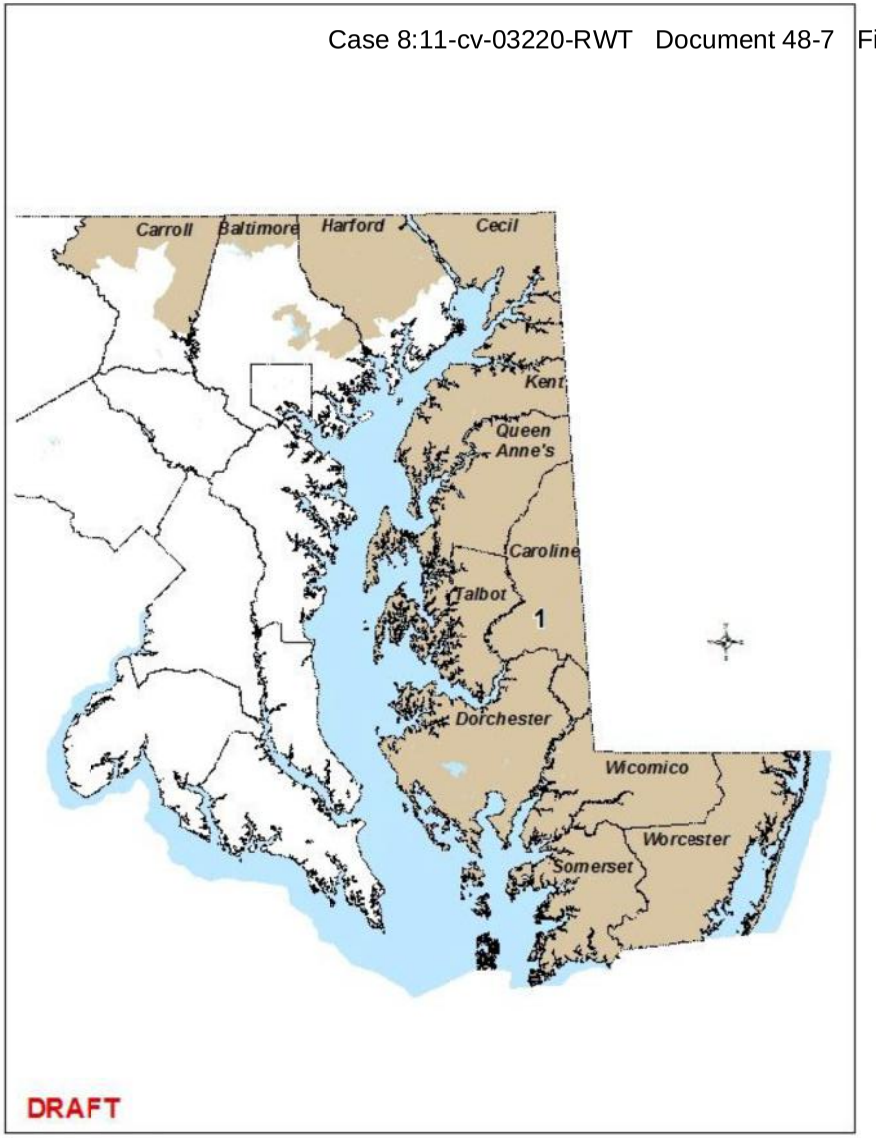
MCM002454

Governor's Redistricting Advisory Committee

- Membership
  - Jeanne Hitchcock, Chair
  - Senate President Miller
  - House Speaker Busch
  - Richard Stewart
  - James King
- Public Input
  - 12 Regional Hearings Across the State close to 1000 Marylanders.
  - 350 total Comments (3rd Party Plans, testimony at meetings, written).

Recommended Plan Highlights

- Approximately 70% of Marylanders stay in their current Congressional District.
- Plan reflects population changes over past decade.
- Plan does not draw any incumbent member of Congress out of his / her district.
- District by District description follows.



District 1: Eastern Shore

- 9 Eastern Shore Counties are kept together.
- District no longer crosses the Chesapeake Bay into more urban areas of Anne Arundel County, instead runs into rural portions of Carroll County.
- Harford County is no longer split into 3 Congressional Districts, a desire expressed by residents .

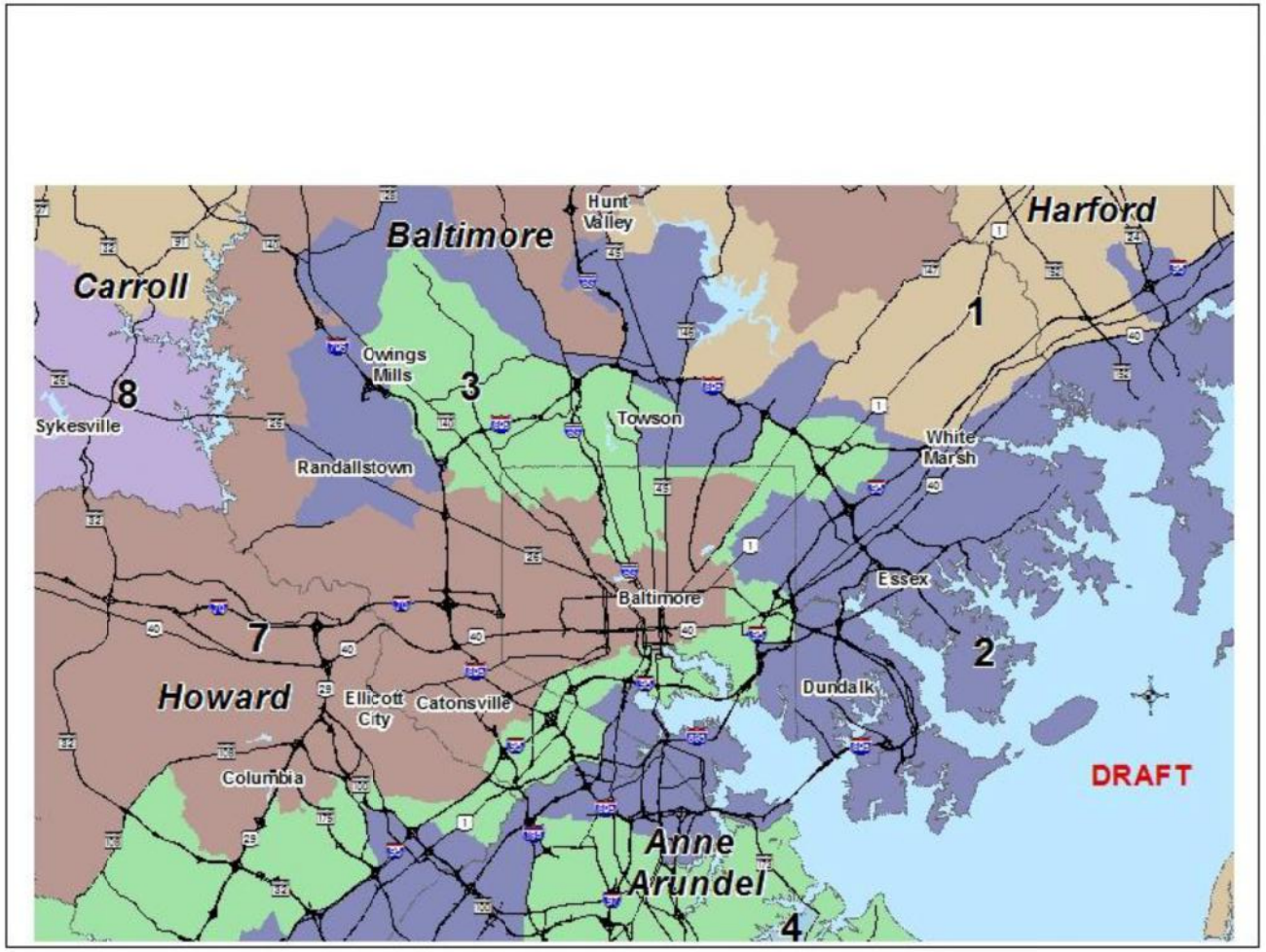
MCM002457

701

Districts 2, 3, and 7: Baltimore Region

- **District 7** remains a district based in Baltimore City, with surrounding portions of Howard and Baltimore Counties that are primarily in the current 7th District.
- **District 3** remains a Central Maryland district that incorporates portions of the Baltimore and suburban Washington regions because of population growth in Central, MD.

Baltimore Region



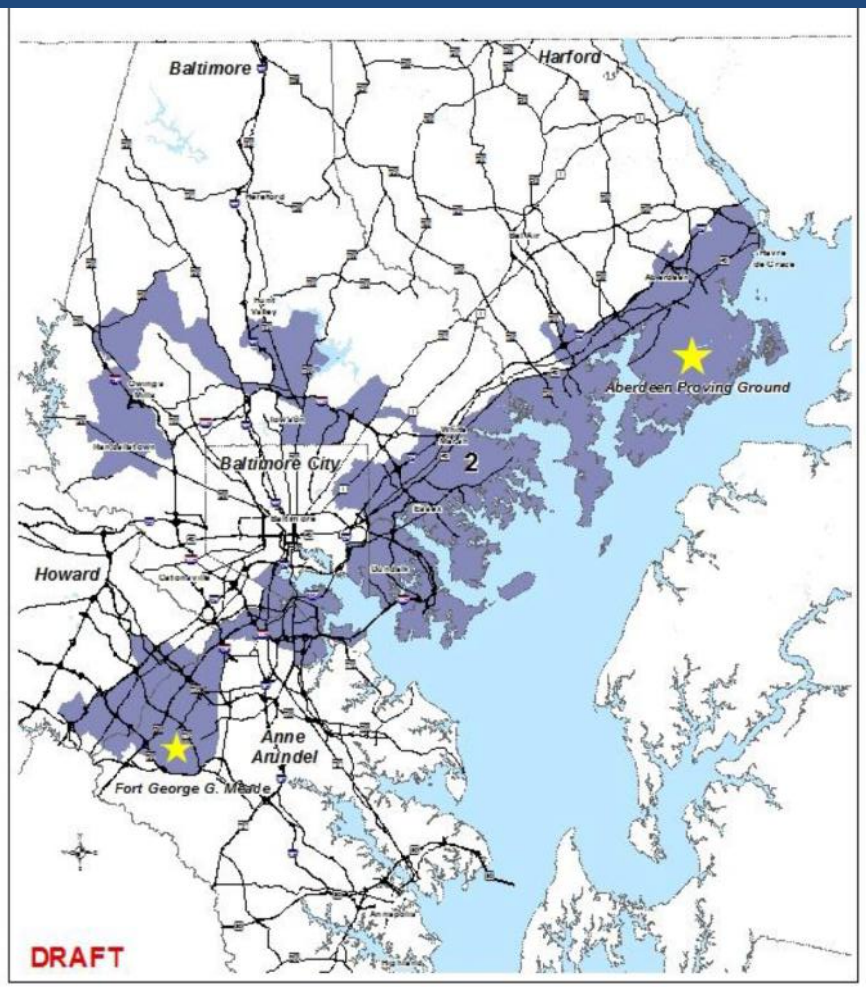
MCM002459

703

District 2

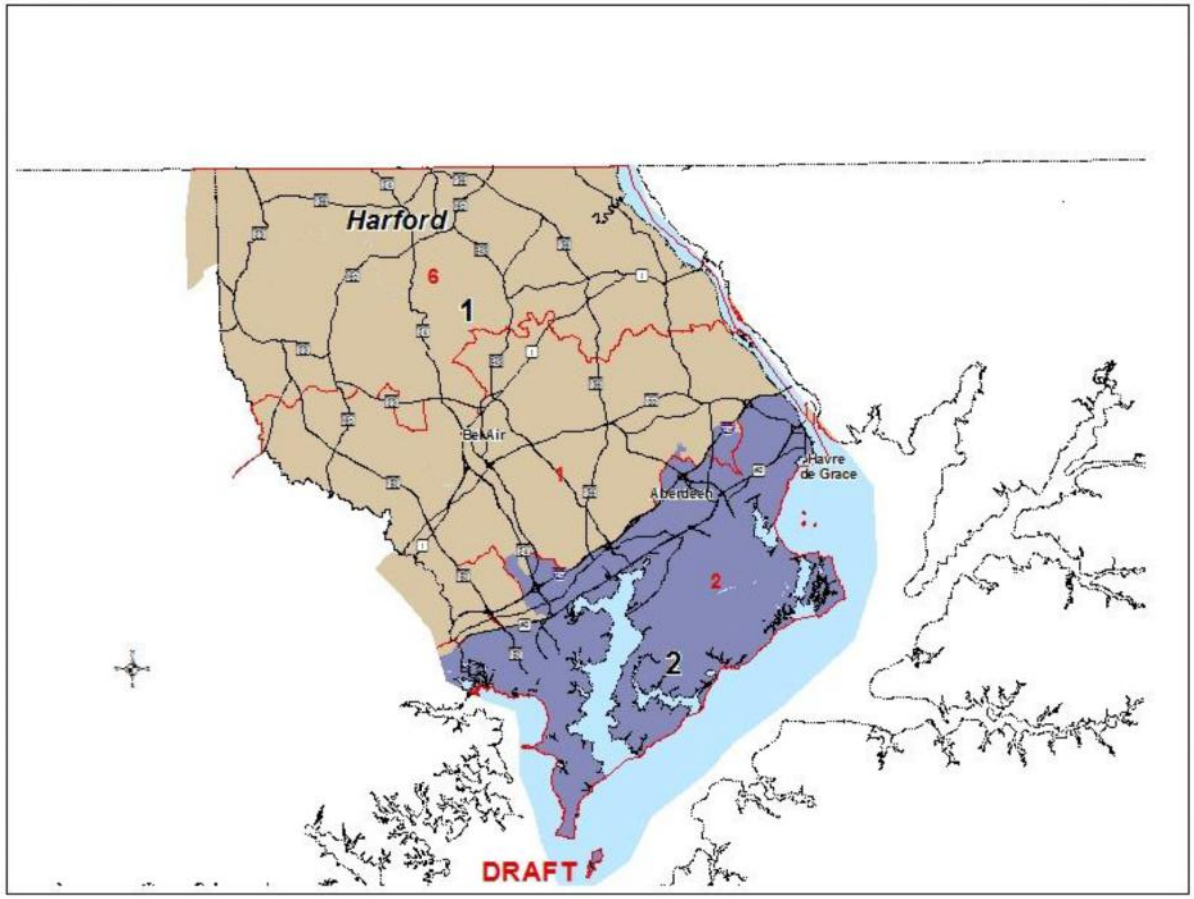
- Retains its character as a BRAC corridor district, anchored on the Northeastern edge by Aberdeen Proving Ground and the Chesapeake Bay shoreline of Harford County, through the Baltimore region, and anchored on the Southern edge by Fort George G. Meade.
- This configuration includes communities along the Upper Western Shore of the Chesapeake Bay and allows for the residents most impacted by the Base Realignment and Closure process to elect a Congressman capable of focusing on this important issue.

District 2



MCM002461

Harford County (parts of Districts 1 & 2)

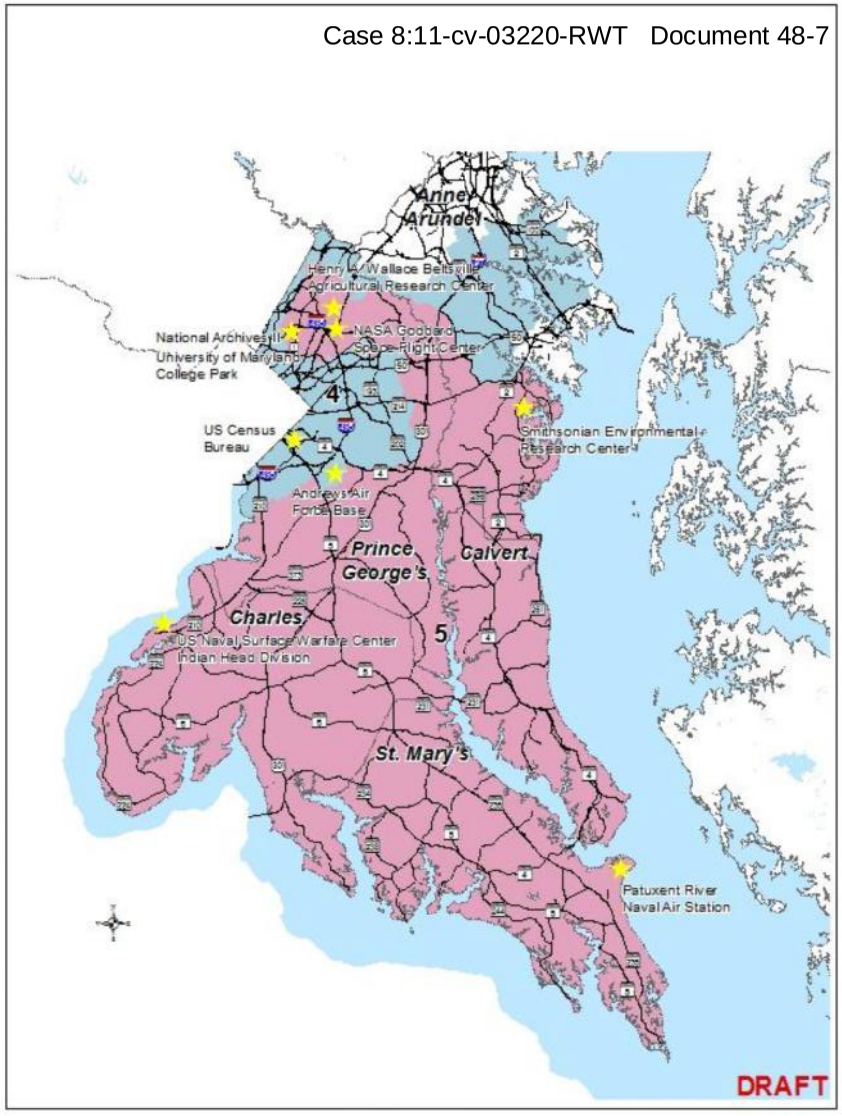


Districts 4, 5, 6 & 8:
Greater Washington, D.C. Region

- Public testimony in this region expressed a desire to have a Congressional map that better reflects patterns in this region – the growth in Southern Maryland from Prince George's County, and the growth of the suburbs along the I-270 Corridor.
- Districts 4 & 5 - the Committee drew 2 districts that are based in Southern Maryland/Prince George's County.
- District 4 connects communities of Central and Upper Prince George's and Anne Arundel Counties, and District 5 connects communities of Upper and Southeastern Prince George's County with Anne Arundel County and Southern Maryland.
- Within Prince George's County, the Committee kept existing communities within their current Congressional districts, to the extent possible.
- Both districts retain the important State and Federal facilities currently within the districts. For instance in the 4th District: the Census Bureau in Suitland, Andrews Airforce Base, etc., and the District is anchored by the National Harbor complex.

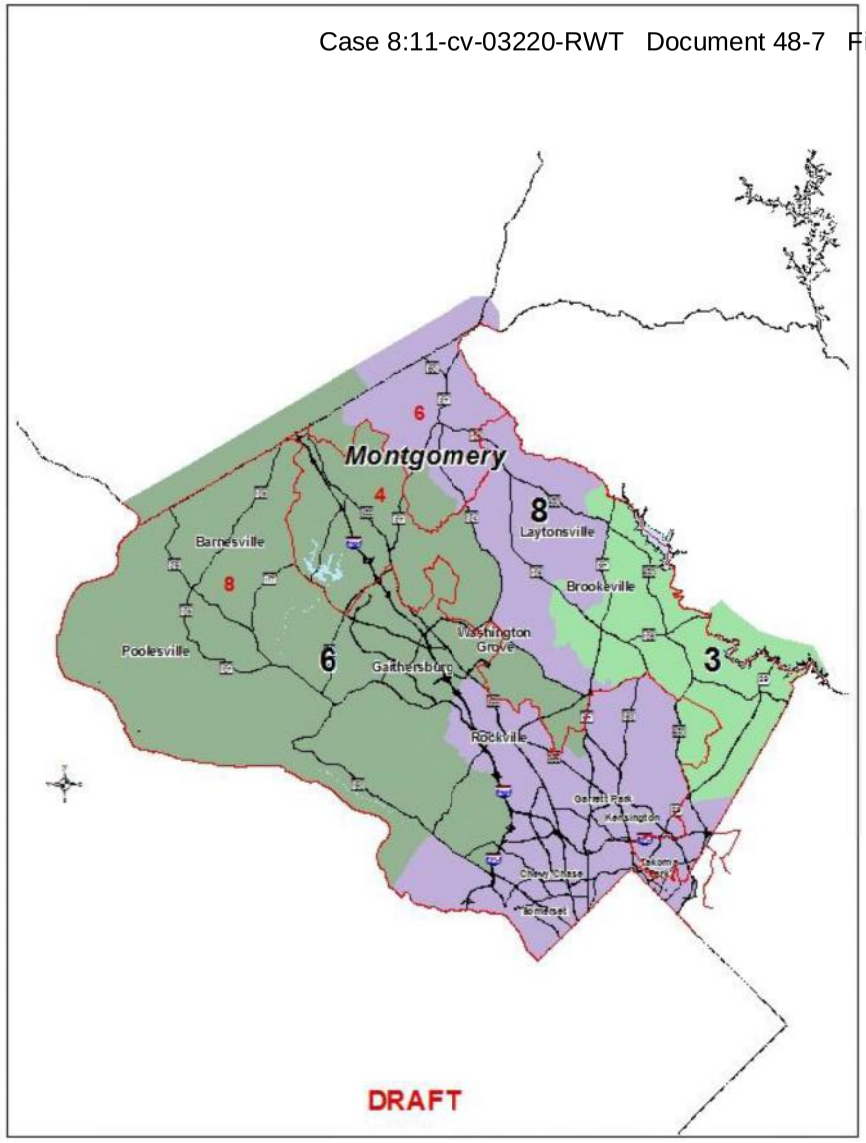
Districts 4, 5, 6 & 8:
Greater Washington, D.C. Region (con't)

- Districts 6 & 8 - based in Montgomery County and the I-270 Corridor, into Western Maryland.
- Consistent with public testimony to the Committee, the proposed map eliminates the current overlap of districts in Prince George's and Montgomery Counties (District 8 into Prince George's and District 4 into Montgomery).
- District 8 includes southern Montgomery County, areas east of the I-270 Corridor, and includes portions of eastern Frederick County and western Carroll County.



Districts 4 & 5: Prince George's, Anne Arundel, Southern, MD

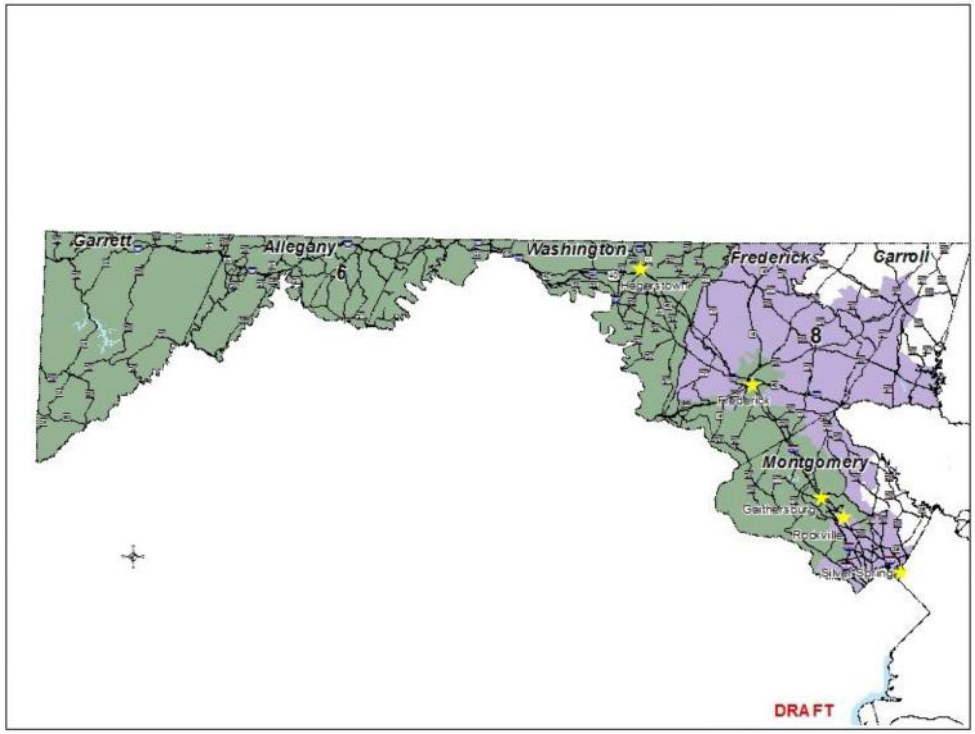
The Committee focused on the current alignment of District 5, which encompasses the Patuxent Naval Air Station, Indian Head Naval Surface Warfare Center, NASA's Goddard Space Flight Center, the National Archives II, the Smithsonian Environmental Research Center, other vital federal facilities, and related research and economic development resources at the University of Maryland, College Park.



Districts 6 & 8: Montgomery County Area

- Configured to reflect the North-South connections between Montgomery County, the I-270 Corridor, and western portions of the State.
- Per public testimony, the Plan reduces the number of Congressional Districts in Prince George's County from 3 to 2, and re-orients the Montgomery County districts to reflect population trends.

District 6 & 8: Western Maryland, Frederick, and Montgomery Counties



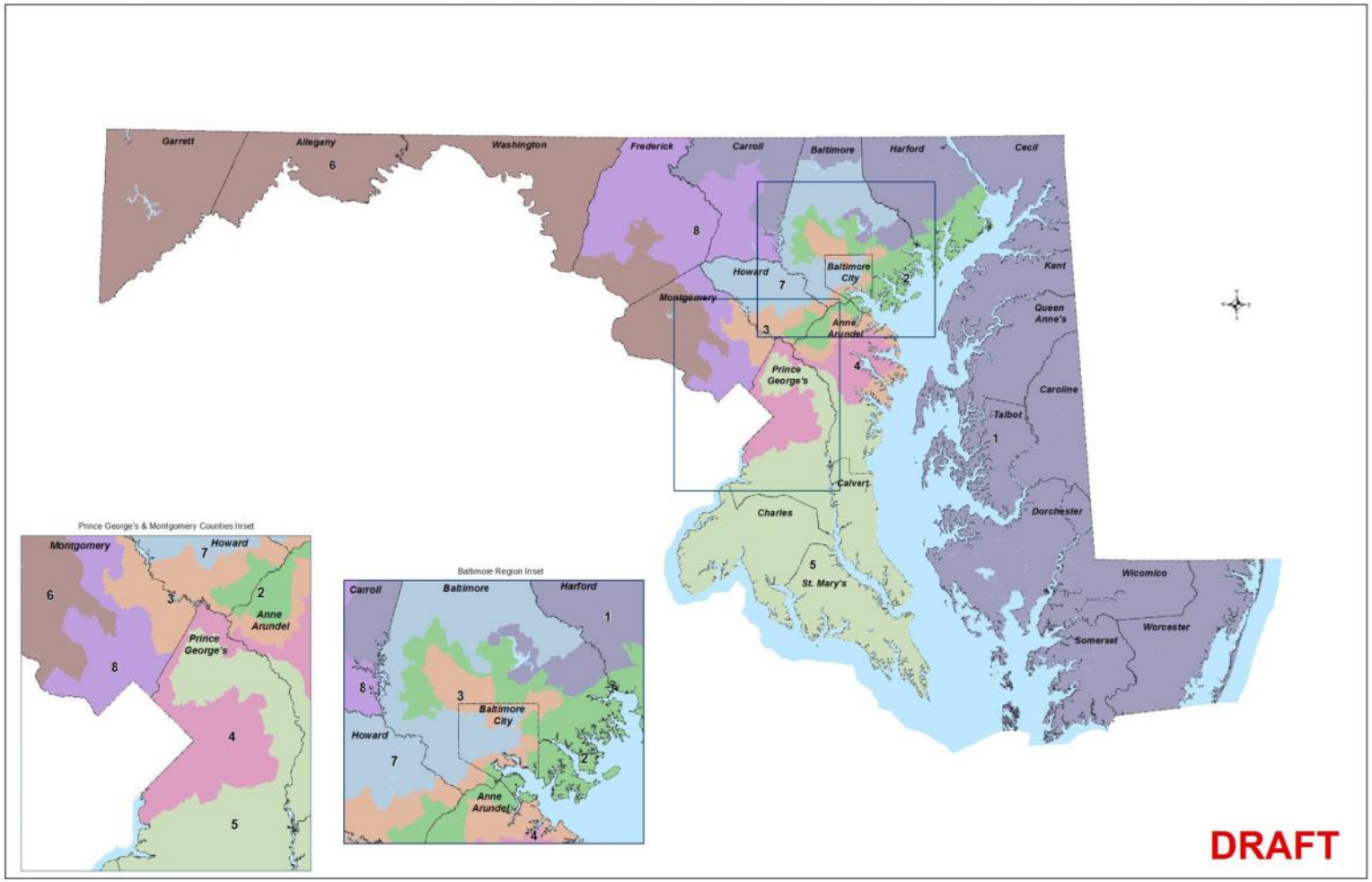
District 8 - includes Southern Montgomery County, areas east of the I-270 Corridor, and includes portions of eastern Frederick County and western Carroll County.

District 6 keeps Western MD together (all of Washington, Allegany, and Garrett Counties), continuing along the Potomac River, connecting portions of Frederick and Montgomery Counties, and incorporates the I-270 Corridor in Montgomery and Frederick Counties.

MCM002467

711

Statewide Map



O'Malley's map easily wins House approval

Baltimore delegates (from left) Keiffer Mitchell, Mary Washington, Jill Carter and Keith Haynes study a copy of a proposed redistricting map on the House of Delegates floor during debate Wednesday. (Barbara Haddock Taylor / The Baltimore Sun)

By **Annie Linskey and John Fritze, The Baltimore Sun**

OCTOBER 19, 2011, 9:12 PM

A new political map aimed at adding a seventh Democrat to the state's congressional delegation is expected to be sent to Gov. Martin O'Malley Thursday for his signature.

The plan won approval in the Maryland House of Delegates on Wednesday after five hours of debate, overcoming unified opposition from Republicans and ire from suburban Washington Democrats. One final stamp of approval is expected from the Senate Thursday morning.

Despite two weeks of steady criticism from liberal and conservative groups, the bill passed 91 to 46, with only five Democrats joining the House GOP caucus to vote "no." House leaders easily fended off three Republican amendments and one from Montgomery County Democrats, who argued that the map denies them a minority voice in Congress.

"It is an emotional process," said House Speaker Michael E. Busch in a meeting with reporters shortly after the legislation passed. "If you were to say it is a gerrymandered map, you started with a gerrymandered map. There is not a perfect process."

The state's ruling Democrats drew the new congressional districts, a process required every decade to reflect population changes found by the Census. Unless altered in court, the map will govern Maryland's elections to the U.S. House of Representatives for the next 10 years, starting with the April 3 primary.

The map is sure to face a legal hurdle, however, a fact even Democratic lawmakers conceded on the House floor. "It will be challenged in court," said House Majority Leader Kumar Barve. "But every plan is challenged in court. It is part of the process."

Republicans pointed out that the mapmakers drew lines to pack suburban Washington Democrats into Western Maryland's conservative 6th District, currently represented by Republican Rep. Roscoe G. Bartlett. And critics including the Maryland National Association for the Advancement of Colored People said that in dividing Montgomery County into three districts, the map sliced up minority populations and weakens their voting strength.

State Republicans were among several groups that threatened to file a lawsuit.

"These districts are not compact. They split up communities of interest. They appear to dilute minority communities," said House Minority Leader Anthony O'Donnell. "And it is clearly an exercise in politicians picking their voters instead of doing what is in the best interest of the citizens."

The effort to squeeze an incumbent Republican member of Congress out of office comes as states across the country are engaged in their own redistricting — a process that could have significant implications for the balance of power in Washington after next year's presidential election. Democrats hope to capture the U.S. House of Representatives while the GOP is aiming to add to the gains made in 2010.

Maryland is one of only six states in which Democrats have direct control of the process — compared with 18 states in which the GOP oversees redistricting. The remaining states are either politically divided or have nonpartisan commissions in charge of the process.

That is sure to put Maryland's new 6th District in the national spotlight as Democratic groups endeavor to take advantage of the rare opportunity.

"It's one of a handful of states where Democrats come out of redistricting with a better map," said David Wasserman, an editor at the nonpartisan *Cook Political Report* who follows House races nationally. "Democrats will clearly prioritize every advantage they have."

Bartlett, the 10-term Republican from Western Maryland, issued a statement hours after the vote promising that he will seek re-election, even though his district would switch from a conservative, rural stronghold to a more left-leaning enclave anchored in Montgomery County.

The 85-year-old congressman, who raised $1,000 over the past three months, will have to introduce himself for the first time to nearly half of his potential constituents. "I filed for re-election in June," Bartlett said in a statement. "Approval of this map hasn't changed my plans."

The Fannie Lou Hamer Political Action Committee, a Prince George's County group formed last year to increase the number of minority-controlled congressional districts, pledged to sue under the federal Voting Rights Act, arguing the plan dilutes minority voting power in Montgomery County.

Carletta Fellows, a spokeswoman for the group, said it will file its case as soon as O'Malley signs the bill and also will ask the Department of Justice to separately review the plan.

It is unclear if the group will be joined by the state's NAACP, which raised concerns about the map but is deferring to their national legal experts to determine whether they'll participate in a lawsuit, said Elbridge James, political director with the NAACP.

A spokesman for the organization's legal defense fund says the map is under review.

Del. Justin D. Ready, a Carroll County Republican and the interim executive director of the state GOP, said the party plans to put "resources toward working on a lawsuit" but noted "it costs a lot of money."

"It'll be a team effort," he said. "It'll be a point of emphasis for us as we raise funds, obviously."

Throughout the summer, Maryland Republicans and some members of the Legislative Black Caucus had hinted that they might join forces in opposing the governor's plan. Each of the three amendments offered by the GOP would have drawn three majority minority districts, a goal stated by some black leaders.

But none of the Black Caucus members voted with the GOP — including on a proposal drafted by the Fannie Lou Hamer group.

Ten Democrats, mostly from the Washington suburbs, supported a separate amendment that would have inched the new 4th District back into Montgomery County, a plan drafted by Rep. Donna Edwards. That plan failed 26-107.

In an unusual move, Edwards, a Prince George's County Democrat, spoke publicly against O'Malley's map on grounds that it would rob Montgomery, a majority minority county, of a black voice in Congress.

In a statement, Edwards acknowledged defeat, saying the state legislative process had "run its course." Still, she remains unhappy with the result, saying it "is not the best approach for minority voters or for all Marylanders."

O'Donnell offered the first of three GOP plans Wednesday — a proposal drafted this past summer by the state Republican Party that would keep congressional districts more compact. Democrats argued the GOP plan would force many voters into new districts.

Democrats, meanwhile, defended O'Malley's map, which they said would keep 70 percent of state residents in their current district. "There is no constitutional requirement that the map be pretty," said Del. Kathleen M. Dumais, a Montgomery County Democrat.

An alternate plan crafted by the Fannie Lou Hamer group initially appeared like it might gain some traction in the House, but it ultimately failed on a 40-97 vote.

The political action committee, named for the Mississippi-born civil rights leader in the 1950s and '60s, offered the map that would put Edwards' 4th District back into Montgomery County to ensure that minorities in that part of the state are represented by a black member of Congress.

It was introduced by Del. Neil C. Parrott, a freshman Republican best known for leading a successful effort to halt a law allowing some illegal immigrants to pay in-state tuition at Maryland colleges and universities.

But Baltimore County Del. Emmett C. Burns Jr., the pastor of an African-American church, rose to say he knew Hamer personally and attended her funeral. He gave an impassioned speech on the House floor, saying that he was "conflicted" about how his vote would affect minorities, but in the end supported the governor and said he believed Hamer would have too.

"I don't think I voted against her wishes," Burns said. "I think she would have opted for the larger picture, and that is more Democrats in the House of Representatives."

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http://www.twitter.com/jfritze

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This article is related to: Elections, Democratic Party, Republican Party, Executive Branch, U.S. House of Representatives, Illegal Immigrants, NAACP

Redistricting panel targets Rep. Bartlett

By **Annie Linskey, The Baltimore Sun**

OCTOBER 3, 2011, 10:41 PM

A panel appointed by Gov. Martin O'Malley recommended a new political map Monday evening that would pack Democrats into a redrawn 6th Congressional District in Western Maryland, giving the state's majority party a shot at sending a seventh Democrat to Washington.

The proposed map targets the 6th District representative, Republican Roscoe Bartlett, but would add GOP voters to the 1st Congressional District represented by the state's other Republican, Andrew Harris.

"I think you will have a very competitive 6th District when you didn't have that in the past," said House Speaker Michael E. Busch, a member of the redistricting panel. He said the new lines in Western Maryland reflect population growth along the Interstate 270 corridor.

The General Assembly's House and Senate Democratic caucuses were briefed on the plan by Jeanne D. Hitchcock, a longtime aide to O'Malley who chairs the Governor's Redistricting Advisory Committee.

Del. Curt Anderson, a Baltimore Democrat, stepped out of the meeting and said Hitchcock used broad hand gestures in her presentation reminding him of a weather report. Anderson said he came away from the meeting thinking "there will be a very cold front going through Western Maryland."

The map immediately drew criticism from Republicans, who view the redistricting process as blatant gerrymandering. "It is pure, raw, brute-force political power," said Del. Anthony O'Donnell, the House of Delegates minority leader.

Monday evening was the first time members of the General Assembly were officially presented the proposal of the advisory committee, a five-member panel that held hearings around the state over the summer.

The panel's recommendation is said to be similar in some respects to a map obtained Friday by The Baltimore Sun known as Option 1. A second map, known as Option 2, was designed to make all eight of the state's congressional districts attractive for Democrats.

Busch said that the governor will put the proposed map online for public comment for seven days and then consider making shifts in the borders. He said he expects O'Malley to call the General Assembly into special session Oct. 17 to approve the plan, and said he does not think the session will last longer than a week.

Lawmakers will have the opportunity to amend the map during the legislative process. The measure will be an emergency bill, and will therefore become law immediately after the governor signs it.

Officials said the proposed map makes only slight changes to congressional districts in the Baltimore area. The city would continue to be represented by three members of Congress.

Busch said a guiding principle in crafting the new map was to keep as many Marylanders as possible in their current congressional districts. On average, each new district keeps 70 percent of the population it previously held, he said.

The map, however, would put the western half of Montgomery County into the 6th District. That would mean the new congressional district would include all of state Sen. Rob Garagiola's General Assembly district. Garagiola, a favorite of Senate President Thomas V. Mike Miller, has said he would consider running for Congress if a favorable map were drawn.

Garagiola said he still wants to see the final congressional borders before he commits to running for the House of Representatives. If the final map is similar to the one presented, "there would be a very good chance I would run," Garagiola said.

Besides Hitchcock, Busch and Miller, panel members are Richard Stewart, who also serves on the Maryland Stadium Authority, and James King, a former state delegate who is the committee's only Republican.

O'Malley is not required to accept their map but is widely expected to accept at the least a very similar proposal. He's now in North Carolina raising money for the Democratic Governors Association.

Bartlett's Western Maryland seat is an appealing target for Democrats on several counts. Democratic strategists believe that over time it is becoming more liberal, as Washington-area residents move up the Interstate 270 corridor to Frederick and Hagerstown.

They also point to Bartlett's lackluster fundraising: The 85-year-old congressman raised a mere $28,000 in the second quarter of this year, putting him last among the state's eight-member delegation.

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OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

October 20, 2011

The Honorable Martin O'Malley
Governor of Maryland
State House
100 State Circle
Annapolis, Maryland 21401-1991

RE: Senate Bill 1 of the Special Session of 2011

Dear Governor O'Malley:

We have reviewed and hereby approve for constitutionality and legal sufficiency Senate Bill 1, an emergency bill creating new districts for congressional elections based on the 2010 census. As always, in reviewing a bill passed by the General Assembly prior to its approval or veto by the Governor, we apply a "not clearly unconstitutional" standard. 93 *Opinions of the Attorney General* 154, 161, n. 12 (2008). This standard reflects the presumption of constitutionality to which statutes are entitled and the Attorney General's constitutional responsibility to defend enactments of the Legislature, while also satisfying the duty to provide the Governor with our best legal advice. *Id.* In reviewing Senate Bill 1, we have considered whether it complies with the one person / one vote requirements of Article I, § 2 of the United States Constitution and Section 2 of the Voting Rights Act, and have found no violation. We also found no reason to believe that Senate Bill 1 constitutes a racial gerrymander in violation of the Fourteenth Amendment as interpreted in *Shaw v. Reno*, 509 U.S. 630 (1993).

Under Article I, § 2 of the United States Constitution, members of the House of Representatives are elected "by the people" from single member districts "founded on the aggregate number of inhabitants of each state," Madison, *The Federalist*, No. 54 at 369. The United States Supreme Court has said that Article I, § 2 requires states to make a good faith effort to achieve precise mathematical equality." *Kirkpatrick v. Preisler*, 394 U.S. 526, 530-531 (1969). Senate Bill 1 does this. Seven of the districts contain 721,529 people, while one district contains 721,528 people. It is not possible to achieve greater population equality.

The population figures above have been adjusted as required by the No Representation Without Population Act, Chapter 67 of 2010, which requires that prisoners be counted in the place in which they resided prior to their incarceration, rather than in the place where they are incarcerated. This shift does not violate the equal population requirement of Article I, § 2. Federal courts have generally allowed states to determine the appropriate method by which to calculate population. 94 *Opinions of the Attorney General* 125, 127-129 (2009) (collecting cases). As noted in *Burns v. Richardson*, 384 U.S. 73, 92 (1966), the Supreme Court has never suggested that "the States are required to include aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of crime in the apportionment base by which their legislators are distributed." Nor have we found any basis for the conclusion that it is not permissible to count prisoners at their home districts rather than remove them from consideration altogether.[1]

To pass muster under the Voting Rights Act, the plan, analyzed in light of the totality of the circumstances, must create political processes leading to nomination and election in the State that are:

> equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

42 U.S.C. § 1973(b).

The Supreme Court has created a three part test that plaintiffs must meet in order to bring a successful challenge to a redistricting plan under the Voting Rights Act. *Thornburgh v. Gingles*, 478 U.S. 30, 50-51 (1986). Specifically, it is necessary to show:

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[1] This method of enumerating prisoners was apparently used in the 1900 census, Nat'l Research Council, *Once, and Only Once, and in the Right Place: Residence Rules in the Decennial Census* 84-85 [Daniel L. Cork and Paul R. Voss, eds., 2006], and the reasons the Census Bureau counts prisoners where they are incarcerated now are technical rather than constitutional, U.S. Census Bureau Report: Tabulating Prisoners at Their "Permanent Home of Record" Address, pp. 10-13 (February 21, 2006). In fact, the Census Bureau released prisoner and other group quarter numbers early in this round of redistricting "so that states can leave the prisoners counted where the prisons are, delete them from the redistricting formulas, or assign them to some other locale." Director's Blog, United States Census Bureau, posted March 10, 2010. http://blogs.census.gov/directorsblog/2010/03/so-how-do-you-handle- prisons.html

> (1) that the minority group is sufficiently large and geographically compact to constitute a majority in a single-member district; (2) that the minority group is politically cohesive; and (3) that the white majority votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate.

Bartlett v. Strickland, 556 U.S. 1, 21 (2009). Meeting this test is not sufficient to establish a violation, but is necessary before the court will proceed to analyze whether a violation has occurred based on the totality of the circumstances. *Id.* at 21-22. Analysis of a plan under these factors requires complex statistical analysis. For that reason, the State engaged in a nationwide search and hired an expert in the field, Bruce E. Cain, Ph.D., Heller Professor of Political Science, University of California Berkeley, and the Executive Director of the U.C. Washington Center. A copy of Dr. Cain's Curriculum Vitae and a copy of his analysis are attached.

According to Dr. Cain's analysis, the only minority group that has sufficient population to constitute a majority of a congressional district in Maryland is African Americans. While other minorities could form a majority in combination with African Americans, attempts to show cohesion among such coalitions has been difficult across the country. It is the view of the State's expert that political cohesion could not be shown for a coalition district in this State either.

According to the United States Census Bureau numbers non-Hispanic African Americans are found throughout the State and constitute 29% of the State's population. Compact populations of African Americans are found in the Baltimore region, and also in the areas around the District of Columbia.[2] The current plan creates a majority African American district in each of these population centers. Each of these districts has a 53.7% non-Hispanic African American voting age population,[3] and will, based on the analysis of the State's expert, enable African American voters to elect their candidates of choice. Moreover, African American voters are not packed in either district in a way that would

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[2] The relevant geographic area for the compactness analysis is a single member district, not a county. Thus, the fact that a county has a significant minority population, or has in the past had a portion of a majority minority district, is irrelevant to this analysis.

[3] This percentage is based on unadjusted data, Census 2010, P.L. 94-171 Redistricting Data (Maryland). An adjusted total for Hispanic is not available because no Hispanic designation was available for incarcerated persons.

inhibit the creation of an additional district. Even so, the population not included in either of these two districts is not, in the view of the State's expert, sufficiently compact to meet the requirements of the *Gingles* test. In the absence of compactness, the Voting Rights Act does not require the creation of an additional majority minority district simply because it is possible. *Abrams v. Johnson*, 521 U.S. 74, 90 (1997); *Johnson v. DeGrandy*, 512 U.S. 997, 1017 (1994).[4] For these reasons, it is our view that Senate Bill 1 is in compliance with the Voting Rights Act.

It is also our view that nothing in Senate Bill 1 can be deemed an unconstitutional racial gerrymander. As discussed above, the two majority minority districts in the plan cover compact African American populations. While the 7th district is not compact overall, the shape is not due to any predominant focus on race, as prohibited under the holding of *Shaw v. Reno*, 509 U.S. 630 (1993), but to add population to the area of compact minority population and based on other considerations.

As indicated by those who participated in developing and adopting the redistricting plan, including the Redistricting Commission, the Governor, and the General Assembly, the boundaries of the newly adopted Congressional districts reflect a number of considerations, including a preference for joining communities of interest, keeping residents in their current districts, recognizing growth patterns, protecting incumbents, and partisan consideration. These factors have been recognized as permissible considerations under applicable case law. It is our view that Senate Bill 1 is not unconstitutional.

Very truly yours,

Douglas F. Gansler
Attorney General

DFG/KMR/kk

[4] With respect to the other two factors, the analyses performed by the State's expert reflect that while African American voters are generally politically cohesive, there is not significant polarized voting in the areas in question.

Voting Rights Assessment of Governor's Maryland Congressional Redistricting Plan

Professor Bruce E. Cain

A valid Congressional redistricting plan must meet all federal constitutional and statutory standards. Aside from creating equally populated, contiguous districts, the state is required to adhere to the standards of the Voting Rights Act (VRA) of 1965 as amended in 1982. There are of course many other perfectly legitimate political considerations that underlie the construction of districting plans, but they are secondary to the federal criteria. It is my judgment that the Governor's 2011 Congressional redistricting plan satisfies those federal criteria.

The relevant part of the VRA for Maryland is Section 2 which prohibits voting practices and procedures that discriminate on the basis of race, color or membership in a designated language minority group. When the VRA was amended in 1982, the Congress supplemented the previous intent standard established under Mobile v Bolden 446 US 55 (1980) with a totality of circumstances test that essentially asked whether in the context of various considerations a standard, practice or procedure (in this case a redistricting plan) has the effect of denying a protected minority group an equal opportunity to elect a candidate of choice. The Supreme Court in reviewing the 1982 revisions developed a three prong test in Thornburg v Gingles 478 US 30 (1986) that all states and local jurisdictions follow when assessing their Section 2 redistricting liability. Because these tests are empirical, they are usually conducted by political scientists.

There are three questions that need to be answered under the Gingles standard: 1. is the protected minority group sufficiently large and concentrated in a reasonably compact area to constitute a majority of a district; 2. is the group politically cohesive; and 3. does it face racial polarization by the majority population? To answer the first question, I mapped the voting age population (VAP) concentrations of African-Americans, Latino and Asian-Americans using the 2010 Census data, and determined whether there are reasonably compact voting age (VAP) concentrations of those groups that would be sufficient to constitute a majority of the ideal population (721,259) for a Maryland Congressional district.

There has been significant growth in Maryland's minority populations, particularly in Prince George's and Montgomery counties, both of which are now majority minority in population. Not all of this growth translates into political strength especially in the Latino population, as non-citizenship and a large Under 18 population share make many ineligible to vote. Unfortunately, there are no reliable estimates of citizenship, so we must rely on voting age population (VAP) as the best proxy. In my judgment, despite the impressive growth of the Latino and Asian American populations, neither has yet

reached the critical 50% VAP threshold for Congressional sized districts required by the law although they may in the next census.

The African-American case, however, is different. I determined that there are sufficient, reasonably compact concentrations in both the Baltimore and Prince George's/Montgomery County areas to create two majority black VAP Congressional districts. This is reflected by the creation of two majority African-American VAP districts (CDs 4 and 7) in the Governor's 2011 Congressional Redistricting Plan. But given the growth in the African-American population, I next explored whether there is sufficient population in a reasonably compact concentration to create a third majority black district. My conclusion is that there is not.

I explored a number of possible alternatives but I found there was simply no way to create a third majority black voting age population district in the Prince George's/Montgomery area or Baltimore and its suburbs area while maintaining two other African-American majority VAP seats . With one exception, this seems to have been also the judgment implicit in all the third party plans, including from a former Justice Department official on behalf of the Legislative Black Caucus. The one exception is the Fannie Lou Hamer PAC Plan that addresses the problem with a new barbell district that links black populations in the Baltimore area in the north with the Prince George's/Montgomery/Anne Arundel areas in the south with a narrow corridor through the intervening predominantly white areas. But such solutions substantially raise the risk of a so-called Shaw violation.

Faced with increasingly contorted attempts to maximize minority representation, the Supreme Court in a series of decisions beginning with Shaw v Reno 509 US 630 (1993) put limits on attempts to redistrict affirmatively. The resulting standard from these cases is that race can be taken into consideration but it should not be the exclusive or predominant consideration. Districts like the disputed majority black district in the Shaw v Reno case that link disparate black populations with narrow corridors to avoid white populations have been ruled unconstitutional. Districts drawn predominantly along racial lines invite a strict scrutiny review by the courts and significantly raise the odds of a Congressional plan being overturned on review. Given the geographic distribution of Maryland's African-American community and the heavy and suspect racial tailoring needed to create a potential third majority black VAP district, it is my view that the state was not required to do so.

The second step in the Gingles test is whether groups are politically cohesive. This judgment is based on analysis of past voting and survey returns as well as the scholarly literature on racial and ethnic voting tendencies. The evidence is clear in Maryland and elsewhere that African-Americans are a politically cohesive group. The same is likely true of Latinos based on national data, but the track record in Maryland is not very extensive yet. The national evidence on Asian-Americans is more mixed as a number of studies have revealed important differences based on historical tensions and socio-economic disparities between different Asian-American nationalities. Given that neither the Latino nor Asian-American populations have yet attained the threshold majority VAP level required for Congressional districts, it was not necessary to explore this question with respect to those groups in Maryland further at this time.

I also considered whether the state is compelled to create a new majority-minority VAP coalitional seat. The Governor's plan has already created a number of coalitional seats, including 2 that are already majority minority, 4 that are over 30% minority, 1 of which is over 40% minority and will likely be majority minority by the end of the decade. In short, it is likely that there will likely be a third majority-minority VAP coalitional congressional district before the next redistricting. The relevant legal question with whether the state is compelled to create another one right now.

It is important that we separate the political merits of different types of coalitional seats from the legal requirement to draw an additional 50% majority minority VAP district. The former is a political judgment. The latter requires meeting the Gingles tests. Proving that coalitional groups are sufficiently politically cohesive under the VRA has been difficult across the country. The original framework of the VRA was devised in a primarily biracial setting. The new diversity challenges the old framework in many important ways, particularly when different protected minority groups have competing claims in the same territory. The Gingles framework requires that coalitions have the same levels of cohesion that single minority groups have, and that is typically very hard to prove.

The normal method is to look at a number of elections that feature white v nonwhite and nonwhite v nonwhite candidates in primary and nonpartisan elections (to control for the effects of partisanship), and to link this with demographic data. As a preliminary analysis, I mapped the political returns and compared them with the demographic data and then ran multivariate regressions testing for detectable racial patterns in the 2008 Democratic Presidential Primary and for the 2008 General Election controlling for party. They basically confirm what the national survey data showed as well, which is that Hispanics as well as certain segments of the white population were considerably and statistically significantly less likely than African-Americans to support Barack Obama in both the primary and general election. This led me to conclude that it would be very hard to argue that African-Americans and Hispanics vote as a sufficiently cohesive political bloc to satisfy that prong of the Gingles test.

I would also add in California, a state that I have studied extensively, coalitions between African-Americans and Latinos have been quite unstable. When Latinos become sufficiently large to constitute a majority, they have preferred to solidify the prospects of electing a candidate of their choice and not of the African-American community. Tensions between the two groups have also come out in recent LA Mayoral races and in ballot measures over English as a second language and state benefits for undocumented Latinos.

The issue of a multi-racial coalition ties into the third prong of the Gingles test: i.e. whether white voters vote in a racially polarized way against African-American candidates. I base my conclusions on my preliminary examination of voting patterns in Maryland. I also attended the redistricting hearings in Prince George's and Montgomery Counties (areas of the most significant nonwhite racial growth), and the testimony at the October Special Legislative Session on October 17. Based on my own analysis, the testimony I heard, and the relevant academic literature, I believe that there is no simple generalization about white voting behavior in Maryland: white voters as a group are neither universally polarized nor completely post-racial.

The Maryland 2008 returns show high levels of support for Obama in both the primary and general elections in white urban and suburban areas such as Montgomery and Prince George's Counties and lower support in rural areas at the western end of the state and the Eastern shore. In the testimony I heard, there were numerous individuals in Montgomery County especially (including the African-American who had been elected as the County Executive Isiah Leggett, who believed that there significant numbers of white voters who would support African-American candidates.

From the regressions I have undertaken, I would characterize the level of polarization as moderate: enough to warrant protections but not so great as to exclude many white areas from the multi-racial coalitions. Moreover, as I mentioned before, at least in 2008, Hispanic voting patterns more closely resembled non-Hispanic whites than African-Americans and Asian-Americans.

An additional consideration about the merits of majority minority VAP coalitions versus coalitions that include supportive white populations in Maryland is demographic and relates to the "one person, one vote" rationale that is the reason for undertaking the difficult task of redistricting in the first place. Different coalitional combinations will have varying implications for population growth in the district over the decade. The spirit of the "one person, one vote" decisions is to try to equalize the weight of every vote by giving all the districts the same population. Placing faster growing populations together can cause district populations to grow out of balance more quickly over the decade than combining them with slower growing populations. Thus, a policy of systematically combining fast growing Latino areas in Montgomery County with fast growing African American areas could lead to greater mal-apportionment over the decade.

In sum, for all the reasons stated above, I find the Governor's Maryland Congressional Redistricting Plan meets the conditions of Section 2 of the Voting Rights Act.

Eligible Active Voters on Precinct Register

Election: 2012 PRESIDENTIAL GENERAL ELECTION
Election Date: 11/6/2012
STATEWIDE

**As of 10/21/2012*

Legislative Districts in this report reflect the districts as defined prior to the 2010 Census.

Countywide Counts

	Dems	Reps	Grn	Lib	UNA	OTH	Subtotal
Allegany	15,557	20,006	121	143	5,891	410	42,128
Anne Arundel	149,232	125,386	874	1,393	71,623	262	348,770
Baltimore City	309,078	33,005	1,401	917	46,649	1,534	392,584
Baltimore County	297,941	132,720	1,338	1,806	75,760	5,843	515,408
Calvert	23,349	23,448	138	192	11,201	535	58,863
Caroline	7,183	7,638	36	59	3,108	141	18,165
Carroll	32,778	56,870	270	399	19,092	985	110,394
Cecil	24,197	24,372	140	244	12,824	744	62,521
Charles	55,690	25,339	140	234	15,712	572	97,687
Dorchester	10,414	7,131	25	47	2,424	126	20,167
Frederick	54,564	61,079	401	577	31,441	94	148,156
Garrett	4,724	11,625	38	52	2,084	206	18,729
Harford	63,549	67,467	315	649	26,855	1,133	159,968
Howard	90,072	56,330	471	698	38,779	2,398	188,748
Kent	6,095	4,572	35	44	1,708	140	12,594
Montgomery	345,449	125,185	1,509	1,745	139,040	3,072	616,000
Prince George's	443,643	47,472	765	940	56,106	19,665	568,591
Queen Anne's	11,366	15,284	64	111	5,295	209	32,329
Saint Mary's	25,295	25,721	144	245	12,049	469	63,923
Somerset	7,249	4,600	19	30	1,694	121	13,713
Talbot	9,898	10,979	48	91	4,012	267	25,295
Washington	31,750	38,551	236	322	16,150	282	87,291
Wicomico	25,474	20,655	117	192	9,310	676	56,424
Worcester	14,997	14,423	71	126	6,080	382	36,079
	2,059,544	959,858	8,716	11,256	614,887	40,266	3,694,527

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Counts by Congressional District

	Dems	Reps	Grn	Lib	UNA	OTH	Subtotal
Congr. Dist: 01	181,774	200,601	967	1,656	76,428	4,411	465,837
Congr. Dist: 02	255,488	97,106	992	1,507	68,071	3,813	426,977
Congr. Dist: 03	253,626	115,393	1,389	1,725	86,771	2,620	461,524
Congr. Dist: 04	329,027	74,939	662	966	56,932	11,171	473,697
Congr. Dist: 05	280,789	118,128	951	1,319	72,544	10,184	483,915
Congr. Dist: 06	192,820	145,620	1,045	1,458	94,074	2,077	437,094
Congr. Dist: 07	326,950	78,475	1,436	1,186	61,511	3,675	473,233
Congr. Dist: 08	239,070	129,596	1,274	1,439	98,556	2,315	472,250
	2,059,544	959,858	8,716	11,256	614,887	40,266	3,694,527

Eligible Active Voters on Precinct Register

Election: 2012 PRESIDENTIAL GENERAL ELECTION
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STATEWIDE

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Counts by Legislative District

	Dems	Reps	Grn	Lib	UNA	OTH	Subtotal
Legis. Dist: 01A	6,227	14,945	48	63	2,736	245	24,264
Legis. Dist: 01B	8,153	10,749	68	67	3,074	211	22,322
Legis. Dist: 01C	8,496	10,669	66	90	3,597	188	23,106
Legis. Dist: 02A	9,847	13,860	66	97	5,152	79	29,101
Legis. Dist: 02B	8,874	11,850	77	109	4,879	89	25,878
Legis. Dist: 02C	9,965	7,597	65	86	4,432	79	22,224
Legis. Dist: 03A	24,558	18,608	183	249	12,155	34	55,787
Legis. Dist: 03B	12,998	14,843	87	118	7,994	38	36,078
Legis. Dist: 04A	16,220	25,985	126	197	10,687	27	53,242
Legis. Dist: 04B	8,033	15,189	56	104	5,177	232	28,791
Legis. Dist: 05A	17,107	29,068	145	214	9,505	476	56,515
Legis. Dist: 05B	11,501	15,015	108	135	4,812	470	32,041
Legis. Dist: 06	38,172	15,464	142	251	10,264	701	64,994
Legis. Dist: 07	37,008	30,245	159	327	13,246	901	81,886
Legis. Dist: 08	42,201	22,648	195	283	11,547	843	77,717
Legis. Dist: 09A	26,302	25,442	179	228	13,272	884	66,307
Legis. Dist: 09B	8,895	14,768	79	99	5,270	279	29,390
Legis. Dist: 10	63,151	7,375	164	166	8,996	658	80,510
Legis. Dist: 11	57,284	17,864	162	255	12,434	997	88,996
Legis. Dist: 12A	24,290	15,252	149	203	9,113	606	49,613
Legis. Dist: 12B	16,096	5,632	70	104	5,479	345	27,726
Legis. Dist: 13	42,840	21,614	196	316	17,554	1,043	83,563
Legis. Dist: 14	43,817	21,614	174	240	16,996	362	83,203
Legis. Dist: 15	43,939	23,323	152	236	23,960	482	92,092
Legis. Dist: 16	48,306	16,988	155	211	19,611	490	85,761
Legis. Dist: 17	40,881	14,942	190	279	19,337	381	76,010
Legis. Dist: 18	45,235	12,154	214	209	15,300	350	73,462
Legis. Dist: 19	42,682	15,965	146	172	15,306	371	74,642
Legis. Dist: 20	44,877	6,568	321	200	12,510	303	64,779
Legis. Dist: 21	45,026	12,553	165	282	13,083	2,620	73,729
Legis. Dist: 22	43,248	5,992	201	146	7,482	2,564	59,633
Legis. Dist: 23A	39,829	9,585	65	109	6,941	2,489	59,018
Legis. Dist: 23B	27,369	3,120	34	49	3,341	954	34,867
Legis. Dist: 24	67,843	2,410	52	71	5,617	2,274	78,267
Legis. Dist: 25	69,354	3,428	49	91	5,844	2,322	81,088
Legis. Dist: 26	69,751	4,482	56	88	6,080	2,598	83,055

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Election Date: 11/6/2012
STATEWIDE

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Legis. Dist: 27A	53,105	10,097	77	110	6,794	2,035	72,218
Legis. Dist: 27B	12,271	11,279	64	84	5,621	278	29,597
Legis. Dist: 28	54,739	24,486	135	230	15,321	556	95,467
Legis. Dist: 29A	11,829	11,944	50	86	5,056	224	29,189
Legis. Dist: 29B	12,430	11,871	87	144	6,293	227	31,052
Legis. Dist: 29C	9,959	10,955	67	105	5,203	209	26,498
Legis. Dist: 30	35,578	30,127	265	359	17,463	51	83,843
Legis. Dist: 31	33,573	28,158	173	292	15,333	60	77,589
Legis. Dist: 32	38,448	22,938	191	325	16,429	68	78,399
Legis. Dist: 33A	22,223	26,896	148	237	12,839	45	62,388
Legis. Dist: 33B	11,946	13,990	75	113	6,439	23	32,586
Legis. Dist: 34A	25,832	14,746	103	223	9,121	388	50,413
Legis. Dist: 34B	10,720	12,531	71	114	5,800	345	29,581
Legis. Dist: 35A	19,105	30,191	119	214	9,073	398	59,100
Legis. Dist: 35B	10,695	13,516	65	113	5,075	199	29,663
Legis. Dist: 36	33,850	34,828	181	314	15,338	799	85,310
Legis. Dist: 37A	14,135	5,554	34	71	3,254	184	23,232
Legis. Dist: 37B	22,291	24,390	99	179	8,452	528	55,939
Legis. Dist: 38A	11,805	9,360	40	60	3,590	278	25,133
Legis. Dist: 38B	23,693	22,653	129	204	9,839	660	57,178
Legis. Dist: 39	35,712	13,631	157	198	16,020	333	66,051
Legis. Dist: 40	51,334	3,786	416	179	7,601	218	63,534
Legis. Dist: 41	57,522	5,130	132	111	6,780	243	69,918
Legis. Dist: 42	37,464	21,851	314	337	11,590	953	72,509
Legis. Dist: 43	55,421	4,724	324	112	7,218	245	68,044
Legis. Dist: 44	47,778	3,713	160	107	6,338	241	58,337
Legis. Dist: 45	53,038	4,665	135	94	5,696	234	63,862
Legis. Dist: 46	43,985	10,987	234	314	13,016	353	68,889
Legis. Dist: 47	38,688	3,055	107	83	5,512	1,906	49,351
	2,059,544	959,858	8,716	11,256	614,887	40,266	3,694,527

Eligible Active Voters on Precinct Register

Election: 2012 PRESIDENTIAL GENERAL ELECTION
Election Date: 11/6/2012
STATEWIDE

*As of 10/21/2012

Legislative Districts in this report reflect the districts as defined prior to the 2010 Census.

Counts by Age, Gender, and Party

*According to Maryland State Law, voters who will be 18 and eligible to vote by a General Election are eligible to Vote in the related primary

		Female						Male						Unspecified					
	TOTAL	17 & below	18-24	25-44	45-65	65 & above	Subtotal	17 & below	18-24	25-44	45-65	65 & above	Subtotal	17 & below	18-24	25-44	45-65	65 & above	Subtotal
DEM	2,059,544	0	116,895	388,968	474,189	230,185	1,210,237	0	91,981	263,849	336,886	155,422	848,138	0	390	389	310	80	1,169
REP	959,858	0	40,959	136,624	196,861	94,914	469,358	0	45,407	147,401	214,199	83,122	490,129	0	113	109	108	41	371
AME	131	0	11	29	15	2	57	0	25	22	23	4	74	0	0	0	0	0	0
UNA	614,887	0	46,472	132,464	91,999	24,080	295,015	0	48,488	139,452	104,149	27,101	319,190	0	136	295	182	69	682
OTH	60,238	0	3,469	10,930	9,061	3,310	26,770	0	4,012	13,895	11,754	3,740	33,401	0	22	22	17	6	67
TOTAL	3,694,658	0	207,806	669,015	772,125	352,491	2,001,437	0	189,913	564,619	667,011	269,389	1,690,932	0	661	815	617	196	2,289

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

O. John Benisek, et al. *Plaintiffs*, vs. Linda H. Lamone, et al., *Defendants*.	Case No. 13-cv-3233 Three-Judge Court

PLAINTIFFS' FIRST SUPPLEMENTAL RESPONSES AND OBJECTIONS TO DEFENDANTS FIRST SET OF INTERROGATORIES

Pursuant to Federal Rules of Civil Procedure 26 and 33 and Local Rule 104, Plaintiffs hereby submit their Responses and Objections to Defendants' First Set of Interrogatories. Plaintiffs reserve the right to amend and supplement these responses and objections to the extent allowed by the Federal Rules of Civil Procedure and the Orders and Local Rules of the District of Maryland.

GENERAL STATEMENT AND OBJECTIONS

The following General Statement and Objections apply to each of the interrogatories propounded by Defendants and, unless otherwise stated, shall have the same force and effect as if set forth in response to each of the separate interrogatories. By providing their responses to Defendants' First Set of Interrogatories, Plaintiffs do not concede that the information provided is relevant to the claims or defenses of any party, proportionate to the needs of the case, or could lead to the discovery of admissible evidence.

1. Defendants object to the interrogatories to the extent that Plaintiffs have not completed all discovery (fact and expert), their investigation of the facts, or the preparation for trial in this case, and therefore Plaintiffs reserve the right to rely on any theories of liability, facts, documents, testimony, or other evidence that may be discovered or may come to light in this case.

	Congressional District that were drawn during the 2011 Congressional redistricting process; knowledge of the failure of Maryland's new Sixth Congressional District boundaries to serve communities of interest.
Unknown employees or officials of the Democratic National Committee	Knowledge of the planning or drawing of the boundaries of Maryland's Sixth Congressional District in the 2011 Congressional redistricting process; knowledge of the intent and purpose of new boundaries of Maryland's Sixth Congressional District that were drawn during the 2011 Congressional redistricting process.
Unknown employees or officials of the Democratic Congressional Campaign Committee	Knowledge of the planning or drawing of the boundaries of Maryland's Sixth Congressional District in the 2011 Congressional redistricting process; knowledge of the intent and purpose of new boundaries of Maryland's Sixth Congressional District that were drawn during the 2011 Congressional redistricting process.
Unknown employees of the Office of Former Governor Martin O'Malley	Knowledge of the planning or drawing of the boundaries of Maryland's Sixth Congressional District in the 2011 Congressional redistricting process; knowledge of the data used to draw boundaries of Maryland's Sixth Congressional District in the 2011 Congressional redistricting process; knowledge of the intent and purpose of new boundaries of Maryland's Sixth Congressional District that were drawn during the 2011 Congressional redistricting process; knowledge of the failure of Maryland's new Sixth Congressional District boundaries to serve communities of interest.

INTERROGATORY NO. 2:

Identify all voters whom you allege would otherwise register as Republican if they had not been chilled from doing so.

RESPONSE: Plaintiffs object to this interrogatory to the extent that it seeks the disclosure of information protected by the attorney-client privilege, work product immunity, or any other privilege or immunity. Plaintiffs object to this interrogatory to the extent that it calls for the premature, non-reciprocal disclosure of expert reports in violation of the Court's scheduling order. Plaintiffs also object to this interrogatory to the extent that it seeks the disclosure of information that is already in the possession, custody, or control of Defendants. Plaintiffs object to this request as overly broad and unduly burdensome as it seeks information regarding "all voters" who "would otherwise register" as

Republican if they had not been chilled from doing so. Plaintiffs further object to this request as vague and ambiguous to the extent that the term "would otherwise register" is undefined.

Further, contention interrogatories may not be used to require a party to set forth all factual information obtained in discovery regarding a particular topic. Defendants' interrogatories, "insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact—rather than, for example, certain principal or material facts, pieces of evidence, witnesses and legal applications—supporting the identified allegations, are overly broad and unduly burdensome." *Ritchie Risk-Linked Strategies Trading (Ireland) Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010); *see also Susquehanna Commercial Fin., Inc. v. Vascular Res., Inc.*, 2010 U.S. Dist. LEXIS 127125, at *25-37 (M.D. Pa. 2010) (denying motion to compel detailed responses to interrogatories requesting "all facts" supporting a particular contention, holding that defendants' demand for specific and "narrative response[s]" to contention interrogatories was "little more than a mark-work request. . . . since they do not only have the information, they have the written materials themselves."). Accordingly, Plaintiffs do not identify every voter who would have registered as a Republican but for enactment of the Plan. Instead, Plaintiffs describe the types of voters who have been chilled by the State's conduct from participating in politics in Maryland.

In addition, Plaintiffs object to this interrogatory because "contention interrogatories are more appropriate after a substantial amount of discovery has been conducted." *Nestle Foods Corp. v. Aetna Cas. & Sur. Co.*, 135 F.R.D. 101, 110 (D.N.J. 1990); *see also In re Convergent Techs. Secs. Litig.*, 108 F.R.D. 328, 336 (N.D. Cal. 1985) ("the wisest general policy is to defer propounding and answering contention interrogatories until near the end of the discovery period."). Plaintiffs have not completed all discovery (fact and expert), their investigation of the facts, or its preparation for trial in this case, and therefore Plaintiffs reserve the right to rely on any legal theories, facts, documents,

testimony, or evidence which may come to light during fact and expert discovery.

Subject to and without waiving the foregoing objections, Plaintiffs will supplement their answer to this interrogatory on January 16, 2017.

FIRST SUPPLEMENTAL RESPONSE: Plaintiffs further object that to prove the elements of their causes of action they are not required to show that Republican voters were chilled from registering to vote, nor are they required to identify each such Republican voter. *See Shapiro v. McManus*, --- F. Supp. 3d ---, 2016 WL 4445320, at *10-11 (D. Md. 2016) (discussing facts that Plaintiffs must prove at trial). As a consequence, this interrogatory is not relevant to any party's claim or defense and is not proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1).

Subject to and without waiving the foregoing objections, Plaintiffs state that to the extent that a further response is required, Plaintiffs state that, after the 2011 Congressional Plan was adopted, voters in Maryland's Sixth District were chilled from participating in the political process, including registering to vote, voting, and/or supporting Republican candidates because they believed that their votes did not matter and their candidates did not have a reasonable chance of winning due to the cracking and packing of the Sixth District.

More generally, gerrymanders that "crack" blocs of like-minded voters chill political participation because those cracked voters understand that their votes "will not count" because they cannot affect the outcome. Voters in packed districts are thus discouraged from voting. Voters in cracked districts also understand that other like-minded voters' votes "will not count" and thus are less likely to participate actively in campaigning for their chosen candidates. Vote "cracking" chills political speech in an especially pernicious way in Maryland because Maryland employs a closed primary registration system. For a voter to participate in a particular political party's primary, the voter must be a registered member of that party. Registered Republicans cannot participate in

Democratic primaries, in other words, and registered Democrats cannot participate in Republican primaries. In districts where the Democratic Party's candidate is very likely to win the general election, like the new Sixth District, the only real opportunity to influence what person is ultimately elected is the Democratic primary race. Under the closed primary system, residents of the Sixth District—even those otherwise inclined to register as Republicans—must register as members of the Democratic party in order to vote in the Democratic primary and practically influence who becomes their representative.

In addition, the Congressional Plan chilled participation in general elections. Voters who feel that the outcomes of elections are preordained by the legislature's map-drawing are discouraged from casting their votes or engaging in the political process at all.

INTERROGATORY NO. 3:

> State the facts concerning your contention that Delegate James J. King was chosen without input from Republican leadership.

RESPONSE: Plaintiffs object to this interrogatory to the extent that it seeks the disclosure of information protected by the attorney-client privilege, work product immunity, or any other privilege or immunity. Plaintiffs also object to this interrogatory to the extent that it seeks the disclosure of information that is already in the possession, custody, or control of Defendants. Plaintiffs object to this request as overly broad and unduly burdensome as it seeks all facts regarding a particular contention. Plaintiffs further object to this request as vague and ambiguous to the extent that the terms "input" and "Republican leadership" are undefined.

Further, contention interrogatories may not be used to require a party to set forth all factual information obtained in discovery regarding a particular topic. Defendants' interrogatories, "insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact—rather than, for example, certain principal or material facts, pieces of evidence, witnesses and

legal applications—supporting the identified allegations, are overly broad and unduly burdensome." *Ritchie Risk-Linked Strategies Trading (Ireland) Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010); *see also Susquehanna Commercial Fin., Inc. v. Vascular Res., Inc.*, 2010 U.S. Dist. LEXIS 127125, at *25-37 (M.D. Pa. 2010) (denying motion to compel detailed responses to interrogatories requesting "all facts" supporting a particular contention, holding that defendants' demand for specific and "narrative response[s]" to contention interrogatories was "little more than a mark-work request. . . . since they do not only have the information, they have the written materials themselves."). Accordingly, Plaintiffs do not cite every document or fact responsive to this interrogatory. Instead, Plaintiffs will make a good faith effort to cite representative documents and facts that support their response.

In addition, Plaintiffs object to this interrogatory because "contention interrogatories are more appropriate after a substantial amount of discovery has been conducted." *Nestle Foods Corp. v. Aetna Cas. & Sur. Co.*, 135 F.R.D. 101, 110 (D.N.J. 1990); *see also In re Convergent Techs. Secs. Litig.*, 108 F.R.D. 328, 336 (N.D. Cal. 1985) ("the wisest general policy is to defer propounding and answering contention interrogatories until near the end of the discovery period."). Plaintiffs have not completed all discovery (fact and expert), their investigation of the facts, or its preparation for trial in this case, and therefore Plaintiffs reserve the right to rely on any legal theories, facts, documents, testimony, or evidence which may come to light during fact and expert discovery.

Subject to and without waiving the foregoing objections, Plaintiffs respond as follows: On July 4, 2011, former Maryland Governor Martin O'Malley appointed all five members of the Governors' Redistricting Advisor Committee (GRAC). The members of the GRAC were Committee Chair Jeanne Hitchcock, who was Governor O'Malley's Secretary of Appointments and a former Deputy Mayor of Baltimore (serving under then Mayor O'Malley); Senate President Thomas V.

Mike Miller, Jr., a Democrat; Maryland House of Delegates Speaker Michael E. Busch, a Democrat; Richard Stewart, a private business owner who chaired Governor O'Malley's 2010 re-election campaign in Prince George's County; and Delegate James J. King, a former one-term member of the Maryland House of Delegates, a Republican. Governor O'Malley appointed Delegate King to the GRAC without consulting with leadership of the Maryland Republican Party.

INTERROGATORY NO. 4:

Identify all statistical tests referenced in ¶ 111 of the Complaint.

RESPONSE: Plaintiffs object to this interrogatory to the extent that it seeks the disclosure of information protected by the attorney-client privilege, work product immunity, or any other privilege or immunity. Plaintiffs object to this interrogatory to the extent that it calls for the premature, non-reciprocal disclosure of expert reports in violation of the Court's scheduling order. Plaintiffs further object to this request as vague and ambiguous to the extent that the terms "statistical tests" and "referenced in" are undefined.

Plaintiffs further object to this interrogatory to the extent that it seeks materials prepared by non-testifying experts retained in anticipation of litigation who are not expected to be called as witnesses at trial. Fed. R. Civ. P. 26(b)(4)(D)(ii); *see also Sara Lee Corp. v. Kraft Foods Inc.*, 273 F.R.D. 416, 420 (N.D. Ill. 2011) ("Because the materials relate solely to [an expert's] role as a non-testifying consultant, Plaintiffs may not discover them unless it can show 'exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.'"); *Monarch Knitting Mach. Corp. v. Sulzer Morat GMBH*, 1998 WL 338106, at *2 (S.D.N.Y. 1998) ("Under this rule, a consulting expert who will not testify at trial, 'is generally immune from discovery.'"); *Plymovent Corp. v. Air Tech. Solutions, Inc.*, 243 F.R.D. 139, 143 (D.N.J. 2007) ("Several policy considerations underlie the rule, including, (1) encouraging counsel to obtain necessary expert advice without fear that the adversary may obtain such information; (2)

preventing unfairness that would result from allowing an opposing party to reap the benefits from another party's efforts and expense; [and] (3) preventing a chilling effect on experts serving as consultants if their testimony could be compelled."); *Mantolete v. Bolger*, 96 F.R.D. 179, 181 (D. Ariz. 1982) ("there is no need for a comparable exchange of information regarding non-witness experts who act as consultants and advisors to counsel regarding the course litigation should take.").

FIRST SUPPLEMENTAL RESPONSE: Plaintiffs further object to this interrogatory to the extent that it seeks the premature, non-reciprocal disclosure of expert witness reports. Plaintiffs will disclose further statistical tests supporting its allegations pursuant to Fed. R. Civ. P. 26(a)(2) on the date required by the Court's scheduling order. *See* ECF No. 108 at 2.

Subject to and without waiving the foregoing objections, Plaintiffs state that the statistical tests referenced in paragraph 111 of their Second Amended Complaint include the tests discussed in greater detail in:

- Nicholas O. Stephanopoulos & Eric M. McGhee, *Partisan Gerrymandering and the Efficiency Gap*, 82 U. Chi L. Rev. 831 (2015); and
- Samuel H. Wang, *Three Tests for Practical Evaluation of Partisan Gerrymandering*, 68 Stanford L. Rev. 1263 (2016).

INTERROGATORY NO. 5:

> List all addresses at which you have resided since reaching voting-age and the dates you resided at each address.

RESPONSE: Plaintiffs object to this interrogatory to the extent that it seeks the disclosure of information protected by the attorney-client privilege, work product immunity, or any other privilege or immunity. Plaintiffs also object to this request as unduly burdensome, not proportionate to the needs of the case, and not relevant to any party's claim or defense to the extent that it seeks discovery before January 1, 2011 or after November 1, 2011. Plaintiffs further object to this request

as vague and ambiguous to the extent that the term "voting-age" and "resided" are undefined.

Subject to and without waiving the foregoing objections, Plaintiffs respond as follows: O. John Benisek is a citizen of the United States and a resident of and active eligible voter in Maryland. Before enactment of the Plan, Mr. Benisek's voter registration address was in Maryland's Sixth Congressional District. Following enactment of the Plan, his voter registration address remains in the Sixth Congressional District. Mr. Benisek has been an eligible Maryland voter since 1966. He has resided at the following addresses or in the following cities in the State since that time: College Park, MD (1963-1977); White Oak, MD (1973-1977); 5113 Porterstown Road in Keedysville, MD 21756 (1978-1990); and 11237 Kemps Mill Road in Williamsport, MD 21795 (1990-present).

Edmund Cueman is a citizen of the United States and a resident of and active eligible voter in Maryland. Before enactment of the Plan, Mr. Cueman's voter registration address was in Maryland's Sixth Congressional District. Following enactment of the Plan, his voter registration address is in the Eighth Congressional District. Mr. Cueman has been an eligible Maryland voter since 1961. He has resided at the following addresses in the State since that time: 304 W. Federal Street, Snow Hill, MD 21863 (1963-1968); 202 W. Martin Street, Snow Hill, MD 21863 (1968-1971); Baltimore Boulevard, Finksburg, MD 21048 (1971-1973); and 1201 Woods Rd., Westminster, MD 21158 (1973-Present).

Jeremiah DeWolf is a citizen of the United States and a resident of and active eligible voter in Maryland. Before enactment of the Plan, Mr. DeWolf 's voter registration address was in Maryland's Sixth Congressional District. Following enactment of the Plan, his voter registration address remains in the Sixth Congressional District. Mr. DeWolf has been an eligible Maryland voter since 2007. He has resided at 4709 Mt. Briar Road, Keedysville, MD 21756, since that time.

Charles W. Eyler, Jr., is a citizen of the United States and a resident of and active eligible

voter in Maryland. Before enactment of the Plan, Mr. Eyler's voter registration address was in Maryland's Sixth Congressional District. Following enactment of the Plan, his voter registration address is in the Eighth Congressional District. Mr. Eyler has been an eligible Maryland voter since 1970. He has resided at the following addresses in the State since that time: Schley Ave., Frederick, MD 21701 (1971-1973); Eyler Road, Thurmont, MD 21788 (1973-1976); and 13249 Creagerstown Road, Thurmont, MD 21788 (1976-Present).

Kat O'Connor is a citizen of the United States and a resident of and active eligible voter in Maryland. Before enactment of the Plan, Ms. O'Connor's voter registration address was in Maryland's Sixth Congressional District. Following enactment of the Plan, her voter registration address remains in the Sixth Congressional District. Ms. O'Connor has been an eligible Maryland voter since 1985. She has resided at the following addresses in the State since 1998: 11411 Seneca Valley Drive, Germantown, MD 20874 (1998-2003); and 9321 Watkins Road Gaithersburg, MD 20882 (2003-present).

Alonnie L. Ropp is a citizen of the United States and a resident of and active eligible voter in Maryland. Before enactment of the Plan, Ms. Ropp's voter registration address was in Maryland's Sixth Congressional District. Following enactment of the Plan, her voter registration address is in the Eighth Congressional District. Ms. Ropp has been an eligible Maryland voter from 1989 through 1996 and 1999 through the present. She resided at the following addresses between 1989 and 1996: 10021 Harp Road, Walkersville, MD 21793; 3 East 2nd Street, Frederick, MD 21701; 1300 Taney Avenue, Frederick, MD 21702; 103 E 8th Street, Frederick, MD 21701; 7 East 13th Street, Frederick, MD 21701. Ms. Ropp has resided at the following addresses since 1999: an apartment at Springwater Court, Frederick, MD 21701 (1999-2002); 8410 Myersville Road, Middletown, MD (2002-November 2016); 8543 Pete Wiles Road, Middletown, MD (November 2016-present).

Sharon Strine is a citizen of the United States and a resident of and active eligible voter in Maryland. Before enactment of the Plan, Ms. Strine's voter registration address was in Maryland's Sixth Congressional District. Following enactment of the Plan, her voter registration address is in the Eighth Congressional District. Ms. Strine has been an eligible Maryland voter since 1982. She has resided at the following addresses in the State since that time: 11611 Harp Hill Road, Myersville, MD 21773 (1972-1983); 312 Broad Street, Middletown MD 21783 (1983-1984); 12610 Loy Wolfe Road, Myersville MD 21773 (1984-1996); and 12709 Martin Road, Smithsburg, MD 21783 (1996-Present).

INTERROGATORY NO. 6:

> Identify any alternative redistricting plan that satisfies all of the constitutional requirements for congressional reapportionment without diluting either party's votes to a constitutionally significant degree that was submitted to the GRAC.

RESPONSE: Plaintiffs object to this interrogatory to the extent that it seeks the disclosure of information protected by the attorney-client privilege, work product immunity, or any other privilege or immunity. Plaintiffs object to this interrogatory to the extent that it calls for the premature, non-reciprocal disclosure of expert reports in violation of the Court's scheduling order. Plaintiffs further object to this request as vague and ambiguous to the extent that the terms "alternative redistricting plan," "constitutional requirements for congressional reapportionment," and "diluting either party's votes to a constitutionally significant degree" are undefined.

Plaintiffs further object to this interrogatory to the extent that it seeks materials prepared by non-testifying experts retained in anticipation of litigation who are not expected to be called as witnesses at trial. Fed. R. Civ. P. 26(b)(4)(D)(ii); *see also Sara Lee Corp. v. Kraft Foods Inc.*, 273 F.R.D. 416, 420 (N.D. Ill. 2011) ("Because the materials relate solely to [an expert's] role as a non-testifying consultant, Plaintiffs may not discover them unless it can show 'exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other

means.'"); *Monarch Knitting Mach. Corp. v. Sulzer Morat GMBH*, 1998 WL 338106, at *2 (S.D.N.Y. 1998) ("Under this rule, a consulting expert who will not testify at trial, 'is generally immune from discovery.'"); *Plymovent Corp. v. Air Tech. Solutions, Inc.*, 243 F.R.D. 139, 143 (D.N.J. 2007) ("Several policy considerations underlie the rule, including, (1) encouraging counsel to obtain necessary expert advice without fear that the adversary may obtain such information; (2) preventing unfairness that would result from allowing an opposing party to reap the benefits from another party's efforts and expense; [and] (3) preventing a chilling effect on experts serving as consultants if their testimony could be compelled."); *Mantolete v. Bolger*, 96 F.R.D. 179, 181 (D. Ariz. 1982) ("there is no need for a comparable exchange of information regarding non-witness experts who act as consultants and advisors to counsel regarding the course litigation should take.").

FIRST SUPPLEMENTAL RESPONSE: Plaintiffs' further object on the basis that it is not Plaintiffs burden to produce an alternative redistricting proposal that would comply with all constitutional requirements for Congressional reapportionment. That was (and continues to be) the responsibility of the State of Maryland. Plaintiffs are not required to present an alternative plan for Congressional reapportionment in order to receive the injunctive relief that they seek. *See Shapiro v. McManus*, --- F. Supp. 3d ---, 2016 WL 4445320, at *10-11 (D. Md. 2016) (discussing facts that Plaintiffs must prove at trial). As a consequence, this interrogatory is not relevant to any party's claim or defense and is not proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1).

Subject to and without waiving the foregoing objections, Plaintiffs respond as follows: Should the Court require Plaintiffs to produce an alternative redistricting proposal after entering a declaration in their favor, Plaintiffs will do so at the time designated by the Court.

INTERROGATORY NO. 7:

> Identify and state the facts concerning all acts by defendants, members of the General Assembly, members of the GRAC, and Governor O'Malley, taken either individually or as

any group, that you contend were done to punish, sanction, target or retaliate against the plaintiffs because of the plaintiffs' protected speech. For any act that you identify, please describe the act, the date the it occurred, the person who was targeted, the persons who took the act, and the protected First amendment activity you allege was the basis for any punishment, sanction, targeting or retaliation.

RESPONSE: Plaintiffs object to this interrogatory to the extent that it seeks the disclosure of information protected by the attorney-client privilege, work product immunity, or any other privilege or immunity. Plaintiffs also object to this interrogatory to the extent that it seeks the disclosure of information that is already in the possession, custody, or control of Defendants. Plaintiffs object to this request as overly broad and unduly burdensome as it seeks all facts regarding a particular contention. Plaintiffs further object to this request as vague and ambiguous to the extent that the terms "General Assembly," "Governor O'Malley," "punish," "sanction," "target," "retaliate," "protected speech," "punishment," and "retaliation" are undefined.

Further, contention interrogatories may not be used to require a party to set forth all factual information obtained in discovery regarding a particular topic. Defendants' interrogatories, "insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact—rather than, for example, certain principal or material facts, pieces of evidence, witnesses and legal applications—supporting the identified allegations, are overly broad and unduly burdensome." *Ritchie Risk-Linked Strategies Trading (Ireland) Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010); *see also Susquehanna Commercial Fin., Inc. v. Vascular Res., Inc.*, 2010 U.S. Dist. LEXIS 127125, at *25-37 (M.D. Pa. 2010) (denying motion to compel detailed responses to interrogatories requesting "all facts" supporting a particular contention, holding that defendants' demand for specific and "narrative response[s]" to contention interrogatories was "little more than a mark-work request. . . . since they do not only have the information, they have the written materials themselves.").

Moreover, Plaintiffs object to this interrogatory because it is an improper "blockbuster interrogatory" that "is overbroad and unduly burdensome on its face." *Bat v. A.G. Edwards & Sons, Inc.*, 2005 WL 6776838, at *3 (D. Colo. 2005). "[C]ourts have held that unnecessarily broad interrogatories, or 'blockbuster' interrogatories, which require a party to state every fact supporting all of its allegations, as well as identify each person with knowledge of each fact and all documents supporting each count, are impermissible." *HBC Fin. Corp. v. Kennedy*, 2016 WL 6216179, at *2 (S.D. Miss. 2016); *see also Nieman v. Hale*, 2013 WL 6814789, at *11 (N.D. Tex. 2013) (denying motion to compel response to "blockbuster" interrogatory); *Brasssell v. Turner*, 2006 WL 1806465, at *2 (S.D. Miss. 2006) (finding interrogatories overly broad an unduly burdensome where they sought an open-ended narrative that was not tailored in any way); *Gynberg v. Total S.A.*, 2006 WL 1186836, at *7 (D. Colo. 2006) (denying motion to compel answer to "blockbuster" interrogatory). "Indiscriminate use of blockbuster interrogatories, such as these, do not comport with the just, speedy, and inexpensive determination of an action. To require answers for them would more likely cause delay and unreasonable expense of time, energy, and perhaps money." *Hilt v. SFC, Inc*, 170 F.R.D. 182, 186-87 (D. Kan. 1997) (denying motion to compel interrogatory response).

Accordingly, Plaintiffs do not cite every document or fact responsive to this interrogatory. Instead, Plaintiffs will make a good faith effort to cite representative documents and facts that support their response. *See, e.g.*, *K.R.S. v. Bredford Cmty. School Dist.*, 2014 WL 11513167, at *3 (S.D. Iowa 2014) (Courts emphasize that '[c]ontention interrogatories should not require a party to provide the equivalent of a narrative account of the case.' . . . When faced with contention interrogatories with overly broad language, courts typically direct that an answer still be provided but narrow the scope of the needed response to the 'material' or 'principal' facts supporting a specific claim or defense.") (citations omitted).

In addition, Plaintiffs object to this interrogatory because "contention interrogatories are more appropriate after a substantial amount of discovery has been conducted." *Nestle Foods Corp. v. Aetna Cas. & Sur. Co.*, 135 F.R.D. 101, 110 (D.N.J. 1990); *see also In re Convergent Techs. Secs. Litig.*, 108 F.R.D. 328, 336 (N.D. Cal. 1985) ("the wisest general policy is to defer propounding and answering contention interrogatories until near the end of the discovery period."). Plaintiffs have not completed all discovery (fact and expert), their investigation of the facts, or its preparation for trial in this case, and therefore Plaintiffs reserve the right to rely on any legal theories, facts, documents, testimony, or evidence which may come to light during fact and expert discovery.

Subject to and without waiving the foregoing objections, Plaintiffs will supplement their answer to this interrogatory on January 16, 2017.

FIRST SUPPLEMENTAL RESPONSE: Subject to and without waiving the foregoing objections, Plaintiffs state that Defendants, GRAC members, and legislators have refused to produce documents regarding the intent and purpose of the 2011 Congressional Plan. As a result, Plaintiffs cannot fully answer this interrogatory. When Defendants and other current and former Maryland state officials duly produce the documents and testimony required by Plaintiffs' discovery requests, Plaintiffs will supplement this interrogatory response.

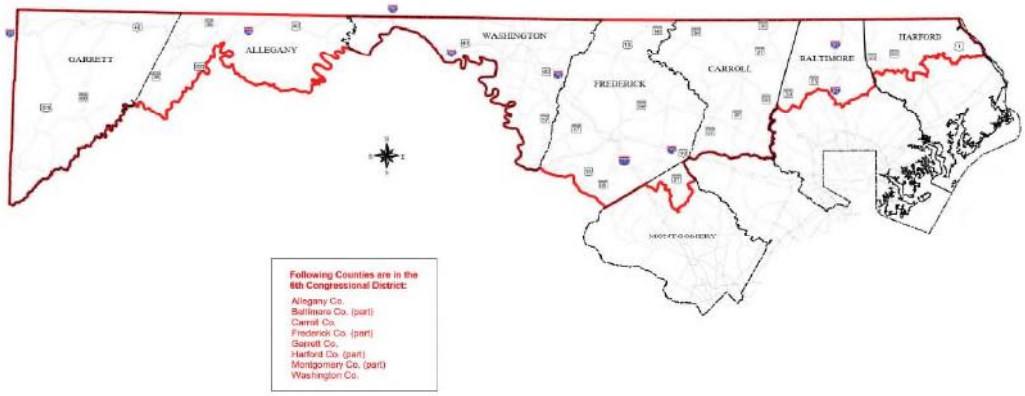
In addition, Defendants, legislators, legislative staffers, state agencies, and members of former Governor O'Malley staff failed to preserve documents and electronically stored information relevant to this litigation after they reasonably anticipated litigation regarding the 2011 Congressional Plan. As a result of this spoliation, Plaintiffs cannot fully answer this interrogatory.

To the extent that a further response is required:

1. Voters in the Sixth Congressional District Have Well-Established Conservative Political Views. Historically, Maryland's Sixth Congressional District has been reliably Republican.

In the 70 years between January 1943 and January 2013, the district was represented in Congress by members of the Republican Party in four out of every five years. Prior to the General Assembly's adoption of the 2011 Congressional Plan, the Sixth District had been Maryland's most Republican district, represented for nearly 20 years by Republican Roscoe Bartlett, who won reelection in 2010 by a 28-point margin. Under the 2001 redistricting map, the district included all of western Maryland and stretched across the northern border of Maryland to encompass other rural areas of the State.

2002 CONGRESSIONAL DISTRICT 6
(Senate Bill 805 May 6, 2002)



2. The GRAC and General Assembly Cracked Republicans in the Sixth Congressional District. Plaintiffs state that on July 4, 2011, former Maryland Governor Martin O'Malley appointed five members to the Governor's Redistricting Advisory Committee (GRAC). The five members of the GRAC were: (1) Committee Chair, Jeanne Hitchcock, who was Governor O'Malley's Secretary of Appointments and a Deputy Mayor of Baltimore, reporting to then-Mayor O'Malley; (2) Senate President Thomas V. Mike Miller, Jr., a Democrat; (3) Maryland House of Delegates Speaker Michael E. Busch, a Democrat; (4) James J. King, a former one-term member of the Maryland House of Delegates who served as a Republican, but was chosen without input from Republican leadership; and (5) Richard Stewart, a private business owner who chaired former

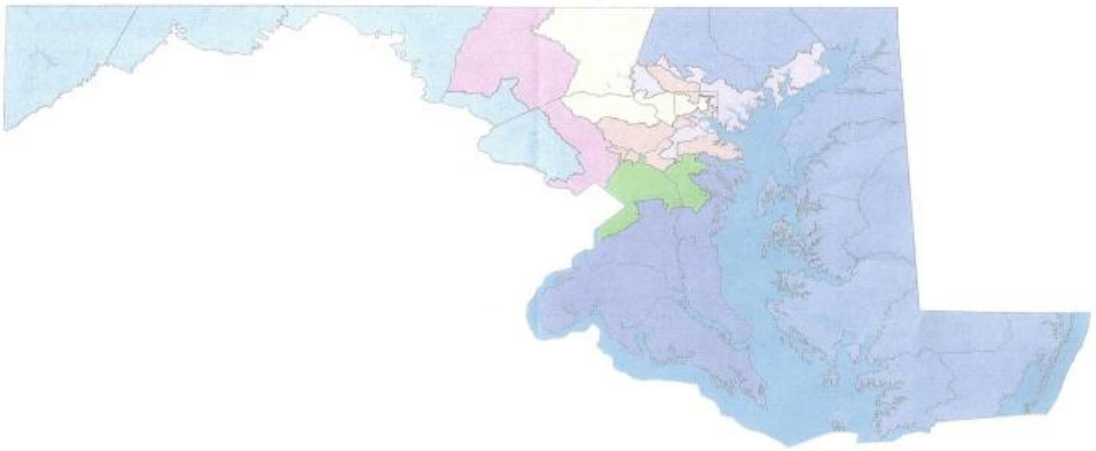
Governor O'Malley's 2010 re-election campaign in Prince George's County. As a consequence, four of the five members of the GRAC were either long-serving Maryland Democrats or advisors close to the then-Democratic governor.

The GRAC was tasked with drafting a recommended plan for Maryland's congressional redistricting in light of the 2010 census results. Although the GRAC held public hearings around the Maryland, these hearings were mere window dressing. All of the GRAC's public meetings were held before the GRAC released its draft Congressional map to the public and none were held after. In addition, several public hearings were held at times when many citizens interested in the redistricting process could not attend.

In fact, the GRAC's plan was developed in secret by the four Democratic members of the GRAC with the assistance of a cadre of senior aides to Governor O'Malley, Senate President Thomas V. Mike Miller, Jr., and Speaker Michael E. Busch. Many of these senior aides had access to the GRAC's draft Congressional Plan before it was made public, including: Patrick Murray, a former legislative aide to Senate President Thomas V. Mike Miller, Jr.; Yaakov Weissman, a legislative aide to Senate President Thomas V. Mike Miller, Jr.; Jeremy Baker, a legislative aide to Maryland House of Delegates Speaker Michael E. Busch; and Joseph E. Bryce, an aide to former Governor Martin O'Malley.

The GRAC and these aides used data reflecting citizen's voting history and party affiliation for the purpose of making it harder for Republican voters in western Maryland to achieve electoral success because of the views they had previously expressed. These aides and the Democratic GRAC members had access to Maryland voter registration data, including information regarding party registration, voting histories, and the precinct-level data regarding the percentage of voters that that voted for the Republican and Democratic candidates in the 2008 presidential election and 2010

Maryland gubernatorial election. Using this data, aides to Senate President Miller drafted four proposed Congressional maps. These maps known colloquially as Option 1, Option 2, Option 3, and Option 4 were considered by the GRAC. Information regarding the percentage of voters that that voted for the Republican and Democratic candidates in the 2008 presidential election and 2010 Maryland gubernatorial election were appended to these maps. For example, for Option 1, which was also known as "Dem Option 1," the following information was provided to Democratic GRAC members and Democratic members of the Maryland General Assembly:



Dem Option 1

District	Population	Deviation	% Deviation	G10G_D	G10G_RV	G08P_DV	G08P_RV	18+_Pop	18+_Blk	% 18+_Blk
1	722065	371	0.000514068	93013	176616	139193	209337	559239	63397	0.113363
2	721123	-571	-0.000791194	121473	99935	185510	117093	553000	168680	0.305027
3	721470	-224	-0.000310381	133567	103857	196217	120281	565950	111183	0.196454
4	721930	236	0.000327008	148856	37612	247254	51041	548434	297335	0.542153
5	721940	246	0.000340865	153198	100779	227200	131033	544369	191449	0.35169
6	722232	538	0.000745468	101301	76761	163358	95310	553504	62046	0.112097
7	721841	147	0.000203687	140759	83701	229847	96958	549287	276236	0.502899
8	720951	-743	-0.001029522	146852	84099	225830	110345	546805	85726	0.156776

In the above chart, "District" refers to the eight Congressional districts in Maryland; G10G_D refers to the number of votes cast for the Democratic candidate in the 2010 Maryland

Gubernatorial election; G10G_RV refers to the number of votes cast for the Republican candidate in the 2010 Maryland Gubernatorial election; G08P_DV refers to the number of votes cast for the Democratic candidate in the 2008 Presidential election; and G08P_RV refers to the number of votes cast for the Republican candidate in the 2008 Presidential election. The GRAC, key aides to the GRAC, and the General Assembly thus explicitly considered the voting histories and party affiliations of Republican voters in western Maryland.

As shown in the map below, "Dem Option 1" became the basic blueprint of the GRAC's draft plan and the plan that was ultimately approved by the General Assembly. Like the draft and final plans, Dem Option 1 added heavily Democratic portions of Frederick, Maryland and western portions of Montgomery County to Maryland's Sixth Congressional District.

More specifically, the GRAC cracked the effective Republican majority in the old Sixth District by removing over 360,000 residents from mostly-Republican northern counties of the district and adding nearly 350,000 residents from predominantly Democratic and urban Montgomery

County. In particular, the Congressional Plan removed from the Sixth District all of Carroll County, which had voted 68% Republican and 27% Democratic in the previous congressional election. The removal of Carroll County generated a loss of 24,000 registered Republican voters from the Sixth District. The Congressional Plan also moved specific, majority-Republican precincts of Frederick County to Maryland's Eighth Congressional District, while leaving the majority-Democratic precincts of the county in the Sixth District. The Frederick County precincts that remained in the Sixth District contained over 6,000 more registered Democrats than registered Republicans. The opposite pattern is true with regard to the transfer of voters from Montgomery County. Of the Montgomery County precincts that were added to the Sixth District by the Congressional Plan, registered Democrats outnumbered registered Republicans by a two-to-one margin. Moving these cherry-picked portions of Montgomery County into the Sixth District generated a gain of tens of thousands of Democratic voters. In total, the Congressional Plan accomplished a net transfer of over 65,000 Republican voters out of the Sixth District and over 30,000 voters into the district. As a result, whereas Republican voters had comprised 47% of all voters in the Sixth District before the Congressional Plan, they comprise just 33% of the Sixth District after the Congressional Plan.

In redrawing the boundaries of the Sixth District, the GRAC and their aids, the Governor and his aides, and the Maryland General Assembly on their aides were motivated by a specific intent to burden Republican voters in Western Maryland. "[I]t is not a well-kept secret that the plan for the sixth congressional district was developed for the purpose of disadvantaging an incumbent Republican legislator." *Fletcher v. Lamone*, 831 F. Supp. 2d 887, 905-06 (D. Md. 2011). Contrary to their position in this litigation, the Office of Attorney General has admitted that:

- "The [Congressional] Plan the product of the careful consideration of a variety of . . . principles, including . . . partisan considerations." State's Opening Summary Judgment Brief

at 41, *Fletcher v. Lamone*, No. 11-cv-3220-RWT (D. Md.).

- "[T]he plan was driven, to a large extent, by the desire to make an additional district more politically competitive while protecting the other current incumbents." *Id.* at 42.
- The Governor, the GRAC, and the General Assembly "all considered and gave effect to a variety of . . . considerations . . . [including] partisan political considerations." State's Reply Brief in Support of Summary Judgment at 18, *Fletcher v. Lamone*, No. 11-cv-3220-RWT (D. Md.).

In an October 31, 2012 speech at the Community College of Baltimore County, Essex Campus, the then-Attorney General of Maryland, Douglas Gansler, provided a frank admission that the 2011 Congressional Plan was designed to burden Republican voters in the Old Sixth District:

> The third issue is redistricting. And the redistricting is interesting because I actually have to defend the legislature in its drawings of the map. . . . So many people have a problem with the way in which the state was gerrymandered this last time. For example, in the Sixth District . . . Garrett County, Maryland, a very rural, agrarian part of the state is couple with Potomac, Maryland in Montgomery County, which is perhaps the most wealthy and lest agrarian part of the state. And, yet, they are voting for the same representative in the election between Roscoe Bartlett, a long-time Congressman, and John Delaney, sort of a new-comer on the political scene. . . . So, what happened, we have eight congressional districts, . . . the Democrats had the ability . . . to look at the state gerrymandered in such a way to make it 7 [Democratic representatives] to 1 [Republican representative]. . . . They were looking do they want to make the Eastern Shore, try that again, to make it even more Democratic and make that the seventh Democratic district, or Western Maryland. They chose Western Maryland, and its actually a 53% Democratic district.

https://www.youtube.com/watch?v=kZHVOvB8fBY. Attorney General Gansler went on to explain that even if the boundaries of the Sixth Congressional District were thrown out, the Democratic General Assembly would simply burden Republicans in the Sixth District once again:

> But the long shot of that is, even if [the Congressional Plan] gets overturned, the Democratic legislature will just go back in January redraw the lines, and they can draw essentially the same lines again.

Id.

The Attorney General was not the only senior Maryland Democrat who out-rightly confessed a specific intent to burden Republican voters in the Sixth Congressional District. Prior to the Congressional Plan being announced to the public, Democratic Senator Richard Madaleno made the following statements in a series of taped interview on September 13, 2011:

> What you see going on elsewhere is clearly in other states that are Republican controlled they are drawing maps to try to take out Democrats, so I think there is pressure on saying look, if they are playing that game elsewhere, then in states like Maryland where Democrats control we've got to do the opposite.
>
> * * *
>
> This is a conflict between, what you could say, the heart and the mind of the Democratic party. The heart is 'Frank Kratovil had that seat [the First District] before, Frank Kratovil won before, he made hard votes on behalf of Barrack Obama, we should find a way to reward our friend Frank Kratovil.' The head is telling you, 'Look, Western Maryland, a new district focused toward western Maryland is one that you could actually pick up easier. . .' Do you reach out and help your good old friend Frank Kratovil, or do you go where, in fact, you probably have a better chance at a pick up.
>
> * * *
>
> If you go with a competitive Western Maryland district, the way that works is clearly the district comes further into Montgomery County, substantially into Montgomery County.
>
> * * *
>
> I think trying to achieve both [goals] makes it a little more difficult for everyone trying to draw the maps. But you're dealing with—one of the things that's interesting is—you're dealing with people like Mike Miller or some of the staff of the legislature who have done this several cycles, so it's not like they are a bunch of people experimenting for the first time on how to do this.

Donna Edwards, a democratic representative from the Fourth District, stated on October 11, 2011 in referenced to the Congressional Plan: "I have been one of the strongest proponents as a Democrat of drawing a seventh district for Democrats. But we can accomplish that in a different way . . . Where I have a real disagreement is in making superior the political interests to minority voting rights interests."

A week later, on October 18, 2011, on the floor of the Maryland Senate, Senator C. Anthony Muse stated:

> [L]et's just be frank. As it stands, the plan dilutes minorities, minority power and parcels out minority populations—voters—to other very different communities in order to strengthen the chances of a Democrat being elected.
>
> * * *
>
> Yes, the party walks away with maybe seven seats, but what do our minority populations walks away with?
>
> * * *
>
> I cannot support this map. It may well like up to the letter of the law, but surely not the spirit of the law nor the spirit of the democratic process. I think minorities lose with this map. Yes, the party gains. But honestly I believe the people, not the party, are the losers.

On the same day, Senator Jamie Raskin, also spoke from the Senate floor:

> [T]his is not a Maryland problem with redistricting and gerrymandering. It's an American problem. All across America, people are complaining about extremely spliced and diced, curvy, swervy districts, where elected officials choose voters before voters choose elected officials. That's the system we've got in 50 states today, in the United States. And it's a process where we dress up partisan and political ambition on both sides of the aisle in high principal, but we can all tell what's really going on. * * *
>
> To my distinguished colleagues on the other side of the aisle, the disappointment that they feel today is shared by Democrats in North Carolina, a state won by President Obama in 2008, which just had districts redrawn, ten majority Republican, three majority Democrat, with all the Democrats packed in there. In Ohio, a state that was won by the President Obama in 2008, 12 majority Republican districts have been drawn, four majority Democratic districts have been drawn. So they've gone way beyond anything that's been seen here. The basic problem is that we are trying to build a whole range in multiplicity of interest and factors into these single member districts, and we now have the convenience of computer technology to be able to accomplish very strange looking figures on the map.

On the floor of the House of Delegates, Delegate Emmett C. Burns, Jr. stated that he supported the Congressional Plan because it meant "more Democrats in the House of Representatives." Likewise, Democratic Speaker Michael Busch said of the Plan, "I think you will have a

very competitive 6th District when you didn't have that in the past."

Democratic Delegate Curt Anderson described an October 3, 2011 briefing given by GRAC Chair Jeanne Hitchcock about the redrawn Sixth District: "It reminded me of a weather woman standing in front of the map saying, 'Here comes a cold front,' and in this case the cold front is going to be hitting Roscoe Bartlett pretty hard." Furthermore, in an October 17, 2011 interview, Delegate Anderson stated, "What we're doing is we are trying to get more, in terms of—currently we have two Republican districts and six Democratic Congressional districts and we're going to try to move that down to seven and one, with the additional Congressional district coming out of Montgomery County and going into Western Maryland that would give the Democrats more."

On November 7, 2011, Democratic Senator Jamie Raskin explained of the redistricting process: "Democrats control the redistricting process in Maryland" and exercising that control, they "hoped to pick up a seventh House seat through redistricting."

In a letter dated October 20, 2011, Attorney General Douglas Gansler stated: "As indicted by those who participated in developing and adopting the redistricting plan, including the [GRAC], the Governor, and the General Assembly, the boundaries of the newly adopted Congressional districts reflect a number of considerations, including . . . partisan consideration."

GRAC members openly acknowledged that their intent was to crack the Sixth District. For example, GRAC member Michael Busch, the Maryland House Speaker, said: "I think the numbers will show that [the Congressional Plan] makes [the Sixth District] pretty competitive," in favor of Democrats, where as it previously was a safely Republican district. GRAC Chair Jeanne Hitchcock confirmed that purpose, noting that the Sixth District was now "dominated" by the Democratic voters in Montgomery County.

3. The GRAC and General Assembly's Specific Intent to Crack Republicans in the

Sixth District Was Successful in Changing the Outcome of Congressional Elections under the Plan. The Republican vote dilution in the Sixth District brought about by the 2011 Congressional Plan was sufficiently serious to produce a demonstrable and concrete adverse effect on Republican voters' right to have an equally effective voice in the election of a representative. Democrat John Delaney defeated Roscoe Bartlett in the election for representative to the United States Congress for the Sixth District by a 20.9% margin in 2012. He has won reelection in each election since. Moreover, as Plaintiffs will show in their forthcoming expert reports, by several statistical measures the 2011 Congressional Plan seriously diluted the votes of Republicans in the Sixth District and impaired those voters from having an equally effective voice in future congressional elections. And the Plan's dilutive effect cannot be explained by compliance with legitimate redistricting criteria, such as respect for existing communities of interest.

INTERROGATORY NO. 8:

> State all facts upon which you rely for your contention that the 2011 Maryland redistricting plan has discouraged voters in Maryland from casting votes, actively campaigning for their chosen candidates, or otherwise participating in the political process.

RESPONSE: Plaintiffs object to this interrogatory to the extent that it seeks the disclosure of information protected by the attorney-client privilege, work product immunity, or any other privilege or immunity. Plaintiffs object to this interrogatory to the extent that it calls for the premature, non-reciprocal disclosure of expert reports in violation of the Court's scheduling order. Plaintiffs also object to this interrogatory to the extent that it seeks the disclosure of information that is already in the possession, custody, or control of Defendants. Plaintiffs object to this request as overly broad and unduly burdensome as it seeks all facts regarding a particular contention. Plaintiffs further object to this request as vague and ambiguous to the extent that the terms "discouraged," "actively campaigning," and "otherwise participating in the political process" are undefined.

Further, contention interrogatories may not be used to require a party to set forth all factual

information obtained in discovery regarding a particular topic. Defendants' interrogatories, "insofar as they seek every fact, every piece of evidence, every witness, and every application of law to fact—rather than, for example, certain principal or material facts, pieces of evidence, witnesses and legal applications—supporting the identified allegations, are overly broad and unduly burdensome." *Ritchie Risk-Linked Strategies Trading (Ireland) Ltd. v. Coventry First LLC*, 273 F.R.D. 367, 369 (S.D.N.Y. 2010); *see also Susquehanna Commercial Fin., Inc. v. Vascular Res., Inc.*, 2010 U.S. Dist. LEXIS 127125, at *25-37 (M.D. Pa. 2010) (denying motion to compel detailed responses to interrogatories requesting "all facts" supporting a particular contention, holding that defendants' demand for specific and "narrative response[s]" to contention interrogatories was "little more than a mark-work request. . . . since they do not only have the information, they have the written materials themselves.").

Moreover, Plaintiffs object to this interrogatory because it is an improper "blockbuster interrogatory" that "is overbroad and unduly burdensome on its face." *Bat v. A.G. Edwards & Sons, Inc.*, 2005 WL 6776838, at *3 (D. Colo. 2005). "[C]ourts have held that unnecessarily broad interrogatories, or 'blockbuster' interrogatories, which require a party to state every fact supporting all of its allegations, as well as identify each person with knowledge of each fact and all documents supporting each count, are impermissible." *HBC Fin. Corp. v. Kennedy*, 2016 WL 6216179, at *2 (S.D. Miss. 2016); *see also Nieman v. Hale*, 2013 WL 6814789, at *11 (N.D. Tex. 2013) (denying motion to compel response to "blockbuster" interrogatory); *Brasssell v. Turner*, 2006 WL 1806465, at *2 (S.D. Miss. 2006) (finding interrogatories overly broad an unduly burdensome where they sought an open-ended narrative that was not tailored in any way); *Gynberg v. Total S.A.*, 2006 WL 1186836, at *7 (D. Colo. 2006) (denying motion to compel answer to "blockbuster" interrogatory). "Indiscriminate use of blockbuster interrogatories, such as these, do not comport with the just,

speedy, and inexpensive determination of an action. To require answers for them would more likely cause delay and unreasonable expense of time, energy, and perhaps money." *Hilt v. SFC, Inc*, 170 F.R.D. 182, 186-87 (D. Kan. 1997) (denying motion to compel interrogatory response).

Accordingly, Plaintiffs do not cite every document or fact responsive to this interrogatory. Instead, Plaintiffs will make a good faith effort to cite representative documents and facts that support their response. *See, e.g.*, *K.R.S. v. Bredford Cmty. School Dist.*, 2014 WL 11513167, at *3 (S.D. Iowa 2014) (Courts emphasize that '[c]ontention interrogatories should not require a party to provide the equivalent of a narrative account of the case.' . . . When faced with contention interrogatories with overly broad language, courts typically direct that an answer still be provided but narrow the scope of the needed response to the 'material' or 'principal' facts supporting a specific claim or defense.") (citations omitted).

In addition, Plaintiffs object to this interrogatory because "contention interrogatories are more appropriate after a substantial amount of discovery has been conducted." *Nestle Foods Corp. v. Aetna Cas. & Sur. Co.*, 135 F.R.D. 101, 110 (D.N.J. 1990); *see also In re Convergent Techs. Secs. Litig.*, 108 F.R.D. 328, 336 (N.D. Cal. 1985) ("the wisest general policy is to defer propounding and answering contention interrogatories until near the end of the discovery period."). Plaintiffs have not completed all discovery (fact and expert), their investigation of the facts, or its preparation for trial in this case, and therefore Plaintiffs reserve the right to rely on any legal theories, facts, documents, testimony, or evidence which may come to light during fact and expert discovery.

Subject to and without waiving the foregoing objections, Plaintiffs will supplement their answer to this interrogatory on January 16, 2017.

FIRST SUPPLEMENTAL RESPONSE: Plaintiffs further object that they are not required to show that Republican voters were chilled from registering to vote, nor are they required to identify

each such Republican voter. *See Shapiro v. McManus*, --- F. Supp. 3d ---, 2016 WL 4445320, at *10-11 (D. Md. 2016) (discussing facts that Plaintiffs must prove at trial). As a consequence, this interrogatory is not relevant to any party's claim or defense and is not proportional to the needs of the case. Fed. R. Civ. P. 26(b)(1).

Subject to and without waiving the foregoing objections, Plaintiffs state that to the extent that a further response is required, after the 2011 Congressional Plan was adopted, voters in Maryland's Sixth District were chilled from participating in the political process, including registering to vote, voting, and/or supporting Republican candidates because they believed that their votes did not matter and their candidates did not have a reasonable chance of winning due to the cracking of Republicans in the former Sixth District.

More specifically, the dilution of Republican's voters in Maryland has chilled and manipulated political participation since 2011. Gerrymanders that "pack" or "crack" votes chill political participation because objectively reasonable voters in such manipulated districts understand that their votes "will not count" because they cannot affect the outcome. Such voters also understand that other like-minded voters' votes "will not count" and thus are less likely to participate actively in campaigning for their chosen candidates.

Vote "cracking" chills political speech in an even more pernicious way in Maryland because Maryland employs a closed primary registration system. For a voter to participate in a particular political party's primary, the voter must be a registered member of that party. Registered Republicans cannot participate in Democratic primaries, and registered Democrats cannot participate in Republican primaries. In districts where the Democratic Party's candidate is very likely to win the general election, the only real opportunity to influence what person is ultimately elected is the Democratic primary race. Under the closed primary system, residents must register as members of

the Democratic party in order to vote in the Democratic primary.

In addition, the Congressional Plan chilled participation in general elections. Objectively reasonably voters who feel that the outcomes of elections are preordained by the legislature's map-drawing are discouraged from casting their votes or engaging in the political process at all.

Dated: January 16, 2016

/s/ *Michael B. Kimberly*

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NCEC SERVICES

NCEC Services is a Washington, DC-based political consulting firm founded in 1985. It specializes in electoral analysis, campaign strategy, political targeting, and GIS services.

For more information, please email info@ncecservices.com.

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EXHIBIT
Hawkins 52
3/3/17 SIC
PENGAD 800-631-6989

Subject: Re: meeting next wek
From: Brian Romick <brianromick@gmail.com>
Date: 3/8/2011 10:46 AM
To: jason.gleason03@gmail.com

Eric Hawkins is drawing the maps and Mark Gersh is the boss

On Tue, Mar 8, 2011 at 10:24 AM, <jason.gleason03@gmail.com> wrote:
What was the name of the other guy at NCEC? Eric and ?

Sent from my Verizon Wireless BlackBerry

From: Brian Romick <brianromick@gmail.com>
Date: Thu, 24 Feb 2011 18:12:39 -0500
To: <jason.gleason03@gmail.com>
Subject: Re: meeting next wek

Cummings asked us to move the meeting, we are going to try for after votes on Monday, which I think may actually be better

On Thu, Feb 24, 2011 at 6:10 PM, <jason.gleason03@gmail.com> wrote:
That's what I thought. Thanks.

Sent from my Verizon Wireless BlackBerry

From: Brian Romick <brianromick@gmail.com>
Date: Thu, 24 Feb 2011 18:09:40 -0500
To: Jason Gleason<jason.gleason03@gmail.com>
Subject: Re: meeting next wek

Other than the map drawing guy, my understanding from Hoyer is that he wants no staff

On Thu, Feb 24, 2011 at 5:55 PM, Jason Gleason <jason.gleason03@gmail.com> wrote:

Brian,

Is staff barred from the entire meeting next week? I know Hoyer said something about this but wasn't sure if he meant the whole thing or just a part of it.

During the previous round of redistricting, my colleagues and I developed open-source, web-accessible redistricting software called DistrictBuilder.[1] We deployed this software in Arizona, Minnesota, Michigan, Ohio, New York, Virginia, and the city of Philadelphia to support redistricting advocacy. As an open-source application others were free to use it, which occurred in Contra Costa County, California and Burlington, Vermont.

I am compensated at a rate of $280 an hour for my work on this report. I have no financial interest in the outcome of this litigation and the opinions that I offer here are in no way dependent upon my compensation.

Materials Considered In This Report

The opinions expressed in this report are based on my review of this information as well as my training and experience. In the production of this report, I have reviewed the following information:

- The Census Bureau's geographic boundary files, which include the census block assignments of the prior, benchmark congressional districts.[2]
- The block assignments for the adopted Maryland congressional districts.
- 2010 census population data adjusted by Maryland for the location of prisoners.[3]
- 2010 voter registration data by precinct and corresponded to census geography, produced in discovery for this case.
- A map of Montgomery County's 2007 precincts to address unassigned census geography in the 2010 voter registration data.[4]
- County and precinct results for the following elections: 2016 President, 2016 U.S. Senate, 2016 U.S. House, 2014 Governor, 2014 Comptroller, 2014 Attorney General, 2014 U.S. House, 2012 President, 2012 U.S. Senate, 2012 U.S. House.
- To apportion voter registration data to census blocks, I use the National Land Coverage Database to improve allocation by identifying where dwellings are located.[5]

Details of how these data were combined to produce statistics and maps presented in this report are provided in the methodology appendix. I understand that certain materials bearing on my conclusions may be produced at later stages of this case. I expect to have the opportunity to review those materials and reserve the right to revise my report and opinions, if necessary.

[1] See: www.districtbuilder.org
[2] See: https://www.census.gov/rdo/about_the_program/public_law_94-171_requirements.html
[3] For census block assignments for Maryland's congressional districts and Maryland's prison-adjusted population data are available see: http://planning.maryland.gov/redistricting/2010/dataDownload.shtml.
[4] See: http://web.archive.org/web/20100528043305/http://www.montgomerycountymd.gov/eletmpl.asp?url=/Content/Elections/electionMapsNEW.asp.
[5] See: https://www.mrlc.gov/nlcd2011.php.

Summary

I have been retained by the Plaintiffs in this action to address the following questions:

1) Whether Maryland's 2011 Congressional Plan resulted in vote dilution that was sufficiently serious to produce a demonstrable and concrete adverse effect on a group of voters?
2) Whether the Maryland General Assembly or its mapmakers specifically intended to burden the representational rights of certain citizens because of how they voted in the past and the political party with which they had affiliated?
3) Whether the lines of the Sixth Congressional District would have been drawn as they were but for the map drawer's and General Assembly's consideration of partisan goals to the detriment of traditional redistricting principles?

With respect to the first question, the evidence is incontrovertible that Maryland's adopted Sixth Congressional District was drawn in a manner that has the effect of diminishing the ability of registered Republican voters to elect candidates of their choice compared to the previous, benchmark district. This vote dilution had a concrete impact on electoral outcomes because Republican voters in the adopted district have, as a consequence, been unable to elect a candidate of their choice.

With respect to the second question, it is my opinion that Maryland's adopted Sixth Congressional District was drawn in an intentional manner to affect the ability of registered Republicans to elect candidates of their choice compared to the previous, benchmark district.

With respect to the third question, it is my opinion that paying due respect to traditional redistricting principles, a clearly superior alternative district exists that would produce a Sixth Congressional District that would not impair as greatly the ability of registered Republicans to elect candidates of their choice. It is my opinion that, but for consideration of partisan goals – aided by map drawers' use of party registration and voting history data—the lines of the adopted district would not have been drawn as they were, and the ability of registered Republican voters to elect candidates of their choice would not have been so substantially diminished.

Methodology

I determine whether vote dilution of Republicans occurred with respect to Maryland's manipulation of the Sixth Congressional District in a manner similar to that used in voting rights litigation. This approach is drawn from my previous experience as an expert witness in voting rights litigation. Most recently, I was the plaintiff's only expert witness in *Page v. Virginia State Board of Elections*, where a federal three-judge panel found Virginia's Third Congressional District to be an unconstitutional racial gerrymander. The U.S. Supreme Court affirmed this decision.

The approach typically used in voting rights litigation includes the following steps, which closely mirror the questions Plaintiff's counsel has asked me to address:

1) First, establish the presence of racially polarized voting. Do individuals of one group reliably vote against the candidate of choice of another group?
2) Second, determine if the disfavored group's ability to elect a candidate of their choice was diminished by district lines that had an effect of diluting their vote. When assessing patterns of polarized voting and vote dilution, experts typically give more weight to *endemic* elections—those held for the office under examination, in this case the U.S. House elections to the Sixth Congressional District—than other *exogenous* elections.
3) Third, probe a redistricting authority's intent by determining whether any other reasonable discretionary criteria explain the shape of the district.

I apply this methodology to assess the effect of the 2011 redistricting on the Sixth Congressional District:

1) I find that Republican and Democratic voters have different preferences over candidates running as Republicans and Democrats. This is unsurprising given the United States' current polarized political environment.
2) I find that on balance, the current Sixth Congressional District has the effect of diluting the vote of Republicans. In the ten recent elections that I analyzed, Republicans were able to elect a candidate of their choice in only one election. For the endemic elections, Republicans were unable to elect a candidate of their choice in any congressional election in the current Sixth Congressional District.
3) I explore the intentionality by examining how well the Sixth Congressional District followed traditional redistricting principles of minimizing county splits and compactness. I find multiple violations of these traditional redistricting principles that appear to be politically motivated. Districts are not drawn in isolation to others. The adopted Sixth Congressional District is bordered by only one other district, the Eighth Congressional District. I further analyze the detrimental impact of configuring the Sixth Congressional District on traditional redistricting principles to the Eighth Congressional District. I show how the Sixth and Eighth Congressional Districts can better follow traditional redistricting principles in a manner that does not dilute Republican votes and does not affect any other congressional districts.

Factual Background

The U.S. House of Representatives has 435 members. Seats in the U.S. House of Representatives are apportioned according to population after each U.S. Census. After the 2000 Census, Maryland was entitled to eight representatives in the U.S. House of Representatives; after the 2010 Census, Maryland was again entitled to eight representatives.[6]

On July 4, 2011, Maryland Governor Martin O'Malley appointed the five members of the Governor's Redistricting Advisory Committee, or GRAC. The members of the GRAC were: (1) Jeanne D. Hitchcock, the Governor's Appointments Secretary; (2) Democratic Delegate and

[6] My recitation of the factual background is taken from the parties' Joint Stipulations of Law and Fact, Dkt. No. 104.

Speaker of the Maryland House of Delegates, Michael E. Busch; (3) Democratic Senator and President of the Maryland Senate, Thomas V. Mike Miller, Jr.; (4) Richard Stewart, a private business owner who chaired Governor O'Malley's 2010 reelection campaign in Prince George's County, Maryland; and (5) former Maryland Delegate James J. King, who was the only Republican appointed to the GRAC. The GRAC announced its proposed congressional map on October 4, 2011.

On October 15, 2011, Governor O'Malley announced that he would submit to the Maryland Legislature a congressional map that was the same as the map proposed by the GRAC. On October 17, 2011, Senate President Miller introduced Senate Bill 1 on behalf of the governor at a special legislative session. The Maryland Senate passed Senate Bill 1 on October 18, 2011. After technical amendments, the Maryland House of Delegates passed the bill on October 19, 2011. The Senate concurred in the House of Delegates' technical amendments, and the Governor signed Senate Bill 1 into law on October 20, 2011. No Republican member of the Maryland Senate or Maryland House of Delegates voted for Senate Bill 1 in committee or on the floor in recorded roll call votes.

The Benchmark and Adopted Sixth Congressional District

Before addressing directly the questions I pose, I wish to provide context by describing the political and geographic character of the Sixth Congressional District as it existed prior to the prior redistricting—what I call the benchmark district—and how it exists currently.

The facts are that Maryland's benchmark Sixth Congressional District was a predominantly Republican district, and composed of predominantly rural communities located along Maryland's Pennsylvanian border. The adopted district is a predominantly Democratic district that subsumes Republican rural communities in Maryland's panhandle by swapping some Republican rural communities previously in the district with predominately Democratic urban portions of Montgomery County not previously in the district.

Party Registration of the Benchmark and Adopted Sixth Congressional District

	Benchmark		Adopted		Change
	Number	**Percent**	**Number**	**Percent**	**Number**
Democrats	159,661	35.8%	184,120	44.8%	+24,460
Republicans	207,966	46.7%	141,548	34.4%	-66,417
No Party	77,892	17.5%	85,535	20.8%	+7,643
Total	445,518	100.0%	411,203	100.0%	-34,315

Table One. Party Registration in Maryland's Sixth Congressional District

The changing political character of the Sixth Congressional District is described in Table One, where I present party registration statistics as of the 2010 general election for the benchmark and adopted Sixth Congressional District. The summary statistics in Table One were generated using party registration data provided by Maryland to Plaintiffs in the course of discovery for the case.

In the first and second columns of Table One, I present party registration statistics for the benchmark Sixth Congressional District. The benchmark district was predominantly Republican in character, with 46.7% of the voters registering with the Republican Party, 35.8% registered with the Democratic Party, and 17.5% registered with neither party.

In the third and fourth columns of Table One, I present party registration statistics for the adopted Sixth Congressional District. The adopted district is predominantly Democratic in character, with 34.4% of voters registered with the Republican Party, 44.8% registered with the Democratic Party, and 20.8% registered with neither party.

The fifth column reveals how this dramatic change to the Sixth Congressional District occurred. In the course of redrawing the district, 66,417 registered Republicans were removed from the district and 24,460 registered Democrats were added to the district. These changes were wrought on a district that could have reasonably been immune to substantial changes: the benchmark district was located in the northwest corner of the state and needed only to shed 10,189 total population—among whom are children and other unregistered voters—in order to reach population equality.

The Benchmark Sixth Congressional District

In Figure One, I present a map of Maryland's Sixth Congressional District as it existed prior to the post-2010 redistricting. (All Figures are provided at the end of my report.) The district was located in the northwest portion of Maryland. The benchmark district included all of Maryland's panhandle, including the counties of Garrett, Allegany, Washington, Frederick, and Carroll. The district included a small portion of northeast Montgomery County, and the northern portions of Baltimore and Harford counties. The benchmark Sixth Congressional District was largely rural in character, with the largest population centers being the cities of Frederick, Hagerstown, and Cumberland.[7]

The shape of any Western Maryland district is heavily influenced by the non-compact shape of the panhandle. That said, the boundary of the benchmark Sixth Congressional District adjacent to other districts followed a relatively regular division of the state, composed primarily of the northwest portion of the state.

Figure Two shows how partisans were distributed across Maryland and its benchmark congressional districts, using the 2010 party registration data provided by Maryland to Plaintiffs. The lowest level of geography available to display party registration is the voting-tabulation district (VTD). Voting-tabulation district is a term used by the Census Bureau to describe precincts, wards, and election districts, among the many names used by states and localities. I use the term VTD to describe Maryland's precincts since this is the most accurate term to describe the data presented in Figure Two and elsewhere. Please see the methodology appendix for more information.

In Figure Two, VTDs are represented by light grey lines, and the benchmark districts are represented by thick black lines. VTDs are shaded by the partisan registration of 2010 general

[7] The Census Bureau identifies cities as census places, which are highlighted in grey in Figure 1.

election voters. VTDs that are shaded darker red are more Republican-leaning and those shaded darker blue are more Democratic-leaning by lighter colors, with least Republican-leaning areas shaded yellow and Democratic-leaning areas shaded light blue.

Figure Two illustrates the rural and Republican character of the Sixth Congressional District. Because VTDs are roughly of equal population size, larger VTDs are generally indicative of rural areas, and smaller VTDs are indicative of urban areas. The benchmark Sixth Congressional District was largely rural in character, encompassing the mountainous panhandle and rural areas along the state's northern border with Pennsylvania. These rural areas are also predominantly Republican. There were three Democratic-leaning areas of the benchmark Sixth Congressional District: the cities of Cumberland (where there are a couple of slightly leaning Democratic VTDs), Hagerstown, and Frederick.

The Adopted Sixth Congressional District

Figure Three presents the adopted Sixth Congressional District. The adopted Sixth Congressional District retained Garret, Allegany, and Washington counties, largely located in the panhandle. The adopted Sixth Congressional District no longer includes predominantly rural portions of Carroll, Baltimore, and Horford counties. The district now splits Frederick County, by removing the predominantly rural portions of the county. The district continues to split Montgomery County, although the small predominantly rural portion of northeast Montgomery County formerly in the benchmark Sixth Congressional District is removed and the adopted district extends further southeast into urban areas that include Gaithersburg and its surrounding environs.

Party registration statistics for the adopted Sixth Congressional District are presented in the third and fourth columns of Table One. The adopted district is predominantly Democratic in character, with 34.4% of the voters registering with the Republican Party, 44.8% registered with the Democratic Party, and 20.8% registered with neither party.

Is Voting in Maryland's Sixth Congressional District Partisan Polarized?

The typical approach to addressing the question of racially polarized voting in the voting rights context is to conduct what is known as a racial bloc voting analysis, which essentially correlates populations and election outcomes within precincts. In the context of partisan polarized voting, I might correlate party registration statistics with election outcomes. This option is challenged due to lack of data availability. I only have precinct-level party registration statistics for the 2010 general election voters, which Maryland provided through discovery; I do not have statistics for subsequent elections for which I might wish to correlate party registration and election results.

Fortunately, there is another approach that can be used to analyze patterns of politically polarized voting: survey data. In voting rights cases, survey data is typically unavailable for the various elections of interest. Here, a large-sample academic election survey, called the Cooperative Congressional Election Study (CCES), sheds light on the partisan polarized voting within the Sixth Congressional District.[8]

[8] The Cooperative Congressional Election Study data and codebooks are available at: http://projects.iq.harvard.edu/cces/data.

Versions of the CCES are available for the 2012 and 2014 general elections. I analyze questions asking respondents' pre-election candidate preferences for President, U.S. Senate, Governor, and U.S. House. The reported percentages do not sum to 100% since I do not report percentages for respondents who are uncertain, have no candidate preference, or prefer an unlisted candidate.

This is a challenging approach to determine partisan polarized voting since the estimates are pre-election candidate preferences and not post-election vote choice. Those who are ambivalent, expressing no candidate preference, are more likely to abstain from the election. The percentages of registered Democrats and Republicans voting for their candidate is likely higher. Furthermore, these are relatively small-sample survey estimates with a relatively high margin of errors, on the order of +/- 6 percentage points or lower.

I cross-tabulate candidate choice by self-reported party registration to present a measure consistent with the party registration statistics presented in Table One. I present two endemic U.S House elections in 2012 and 2014 and three exogenous statewide elections: 2012 President, 2012 U.S. Senate, and 2014 Governor.

		Registered Democrats	No Party Registration	Registered Republicans
Endemic Elections				
2012 U.S. House				
Survey	*John Delaney (D)*	69%	28%	23%
N = 133	*Roscoe Bartlett (R)*	8%	15%	64%
2014 U.S. House				
Survey	*John Delaney (D)*	66%	28%	2%
N = 124	*Dan Bongino (R)*	6%	54%	82%
Exogenous Elections				
2012 President				
Survey	*Barack Obama (D)*	91%	68%	14%
N = 108	*Mitt Romney (R)*	8%	14%	70%
2012 U.S. Senate				
Survey	*Ben Cardin (D)*	71%	38%	15%
N = 132	*Dan Bongino (R)*	5%	10%	61%
	S. Rob Sobhani (I)	3%	8%	12%
2014 Governor				
Survey	*Anthony Brown (D)*	64%	24%	2%
N = 124	*Larry Hogan (R)*	8%	58%	84%

Table Two. Election Results and Candidate Preferences Among Registered Voters in the Sixth Congressional District

The CCES estimates presented in Table Two reveal that in all five elections for which data are available, Democrats and Republicans have distinct candidate preferences in that at least a majority of registered Democrats prefer the Democratic candidate and at least a majority of

registered Republicans prefer the Republican candidate. These survey estimates are different from 50% at conventional levels of statistical significance.[9] I am thus highly confident within prevailing professional standards that registered Democrats in the Sixth Congressional District prefer Democratic candidates and registered Republicans prefer Republican candidates. This common sense conclusion should be of no surprise. Since a seminal 1960 book called *The American Voter* scholars have repeatedly found party identification is a strong predictor of vote choice.[10]

Can Republicans in the Sixth Congressional District Elect a Candidate of Their Choice?

To address whether registered Republicans in the adopted Sixth Congressional District are able to elect candidates of their choice, I examine ten elections within the district. Three are the endemic U.S. House elections in 2012, 2014 and 2016. Seven are exogenous statewide elections, for which I report the portion of the statewide vote cast within the adopted Sixth Congressional District.[11]

The election results within the adopted Sixth Congressional District are reported in Table Three.

In the three endogenous U.S. House election, registered Democrats' preferred candidate prevailed in all three elections.

In the seven exogenous statewide elections, registered Democrats' preferred candidate prevailed in six of seven elections.

The average margin of victory for the Democratic candidate over the Republican candidate in all ten elections was ten percentage points.

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[9] The worst-case election in terms of not finding a preference among registrants of a party is different than 50% is in the 2014 Governor election. Here, 64.1% of registered Democrats expressed a preference for the Democratic candidate, Anthony Brown. The margin of error for this estimate is +/- 6.4%, which means that the true population value could range from 57.7% to 70.5%. Thus, in all five instances, the registered Democrats and Republicans express a preference for their party's candidate that is different from 50% at conventional levels of statistical significance.

[10] See Campbell, Converse, Miller, and Stokes. 1960. *The American Voter*. New York: John Wiley & Sons, Inc. Evidence in this case supports the same conclusion. Eric Hawkins, a mapmaker at NCEC Services, testified that his consulting firm tracked the voting history of Maryland voters in order to draw the map that became the Congressional Plan. *See, e.g.*, Hawkins Dep. at 84:17-86:1 (noting that NCEC Services tracked two-way voting percentages); Hawkins Dep. Exs. 55-57, 59, 66, 68.

[11] I did some estimation to construct statewide election results within the adopted Sixth Congressional District. Maryland reports complete election results by county and election results for early voters only by precinct. Election results are thus available for Allegany, Garrett, and Washington counties, which are entirely contained within the Sixth Congressional District. I estimated precinct-level Election Day candidate tallies for the parts of the Sixth Congressional District contained in Frederick and Montgomery counties. I apportioned the county total Election Day vote for the candidates by the proportion of the early vote a candidate received within a given precinct, relative to the county. I added the known early vote total and estimated Election Day vote total for each precinct, and sum the votes across Frederick and Montgomery counties' precincts assigned to the Sixth Congressional District. I then summed the votes for all counties to produce district-wide totals for the Sixth Congressional District.

It is my opinion based on the preponderance of this evidence that registered Republicans are disfavored in electing a candidate of their choice.

	Election Result
Endemic Elections	
2012 U.S. House	
John Delaney (D)	59%
Roscoe Bartlett (R)	38%
2014 U.S. House	
John Delaney (D)	50%
Dan Bongino (R)	48%
2016 U.S. House	
John Delaney (D)	56%
Amy Hoeber (R)	40%
Exogenous Elections	
2012 President	
Barack Obama (D)	55%
Mitt Romney (R)	43%
2012 U.S. Senate	
Ben Cardin (D)	50%
Dan Bongino (R)	35%
S. Rob Sobhani (I)	14%
2014 Governor	
Anthony Brown (D)	42%
Larry Hogan (R)	56%
2014 Attorney General	
Brian Frosh (D)	49%
Jeffery Pritzker (R)	48%
2014 Comptroller	
Peter Franchot (D)	54%
William Campbell (R)	46%
2016 President	
Hillary Clinton (D)	58%
Donald Trump (R)	39%
2016 U.S. Senate	
Chris Van Hollen (D)	57%
Kathy Szeliga (R)	40%

Table Three. Election Results Within the Sixth Congressional District

Was Vote Dilution of Registered Republicans Intentional?

To assess if the vote dilution of registered Republicans was intentional, I examine how Maryland's General Assembly affected the Sixth Congressional District through redistricting. I note how the changes made to the benchmark district produced an adopted district of distinctly different geography with distinctly different political character. I assess the intentionality of these changes by showing how the district could have been drawn while better respecting the traditional redistricting principles of compactness and respect for county boundaries.

Changes to Maryland's Sixth Congressional District

The 2010 census revealed that Maryland had a total population of 5,773,552 people. State law requires the 2010 census to be adjusted for the location of prison populations for the purposes of redistricting, which yielded a statewide population of 5,772,231. The ideal equal population congressional district was the state's adjusted total population divided by eight, which yields 721,529 people (with one district needing one less person due to rounding).

Using the prison-adjusted numbers, the benchmark Sixth Congressional District had 731,718 people, which was 10,189 more than the ideal equal population congressional district. Since the Sixth Congressional District was located in a corner of the state and it needed to shed only 1.4% of its population to achieve population equality, it should have been reasonably immune to major boundary disruptions during redistricting.

This is not what happened. As is clear from Table One, the Sixth Congressional District had a major transformation from a predominantly Republican district to a predominantly Democratic district. Such a transformation is only possible through substantial shifts of people and geography.

The population changes from the benchmark to the adopted Sixth Congressional District that occurred during redistricting are presented in Table Four. The first column identifies the district in the benchmark plan, the second column identifies the district in the adopted plan, and the third column presents the prison-adjusted total population that was moved from the benchmark plan to the target adopted district. *Continuing portions* are those populations that were in the benchmark and adopted Sixth Congressional District. *Shed portions* are those populations that were removed from the benchmark Sixth Congressional District to a different adopted district. *Gained portions* are populations that were removed from different benchmark districts and added to the adopted Sixth Congressional District.

Only 371,350 people in the benchmark Sixth Congressional district (just 50.75% of the benchmark population) are also in the adopted district. The panhandle portion of the Sixth Congressional District—comprising Garrett, Allegany, and Washington counties, with a total adjusted population of 245,249 persons—is effectively locked into the district. While it is technically possible to split these three panhandle counties, doing so would raise glaring concerns that traditional redistricting principles were being subverted for some other goal. Thus,

within the constrained options available to Maryland, only 126,101 (371,350 minus 245,249) people of whom Maryland had a reasonable option of continuing in the district actually did so.

Continuing Portions					
Benchmark District	**Adopted District**	**Total Reg.**	**Dem Reg.**	**Rep Reg.**	**Other Reg.**
6	**6**	213,565	82,902	92,983	37,680
Shed Portions					
Benchmark District	**Adopted District**	**Total Reg.**	**Dem Reg.**	**Rep Reg.**	**Other Reg.**
6	**1**	68,764	21,980	36,153	10,631
6	**2**	3	1	1	0
6	**7**	17,203	6,557	7,908	2,738
6	**8**	145,984	48,221	70,921	26,842
6	**All**	231,953	76,759	114,983	40,212
Gained Portions					
Benchmark District	**Adopted District**	**Total Reg.**	**Dem Reg.**	**Rep Reg.**	**Other Reg.**
4	**6**	68,646	34,578	17,711	16,358
8	**6**	128,992	66,641	30,855	31,497
All	**6**	197,638	101,218	48,565	47,855

Table Four. Party Registration Changes to the Maryland Sixth Congressional District

Maryland's General Assembly respected few people who it had a discretion of continuing in the district: 360,368 people were moved out of t he district and 350,179 people were moved in. All of this activity occurred for a district that needed to only shed 10,189 people.

The political effect of these moves is clear. Maryland's Sixth Congressional District experienced substantial changes in its partisan character during the last redistricting. As reported in Table One, the benchmark district changed a district with a margin of 10.8 percentage points favoring the Republican Party to an adopted district with a 10.4 percentage favoring the Democratic Party. A change of the partisan character of this magnitude would not have been possible by merely removing 10,189 people from the Sixth Congressional District. Massive population shifts as documented in Table Four were needed. The changes from the benchmark to the adopted Sixth Congressional District—presented in the fifth and sixth columns of Table One—further illustrate that the population shifts had a profound effect on the partisan character of the district. A net of 66,417 registered Republicans were removed from the district; 24,460 registered Democrats were added; and 7,643 persons with no party registration were added. That more Republicans were removed than Democrats added is also indicative of the partisan effect, in that Democratic communities, compared to Republican communities, tend to have greater number of ineligible populations, such as under age youth and noncitizens.

Respect for Traditional Redistricting Principles

I rule out that respecting traditional redistricting principles, such as minimizing splits of local political boundaries and improving compactness, were the guiding principles behind the crafting of the adopted Sixth Congressional District. It is my opinion that but for the consideration of partisan goals—aided by map drawers, use of party registration and voting history data – the lines of the Sixth District would not have been drawn as they were, and Republican votes would not have been so diluted.

It is true that the adopted Sixth Congressional District has fewer county splits than the benchmark district. The benchmark Sixth Congressional District contributed to (three) splits of Carroll, Harford, and Montgomery counties, while the adopted Sixth Congressional District contributes to (two) splits of Frederick and Montgomery counties. However, if minimizing county splits was a priority, there is a simple solution to reduce the split of Frederick County, and to reduce the overall number of county splits in the entire plan.

The adopted Eighth Congressional District, presented in Figure Five, is the only congressional district that borders the Sixth Congressional District. These two districts split Frederick County and the Eighth Congressional District splits Carroll County with the First Congressional District. Maryland could have assigned all of Frederick County to the Sixth Congressional District, and the portion of Carroll County split by the Eighth Congressional District to the Sixth. The balance of the population lost from the Eighth Congressional District to the Sixth could be given back in from the Sixth's population located in Montgomery County. This simple solution would have reduced the number of counties split in the overall redistricting plan by one. I can thus rule out minimizing county splits as a rationale for the creation of the adopted Sixth Congressional District.

Why this solution was not pursued is clear from the partisan character of the Eighth Congressional District's registered voters in the Frederick and Carroll county areas assigned to it. The Frederick and Carroll county VTDs assigned to the adopted Eighth Congressional District are visible in Figure Four. These are predominantly rural, heavily Republican areas. A zoomed-in map of the Frederick area—Figure Six—shows how Frederick was retained within the adopted Sixth Congressional District. The figure illustrates two important points.

First, the panhandle portion of the adopted Sixth Congressional District is joined to the remainder by way of a neck hugging the Virginia border that is composed of a string of single VTDs joined together. When this string reaches the VTDs to the south of Frederick, another narrow neck extends upward to encompass Frederick. It is these narrow necks that join Frederick in a non-compact and unnecessary manner. In my map drawing experience, it would have been easy to add additional VTDs to the Sixth Congressional District to round off its shape in a more compact manner and trade back population with the Eighth Congressional District elsewhere. I can thus eliminate creating compact districts as a rationale for the drawing of the Sixth Congressional District.

Second, the effect of including Frederick is to increase the Democratic registration in the Sixth Congressional District, as the city and VTDs to the immediate south are generally Democratic

leaning. Three VTDs are split around Frederick in such a manner that neighborhoods further away from Frederick—and presumably more Republican in character—are removed from the adopted Sixth Congressional District. Adding the portions of these split VTDs, and indeed more VTDs to improve the compactness of the Sixth Congressional District would have meant adding more Republicans to the district and, given where population could be swapped with the Eighth Congressional District in Montgomery County, Democrats removed from the district.

After looping in Frederick, the adopted Sixth Congressional District crosses the Montgomery County line and continues into heavily Democratic areas in the suburbs of the District of Columbia. The environs of Gaithersburg and Rockville are presented in Figures Seven. The city of Gaithersburg is included in its entirety in the adopted Sixth Congressional District and the district hugs two arms around Rockville. Trading the portions of Frederick and Carroll counties located in the adopted Eighth Congressional District to the adopted Sixth Congressional District would require giving some of these Democratic areas located in the Sixth to the Eighth District. This could be accomplished in a more compact manner than currently exists, thus again providing evidence that Maryland was not seeking compactness when drawing the Sixth Congressional District.

While the focus of Plaintiffs' claims are the Sixth Congressional District, it is important to reflect again on how the geography and population of the Sixth Congressional District affected its only neighbor, the Eighth Congressional District. Table Four presents the party registration shed from the benchmark Sixth Congressional District to other adopted districts, and party registration gained to the adopted Sixth Congressional District from other benchmark districts. The Sixth District gained a net of 18,420 registered Democrats (66,642 minus 48,221) from the Eighth Congressional District and gave a net of 40,067 registered Republicans (70,921 minus 30,855) to the Eighth District.

The party registration trades between the Sixth and Eighth Congressional Districts are indicative of a classic gerrymandering strategy known as *cracking*. In cracking, a district that leans towards one political party is cut into two or more pieces so that the influence of the party that was the former majority is diminished. As mentioned previously, the Eighth Congressional District was given much of the former rural and Republican portions of the benchmark Sixth District in Frederick and Carroll counties. As evident in Figure Four, these areas bordering Pennsylvania were combined with heavily Democratic areas in the areas immediately bordering the District of Columbia. As evident in Figure Five, at a point along Olney Laytonsville Road, the Eighth Congressional District narrows to a neck less than a half a mile wide, traversing the Oaks Landfill, to join the two geographically and politically disparate portions of the district. The result of these trades, and others, with the Eighth District reduced the Democratic registration advantage from a 38.8 point Democratic margin (58.4% to 19.6%), to a 23.2 point Democratic margin (51.4% to 28.3%).

An Alternative Approach to the Sixth and Eighth Congressional Districts

Since the adopted Sixth Congressional District is contiguous only with the Eighth Congressional District, a simple alternative exists that avoids diluting the votes of registered Republicans, better

adheres to redistricting principles, and does not affect any choices made when the Maryland General Assembly constructed the other districts.

A Sixth Congressional District can be constructed that is more compact and results in fewer county splits in the entire plan by assigning to the Sixth District portions of Frederick County and the split portion of Carroll County, which are currently assigned to the Eighth Congressional District. Population traded to the Sixth can be easily balanced back in Montgomery County, where the Sixth and Eighth Congressional Districts also share a common border. These trades could reduce the number of split VTDs between the Sixth and Eight districts in Frederick and Montgomery counties, in a compact manner. As a by-product, the shape of the Eighth Congressional District can also be greatly improved.

Figure Eight presents an alternative configuration of the Sixth and Eighth Congressional Districts that affects only the boundaries of these two districts. A simple comparison to a map of the adopted district in Figure 3 shows the alternative Sixth District is visually more compact than the adopted district. Most notably, whereas the adopted district has contorted boundaries in Frederick County, this district assigns all of Frederick to the district. Furthermore, this configuration has a beneficial effect on the Eighth Congressional District. In comparison to Figure Five, the Eighth Congressional District is now entirely contained within Montgomery County and no longer has a narrow neck connecting portions of Montgomery County with portions of Carrol and Frederick counties.

Figure Nine illustrates how the alternative Sixth Congressional District no longer subsumes predominantly Republican rural portions of Western Maryland into the predominantly Democratic urban areas of Montgomery County.

In Table Five, I present 2010 party registration statistics for this alternative Sixth Congressional District, using the same underlying party registration data in Table One. The statistics for this alternative district confirm that this district is now slightly Republican leaning; 42.6% of registered voters registering with the Republican Party and 38.4% registering with the Democratic Party, for a difference of 4.2 percentage points. In comparison, the benchmark district had a 10.8 percentage point Republican Party registration advantage and the adopted district has a 10.6 percentage point Democratic Party registration advantage.

	Alternative	
	Number	**Percent**
Democrats	162,616	38.4%
Republicans	180,226	42.6%
No Party	80,405	19.0%
Total	423,246	100.0%

Table Five. Party Registration in Maryland Alternative Sixth Congressional District

I examined elections within the alternative Sixth Congressional District to determine if Republicans would more often be able to elect a candidate of their choice. I did not examine U.S. House races since the district now extends across two U.S. House districts that did not have similar electoral circumstances.

		Election Results
Exogenous Elections		
2012 President		
	Barack Obama (D)	44%
	Mitt Romney (R)	53%
2012 U.S. Senate		
	Ben Cardin (D)	38%
	Dan Bongino (R)	43%
	S. Rob Sobhani (I)	16%
2014 Governor		
	Anthony Brown (D)	30%
	Larry Hogan (R)	68%
2014 Attorney General		
	Brian Frosh (D)	38%
	Jeffery Pritzker (R)	58%
2014 Comptroller		
	Peter Franchot (D)	46%
	William Campbell (R)	54%
2016 President		
	Hillary Clinton (D)	42%
	Donald Trump (R)	51%
2016 U.S. Senate		
	Chris Van Hollen (D)	44%
	Kathy Szeliga (R)	51%

Table Six. Election Results Within the Alternative Sixth Congressional District

Election results for the seven statewide offices in 2012, 2014, and 2016 for the portions contained within the alternative Sixth Congressional District are presented in Table Six. The Table shows that in all seven exogenous statewide elections the Republican candidate of choice received more votes than the Democratic candidate. The average margin of victory for the Republican candidate is 13%.

Conclusion

Given the current high levels of political polarization in the United States, it should come as no surprise that party registrants within Maryland's Sixth Congressional District disagree over their candidates of choice, with registered Democrats preferring Democratic candidates and registered Republicans preferring Republican candidates.

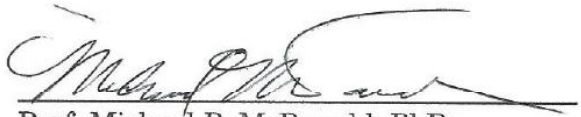
Maryland's adopted Sixth Congressional District's geography and political composition are a clear result of a classic partisan gerrymandering strategy known as cracking. A district that was predominantly rural and Republican in character was transformed into a district where the political strength of Democratic suburbs of the Washington, D.C. suburbs outweighs the Republican rural areas, predominantly in the panhandle.

As a consequence of the configuration of the adopted Sixth Congressional District, registered Republicans do not have an opportunity to elect a candidate of their choice. Their preferred candidate lost all three endemic U.S. House elections within the district and received less than the Democratic candidate in six of seven exogenous statewide elections. It is extremely unlikely that this would have happened if Republicans' voter histories and party affiliation had not been taken into account while drawing the adopted district's lines.

The gerrymandering strategy that was executed to produce this political outcome had a detrimental effect on traditional redistricting principles. The Republican rural communities along the Pennsylvania border were fragmented in a classic cracking gerrymandering strategy, by transferring registered Republicans in Carroll and Franklin counties to the Eighth Congressional District in exchange for Democratic urban areas in Montgomery County formerly in the Eighth Congressional District.

An alternative map approach exists that better respects traditional redistricting principles by reducing the overall number of counties split by districts, doing so in a more compact manner for both the Sixth and Eighth congressional districts. It is my opinion this approach would have been easily discoverable to the Maryland General Assembly, if they wished to pursue it. I envisioned this configuration following a brief inspection of the district. Notably, this alternative Sixth Congressional District would affect the political character of the district, making it more Republican. Thus, the violation of traditional redistricting principles serves as an indicator that politics, not good government goals, was a major motivating factor behind the creation of the adopted Sixth Congressional District.

Date: April 7, 2017



Prof. Michael P. McDonald, PhD

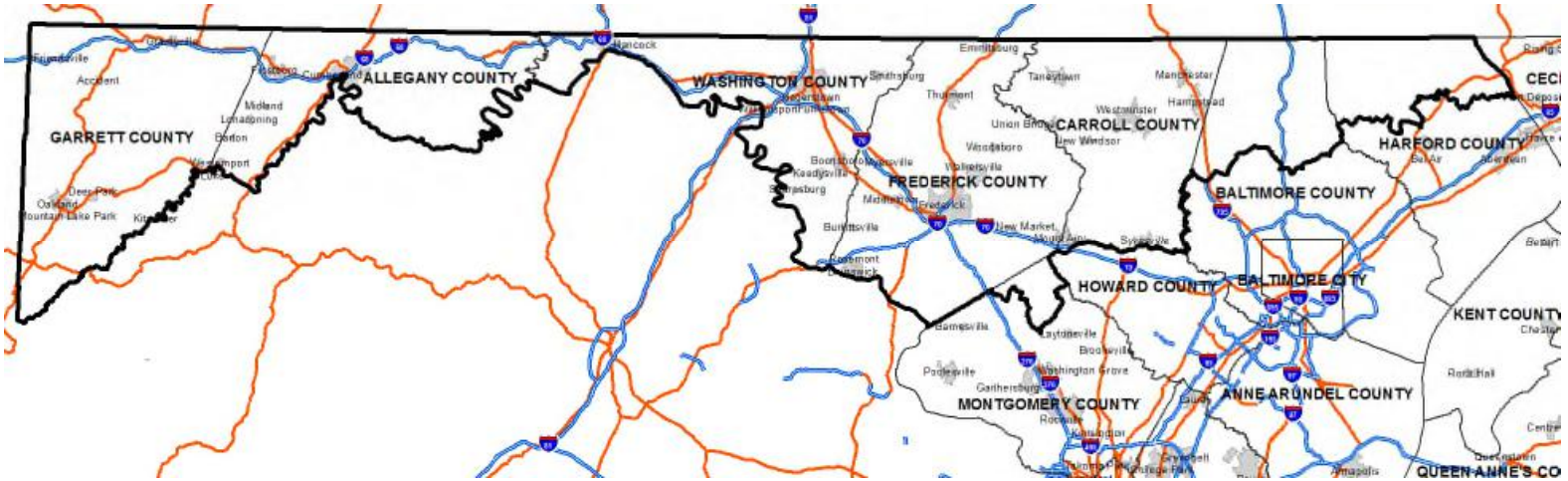


Figure One. Benchmark Maryland Sixth Congressional District

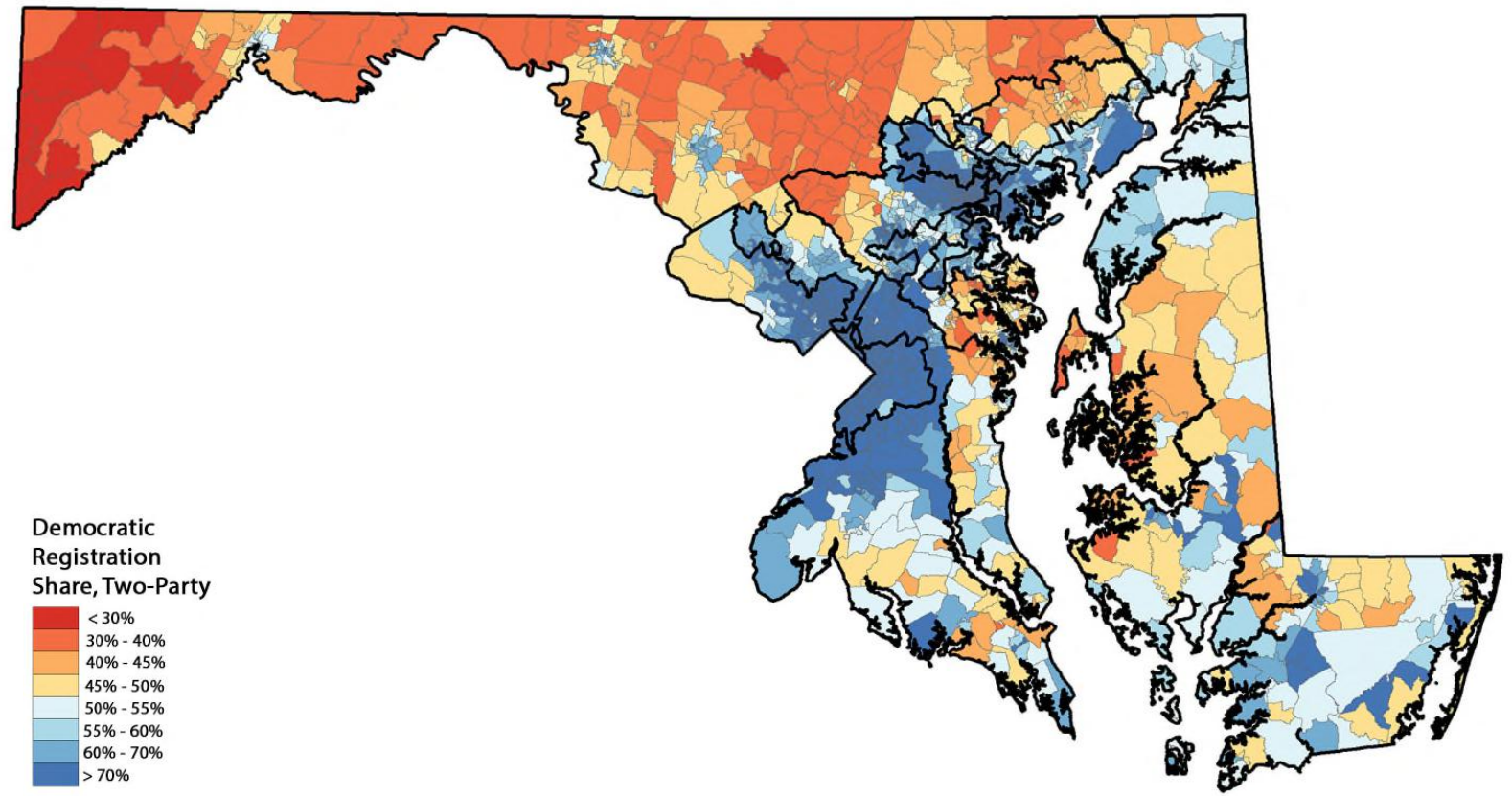


Figure Two. Party Registration in Maryland's benchmark Congressional Districts

Note: Congressional districts are represented by thick black lines and VTDs boundaries are represented by light grey lines. VTDs are shaded by their partisan registration, with Republican areas shaded in red and Democratic areas shaded in blue.

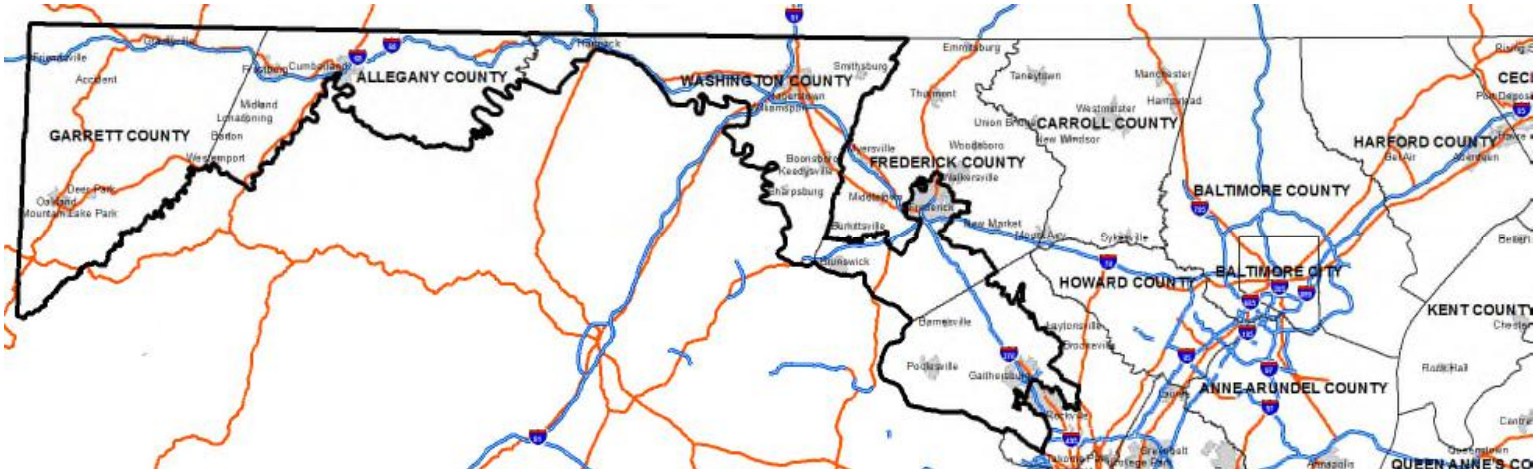


Figure Three. Adopted Sixth Congressional District

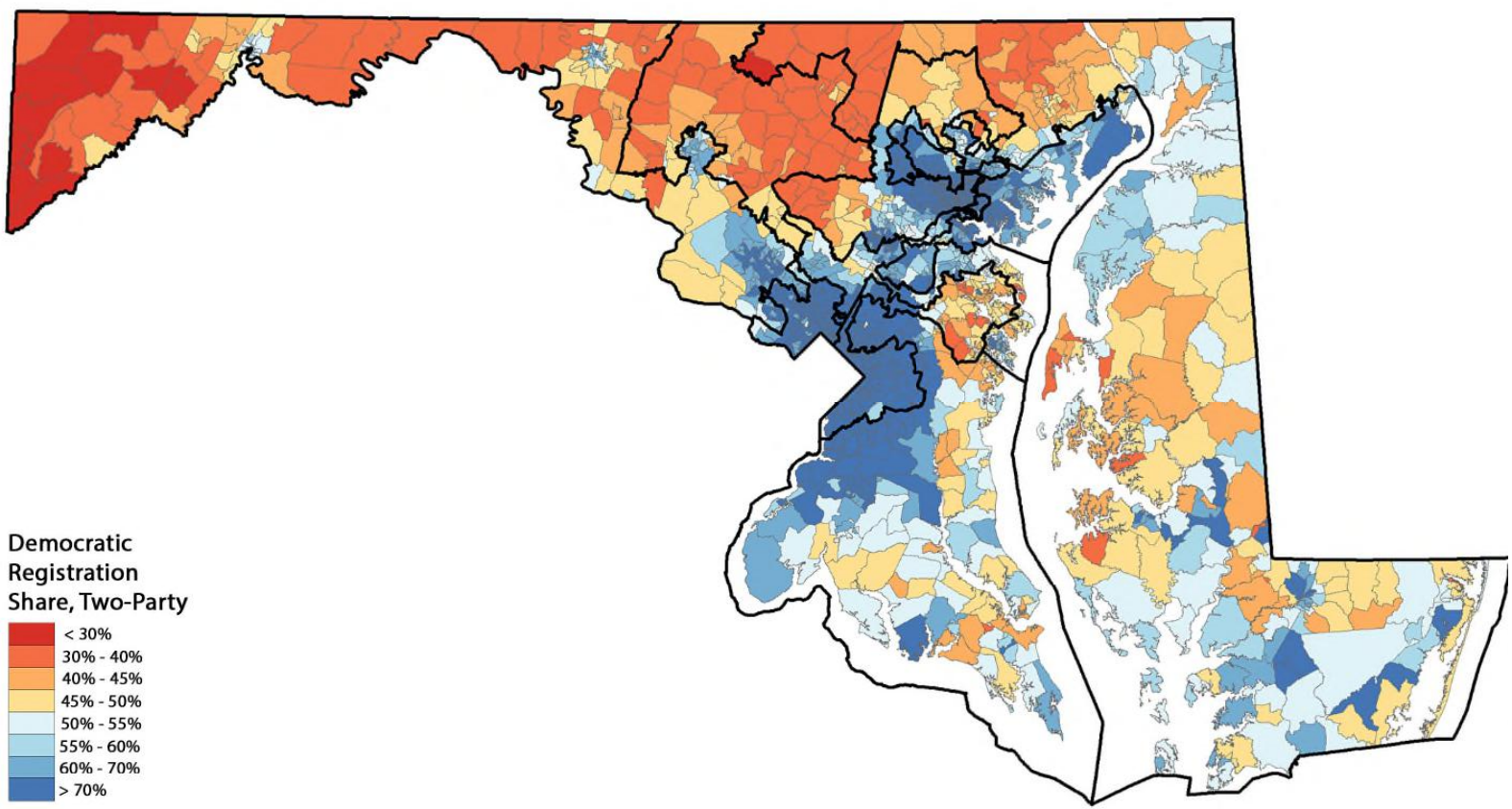


Figure Four. Party Registration in Maryland's benchmark Congressional Districts

Note: Congressional districts are represented by thick black lines and VTDs boundaries are represented by light grey lines. VTDs are shaded by their partisan registration, with Republican areas shaded in red and Democratic areas shaded in blue.

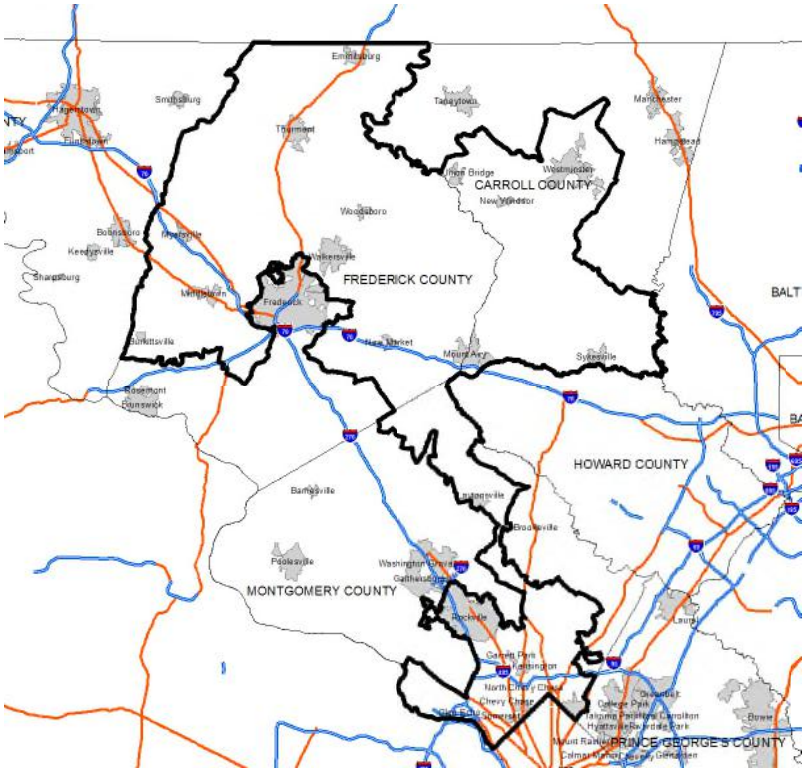


Figure Five. Adopted Eighth Congressional District

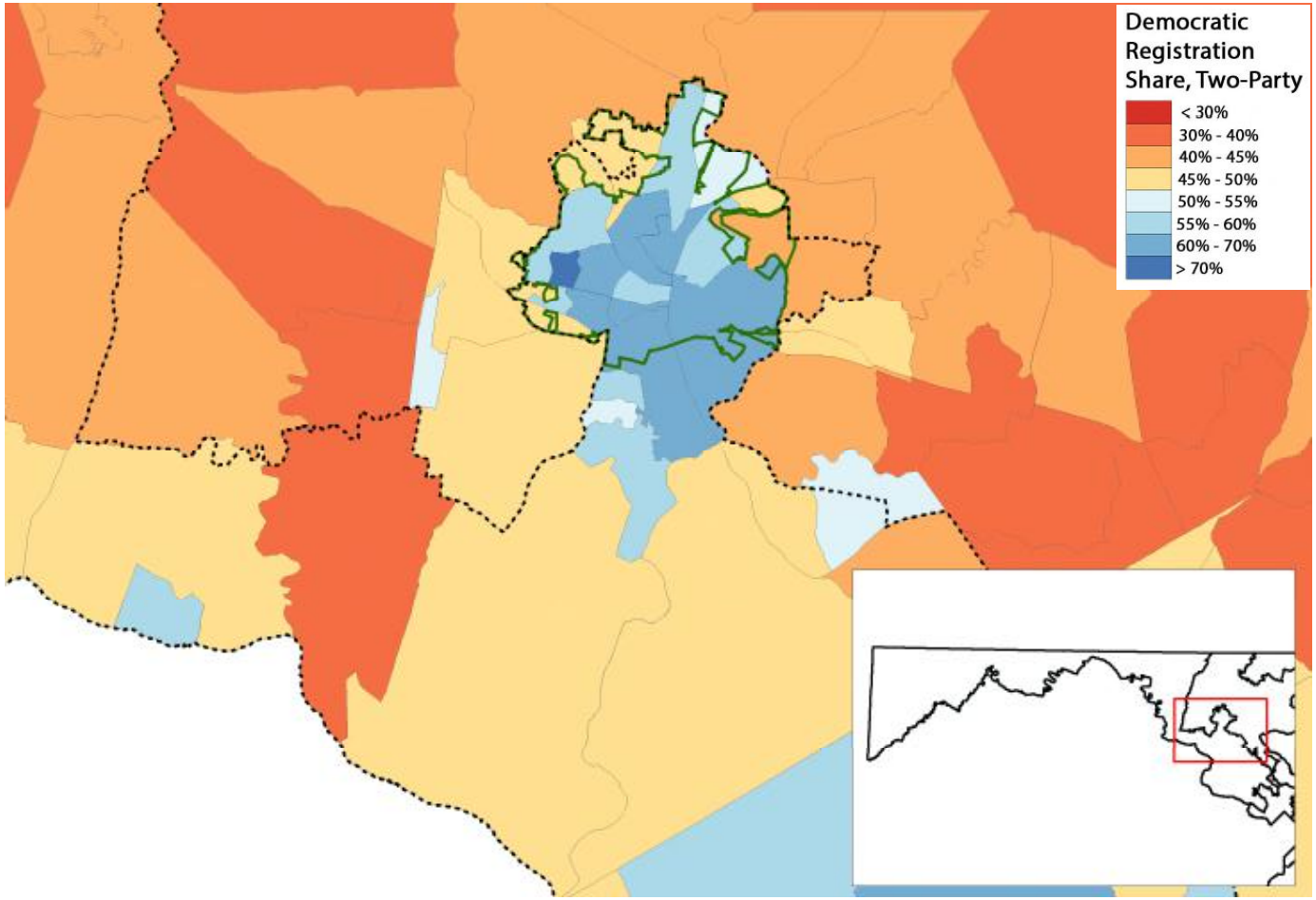


Figure Six. Zoom of City of Frederick with Current Congressional Sixth District

Note: Congressional district boundaries are represented by dotted black lines, the city of Frederick is represented by a dark green line, and VTDs boundaries are represented by light grey lines. VTDs are shaded by their partisan registration, with Republican areas shaded in red (most Republican) to yellow and Democratic areas shaded in dark blue (most Democratic) to light blue.

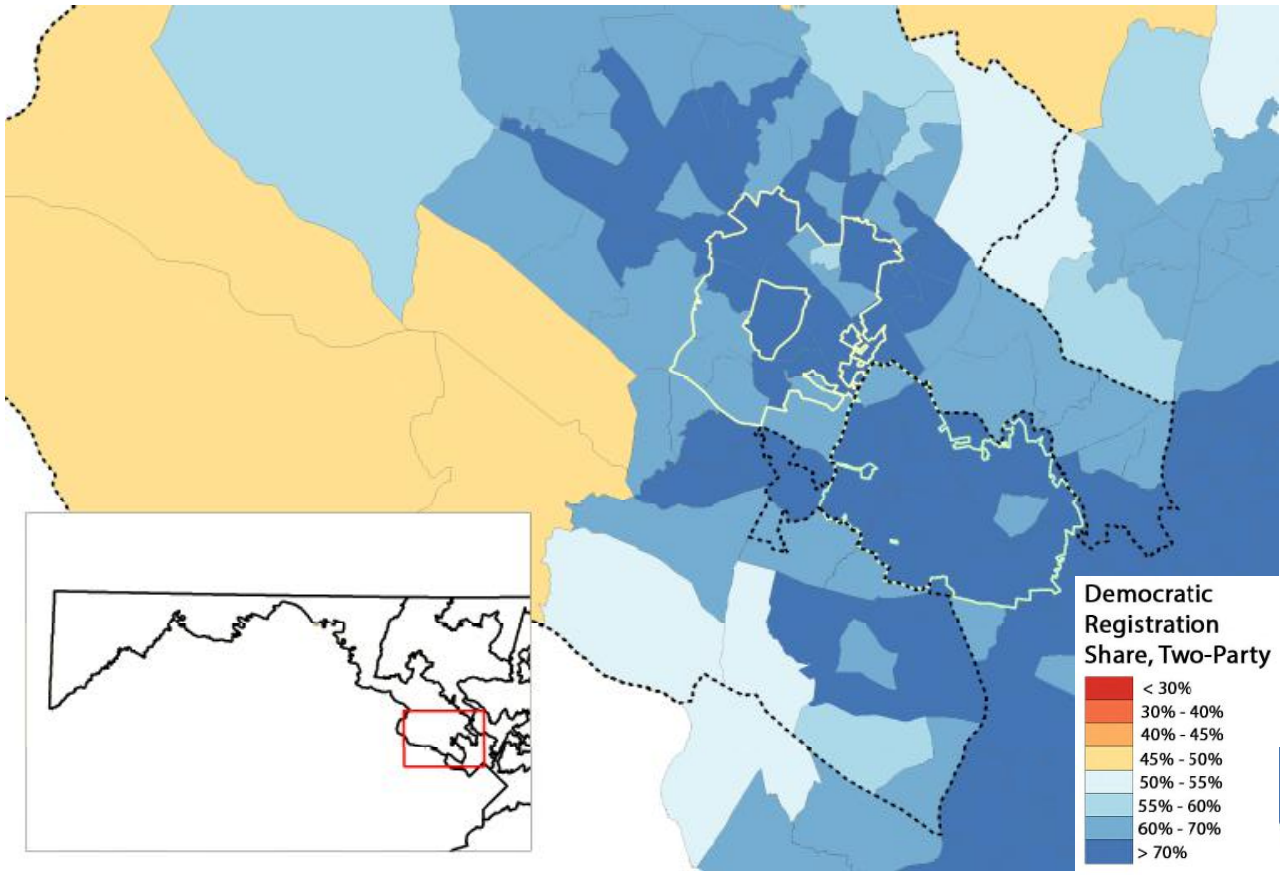


Figure Seven. Zoom of Gaithersburg and Rockville with Current Sixth Congressional District

Note: Congressional district boundaries are represented by dotted black lines, the cities of Gaithersburg and Rockville are represented by light yellow and green lines (respectively), and VTDs boundaries are represented by light grey lines. VTDs are shaded by their partisan registration, with Republican areas shaded in red (most Republican) to yellow and Democratic areas shaded in dark blue (most Democratic) to light blue.

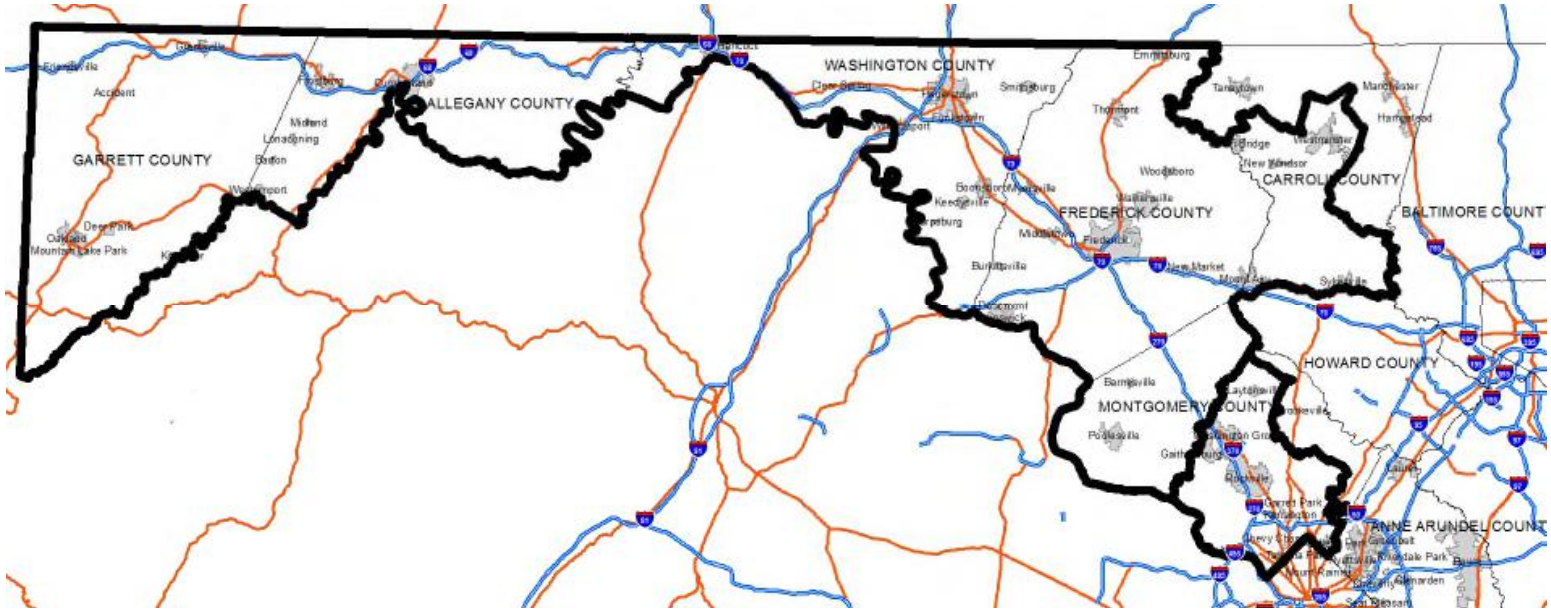


Figure Eight. Alternative Sixth and Eighth Congressional Districts

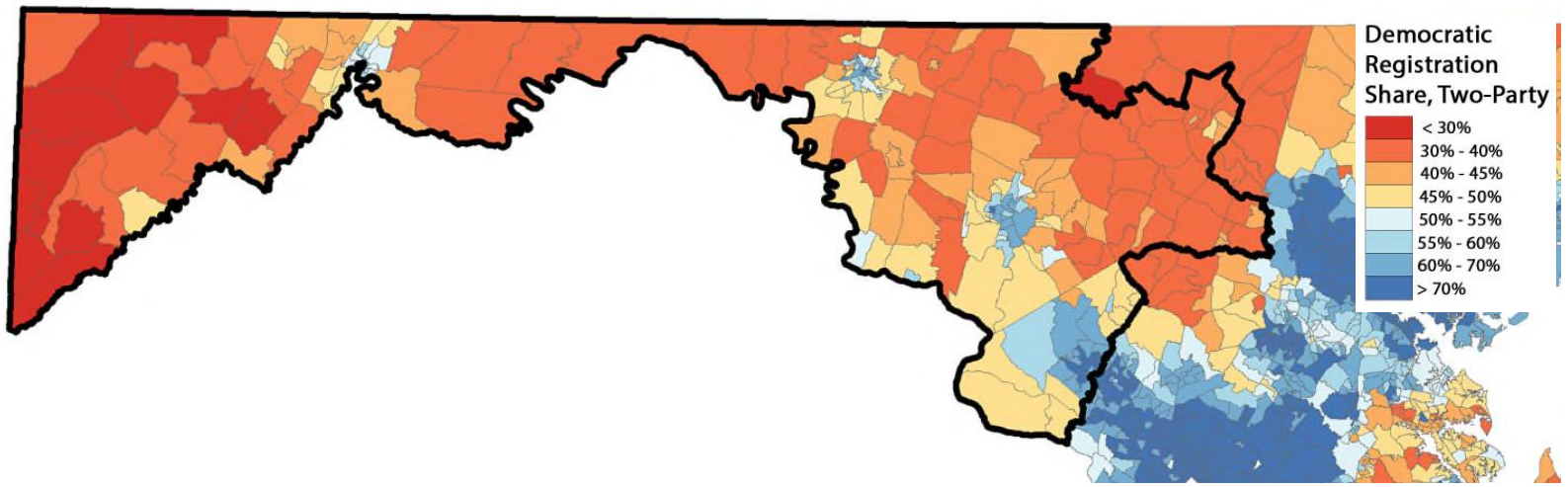


Figure Nine. Alternative Sixth Congressional District

Note: Congressional districts are represented by thick black lines and VTDs boundaries are represented by light grey lines. VTDs are shaded by their partisan registration, with Republican areas shaded in red and Democratic areas shaded in blue.

Appendix 1: Methodology

Voting-tabulation districts is a term used by the Census Bureau to describe precincts, wards, and election districts, among the many names used by states and localities. States transmit these boundaries to the Census Bureau circa a year ending in '7' for inclusion in the next census.

I obtained from counsel Maptitude (a commercial redistricting software) data files that contained 2010 voter registration information for Maryland's precincts. These precincts were assigned to VTDs. In the course of merging these data with the Census Bureau's PL-94-171 redistricting data file for Maryland, I identified eleven Montgomery County VTDs that were not assigned a precinct from the Maptitude data files. I obtained from 2007 a map of the Maryland's 2007 precincts via an internet archive. From this map I deduced where two precincts were consolidated into one between 2007—when precinct boundaries were transmitted to the Census Bureau—and 2010. I assigned the geography to the parent VTD from which it was consolidated. These orphaned precincts were combined as follows:

02-009 and 02-002 into 02-002
02-010 and 02-003 into 02-003
02-011 and 02-006 into 02-006
04-026 and 04-016 into 04-016
05-022 and 05-005 into 05-005
05-024 and 05-012 into 05-012
06-014 and 06-005 into 06-005
09-032 and 09-020 into 09-020
09-038 and 09-026 into 09-026
13-041 and 13-002 into 13-002
13-062 and 13-049 into 13-049

In some cases two or more districts share or split a precinct. I use a method known as "dasymetric mapping" to assign party registration numbers to census blocks, and then aggregate party registration data from census blocks to compute party registration statistics presented in this report.[12]

[12] See: Brian Amos, Michael P. McDonald, and Russell Watkins. Forthcoming. "When Boundaries Collide: Constructing a Database of Election and Census Data." *Public Opinion Quarterly*.

From: Jeremy Baker <bakerjeremypaul@gmail.com>
Sent: Thursday, December 29, 2016 2:37 PM
To: Brantley, Sandra
Subject: Fwd: Refutation
Attachments: Edwards Data.xlsx

Sent from my iPhone

Begin forwarded message:

From: "Yaakov \"Jake\" Weissmann" <yweissm1@gmail.com>
Date: October 17, 2011 at 5:41:45 PM EDT
To: jmjbryce@comcast.net, "Murray, Patrick" <patrickhmurray@gmail.com>, Jeremy Baker <bakerjeremypaul@gmail.com>, "John P. McDonough" <jmcdonough@martinomalley.com>
Subject: Refutation

Hey All,

Secretary McDonough and I looked over the map and Press release. Thoughts:

First off, it should be noted that this plan significantly lowers the 6th, 8th and 3rd's DPI to help the 4th and 5th.

The 6th is now at 51.8% (was at 52.7%)
The 8th is now at 59.8% (was at 60.4%)
The 3rd is now at 55.0% (was at 58.4%)

It should be noted that in the last wave, 10 incumbent Democrats lost seats that were at 54.9% or higher, placing the 3rd in danger and making the 6th much harder to pick up.

Refutations:

Edwards 1: Allows for the possibility of minority representation in one of the congressional districts in Montgomery County

Counter: We argue that the electoral history in Montgomery County clearly suggests that both districts in the Governor's plan (6&8) can be won by a minority candidate.

Edwards 2: Unifies the Latino/Hispanic populations on the Montgomery-Prince George's County border in one congressional district;

Counter: (It should be noted that her argument is no longer percentages, it is now Communities). To combine these communities (Langley park), she also takes silver spring which contain precincts with little Hispanic population relative to other nearby precincts (see image 1 attached). This isn't about reuniting neighborhoods or strengthening communities, it's about preferred territory for a Congresswoman.

Edwards 3: Enables a significant Asian population in North Potomac to remain as a cohesive unit in Congressional District 8;

Counter: The Asian territory in North Potomac causes the bulk of the 1% DPI drop in the 8th and it dilutes the percentage of the Asian population in the 6th (from 10% to 9.2%). There are again, precincts she did not take (see image 2).

Edwards 4 & 5: Enables African American communities in Montgomery to remain in Congressional District 4 under the Voting Rights Act; 5) Strengthens the Black voting age population in Congressional Districts 4 and 5 and provides more cohesiveness in Prince George's County;

Counter: She actually bypasses heavier African-American precincts in Montgomery County to choose Silver Spring precincts she wanted even though they are less African-American (see Image 3). She even bypassed precincts she previously represented. Why do that if this is all about minority representation?

Other general issues:

- Montgomery County gets 4 CDs
- Howard County gets 4 CDs
- Edwards is not even standing by this map. At the hearing she freely suggested changing it again to eject the 3rd from Montgomery County which will disrupt the Baltimore area.

Overall Message:

A vote for this amendment would put 4 in MoCo, 4 in Howard, just increases her margin in the General Election, slightly increases AA in 5th which is increasing due to demographic growth. Causes CD8 disruption, endagers effort to win the 6th and puts the 3rd in jeopardy. Dilutes the power of Asians and Hispanics in other parts of MoCo. Pure political selfishness and actually undermines the possibility of minority candidates winning the 6th or 8th CDs in the future.

Thanks!
Jake

Attached is:

- Images discussed
- An image of the areas of the state impacted
- A close up on Montgomery County
- A new spreadsheet with DPI with this map

Current Districts — **MARYLAND DRAFT 2011 PLAN SUMMARIES**

CD	POP10_A	POP10	DEV.	Current	FED_DPFM	ST_DPFM	GOV06D%	GOV10D%	PRS04D%	PRS08D%	AA_A%	AA18_A%	NHAA%	NHAA18%	HISP%	HSE08D%	HSE10%
1	743067	744275	21538	100%	38.4%	35.6%	35.7%	34.3%	36.5%	40.3%	11.4%	11.0%	11.4%	11.1%	3.5%	50.1%	42.7%
2	703824	700893	-17705	100%	57.9%	55.1%	54.2%	52.8%	54.7%	60.7%	33.8%	31.3%	33.1%	30.7%	5.0%	74.3%	64.8%
3	716808	719856	-4721	100%	57.0%	53.3%	52.4%	52.9%	54.3%	59.7%	20.0%	18.6%	20.0%	18.7%	6.8%	69.6%	61.9%
4	715671	714316	-5858	100%	82.5%	79.8%	75.8%	82.3%	79.1%	85.8%	56.6%	56.3%	55.7%	55.5%	14.2%	87.1%	82.6%
5	768464	767369	46935	100%	62.1%	61.8%	57.6%	63.3%	58.0%	66.2%	37.3%	36.1%	36.7%	35.6%	7.9%	75.4%	64.0%
6	731718	738943	10189	100%	37.4%	35.9%	35.9%	34.5%	34.2%	40.5%	5.9%	5.5%	6.4%	6.4%	4.2%	39.8%	34.1%
7	664091	659776	-57438	100%	76.8%	72.1%	67.5%	72.3%	73.5%	79.8%	56.4%	55.4%	55.7%	54.6%	3.5%	81.1%	75.9%
8	728588	728124	7059	100%	71.9%	67.1%	66.0%	70.8%	69.2%	74.5%	16.9%	16.6%	16.3%	16.1%	20.0%	77.2%	73.9%

MDCD2011A_1-929_v3-Arbutus Change DP1

CD	POP10_A	POP10	DEV.	Current	FED_DPFM	ST_DPFM	GOV06D%	GOV10D%	PRS04D%	PRS08D%	AA_A%	AA18_A%	NHAA%	NHAA18%	HISP%	HSE08D%	HSE10%
1	721529	722661	0	84.4	37.0%	34.3%	34.7%	32.6%	35.0%	38.8%	11.4%	11.0%	11.4%	11.03%	3.3%	48.3%	40.06%
2	721529	723456	0	80.2	58.4%	55.3%	54.2%	53.6%	55.1%	61.5%	32.0%	29.5%	31.6%	29.34%	5.5%	73.9%	64.78%
3	721528	720067	-1	68.0	58.6%	54.8%	54.0%	54.5%	56.0%	61.2%	21.1%	19.5%	20.6%	19.10%	7.7%	70.2%	62.59%
4	721529	720068	0	57.6	74.7%	72.8%	66.8%	71.2%	71.3%	77.7%	54.6%	54.5%	53.8%	53.71%	13.6%	81.5%	74.83%
5	721529	720472	0	96.3	61.8%	61.5%	57.5%	63.0%	57.7%	65.9%	37.0%	35.8%	36.4%	35.31%	7.2%	75.2%	63.60%
6	721529	728453	0	50.6	53.0%	49.8%	49.3%	51.0%	49.3%	56.6%	12.0%	11.2%	12.3%	11.76%	11.2%	57.1%	51.32%
7	721529	716862	0	84.5	74.2%	69.5%	64.7%	68.4%	70.9%	77.2%	55.7%	54.5%	54.9%	53.75%	3.1%	78.9%	72.52%
8	721529	721513	0	57.4	60.0%	56.8%	56.1%	58.0%	57.7%	62.5%	11.7%	11.6%	11.3%	11.29%	13.5%	63.7%	60.27%

EXHIBIT
Busch
120
4/19/17 OJ

Gmail Robert Garagiola

CD6

Elizabeth Paul Tue, Oct 4, 2011 at 8:13 PM
Reply-To: eapaul
To: robgaragiola

Great to hear - I'm keeping my fingers crossed until 10/17! Thanks for keeping me posted - Elizabeth

----Original Message----
From: robgaragiola
Sent: Tuesday, October 04, 2011 8:20 AM
To: Elizabeth Paul
Subject: CD6

Elizabeth,

The map will be public today. There still may be minor changes before the General Assembly convenes in less than two weeks. The 6th District would comprise about 40% of Montgomery County, including northern and western parts. It would include southern Frederick and the City of Frederick. The rest of Frederick would be in Van Hollen's district. All of Washington, Allegheny, and Garrett would remain in the 6th. The Dem performance would be 53%. All good news.

Rob
Sent from my Verizon Wireless BlackBerry

EXHIBIT
15
2/3/17 DJ

Subject: Re: (No subject)
From: MG2590@aol.com
Date: 9/1/2011 3:06 PM
To: brianromick@gmail.com

No problem

In a message dated 9/1/2011 2:43:41 P.M. Eastern Daylight Time, brianromick@gmail.com writes:

> if we can get you parking, you mind driving separately then? we need to do 3 meetings, if Miller and Busch are in Annapolis.
>
> On Thu, Sep 1, 2011 at 2:31 PM, <mg2590@aol.com> wrote:
> Brian:
>
> OK. Have to come back to NCEC after meeting with the Governor, as I have much to do on the first day with everyone returning.
> c
>
> -----Original Message-----
> From: Brian Romick <brianromick@gmail.com>
> To: MG2590@aol.com <mg2590@aol.com>
> Sent: Thu, Sep 1, 2011 2:09 pm
>
> 10am on Tuesday

EXHIBIT
Miller
135
4/24/17 DJ

Confidential 9/5/2011

			MARYLAND DRAFT 2011 PLAN SUMMARIES																
Current Districts																			
CD	POP10_A	POP10	DEV.	Current	FED_DPFM	ST_DPFM	GOV06D%	GOV10D%	PRS04D%	PRS08D%	AA_A%	AA%	AA18_A%	AA18%	NHAA%	NHAA18%	HISP%	HSE08D%	HSE10%
1	743067	744275	21538	100%	38.4%	35.6%	35.7%	34.3%	36.5%	40.3%	11.4%	11.6%	11.0%	11.2%	11.4%	11.1%	3.5%	50.1%	42.7%
2	703824	700893	-17705	100%	57.9%	55.1%	54.2%	52.8%	54.7%	60.7%	33.8%	33.6%	31.3%	31.1%	33.1%	30.7%	5.0%	74.3%	64.8%
3	716808	719856	-4721	100%	57.0%	53.3%	52.4%	52.9%	54.3%	59.7%	20.0%	20.3%	18.6%	19.0%	20.0%	18.7%	6.8%	69.6%	61.9%
4	715671	714316	-5858	100%	82.5%	79.8%	75.8%	82.3%	79.1%	85.8%	56.6%	56.6%	56.3%	56.2%	55.7%	55.5%	14.2%	87.1%	82.6%
5	768464	767369	46935	100%	62.1%	61.8%	57.6%	63.3%	58.0%	66.2%	37.3%	37.3%	36.1%	36.0%	36.7%	35.6%	7.9%	75.4%	64.0%
6	731718	738943	10189	100%	37.4%	35.9%	35.9%	34.5%	34.2%	40.5%	5.9%	6.6%	5.5%	6.5%	6.4%	6.4%	4.2%	39.8%	34.1%
7	664091	659776	-57438	100%	76.8%	72.1%	67.5%	72.3%	73.5%	79.8%	56.4%	56.2%	55.4%	55.0%	55.7%	54.6%	3.5%	81.1%	75.9%
8	728588	728124	7059	100%	71.9%	67.1%	66.0%	70.8%	69.2%	74.5%	16.9%	16.9%	16.6%	16.6%	16.3%	16.1%	20.0%	77.2%	73.9%
Black Caucus A																			
CD	POP10_A	POP10	DEV.	Current	FED_DPFM	ST_DPFM	GOV06D%	GOV10D%	PRS04D%	PRS08D%	AA_A%	AA%	AA18_A%	AA18%	NHAA%	NHAA18%	HISP%	HSE08D%	HSE10%
1	721529	722712	0	92.2%	38.0%	35.2%	35.3%	33.9%	36.1%	39.8%	11.3%	11.4%	11.0%	11.1%	11.3%	11.0%	3.4%	49.6%	41.4%
2	721529	719370	0	75.1%	48.8%	46.2%	46.6%	43.6%	46.3%	51.1%	21.5%	21.4%	19.5%	19.3%	21.1%	19.1%	5.0%	64.3%	55.2%
3	721529	725024	0	65.9%	58.9%	54.9%	53.1%	54.8%	55.7%	62.0%	25.2%	25.4%	23.9%	24.3%	25.0%	24.0%	6.3%	69.0%	61.7%
4	721529	720083	0	69.0%	88.1%	86.1%	82.2%	89.4%	85.1%	90.9%	58.8%	58.7%	58.0%	57.9%	57.7%	57.0%	18.3%	92.3%	90.0%
5	721528	720470	-1	93.7%	62.1%	61.8%	57.6%	63.4%	57.9%	66.2%	39.6%	39.6%	38.5%	38.5%	39.1%	38.1%	6.4%	75.4%	64.0%
6	721529	728811	0	93.2%	39.0%	37.5%	37.2%	36.5%	35.6%	42.4%	6.5%	7.2%	6.1%	7.0%	7.0%	6.9%	4.7%	41.5%	36.3%
7	721529	715935	0	51.7%	80.8%	76.4%	72.3%	76.6%	77.6%	83.8%	58.7%	58.5%	56.0%	55.6%	58.0%	55.2%	3.8%	88.4%	83.0%
8	721529	721147	0	80.7%	68.8%	63.6%	62.9%	67.7%	65.9%	71.7%	13.9%	13.9%	13.2%	13.2%	13.4%	12.8%	17.4%	74.3%	70.4%
Black Caucus B																			
CD	POP10_A	POP10	DEV.	Current	FED_DPFM	ST_DPFM	GOV06D%	GOV10D%	PRS04D%	PRS08D%	AA_A%	AA%	AA18_A%	AA18%	NHAA%	NHAA18%	HISP%	HSE08D%	HSE10%
1	721529	722712	0	92.2%	38.0%	35.2%	35.3%	33.9%	36.1%	39.8%	11.3%	11.4%	11.0%	11.1%	11.3%	11.0%	3.4%	49.6%	41.4%
2	721529	719085	0	75.0%	48.7%	46.1%	46.8%	43.2%	46.4%	50.8%	19.9%	19.8%	17.6%	17.4%	19.4%	17.1%	5.8%	65.8%	56.1%
3	721529	725198	0	65.1%	55.1%	51.1%	49.9%	50.9%	52.1%	58.0%	19.5%	19.8%	18.6%	19.0%	19.5%	18.7%	5.6%	65.7%	58.2%
4	721529	720083	0	69.0%	88.1%	86.1%	82.2%	89.4%	85.1%	90.9%	58.8%	58.7%	58.0%	57.9%	57.7%	57.0%	18.3%	92.3%	90.0%
5	721528	720470	-1	93.7%	62.1%	61.8%	57.6%	63.4%	57.9%	66.2%	39.6%	39.6%	38.5%	38.5%	39.1%	38.1%	6.4%	75.4%	64.0%
6	721529	728811	0	93.2%	39.0%	37.5%	37.2%	36.5%	35.6%	42.4%	6.5%	7.2%	6.1%	7.0%	7.0%	6.9%	4.7%	41.5%	36.3%
7	721529	716046	0	63.3%	83.9%	79.4%	75.2%	81.4%	80.6%	87.1%	66.1%	65.8%	64.2%	63.9%	65.3%	63.5%	3.8%	89.1%	85.8%
8	721529	721147	0	80.7%	68.8%	63.6%	62.9%	67.7%	65.9%	71.7%	13.9%	13.9%	13.2%	13.2%	13.4%	12.8%	17.4%	74.3%	70.4%

Confidential

9/15/2011

Current Districts			MARYLAND DRAFT 2011 PLAN SUMMARIES															
CD	POP10_A	POP10	DEV.	Current	FED_DPFM	ST_DPFM	GOV06D%	GOV10D%	PRS04D%	PRS08D%	AA_A%	AA%	AA18_A%	AA18%	NHAA%	NHAA18%	HISP%	HSE08%	HSE10%
1	743067	744275	21538	100%	38.4%	35.6%	35.7%	34.3%	36.5%	40.3%	11.4%	11.6%	11.0%	11.2%	11.4%	11.1%	3.5%	50.1%	42.7%
2	703824	700893	-17705	100%	57.9%	55.1%	54.2%	52.8%	54.7%	60.7%	33.8%	33.6%	31.3%	31.1%	33.1%	30.7%	5.0%	74.3%	64.8%
3	716808	719856	-4721	100%	57.0%	53.3%	52.4%	52.9%	54.3%	59.7%	20.0%	20.3%	18.6%	19.0%	20.0%	18.7%	6.8%	69.6%	61.9%
4	715671	714316	-5858	100%	82.5%	79.8%	75.8%	82.3%	79.1%	85.8%	56.6%	56.6%	56.3%	56.2%	55.7%	55.5%	14.2%	87.1%	82.6%
5	768464	767369	46935	100%	62.1%	61.8%	57.6%	63.3%	58.0%	66.2%	37.3%	37.3%	36.1%	36.0%	36.7%	35.6%	7.9%	75.4%	64.0%
6	731718	738943	10189	100%	37.4%	35.9%	35.9%	34.5%	34.2%	40.5%	5.9%	6.6%	5.5%	6.5%	6.4%	6.4%	4.2%	39.8%	34.1%
7	664091	659776	-57438	100%	76.8%	72.1%	67.5%	72.3%	73.5%	79.8%	56.4%	56.2%	55.4%	55.0%	55.7%	54.6%	3.5%	81.1%	75.9%
8	728588	728124	7059	100%	71.9%	67.1%	66.0%	70.8%	69.2%	74.5%	16.9%	16.9%	16.6%	16.6%	16.3%	16.1%	20.0%	77.2%	73.9%
MDLEG_Plan A																			
CD	POP10_A	POP10	DEV.	Current	FED_DPFM	ST_DPFM	GOV06D%	GOV10D%	PRS04D%	PRS08D%	AA_A%	AA%	AA18_A%	AA18%	NHAA%	NHAA18%	HISP%	HSE08%	HSE10%
1	724074	725163	2545	77.2	36.9%	34.2%	34.5%	32.4%	34.9%	38.8%	11.1%	11.3%	10.7%	10.9%	11.1%	10.8%	3.36%	47.5%	39.1%
2	721895	719537	366	71.6	52.4%	50.1%	50.2%	47.6%	49.6%	55.2%	26.9%	26.8%	24.6%	24.5%	26.3%	24.2%	5.35%	68.8%	59.7%
3	719152	721958	-2377	60.0	59.8%	55.7%	53.9%	55.4%	56.9%	62.6%	24.0%	24.2%	22.4%	22.7%	23.9%	22.4%	6.05%	71.2%	63.6%
4	722495	721016	966	53.7	75.3%	73.3%	67.4%	71.9%	72.0%	78.4%	54.6%	54.5%	54.3%	54.2%	53.7%	53.5%	13.59%	81.8%	75.1%
5	724149	723036	2620	85.4	60.3%	59.8%	55.8%	61.1%	56.2%	64.4%	35.4%	35.3%	33.9%	33.8%	34.8%	33.4%	6.21%	73.8%	62.1%
6	719962	726897	-1567	50.6	53.1%	49.8%	49.3%	51.2%	49.5%	56.7%	11.8%	12.4%	11.0%	11.8%	12.1%	11.5%	10.57%	57.3%	51.8%
7	718735	714629	-2794	83.5	73.0%	68.5%	64.0%	67.9%	69.7%	76.0%	54.6%	54.3%	53.6%	53.2%	53.9%	52.8%	3.17%	77.5%	71.8%
8	721769	721316	240	61.4	66.4%	63.1%	62.0%	65.3%	63.8%	69.0%	17.3%	17.3%	17.1%	17.1%	16.7%	16.6%	16.9%	70.5%	67.0%
MDLEG_Plan B																			
CD	POP10_A	POP10	DEV.	Current	FED_DPFM	ST_DPFM	GOV06D%	GOV10D%	PRS04D%	PRS08D%	AA_A%	AA%	AA18_A%	AA18%	NHAA%	NHAA18%	HISP%	HSE08%	HSE10%
1	724074	725163	2545	77.2	36.9%	34.2%	34.5%	32.4%	34.9%	38.8%	11.1%	11.3%	10.7%	10.9%	11.1%	10.8%	3.4%	47.5%	39.1%
2	721940	719582	411	71.6	52.4%	50.1%	50.2%	47.6%	49.6%	55.2%	26.9%	26.8%	24.7%	24.5%	26.3%	24.2%	5.4%	68.8%	59.7%
3	719152	721958	-2377	60.0	59.8%	55.7%	53.9%	55.4%	56.9%	62.6%	24.0%	24.2%	22.4%	22.7%	23.9%	22.4%	6.1%	71.2%	63.6%
4	722495	721016	966	53.7	75.3%	73.3%	67.4%	71.9%	72.0%	78.4%	54.6%	54.5%	54.3%	54.2%	53.7%	53.5%	13.6%	81.8%	75.1%
5	724149	723036	2620	85.4	60.3%	59.8%	55.8%	61.1%	56.2%	64.4%	35.4%	35.3%	33.9%	33.8%	34.8%	33.4%	6.2%	73.8%	62.1%
6	722879	724441	1350	52.2	52.1%	49.1%	48.4%	50.0%	48.3%	55.9%	12.3%	12.5%	11.4%	11.7%	12.1%	11.4%	12.5%	56.0%	50.0%
7	718690	714584	-2839	83.5	73.0%	68.5%	64.0%	67.9%	69.7%	76.0%	54.6%	54.3%	53.5%	53.2%	53.9%	52.8%	3.2%	77.5%	71.8%
8	718852	723772	-2677	67.5	67.1%	63.5%	62.4%	65.9%	64.7%	69.6%	16.8%	17.2%	16.7%	17.2%	16.6%	16.7%	14.9%	71.3%	68.0%
MDLEG_Plan C																			
CD	POP10_A	POP10	DEV.	Current	FED_DPFM	ST_DPFM	GOV06D%	GOV10D%	PRS04D%	PRS08D%	AA_A%	AA%	AA18_A%	AA18%	NHAA%	NHAA18%	HISP%	HSE08%	HSE10%
1	724074	725163	2545	77.2	36.9%	34.2%	34.5%	32.4%	34.9%	38.8%	11.1%	11.3%	10.7%	10.9%	11.1%	10.8%	3.4%	47.5%	39.1%
2	724843	722469	3314	68.9	51.4%	49.2%	49.4%	46.5%	48.8%	53.9%	25.9%	25.8%	23.7%	23.6%	25.4%	23.3%	5.1%	67.7%	58.7%
3	722693	725377	1164	61.9	57.6%	53.4%	51.9%	52.8%	54.8%	60.2%	22.1%	22.3%	20.7%	20.9%	22.0%	20.7%	6.1%	69.2%	61.6%
4	719633	718211	-1896	60.6	78.0%	75.8%	70.2%	76.0%	74.5%	81.3%	54.8%	54.8%	54.6%	54.5%	53.9%	53.8%	14.2%	84.0%	78.1%
5	720522	719490	-1007	92.8	61.7%	61.4%	57.3%	62.8%	57.5%	65.8%	38.1%	38.1%	36.8%	36.8%	37.6%	36.4%	5.8%	75.1%	63.5%
6	719962	726897	-1567	50.6	53.1%	49.8%	49.3%	51.2%	49.5%	56.7%	11.8%	12.4%	11.0%	11.8%	12.1%	11.5%	10.6%	57.3%	51.8%
7	718735	714629	-2794	83.5	73.0%	68.5%	64.0%	67.9%	69.7%	76.0%	54.6%	54.3%	53.6%	53.2%	53.9%	52.8%	3.2%	77.5%	71.8%
8	721769	721316	240	61.4	66.4%	63.1%	62.0%	65.3%	63.8%	69.0%	17.3%	17.3%	17.1%	17.1%	16.7%	16.6%	16.9%	70.5%	67.0%

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MDLEG_Plan D																			
CD	POP10_A	POP10	DEV.	Current	FED_DPFM	ST_DPFM	GOV06D%	GOV10D%	PRS04D%	PRS08D%	AA_A%	AA%	AA18_A%	AA18%	NHAA%	NHAA18%	HISP%	HSE08%	HSE10%
1	724074	725163	2545	77.2	36.9%	34.2%	34.5%	32.4%	34.9%	38.8%	11.1%	11.3%	10.7%	10.9%	11.1%	10.8%	3.4%	47.5%	39.1%
2	722337	723719	808	69.6	50.8%	48.8%	49.4%	46.2%	48.2%	53.2%	23.2%	23.3%	20.8%	21.1%	22.9%	20.8%	5.9%	67.7%	58.7%
3	718719	717993	-2810	30.5	59.0%	54.4%	52.4%	53.7%	55.9%	62.0%	26.2%	26.2%	25.2%	25.1%	25.8%	24.9%	4.2%	67.5%	60.3%
4	722495	721016	966	53.7	75.3%	73.3%	67.4%	71.9%	72.0%	78.4%	54.6%	54.5%	54.3%	54.2%	53.7%	53.5%	13.6%	81.8%	75.1%
5	724149	723036	2620	85.4	60.3%	59.8%	55.8%	61.1%	56.2%	64.4%	35.4%	35.3%	33.9%	33.8%	34.8%	33.4%	6.2%	73.8%	62.1%
6	722879	724441	1350	52.2	52.1%	49.1%	48.4%	50.0%	48.3%	55.9%	12.3%	12.5%	11.4%	11.7%	12.1%	11.4%	12.5%	56.0%	50.0%
7	718726	714412	-2803	66.4	76.4%	72.2%	68.0%	72.5%	73.0%	79.5%	56.1%	55.9%	54.6%	54.2%	55.4%	53.8%	4.5%	83.1%	77.8%
8	718852	723772	-2677	67.5	67.1%	63.5%	62.4%	65.9%	64.7%	69.6%	16.8%	17.2%	16.7%	17.2%	16.6%	16.7%	14.9%	71.3%	68.0%
MDLEG_Plan E																			
CD	POP10_A	POP10	DEV.	Current	FED_DPFM	ST_DPFM	GOV06D%	GOV10D%	PRS04D%	PRS08D%	AA_A%	AA%	AA18_A%	AA18%	NHAA%	NHAA18%	HISP%	HSE08%	HSE10%
1	724074	725163	2545	77.2	36.9%	34.2%	34.5%	32.4%	34.9%	38.8%	11.1%	11.3%	10.7%	10.9%	11.1%	10.8%	3.4%	47.5%	39.1%
2	724843	722469	3314	68.9	51.4%	49.2%	49.4%	46.5%	48.8%	53.9%	25.9%	25.8%	23.7%	23.6%	25.4%	23.3%	5.1%	67.7%	58.7%
3	722693	725377	1164	61.9	57.6%	53.4%	51.9%	52.8%	54.8%	60.2%	22.1%	22.3%	20.7%	20.9%	22.0%	20.7%	6.1%	69.2%	61.6%
4	718612	717130	-2917	54.9	79.2%	77.1%	71.4%	77.3%	75.7%	82.4%	56.1%	56.0%	56.0%	56.0%	55.1%	55.2%	15.7%	85.0%	79.4%
5	721718	720692	189	91.7	61.7%	61.4%	57.3%	62.7%	57.5%	65.7%	38.0%	38.0%	36.7%	36.7%	37.5%	36.3%	5.7%	75.0%	63.4%
6	719962	726897	-1567	50.6	53.1%	49.8%	49.3%	51.2%	49.5%	56.7%	11.8%	12.4%	11.0%	11.8%	12.1%	11.5%	10.6%	57.3%	51.8%
7	718735	714629	-2794	83.5	73.0%	68.5%	64.0%	67.9%	69.7%	76.0%	54.6%	54.3%	53.6%	53.2%	53.9%	52.8%	3.2%	77.5%	71.8%
8	721594	721195	65	56.1	65.6%	62.3%	61.3%	64.6%	63.1%	68.3%	16.1%	16.1%	15.7%	15.7%	15.6%	15.2%	15.4%	69.9%	66.2%
MDLEG_Plan F																			
CD	POP10_A	POP10	DEV.	Current	FED_DPFM	ST_DPFM	GOV06D%	GOV10D%	PRS04D%	PRS08D%	AA_A%	AA%	AA18_A%	AA18%	NHAA%	NHAA18%	HISP%	HSE08%	HSE10%
1	724074	725163	2545	77.2	36.9%	34.2%	34.5%	32.4%	34.9%	38.8%	11.1%	11.3%	10.7%	10.9%	11.1%	10.8%	3.4%	47.5%	39.1%
2	724843	722469	3314	68.9	51.4%	49.2%	49.4%	46.5%	48.8%	53.9%	25.9%	25.8%	23.7%	23.6%	25.4%	23.3%	5.1%	67.7%	58.7%
3	722693	725377	1164	61.9	57.6%	53.4%	51.9%	52.8%	54.8%	60.2%	22.1%	22.3%	20.7%	20.9%	22.0%	20.7%	6.1%	69.2%	61.6%
4	721364	719931	-165	63.4	79.3%	77.3%	71.9%	77.7%	75.9%	82.5%	55.5%	55.5%	55.3%	55.3%	54.6%	54.5%	14.2%	85.2%	79.7%
5	721718	720692	189	91.7	61.7%	61.4%	57.3%	62.7%	57.5%	65.7%	38.0%	38.0%	36.7%	36.7%	37.5%	36.3%	5.7%	75.0%	63.4%
6	719962	726897	-1567	50.6	53.1%	49.8%	49.3%	51.2%	49.5%	56.7%	11.8%	12.4%	11.0%	11.8%	12.1%	11.5%	10.6%	57.3%	51.8%
7	718735	714629	-2794	83.5	73.0%	68.5%	64.0%	67.9%	69.7%	76.0%	54.6%	54.3%	53.6%	53.2%	53.9%	52.8%	3.2%	77.5%	71.8%
8	718842	718394	-2687	64.8	65.2%	61.7%	60.6%	63.9%	62.6%	67.8%	16.5%	16.5%	16.3%	16.2%	16.0%	15.8%	16.9%	69.3%	65.7%
Black Caucus A																			
CD	POP10_A	POP10	DEV.	Current	FED_DPFM	ST_DPFM	GOV06D%	GOV10D%	PRS04D%	PRS08D%	AA_A%	AA%	AA18_A%	AA18%	NHAA%	NHAA18%	HISP%	HSE08D%	HSE10%
1	721529	722712	0	92.2%	38.0%	35.2%	35.3%	33.9%	36.1%	39.8%	11.3%	11.4%	11.0%	11.1%	11.3%	11.0%	3.4%	49.6%	41.4%
2	721529	719370	0	75.1%	48.8%	46.2%	46.6%	43.6%	46.3%	51.1%	21.5%	21.4%	19.5%	19.3%	21.1%	19.1%	5.0%	64.3%	55.2%
3	721529	725024	0	65.9%	58.9%	54.9%	53.1%	54.8%	55.7%	62.0%	25.2%	25.4%	23.9%	24.3%	25.0%	24.0%	6.3%	69.0%	61.7%
4	721529	720083	0	69.0%	88.1%	86.1%	82.2%	89.4%	85.1%	90.9%	58.8%	58.7%	58.0%	57.9%	57.7%	57.0%	18.3%	92.3%	90.0%
5	721528	720470	-1	93.7%	62.1%	61.8%	57.6%	63.4%	57.9%	66.2%	39.6%	39.6%	38.5%	38.5%	39.1%	38.1%	6.4%	75.4%	64.0%
6	721529	728811	0	93.2%	39.0%	37.5%	37.2%	36.5%	35.6%	42.4%	6.5%	7.2%	6.1%	7.0%	7.0%	6.9%	4.7%	41.5%	36.3%
7	721529	715935	0	51.7%	80.8%	76.4%	72.3%	76.6%	77.6%	83.8%	58.7%	58.5%	56.0%	55.6%	58.0%	55.2%	3.8%	88.4%	83.0%
8	721529	721147	0	80.7%	68.8%	63.6%	62.9%	67.7%	65.9%	71.7%	13.9%	13.9%	13.2%	13.2%	13.4%	12.8%	17.4%	74.3%	70.4%

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9/15/2011

Black Caucus B																		
CD	POP10_A	POP10	DEV.	Current	FED_DPFM	ST_DPFM	GOV06D%	GOV10D%	PRS04D%	PRS08D%	AA_A%	AA%	AA18_A%	AA18%	NHAA%	NHAA18%	HISP%	HSE08D%	HSE10%
1	721529	722712	0	92.2%	38.0%	35.2%	35.3%	33.9%	36.1%	39.8%	11.3%	11.4%	11.0%	11.1%	11.3%	11.0%	3.4%	49.6%	41.4%
2	721529	719085	0	75.0%	48.7%	46.1%	46.8%	43.2%	46.4%	50.8%	19.9%	19.8%	17.6%	17.4%	19.4%	17.1%	5.8%	65.8%	56.1%
3	721529	725198	0	65.1%	55.1%	51.1%	49.9%	50.9%	52.1%	58.0%	19.5%	19.8%	18.6%	19.0%	19.5%	18.7%	5.6%	65.7%	58.2%
4	721529	720083	0	69.0%	88.1%	86.1%	82.2%	89.4%	85.1%	90.9%	58.8%	58.7%	58.0%	57.9%	57.7%	57.0%	18.3%	92.3%	90.0%
5	721528	720470	-1	93.7%	62.1%	61.8%	57.6%	63.4%	57.9%	66.2%	39.6%	39.6%	38.5%	38.5%	39.1%	38.1%	6.4%	75.4%	64.0%
6	721529	728811	0	93.2%	39.0%	37.5%	37.2%	36.5%	35.6%	42.4%	6.5%	7.2%	6.1%	7.0%	7.0%	6.9%	4.7%	41.5%	36.3%
7	721529	716046	0	63.3%	83.9%	79.4%	75.2%	81.4%	80.6%	87.1%	66.1%	65.8%	64.2%	63.9%	65.3%	63.5%	3.8%	89.1%	85.8%
8	721529	721147	0	80.7%	68.8%	63.6%	62.9%	67.7%	65.9%	71.7%	13.9%	13.9%	13.2%	13.2%	13.4%	12.8%	17.4%	74.3%	70.4%

boundaries of the newly adopted Congressional districts reflect a number of considerations, including . . . partisan consideration."[213]

121. On November 7, 2011, Democratic Senator Jamie Raskin explained of the redistricting process: "Democrats control the redistricting process in Maryland" and exercising that control, they "hoped to pick up a seventh House seat through redistricting."[214]

122. GRAC member Michael Busch, the Maryland House Speaker, said: "I think the numbers will show that [the Congressional Plan] makes [the Sixth District] pretty competitive," in favor of Democrats, where as it previously was a safely Republican district.[215]

123. GRAC Chair Jeanne Hitchcock explained that under the Congressional Plan the Sixth District was "dominated" by Democratic voters in Montgomery County.[216]

IV. OBJECTIVE DEMOGRAPHIC EVIDENCE DEMONSTRATES THAT THE MARYLAND LEGISLATURE INTENDED TO BURDEN THE REPRESENTATIONAL RIGHTS OF REPUBLICANS LIVING IN NORTHWESTERN MARYLAND

124. Changes to the 6th Congressional District in the 2011 Congressional Plan severely altered the partisan composition of its registered voters. The interchange of population among districts far exceeded the modest changes needed to rebalance the District's total population based on the 2010 decennial census. (*See* Paragraph 20, above.) My partisan gain and loss accounting presented below reveals a telltale

[213] *Id.*

[214] *Id.*

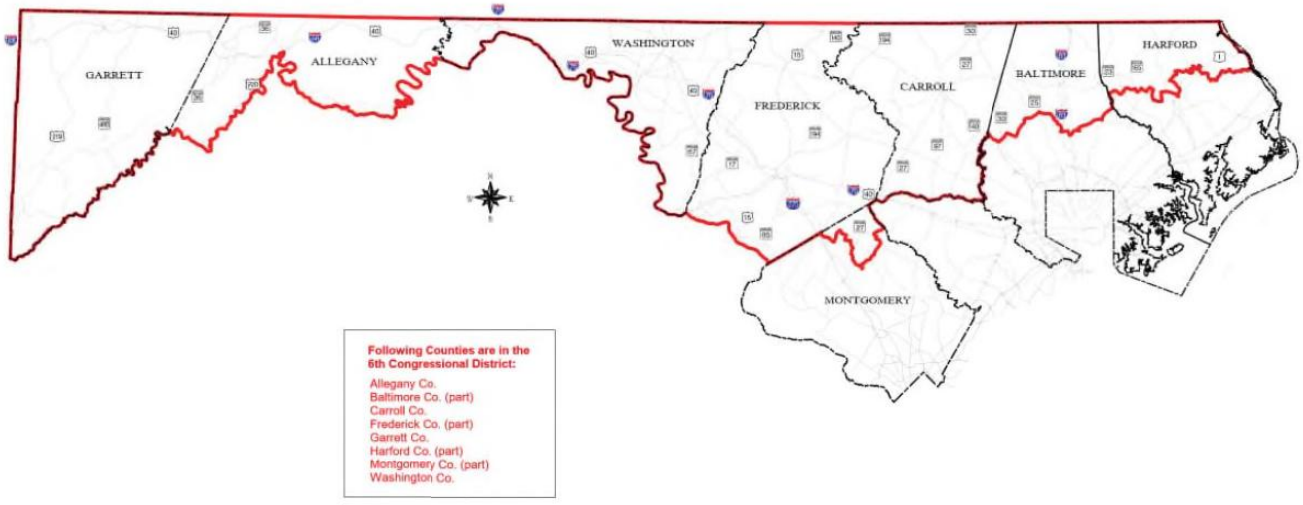
[215] *Id.*

[216] *Id.*

statistical footprint which exposes an underlying partisan intent as the predominant motivation behind redrawing CD6 in its current form. In my opinion, that obvious statistical footprint presents unambiguous evidence of partisan intent as the predominant motivating factor for dismembering CD6. The legitimate aims of equalizing the District's total resident population and respecting existing communities of interest insofar as possible were subordinated in favor of that single-minded partisan intent. (*See* Paragraph 21, above.)

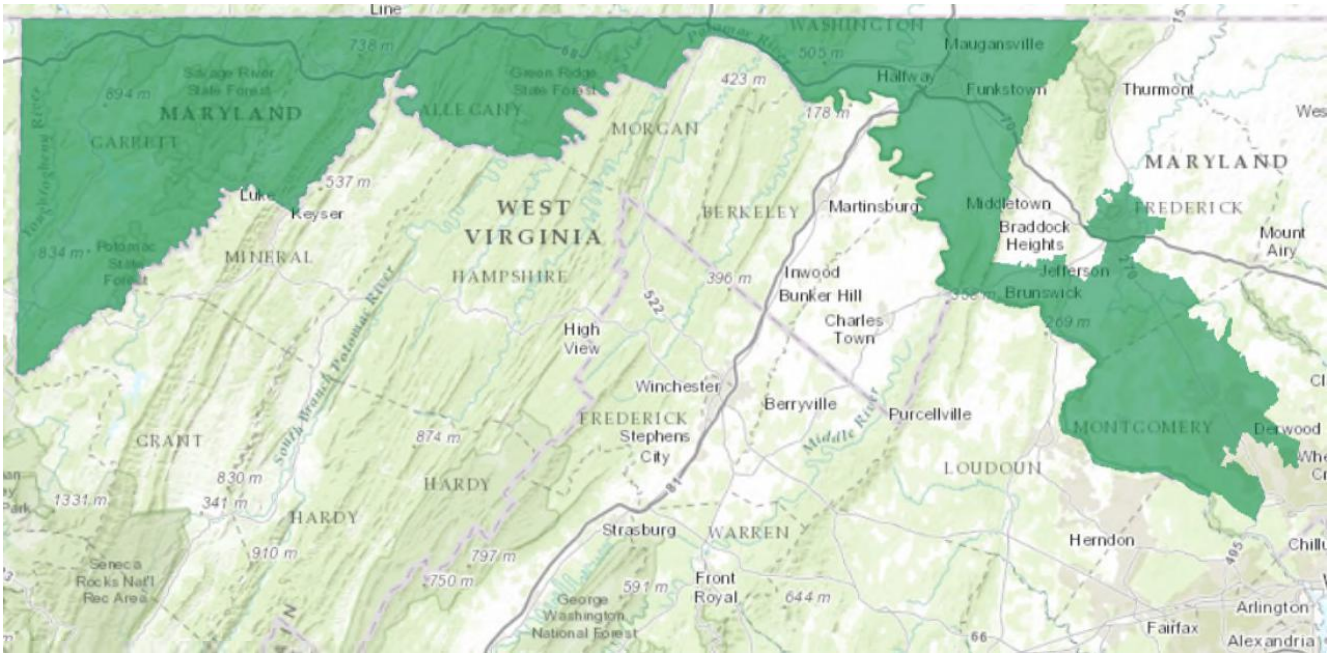
125. Prior to redistricting, 2002 Congressional District 6 included all of western Maryland and extended across the State's northern border, encompassing mostly rural areas and a heavily Republican electorate (see Figure 1). In 2010, registered Republicans outnumbered registered Democrats by 1.3 to 1 among eligible active voters there and comprised 47% of all eligible active voters.

Figure 1. 2002 Congressional District 6



126. Redistricting drastically altered the 6th Congressional District as reconfigured in 2012 (see Figure 2). A total of 189 precincts were interchanged—i.e., either switched out of the former district or into the newly redrawn district. In 2012, it was Democrats who outnumbered Republicans by 1.3 to 1 among eligible active voters, and Republicans' share stood at just 33%.

Figure 2. 2011 Congressional District 6



127. This 189-precinct interchange left an indelible statistical footprint of partisan intent. To show its pattern, I reconstructed how the redrawn boundaries of CD6 altered the assignment of each individual precinct that was ever part of CD6, either before or after redistricting. Table 1 summarizes the results of my analysis (based on the precinct-level reconstruction documented in Appendix A). The reader can follow the geographic pattern of changes by referring to Figures 1 and 2, which show CD6 before and after that 189-precinct interchange.

128. On the northeast, the original 111th Congressional District 6 included part of Harford County (Figure 1, top right). Redistricting removed all 9 of that county's precincts from the newly redrawn 113th Congressional District 6. This decision had the effect of subtracting 11,426 of its existing Republican registrants and 6,757 of its existing Democratic registrants.

129. In Baltimore County (to the west), redistricting removed all 11 of that county's precincts from the newly redrawn 113th Congressional District 6. This decision had the effect of subtracting 2,745 of its existing Republican registrants and 9,576 of its existing Democratic registrants.

130. In Carroll County (further west), redistricting removed all 36 of that county's precincts from the newly redrawn 113th Congressional District 6. This decision had the effect of subtracting 56,870 of its existing Republican registrants and 32,778 of its existing Democratic registrants.

131. In Frederick County (still further west), redistricting removed 29 of that county's 40 precincts entirely, plus portions of the 11 other precincts, from the newly redrawn 113th Congressional District 6. This decision had the effect of subtracting nearly 41,265 of its existing Republican registrants and nearly 28,284 of its existing Democratic registrants.

132. In Montgomery County (to the south), redistricting removed just three of that county's precincts from the newly redrawn 113th Congressional District 6. This decision had only a slight effect, subtracting 2,065 existing Republican registrants and 1,624 existing Democratic registrants. However, redistricting added 90 precincts from former Districts 4 and 8 in the original 111th Congressional District plan. This decision increased Republican registrants by 48,913 but boosted Democratic registrants by 107,119—a net gain of over 58 thousand Democratic voters.

133. All in all, decisions to amputate communities of interest in Harford, Baltimore, and Carroll counties evidence a singular purpose: to subtract Republican voters. The

decision to remove 11 precincts from Baltimore County (favoring Republican voters) created the further possibility of attaching Republican Frederick county—and the added possibility of connecting Montgomery County, for a further net gain of thousands of Democratic voters.

134. The overall effect of the 189-precinct interchange that I reconstructed and show in Table 1 was a net reduction of 65,458 Republican registrants and an offsetting net increase of 28,100 Democratic registrants. Together, these changes favored Democrats with a *net gain* of 93,558 registrants. Recall that the legitimate aim of equalizing the total resident population of CD6 necessitated simple boundary adjustments to register a *net removal* of just 17,249 district residents.

Table 1. Precinct-Level Accounting of Partisan Gain and Loss

Partisan Gain and Loss Accounting			
111th District 6:	**Redistricting action**	**Effect on 113th District 6**	
Baltimore County	Removed all 11 precincts	*Voters FROM D6 (to D1):*	
		Republican	-2,745
		Democrat	-9,576
Carroll County	Removed all 36 precincts	*Voters FROM D6 (to D8):*	
		Republican	-56,870
		Democrat	-32,778
Frederick County	Removed 40 precincts	*Voters FROM D6 (to D8):*	
		Republican	-41,265
		Democrat	-28,284
Harford County	Removed all 9 precincts	*Voters FROM D6 (to D1):*	
		Republican	-11,426
		Democrat	-6,757
Montgomery County	Added 90 precincts	*Voters TO D6 (from D4 & D8):*	
		Republican	48,913
		Democrat	107,119
	Removed 3 precincts	*Voters FROM D6 (to D8):*	
		Republican	-2,065
		Democrat	-1,624
Total, all 5 counties	189 precincts interchanged	*Net Effect of interchanges:*	
		Republican	-65,458
		Democrat	+28,100
Source: See Appendix D.			
Note: 10 precincts unaccounted for due to missing/inconsistent precinct numbering.			

135. An unmistakable partisan logic and intent drove the redistricting of CD6. The former district was dismembered and reassembled so as to exclude its existing registered Republicans in four counties (Baltimore, Carroll, Frederick, and Harford) and to incorporate registered Democrats by attaching portions of Montgomery County where they were concentrated.

V. THE NEW BOUNDARIES OF THE SIXTH DISTRICT CANNOT BE EXPLAINED BY TRADITIONAL REDISTRICTING PRINCIPLES, SUCH AS MAINTAINING EXISTING COMMUNITIES OF INTEREST

136. The net gain of over 58 thousand Democratic registrants from attaching portions of Montgomery County has been justified as a legitimate effort to respect a "community of interest." This implausible justification has a necessary premise: that Montgomery County residents who are employed share a common interest because most of them commute to work in the District of Columbia, via Interstate 270. This DC-bound commuter population, so the argument goes, is a vital "community of interest," which necessitated adding a portion of Montgomery County to CD6 and retaining only a portion of Frederick County in the newly drawn CD6.

137. This "community of interest" justification fades in the face of US Census Bureau data on journey to work (see Table 2). Only 21.3% of workers living in Montgomery County commute to a job in DC; most commute to jobs located *within* Montgomery County (59.4%) or in neighboring Frederick, Howard, Anne Arundel, or Prince George's counties. Among workers in Frederick County, a miniscule 3.4% commute to a job in DC; and in Washington County, just 1.1% do so.

Table 2

Residence and Workplace Commuting: 2006-10					
County of Residence	Total workers		Commuting to workplace in:		
	No.	%	District of Columbia	Own county of residence	All other workplaces
Montgomery	495,994	100%	21.3%	59.4%	19.2%
Frederick	119,462	100%	3.4%	57.7%	38.9%
Washington	69,709	100%	1.1%	66.4%	32.5%
Source: US Census Bureau, American Community Survey, 5-year 2010 file.					

138. Communities of interest are diverse and varied. The most clearly recognized communities of interest center on the residents of established communities, such as incorporated cities and towns and Census Designated Places. The U.S. Census Bureau defines such established communities collectively as Census "Places," recognizing that their residents share well-defined commonalities of interest tied to place. Census Designated Places (CDPs) have been recognized and identified in each decennial census since 1980 as the counterparts of incorporated cities, towns, and villages. CDPs are populated areas that generally include one officially designated but currently unincorporated small community, for which the CDP is named, plus surrounding inhabited countryside of varying dimensions and, occasionally, other, smaller unincorporated communities as well. CDPs include small rural communities, *colonias* located along the U.S. border with Mexico, and unincorporated resort and retirement communities and their environs. Current Census Bureau criteria require that a CDP name "be one that is recognized and

used in daily communication by the residents of the community" (not "a name developed solely for planning or other purposes") and recommend that a CDP's boundaries be mapped based on the geographic extent associated with inhabitants' regular use of the named place.[217]

139. Communities of interest exist, as well, in the eyes of the beholder. Conceivably, one could imagine the 21.3% of Montgomery County workers, plus the 3.4% of Frederick County workers, who commute to jobs in DC as a "community of interest." This imagined possibility poses a real question of balance: Does any purported shared interest, unifying some small fraction of commuters, outweigh in importance the officially recognized shared interests among residents of an established Census Place within a Congressional district? That is, in balancing traditional redistricting criteria, can anyone justify according more importance to an imagined "community of interest" embodying daily commuters than to established communities of interest that are officially recognized over many years as "Census Places" by the U.S. Census Bureau?

[217] *See* US Census Bureau, "Geographic Terms and Concepts—Place," https://goo.gl/T7aKiL (last visited April 5, 2017).

Table 3

Established Communities of Interest Split by Redistricting						
	No. of communities of interest within 111th CD 6			No. of communities of interest within 113th CD 6		
Type of place	Whole	Portion	% split	Whole	Portion	% split
Incorporated						
Cities	3	0	0%	1	2	67%
Towns	14	0	0%	3	1	25%
Unincorporated						
CDPs	14	4	22%	5	10	67%
Other						
Total, all places	31	4	11%	9	13	59%
Source: Author's tabulation of all Census Places wholly or partly within 111th and 113th CD6.						

140. The post-2010 reconfiguration of CD6, as shown above, entailed a massive interchange of territory. Accompanying that interchange was the dismemberment of many existing communities of interest; specifically, the majority of established Census Places within the 113th CD6. Table 3 documents this unmistakable effect.

141. Prior to redistricting, all the three incorporated cities and all 14 incorporated towns within the 111th CD6 were wholly intact; not a single one of these established communities of interest was split. After redistricting, two of the three incorporated cities and one of the four incorporated towns within the 113th CD6 was split.

142. As noted above (see Paragraph 140), an unincorporated CDP is an officially recognized community that bears a locally recognized name. Prior to redistricting, only 22% of the 18 CDPs within the 111th CD6 was split. After redistricting, 67% of the 15 CDPs within the 113th CD6 were split.

143. The bottom row of Table 3 summarizes the overall collateral damage inflicted on recognized communities of interest in the wake of redistricting. Only 11% of such communities in the 111th CD6 were split; fully 59% of such communities ended up being split in the 113th CD6. In my opinion, this disparity is an indelible statistical footprint of intent.

144. The data in Table 3 discredit any suggestion that a purported shared interest among a small fraction of resident commuters could justify splitting the majority of established Census Places within the 113th CD6. Even granting the existence of that purported shared interest, its significance pales relative to the collective shared interests of the 13 established Census places whose boundaries ended up being split in the 113th CD6.

145. The total population of CD6 could easily have been rebalanced without splitting so many existing Census Places. The post-redistricting increase in non-intact Census places (from 11% to 59% of all places) is a "smoking gun" that exposes motives beyond simply rebalancing total population. The predominant emphasis on "cracking" the 6th District blatantly subordinated the preservation of existing communities of interest to removing Republican registered voters and scattering them across other districts.

VI. THE PROPOSED CONGRESSIONAL PLAN UNDERMINES ENDURING COMMON INTERESTS SHARED AMONG ITS ORIGINAL RESIDENTS

146. Enduring commonalities of interest are apparent within the 111th CD6. Recurrent themes voiced in deposition testimonies[218] reflect common values deriving from the origins and economic circumstances of its residents, the low-density rural and small-town communities in which they live and work, and the traditional livelihoods their local economies have offered its residents.

147. Before redistricting, the population of the 111th CD6 was relatively uniform. Its residents were mostly native Marylanders, living and working in exurban and rural communities beyond the District of Columbia and its daily commuter shed. Many of these residents had modest levels of educational attainment and per capita income, and their communities registered comparatively high levels of poverty and economic dependence.

148. Figures 3 through 7 provide a visual overview of various aspects of these uniformities. Specifically, they highlight key differences between newly added Montgomery County and other counties in the original 111th CD6 (from Garrett County on the west to Harford County on the east).

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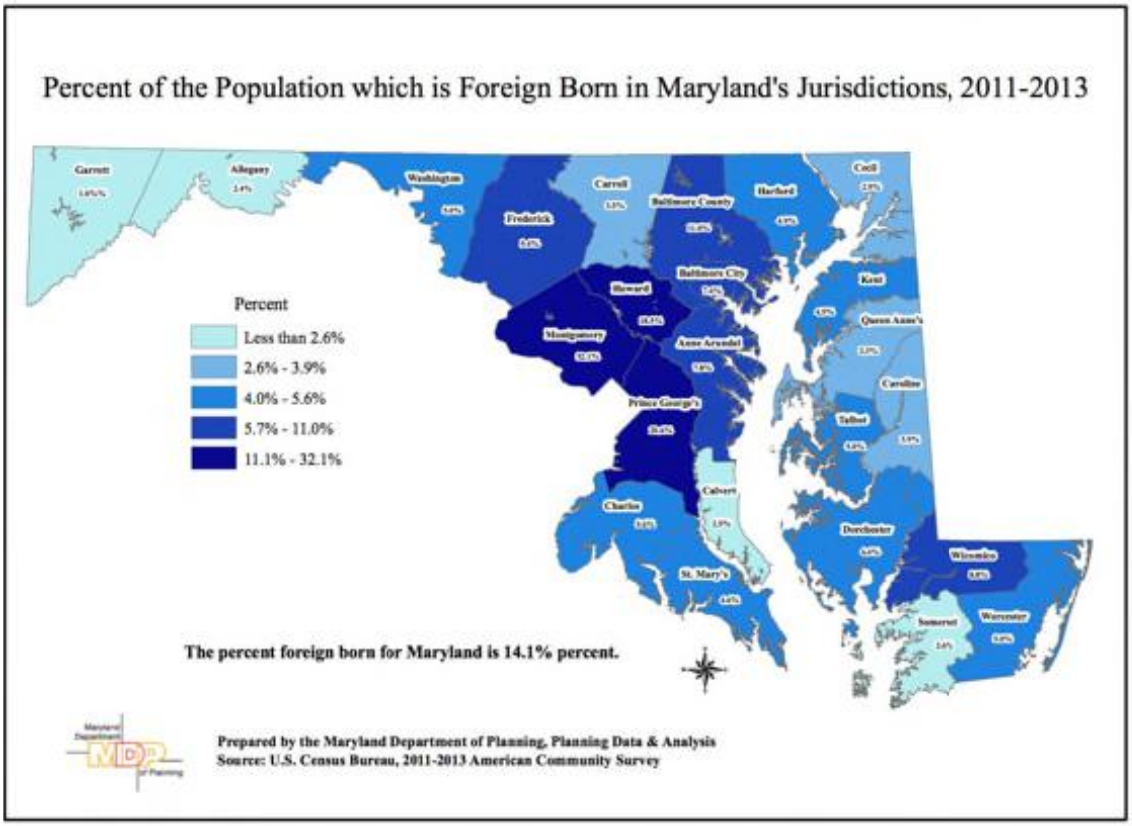
[218] *See, e.g.*, Deposition of Edmund Cueman (quoted at Paragraph 31 above); and Ropp Dep. at 67:2-13 (referencing being harmed by the 2011 redistricting: "I found that I was separated from areas that I aligned with. Like take, for example, speaking geographically, I live 10 miles away from a friend voting in a different congressional district. There was a disconnect between myself and my community as to who we would be voting for these positions. . . . I also felt very harmed because I saw many people in my community very frustrated with the process and very frustrated that there were not clear lines drawn to keep everybody together.").

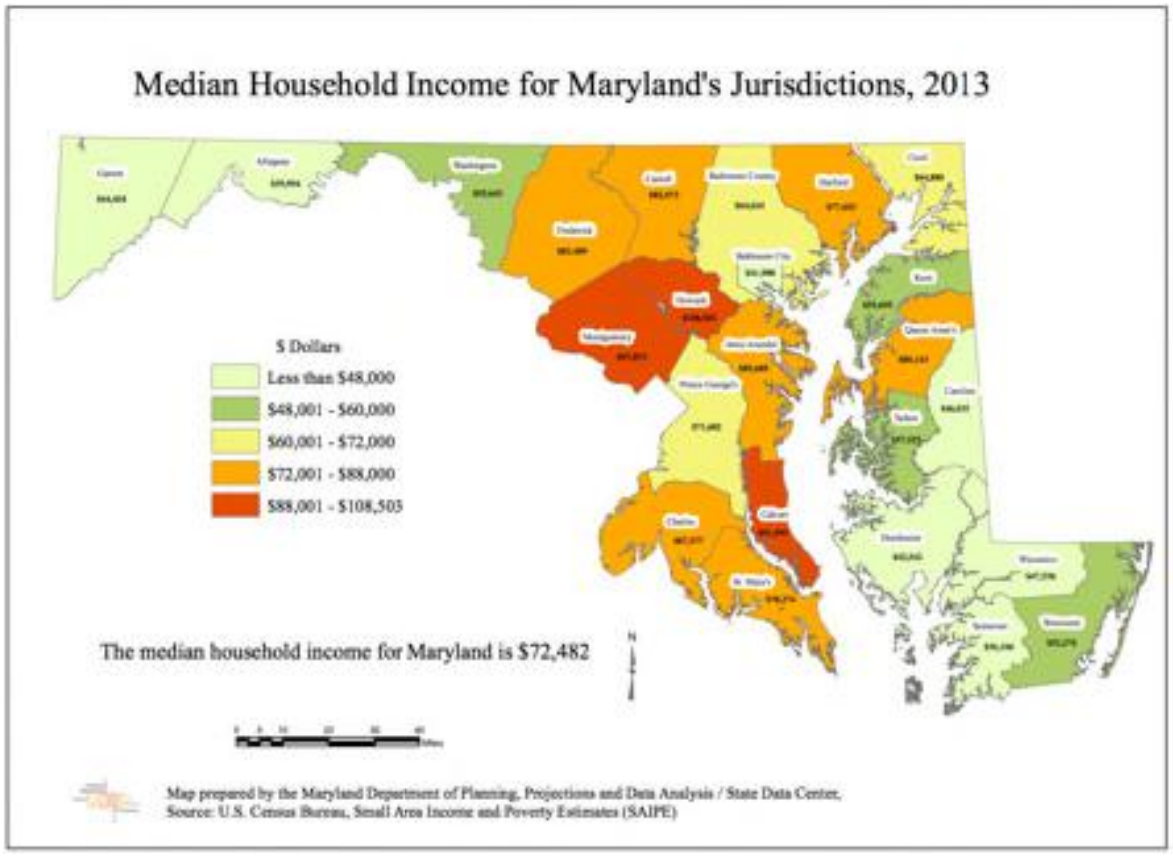
Figure 3.



Source: *2014 Maryland Statistical Handbook.*

149. As seen in Figure 3, foreign-born residents range from just 2% to no more than 11% of the population in any of the original counties in the 111th CD6. In Montgomery County, by contrast, foreign-born residents constitute 32% of the population.

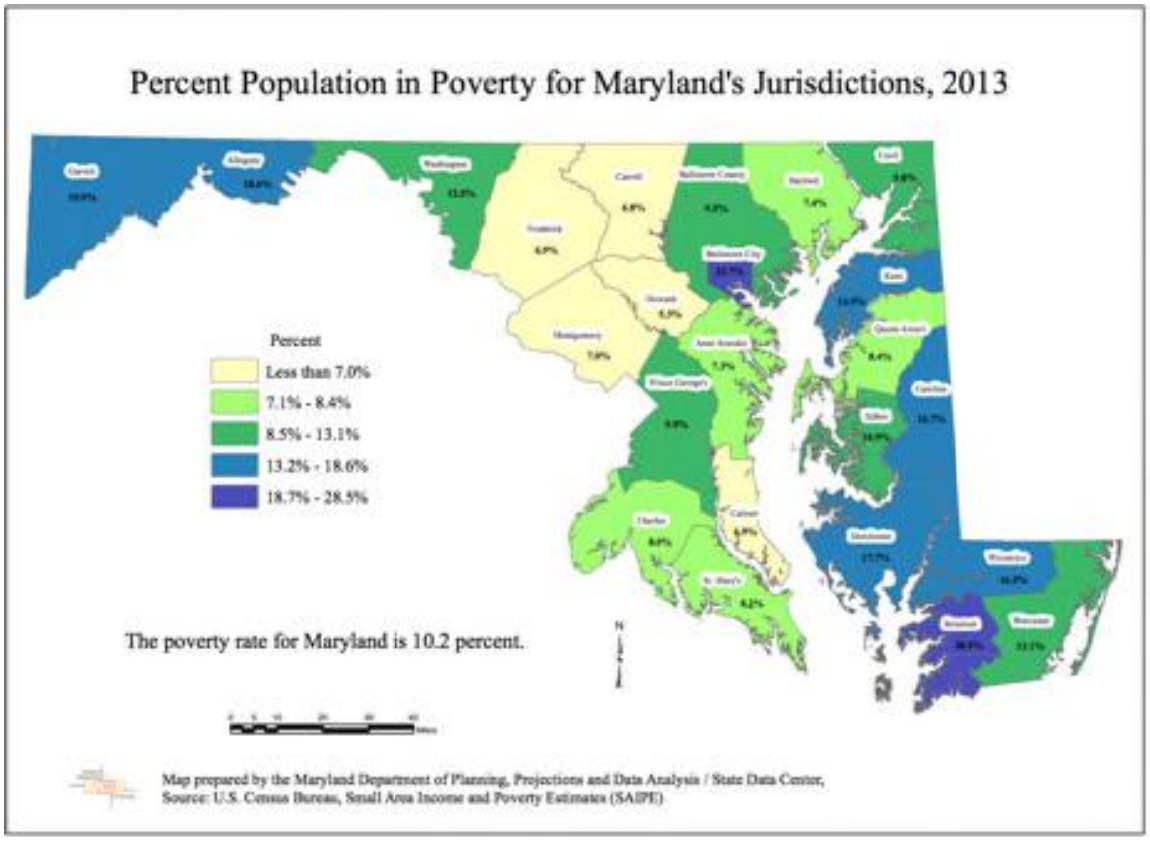
Figure 4



Source: *2014 Maryland Statistical Handbook.*

150. As seen in Figure 4, median household income is under $56,000 in Garrett, Allegany, and Washington counties (and under $83,500 in any other of the district's original counties). In Montgomery County, by contrast, median household income is $97,873.

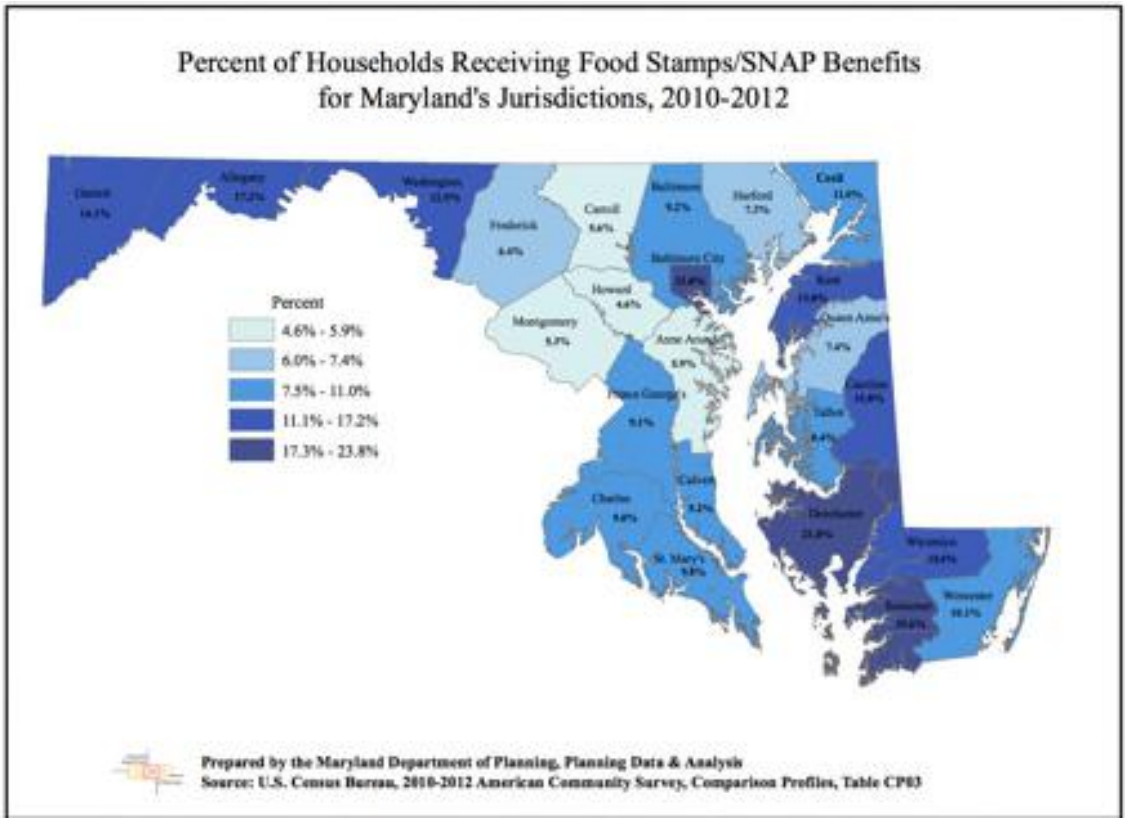
Figure 5



Source: *2014 Maryland Statistical Handbook.*

151. As seen in Figure 5, the percentage of residents in poverty ranges from 12.0% to 18.6% in Garrett, Allegany, and Washington counties, compared with 7.0% in Montgomery County.

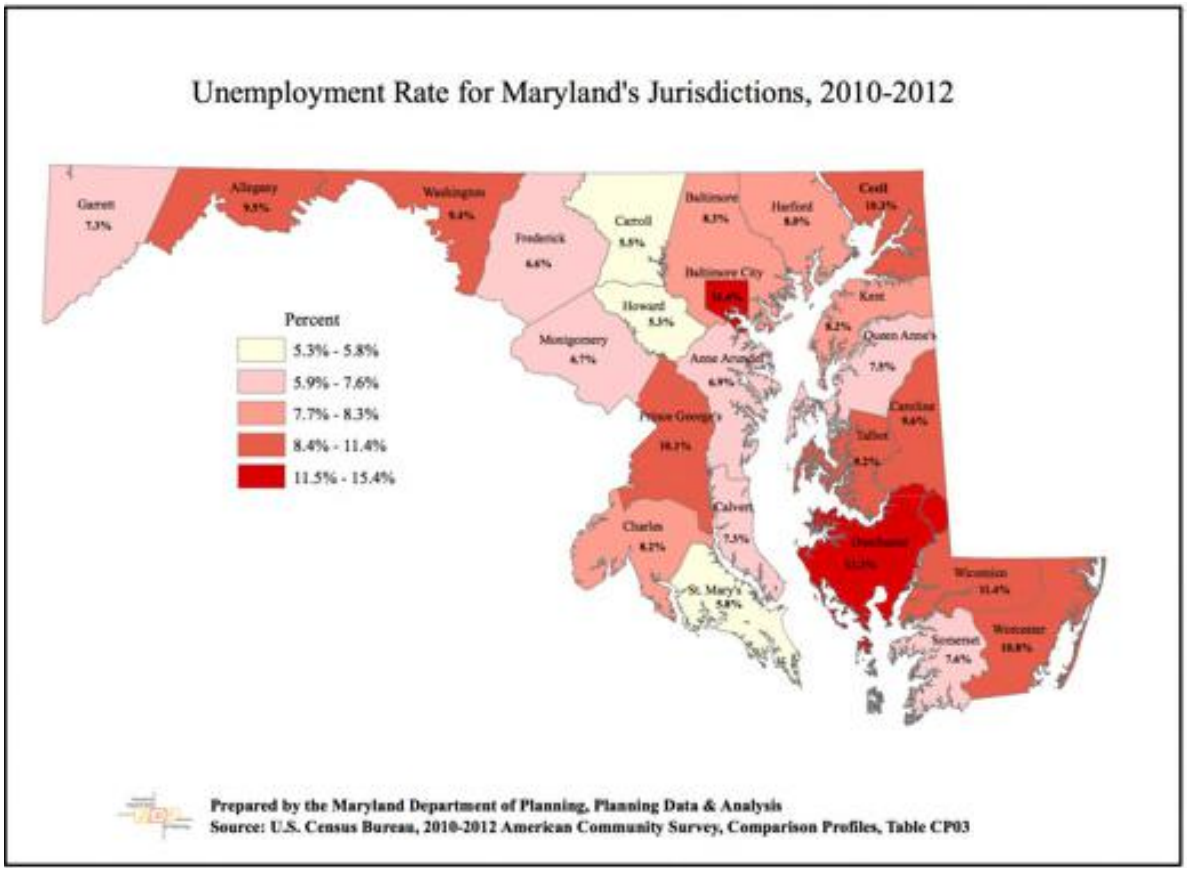
Figure 6



Source: *2014 Maryland Statistical Handbook.*

152. As seen in Figure 6, the percentage of households receiving food stamps/SNAP benefits ranges from 12.5% to 17.2% in Garrett, Allegany, and Washington counties, compared with 5.3% in Montgomery County.

Figure 7



Source: *2014 Maryland Statistical Handbook.*

153. As seen in Figure 7, the unemployment rate ranges from 7.3% to 9.5% in all but two of the counties originally in 2011 CD6, compared with 6.7% in Montgomery County.

154. Table 4 further amplifies on my central point here: The residents of the original 111th CD6 share long-standing common interests and values deriving from their origins and economic circumstances, the low-density rural and small-town communities in which they live and work, and the traditional livelihoods their local economies have offered its residents.

Table 4 County Socioeconomic Indicators

Maryland County	Density (persons per sq.mi.)	Farms per 1,000 residents	Per capita personal income (2009 $)	% of H'holds receiving Food Stamps or SNAP	% of persons 25+ with:		% Marylan d born	% Foreign born	% Speaking Non-English Language at Home
					No HS diploma	BA degree or higher			
Characteristics of Counties Within Original 111th Congressional District 6									
Garrett	47	22.3	$38,001	14.1%	15%	19%	62%	2%	n.a.
Allegany	176	3.9	$32,185	17.2%	14%	17%	72%	2%	4%
Washington	325	5.8	$36,133	12.5%	14%	19%	63%	5%	7%
Frederick	360	5.5	$45,747	6.4%	8%	38%	50%	10%	13%
Carroll	374	6.5	$45,309	5.6%	8%	33%	67%	4%	5%
Baltimore	1,359	0.8	$49,819	9.2%	10%	35%	65%	11%	13%
Harford	565	2.3	$48,696	7.3%	8%	32%	65%	5%	8%
Median, all 7 counties	***360***	***5.5***	***$45,309***	***9.2%***	***10%***	***32%***	***65%***	***5%***	***7%***
Characteristics of Montgomery County Newly Added to 113th Congressional District 6									
Montgomery	2,021	0.5	$68,830	5.3%	9%	57%	24%	32%	39%
Source: US Census Bureau, American Community Survey 3-Year 2012 file. Access at: www.mdp.state.md.us/MSDC/American_Community_Survey/2010-2012ACS.shtml									

155. The reconfigured 113th CD6 switched out many of these small-town native-born Marylanders and replaced them with outsiders with more varied and dissimilar interests. This reconfiguration was accomplished by replacing several entire counties (Carroll, Frederick, and Harford) with portions of Montgomery County, thereby inserting into the new 113th CD6 various enclaves and other groups of persons born out-of-state and abroad.

156. As shown in Table 4, the socioeconomic profile of Montgomery County differs sharply from those of the seven original counties within the original 111th CD6:

- Montgomery County's population density (2,021 persons per square mile) is over five times the median population density of those seven original counties.
- The presence of farms per thousand residents, which is infinitesimal in Montgomery County, is 11 times more common on average in those seven original counties.
- Montgomery County residents register higher per capita personal income ($68,830) than the corresponding median value for residents of those seven original counties.
- In each of the seven original counties, the percentage of households receiving food stamps or SNAP benefits exceeds the corresponding 5.3% value for Montgomery County.
- On average, only 32% of residents in those seven original counties are four-year college graduates with a BA degree, compared with 57% of all Montgomery County residents.
- On average, 65% of residents in those seven original counties were born in Maryland, compared with 24% of all Montgomery County residents.
- 32% of Montgomery County residents are foreign-born (vs. 5% on average of those in the seven original counties), and 39% speak a language other than English at home (vs. 7% on average among residents of the seven original counties).

157. The pervasive, often sharp differences documented in Table 4 underscore the overall breadth of difference between the existing population of the 111th CD6 and the

newly-added population that has been attached to the 113th CD6. The low density and often rural character of communities, the economic circumstances and educational attainment of residents, and their origins and languages, show the extent to dissimilarity between these two fundamentally dissimilar populations.

158. Of particular note is the infusion into the new 113th CD6 of residents born out-of-state. In the new 113th CD6, the majority of residents (61%) are newcomers to Maryland rather than native-born Marylanders (vs. 43% in the former 111th CD6). One of every four residents of the 113th CD6 is foreign-born, compared with only one of every 13 residents of the 111th CD6.

159. This infusion of outsiders has produced a second-order effect. It has intensified neighborhood residential separation of native-born Marylanders from outsiders of dissimilar origins and backgrounds within CD6. Residential separation, as used here, denotes populations residing apart from one another, in different neighborhoods within CD6. Commonplace neighborhood residential separation—homeowners' separation from renters, for example, or retirees' separation from families with young children—reflects such communities of interest.

160. To quantify residential separation before and after redistricting, I have computed the Index of Dissimilarity (DI), which is widely used to gauge neighborhood residential segregation of Blacks and Whites.[219] This index ranges from 0.0 (absence of separation) to 1.0 (complete separation).

[219] *See* U.S. Bureau of the Census, *Racial and Ethnic Residential Segregation in the United States: 1980-2000,* Appendix B: Measures of Residential Segregation. https://goo.gl/t9Lq7Y (last visited April 5, 2017).

161. DI furnishes me an objective metric for gauging how evenly two segments of the resident population are distributed across neighborhoods within CD6 both before and after redistricting. Residential separation would be least when native-born Marylanders and outsiders were found to be distributed in equal proportions in every census place within CD6. In this hypothetical case, DI would equal 0.0. Conversely, if both groups were entirely separate from each other, DI would equal 1.0. Conceptually, DI measures the percentage of a group's population that would have to change residence for each neighborhood to have the same percentage of that group as in CD6 overall.

162. The Dissimilarity Index increased from 21.0% in the 111th CD6 to 29.3% in the 113th CD6. Such an increase over so brief a period of time shows that redistricting had the second-order effect of separating the district's native-born Marylanders from outsiders incorporated into the district through district boundary changes.

163. Increased residential separation within an election district is potentially corrosive. Where it is generated abruptly by administrative action (as here) instead of emerging gradually through residential choices by individuals over many years, residential separation may undermine the long-standing commonalities of interest within that district. What once unified the district's residents may be supplanted by a heightened "us" vs. "them" mentality, fueling perceived differences among its residents.

VII. CONCLUSIONS

164. The original 111th CD6 was a legitimate "community of interest." Its residents shared long-standing common interests and values deriving from their origins and

economic circumstances, the low-density rural and small-town communities in which they live and work, and the traditional livelihoods their local economies have offered.

165. There is objective demographic evidence showing that the Maryland legislature intended to burden the representational rights of Republicans living in northwestern Maryland because of how they had voted in the past and the political party with which they had affiliated.

166. The 2011 reconfiguration of Maryland's Sixth Congressional District displays an unnecessarily extreme interchange of territory and population. That interchange of approximately 375,000 residents (fully half the district's population) far exceeded what was needed to accomplish the legitimate aim of equalizing the total resident population of CD6. Equalization necessitated only a slight 2.39-percent downward adjustment, easily accomplished through straightforward boundary adjustments to reduce the district's population by just 17,249 residents instead of interchanging ("swapping") over twenty times that number (375,000 district residents).

167. The reconfiguration of CD6 caused by the 2011 Congressional Plan cannot be explained by legitimate districting considerations, such as the preservation of existing communities of interest. In fact, the 2011 Congressional Plan dismembered CD6 itself and many well-defined established local communities of interest that existed within CD6. The direct cause of that dismemberment was the excessive interchange of territory and population.

168. The reconfiguration of CD6 caused by the 2011 Congressional Plan has had a latent divisive effect within the new district, evidenced by the abrupt increase in the value

of the Dissimilarity Index. That discernible increase is directly attributable to the infusion of outsiders, which has intensified neighborhood residential separation of native-born Marylanders from outsiders of dissimilar origins and backgrounds newly assigned to the 113th CD6. This abrupt increase in neighborhood residential separation has the potential to divide the district's native-born Marylanders from outsiders incorporated into the district through unnecessary district boundary changes.

169. Lastly, the Plan clearly manifests (and has accomplished) the obvious aim of replacing Republican-registered voters with non-Republican ones. This predominant emphasis on "cracking" the 6th District—that is, amputating territory so as to replace half of its inhabitants with former inhabitants of other districts—largely ignored existing communities of interest. Thus, its most inexplicable and therefore most telling effect was to single out Republican voters and diminish their presence in CD6.

Date: April 7, 2017

Dr. Peter A. Morrison

Subject: Re: LBC letter
From: jason.gleason03@gmail.com
Date: 5/19/2011 9:37 AM
To: "Brian Romick" <brianromick@gmail.com>

Um yea. Its a recipe for 5-3 not 7-1.
------Original Message------
From: Brian Romick
To: Jason Gleason
Subject: Re: LBC letter
Sent: May 19, 2011 9:28 AM

Not a good letter at all, I am worried that it will spook Cummings

On Wed, May 18, 2011 at 10:08 PM, <jason.gleason03@gmail.com> wrote:

> Have you seen the letter from the Leg Black Caucus in follow up to our meetings with them?
> Sent from my Verizon Wireless BlackBerry

Sent from my Verizon Wireless BlackBerry

Gmail Jason Gleason <jason.gleason03@gmail.com>

RE: Follow up question on maps

1 message

Eric Hawkins <ehawkins@ncecservices.com> Sun, Mar 20, 2011 at 8:20 PM
To: jason.gleason03@gmail.com

Jason,

I have worked out a new version of the 7-1 plan in which you have nothing new in AA (keeping 144k of what Sarbanes currently have). Additions to the district include 79k in Howard with a 60% Dem. Performance, 16.5k in PG with at 69.8% Dem. Performance, and 83k in Montgomery at 67.8% DPFM. The district is currently overpopulated by ~23k and has a total Democratic Performance of 60%. Ruppersburger is under by ~23K and a Democratic Performance of 56.7% -- a decline of 1.2% which we need to fix somehow.

I will be traveling back from Denver on Monday morning and will contact you on Tuesday with more details.

Eric

Eric Hawkins
NCEC Services, Inc.
202-459-2170
ehawkins@ncecservices.com

-----Original Message-----
From: jason.gleason03@gmail.com [mailto:jason.gleason03@gmail.com]
Sent: 03/17/2011 11:24 AM
To: Eric Hawkins
Subject: Re: Follow up question on maps

Understood. But I think my boss's reaction will be that he gave up Annapolis and will be picking up 200,000 new people all in the name of helping the 1st. No one else can claim a similar sacrifice and he can't pick up new, tough areas in AAC as well.

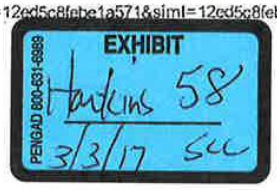
In reality, I think that if our dem performance is only improving by a little over a point, our actual election numbers may decrease if we get those new areas in AAC in the new map. He performs way above the dem average in his current AAC areas because he's spent four years of blood sweat and tears in those areas. He wouldn't have that same benefit in the new areas.

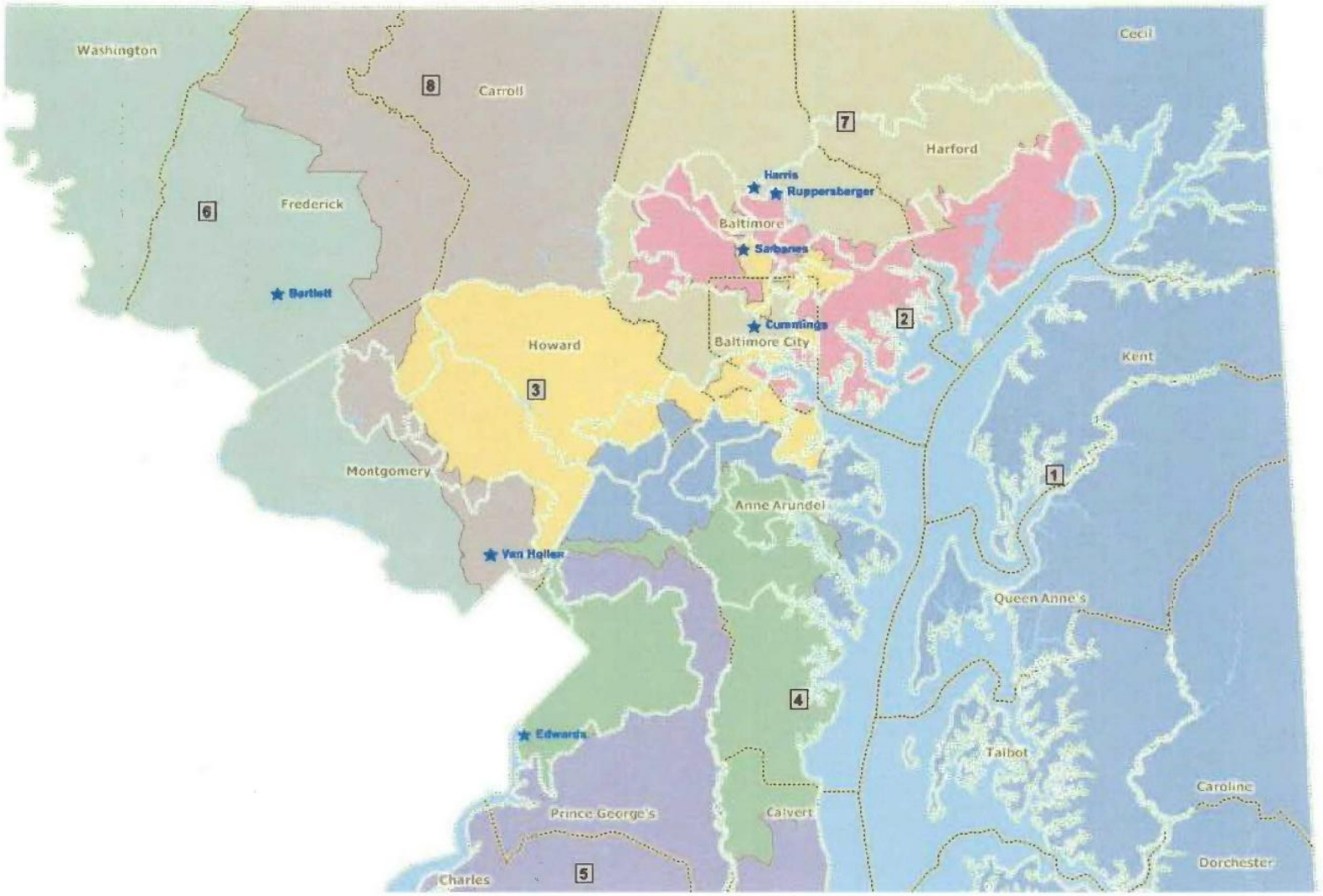
Maybe the 2nd can pick up a few of those areas in AAC? I think the constraints on the 7th may have to be reexamined in that context.
Sent from my Verizon Wireless BlackBerry

-----Original Message-----
From: "Eric Hawkins" <ehawkins@ncecservices.com>
Date: Thu, 17 Mar 2011 11:03:26
To: <jason.gleason03@gmail.com>
Subject: RE: Follow up question on maps

Completely understood. Just so you know the reason why this has been done is because we are able to improve the 3rd with other areas outside

CONFIDENTIAL




Washington
8
Carroll
7
Harford
Cecil
Harris
Ruppersberger
6
Frederick
Baltimore
Sarbanes
Bartlett
Cummings
2
Howard
Baltimore City
Kent
3
Montgomery
1
Anne Arundel
Van Hollen
Queen Anne's
4
Edwards
Talbot
Caroline
Prince George's
Calvert
Dorchester
Charles
5

Gmail

Jason Gleason <jason.gleason03@gmail.com>

Re: Precincts

1 message

jason.gleason03@gmail.com <jason.gleason03@gmail.com> Thu, Oct 13, 2011 at 2:35 PM
Reply-To: jason.gleason03@gmail.com
To: Eric Hawkins <ehawkins@ncecservices.com>

Thank you!
Sent from my Verizon Wireless BlackBerry

-----Original Message-----
From: "Eric Hawkins" <ehawkins@ncecservices.com>
Date: Thu, 13 Oct 2011 14:33:15
To: <jason.gleason03@gmail.com>
Subject: RE: Precincts

Here's what I got from the state.

Eric Hawkins
NCEC Services, Inc.
202-459-2170
ehawkins@ncecservices.com

-----Original Message-----
From: jason.gleason03@gmail.com [mailto:jason.gleason03@gmail.com]
Sent: 10/13/2011 10:13 AM
To: Brian Romick; Eric Hawkins
Subject: Precincts

Have you guys gotten anything back from the Govs people yet?
Sent from my Verizon Wireless BlackBerry

EXHIBIT
Hawkins 71
3/3/17 SLC

Confidential

10/3/2011

MARYLAND DRAFT 2011 PLAN SUMMARIES

Current Districts

CD	POP10_A	POP10	DEV.	Current	FED_DPFM	ST_DPFM	GOV06D%	GOV10D%	PRS04D%	PRS08D%	AA_A%	AA18_A%	NHAA%	NHAA18%	HISP%	HSE08D%	HSE10%
1	743067	744275	21538	100%	38.4%	35.6%	35.7%	34.3%	36.5%	40.3%	11.4%	11.0%	11.4%	11.1%	3.5%	50.1%	42.7%
2	703824	700893	-17705	100%	57.9%	55.1%	54.2%	52.8%	54.7%	60.7%	33.8%	31.3%	33.1%	30.7%	5.0%	74.3%	64.8%
3	716808	719856	-4721	100%	57.0%	53.3%	52.4%	52.9%	54.3%	59.7%	20.0%	18.6%	20.0%	18.7%	6.8%	69.6%	61.9%
4	715671	714316	-5858	100%	82.5%	79.8%	75.8%	82.3%	79.1%	85.8%	56.6%	56.3%	55.7%	55.5%	14.2%	87.1%	82.6%
5	768464	767369	46935	100%	62.1%	61.8%	57.6%	63.3%	58.0%	66.2%	37.3%	36.1%	36.7%	35.6%	7.9%	75.4%	64.0%
6	731718	738943	10189	100%	37.4%	35.9%	35.9%	34.5%	34.2%	40.5%	5.9%	5.5%	6.4%	6.4%	4.2%	39.8%	34.1%
7	664091	659776	-57438	100%	76.8%	72.1%	67.5%	72.3%	73.5%	79.8%	56.4%	55.4%	55.7%	54.6%	3.5%	81.1%	75.9%
8	728588	728124	7059	100%	71.9%	67.1%	66.0%	70.8%	69.2%	74.5%	16.9%	16.6%	16.3%	16.1%	20.0%	77.2%	73.9%

Commission Plan

CD	POP10_A	POP10	DEV.	Current	FED_DPFM	ST_DPFM	GOV06D%	GOV10D%	PRS04D%	PRS08D%	AA_A%	AA18_A%	NHAA%	NHAA18%	HISP%	HSE08D%	HSE10%
1	721529	722661	0	84.4	37.0%	34.3%	34.7%	32.6%	35.0%	38.8%	11.4%	11.0%	11.4%	11.03%	3.3%	48.3%	40.06%
2	721529	723456	0	80.2	58.4%	55.3%	54.2%	53.6%	55.1%	61.5%	32.0%	29.5%	31.6%	29.34%	5.5%	73.9%	64.78%
3	721528	720067	-1	68.0	58.6%	54.8%	54.0%	54.5%	56.0%	61.2%	21.1%	19.5%	20.6%	19.10%	7.7%	70.2%	62.59%
4	721529	720068	0	57.6	74.7%	72.8%	66.8%	71.2%	71.3%	77.7%	54.6%	54.5%	53.8%	53.71%	13.6%	81.5%	74.83%
5	721529	720472	0	96.3	61.8%	61.5%	57.5%	63.0%	57.7%	65.9%	37.0%	35.8%	36.4%	35.31%	7.2%	75.2%	63.60%
6	721529	728453	0	50.6	53.0%	49.8%	49.3%	51.0%	49.3%	56.6%	12.0%	11.2%	12.3%	11.76%	11.2%	57.1%	51.32%
7	721529	716862	0	84.5	74.2%	69.5%	64.7%	68.4%	70.9%	77.2%	55.7%	54.5%	54.9%	53.75%	3.1%	78.9%	72.52%
8	721529	721513	0	57.4	60.0%	56.8%	56.1%	58.0%	57.7%	62.5%	11.7%	11.6%	11.3%	11.29%	13.5%	63.7%	60.27%

finalist for the Los Angeles Times Book Prize in history. My most recent book, *The Case for Impeachment* was an independent bookstore best seller, and a bestseller in several academic categories on Amazon.com.

I have worked as a consultant or expert witness for both plaintiffs and defendants in more than eighty redistricting, voting and civil rights cases. These include several cases in the state of Maryland. In the U.S. Supreme Court case, *League of United Latin Am. Citizens (LULAC) v. Perry*, 548 U.S. 399 (2006), the majority opinion written by Justice Kennedy authoritatively cited my statistical work. I have testified several times for plaintiffs and defendants on the issues of intentional discrimination in the adoption of state redistricting plans and other state laws affecting voter registration and turnout. A three-judge panel in litigation challenging the 2011 state of Illinois redistricting plan also cited my work on behalf of defendants in support of the panel's *rejection* of plaintiffs' claim that the plan intentionally discriminated against minority voters in *Committee for a Fair and Balanced Map v. Illinois State Board of Elections*, 2011 U.S. Dist. Lexis 117656 (N.D. Ill. Oct. 12, 2011). I testified on intentional discrimination in the landmark case of *North Carolina State Conference of the NAACP v. McCrory, et al.*, in which a unanimous panel of the Fourth Circuit affirmed my finding of intentional racial discrimination on the part of the state: 831 F.3d 204 (4th Cir. 2016). I was also the plaintiffs' expert on partisan gerrymandering in the case of *Vieth v. Jubelirer* that was ultimately decided by the U.S. Supreme Court. 51 U.S. 267 (2004).

III. SUMMARY OF OPINIONS

* After examining the reports of plaintiffs' experts, I conclude that these reports establish only what is already the obvious: that the 2011 Maryland congressional redistricting plan improved Democratic prospects in Maryland's Congressional District 6 as compared to the prior redistricting plan.

* Even taken fully at face value, the reports of plaintiffs' experts fail to establish that Maryland's congressional plan is a partisan gerrymander that unfairly burdens voters inclined to vote for Republican candidates. The reports consider *only* changes made by the plan in CD6. Yet scholarly work in the field, including Dr. McDonald's own published work and expert reports, demonstrate that a partisan gerrymander, as that term is understood in the social science literature, must be evaluated through the analysis of the *entire* plan.

* Scrutiny of Maryland's 2011 congressional plan through multiple modes of analysis demonstrates that the plan is *not* a partisan gerrymander.

* Maryland's 2011 redistricting plan established a community of interest in CD6, according to methodology applied by Dr. Morrison in *Fletcher v. Lamone*.

* The analysis of the intent behind the 2011 congressional plan in the reports of plaintiffs' experts is fundamentally flawed conceptually. The analysis fails to follow standard historical methodology or the framework for intent analysis established by the U.S. Supreme Court in the *Arlington Heights* case.

* The analysis of intent also fails to consider four plausible alternative explanations for the crafting of the plan that are unrelated to an intent to retaliate against Republican-leaning voters for their political views, voting decisions, or party affiliation.

* The reports of plaintiffs' experts contain serious errors and omissions and demonstrate a lack of knowledge of circumstances in Maryland essential to the inquiry.

Before examining other issues raised in plaintiffs' expert reports, I first address the critical question of whether Maryland's 2011 congressional plan constitutes an invidious partisan gerrymander that unfairly burdens Republican-leaning voters.

IV. MARYLAND'S 2011 REDISTRICTING PLAN IS NOT A PARTISAN GERRYMANDER

A. Deficiency of Plaintiffs' Analysis

Both the Morrison Report and the McDonald Report examine only one of the eight congressional districts in Maryland's 2011 plan, CD6. Such a limited study cannot establish whether a redistricting plan represents an invidious partisan gerrymander. The scholarship on this issue makes it clear that the possible existence of a partisan gerrymander must be assessed by examining the plan as a whole.

A redistricting plan is an interactive system, where every district in the plan affects every other district. This is a principle so well-recognized that one of plaintiffs' experts, Dr. McDonald, has espoused it several times himself. The other of plaintiffs' experts, Dr. Morrison, acknowledges that the proper inquiry is statewide but then neglects to address statewide factors in his report in *this* litigation. In his testimony in *Backus v. South Carolina,* plaintiffs' expert Dr. McDonald affirms the principle that districts interact with one another in a plan and that redistricting experts cannot analyze any single district in isolation.

"Well, I don't know if it's a scientific principle, but among people who do redistricting we call it a ripple effect. So one district, if you change one district it's going to affect all of the neighboring districts, and then that in turn, it's like a row of dominoes, can spread entirely across the state. And so *you really can't look at one district in isolation* because it can be affected by changes to other districts."[1]

Much the same point was asserted in his report on partisan gerrymandering in the litigation of Texas' post-2010 redistricting plans, where Dr. McDonald made clear the need to examine all the districts in assessing partisan gerrymandering. Dr. McDonald first observed that "[a] commonly used method to determine the potential political consequences of a redistricting plan is to aggregate statewide election returns *into proposed districts*. The resulting statistics can be used to evaluate if a redistricting plan is a partisan gerrymander. The methodology clearly illustrates the burdens that partisan gerrymanders place upon voters and political parties."[2] Dr. McDonald then

[1] McDonald Test. at 55:22-56:4 (emphasis added), *Backus v. South Carolina*, No. 3:11-3120 (D.S.C. March 4, 2012), ECF No. 207.
[2] Designation of Expert Witnesses, Ex. A, McDonald Expert Report at 1, *Perez v. Perry*, No. 5:11-00360 (W.D.

examined three adopted Texas redistricting plans for congressional districts, state house districts and state senate districts, and examined all the districts in each plan before concluding that these plans were partisan gerrymanders. He said, "the adopted redistricting plans are Republican gerrymanders, designed with a purpose to dictate electoral outcomes by strategically grouping voters within districts based on their political orientation and that the representational rights of Democratic voters and the Democratic Party are thereby disfavored on the basis of their political views." [3]

Similarly, Dr. McDonald's scholarly work in partisan gerrymandering litigation also establishes the necessity of examining the complete redistricting plan to assess gerrymandering. This body of work includes his 2015 Social Science Research Network (SSRN) paper; his 2012 article in the *Case Western Reserve Law Review*; and his 2013 article in the *University of Richmond Law Review.*[4] Likewise, the scholarly sources cited in plaintiffs' second amended complaint examine the issue of partisan gerrymandering through a consideration of the entire plan, not just one district.[5]

In his deposition in the South Carolina case of *Backus v. South Carolina*, Dr. McDonald was asked: "is it possible to, if you have a statewide plan with – for instance, in the House map there are 124 districts. Is it possible to draw each one of those 124 districts individually without considering their impact on the surrounding districts?" Dr. McDonald answered simply, "No."[6]

Dr. Morrison, the plaintiffs' other expert, specifically frames his inquiry as pertaining generally to Republicans in Maryland, not just Republicans in CD6:

"I have also been asked to determine whether there is objective demographic evidence supporting the conclusion that the Maryland General Assembly specifically intended to burden *the representational rights of Maryland Republicans* because of how they had voted in the past and the political party with which they had affiliated."[7]

Yet the substance of the Morrison Report considers only CD6 and not the impact of the entirety of the 2011 congressional redistricting plan on "Maryland Republicans."

Likewise, plaintiffs' Second Amended Complaint refers frequently to the plan as a whole, and its scope is not limited to CD6. For example:

Tex. Aug. 8, 2011), ECF No. 130-2 (emphasis added).

[3] *Ibid*., at 5.

[4] Micah Altman & Michael P. McDonald, "Redistricting Principles for the 21st Century," 62 *Case Western Law Review* 1179 (2012); Micah Altman & Michael P. McDonald, "A Half-Century of Virginia Redistricting Battles: Shifting from Rural Malapportionment to Voting Rights and Participation," 47 *University of Richmond Law Review* 771 (2013); and Micah Altman, Brian Amos, Michael P. McDonald, & Daniel R. Smith, "Revealing Preferences: Why Gerrymanders are Hard to Prove and What to do About It," *SSRN* (March 22, 2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2583528.

[5] Samuel S. H. Wang, "Three Tests for the Practical Evaluation of Partisan Gerrymandering," 68 *Stanford Law Review* 1263 (2016); Nicholas O. Stephanopoulos & Eric M. McGhee, "Partisan Gerrymandering and the Efficiency Gap," 82 University of Chicago Law Review 831 (2015).

[6] McDonald Dep. at 53:7-53:14, *Backus v. South Carolina*, No. 3:11-03120 (D.S.C. Feb. 27, 2012), ECF No. 158.

[7] Opening Expert Report of Dr. Peter A. Morrison (hereinafter Morrison Report) at 4 (emphasis added).

"The Plan is widely regarded as one of the worst partisan gerrymanders in American history." (p. 4)

"The crux of every partisan gerrymander is the dominant party's effort to dilute the effectiveness of the votes in favor of the disfavored party. … This end is achieved by drawing district lines so that the dominant party wins a large number of seats by narrow margins and the disfavored party wins a small number of seats by wide margins." (pp. 9-10)

"As a result of both increasing partisanship and more sophisticated voter data collection and analysis, map-drawers in recent decades have been able to create redistricting plans in ways that crack and pack with unprecedented efficiency and accuracy." (pp. 10-11)

"The 1st District covers Maryland's Eastern Shore and stretches across a portion of the northern border of the State. It is the State's 'packed' Republican district." (p. 19)

Pages 19-29 of the complaint include allegations about every one of the 8 congressional districts in Maryland's 2011 redistricting plan, not limited to CD6. Yet neither the Morrison nor the McDonald Report provides any detailed analysis of the overall plan, showing that it unfairly packs and cracks Republican voters. Instead their analyses are limited only to CD6.

B. Multiple Analyses Demonstrate That Maryland's 2011 Congressional Plan is Not a Partisan Gerrymander

1. Dr. McDonald's Own Methodology for Detecting Partisan Gerrymanders Demonstrates that Maryland's 2011 Congressional Plan is not a Partisan Gerrymander

In his Texas reports, Dr. McDonald establishes a methodology for assessing whether a redistricting plan represents an unfair partisan gerrymander. He references my work in *Vieth v. Jubelirer* as a foundation for this methodology.[8] According to Dr. McDonald's prior testimony, the correct methodology calls for the analyst to take the following steps:

1) Calculate statewide election returns within districts. This requires the reaggregation of statewide results into each of the individual districts of a plan.
2) Calculate the average share of "two-party" vote across districts.
3) Compare the relationship between seats to votes at various average votes for the two major parties across the districts.[9]

Using this methodology, Dr. McDonald found that the adopted Texas congressional, state senate, and state house plans were partisan gerrymanders disfavoring Democrats, the minority party in the Texas legislature.[10] However, as shown below, this same methodology yields a contrary finding for Maryland's 2011 congressional redistricting plan.

[8] McDonald Expert Report at 2, *Perez v. Perry*, No. 5:11-00360 (W.D. Tex. Aug. 8, 2011), ECF No. 130-2 .
[9] *Ibid.* at 3-5.
[10] Designation of Expert Witnesses, Ex. B, McDonald Apx. at 3, 7, 9, *Perez v. Perry*, No. 5:11-00360 (W.D. Tex. Aug. 8, 2011), ECF No. 130-3.

Tables 1 and 2 below set forth the results of applying to Maryland's 2011 congressional redistricting plan the same methodology that Dr. McDonald endorsed in the Texas case of *Perez v. Perry*. Table 1 calculates the average share of the "two-party" vote for statewide elections for each of the districts in the 2011 congressional plan from 2012 to 2016.[11] Table 2 examines the relationship between Republican votes and seats for the Maryland plan and compares these results to the results found for Texas by Dr. McDonald.

The results reported in Table 2 indicate that, in contrast to Dr. McDonald's Texas findings, the 2011 Maryland congressional redistricting plan is highly responsive to a hypothetical Republican majority. If Republicans were to achieve a bare majority of 51 percent of the vote, according to Dr. McDonald's methodology they would win 63 percent of the seats. If they won a 54 percent vote majority, Republicans would win 75 percent of the seats. In 2010, Democrats won 75 percent of the seats in Maryland's congressional delegation, but they did so with a majority vote of 64.3 percent across districts, more than 10 percentage points above the 54 percent that Republicans would have needed statewide to win that same percentage of seats. At 54 percent of the vote, under Maryland's 2011 congressional redistricting plan, Republicans would win all six of the districts that are not majority-African American voting rights districts (CD4 and CD7). By contrast, if Democrats won 54 percent of the Texas vote they would win only 49 percent of seats under the state's adopted congressional plan, 33 percent under its adopted state senate plan, and 41 percent under its adopted state house plan. Thus, under Maryland's congressional plan, Democrats are generally at a statewide *disadvantage* in converting their votes to congressional house seats, unlike the Republicans in Texas who established an anti-majoritarian statewide advantage.

[11] The Maryland State Board of Elections reports only election night results (e.g., the votes cast on Election Day) by precinct and congressional district. Through a special tabulation from the Board of Elections I also obtained the early votes cast by congressional district. Only the relatively small number of absentee votes and provisional votes (fewer than 10 percent of votes cast) are not available by congressional district.

TABLE 1
REPUBLICAN PERCENTAGE OF TWO-PARTY VOTE, STATEWIDE ELECTIONS, AGGREGATED TO DISTRICTS IN THE 2011 ADOPTED CONGRESSIONAL PLAN

CD	2012 President	2012 US Senate	2014 Governor	2014 Comptr.	2014 Attorney General	2016 President	2016 US Senate	Mean All Elections
1	62.2	56.5	78.6	53.4	66.0	65.8	64.9	63.9
2	36.1	28.2	55.9	34.3	41.1	38.3	37.9	38.8
3	38.3	31.3	54.7	36.3	41.8	34.7	36.7	39.1
4	21.3	19.0	34.0	25.6	28.2	20.6	22.2	24.4
5	33.1	28.5	46.2	37.3	38.9	33.8	33.8	35.9
6	44.6	42.4	58.4	47.1	50.6	43.8	42.5	47.1
7	23.0	20.3	37.2	24.6	28.7	21.7	25.2	25.8
8	37.6	33.7	48.9	37.8	40.5	33.4	34.5	38.1
	37.0	32.5	51.7	37.0	42.0	36.5	37.2	39.1

TABLE 2
VOTES TO SEATS RATIOS 50% TO 55% FROM MINORITY PARTY IN LEGISLATURE MARYLAND 2011 CONGRESSIONAL PLAN COMPARED TO PLANS ANALYZED BY DR. MCDONALD IN TEXAS

% of Vote By Minority Party In Legislature	Maryland Adopted 2011 Cong. Plan	Texas Adopted 2011 Cong. Plan	Texas Adopted 2011 State. Senate Plan	Texas Adopted 2011 State House
Minority Party 50%	**38%**	**32%**	**33%**	**38%**
Minority Party 51%	**63%**	**32%**	**33%**	**38%**
Minority Party 52%	**63%**	**39%**	**33%**	**38%**
Minority Party 53%	**63%**	**40%**	**33%**	**40%**
Minority Party 54%	**75%**	**49%**	**33%**	**41%**
Minority Party 55%	**75%**	**50%**	**40%**	**42%**
Source: Table 1, McDonald, *Perez* Report.				

2. Efficiency Gap Analysis Shows That the Maryland's 2011 Congressional Plan Favors Republicans

The analysis of the so-called "efficiency gap" is a methodology for detecting a partisan gerrymander developed by Nicholas Stephanopoulos, Professor at the University of Chicago Law School, and Eric McGhee, Research Fellow at the Public Policy Institute of California. It is explained and illustrated in their 2015 article in the *University of Chicago Law Review*, cited in plaintiffs' complaint and referenced above. As explained by the authors, their efficiency-gap measure accounts *for both the packing and cracking of voters* in any redistricting plan: "The efficiency gap," they write, "essentially aggregates all of a district plan's cracking and packing into a single tidy number."[12] The district court in the Wisconsin gerrymandering litigation relied heavily on their efficiency gap measure in denying defendants' motion for summary judgment in a case alleging that the plan for State Assembly districts represented a partisan gerrymander that unfairly disadvantaged Democrats.[13]

The efficiency gap, Stephanopoulos and McGhee indicate, "represents the difference between the parties' respective wasted votes in an election."[14] They define a wasted vote as a vote that "is cast (1) for a losing candidate, or (2) for a winning candidate but in excess of what she needed to prevail."[15] Wasted votes for a losing candidate, they state, are "a result of the time-honored gerrymandering technique of 'cracking.'"[16] Wasted votes in excess of electoral majorities result from "the equally age-old mechanism of 'packing.'"[17]

The efficiency gap is relatively simple to compute:

1) Sum for each party the number of votes cast for losing candidates in each district.
2) Sum for each party the number of votes cast for winning candidates in excess of 50%.
3) Add together these two sums to obtain the total number of wasted votes for each party.
4) Subtract the total number of wasted votes for the party controlling the redistricting from the total number of wasted votes for the second party.
5) A positive result indicates that the plan disadvantages the second party, e.g., that it has more wasted votes. A negative result indicates that the plan disadvantages the redistricting party, i.e., that it has more wasted votes.
6) Divide the result by the total number of votes cast to obtain the net percentage of wasted votes for the disadvantaged party.
7) This final percentage measure represents the efficiency gap.

Table 3 applies the efficiency gap analysis to Maryland's 2011 plan using the 2012 general election results. This first post-redistricting election is the most critical election in assessing any redistricting plan, for at least two important reasons. First, this election establishes the congressional incumbencies for subsequent elections. It is well established that incumbents have

[12] Stephanopoulos & McGhee at 833.
[13] *Whitford v. Nichol*, 180 F. Supp. 3d 583 (W.D.Wis. 2016).
[14] Stephanopoulos & McGhee at 834.
[15] *Ibid.*
[16] *Id.*
[17] *Id.*

a significant electoral advantage over challengers. As plaintiffs' expert Dr. McDonald has noted, "Much electoral competition scholarship focuses on the advantages of incumbents in election to the House of Representatives."[18] Second, circumstances change over time, including demographic and political changes, making outcomes in later elections more difficult to predict at the time of the redistricting. Political scientist Nicholas R. Seabrook explains: "A number of factors can combine to dramatically alter the underlying distribution of voters that had formed the basis of a gerrymander." He cites "generational replacement," electoral realignments, "national electoral swings and turnout variations," changes "between presidential elections and midterm years," and "residential mobility." Thus, "All else being equal, the effectiveness of a partisan gerrymander is expected to decline as the alignment of voters moves further away from that on which the redistricting plan was based."[19]

The results reported in Table 3 indicate that for the 2012 congressional elections in Maryland, the Democrats had 222,259 more wasted votes than Republicans. As also indicated in Table 3, this result translates into *an efficiency gap of 8.0 percent disfavoring Democrats*. In sharp contrast, in Wisconsin, the court cited a report by plaintiffs' expert finding that the Republicans controlling the State Assembly redistricting had created a plan with a *13 percent efficiency gap favoring Republicans.*[20] I am not suggesting that the Democrats in 2011 deliberately gerrymandered congressional districts to produce more Democratic wasted votes, but rather that this is a consequence of other factors, such as the natural distribution of partisans in the state and the creation of two voting rights districts. These districts -- CD4 and C7 -- are overwhelmingly packed with Democrats, with the winning Democrat in 2012 garnering about 79 percent of the vote in each district.[21] The large efficiency gap in favor of Republicans in Maryland is consistent with Stephanopoulos and McGhee's conclusion; Maryland is not identified as a partisan gerrymander under their applicable threshold test.[22]

[18] Michael P. McDonald and John Samples, "The Marketplace of Democracy: Normative and Empirical Issues," in *The Marketplace of Democracy: Electoral Competition and American Politics* 13 (McDonald and Samples, eds., 2006).
[19] Nicholas R. Seabrook*, Constraints on Partisan Gerrymandering in U.S. Politics* 62 (2017).
[20] *Whitford v. Nichol*, 180 F. Supp. 3d at 590. In the Wisconsin case, one plaintiffs' expert found that the efficiency gap favoring Republicans was 13%. Another plaintiffs' expert, using a more elaborate district-by-district analysis, found that the overall efficiency gap favoring Republicans was 12%. *Ibid.*
[21] Maryland State Board of Elections, 2012 General Election, http://www.elections.state.md.us/elections/2012/results/general/gen_results_2012_4_008X.html.
[22] Stephanopoulos & McGhee at 890.

TABLE 3
EFFICIENCY GAP REPUBLICANS VS. DEMOCRATS 2012 CONGRESSIONAL ELECTIONS MARYLAND

Total Votes	"Wasted" Democratic Votes	"Wasted" Republican Votes	Difference in "Wasted Votes"
2,482,687	985,261	763,002	**-222,259 Democrats Disadvantaged**
Efficiency Gap*	**222.259/2,482,687 = 8.0% Disadvantaging Democrats**		
* Difference in "Wasted" Votes Divided by Total Votes. Party With More "Wasted" Votes is Disadvantaged. See, Nicholas O. Stephanopoulos & Eric M. McGhee, "Partisan Gerrymandering and the Efficiency Gap," *Chicago Law Review*, 81 (2015), pp. 831-900.			

V. THE MORRISON REPORT IS FUNDAMENTALLY FLAWED BY CONFIRMATION BIAS

Dr. Morrison has produced a result-driven report that exhibits the flaw of confirmation bias, defined as the marshalling of evidence to support a pre-conceived conclusion rather than the conducting of an open-ended inquiry with no fixed outcome. As explained by Raymond S. Nickerson in his article in the *Review of General Psychology*, confirmation bias occurs when "one selectively gathers, or gives undue weight to, evidence that supports one's position while neglecting to gather, or discounting, evidence that would tell against it."[23] He further elaborates that, "People may treat evidence in a biased way when they are motivated by the desire to defend beliefs that they wish to maintain."[24]

The confirmation bias of the Morrison Report is evident in the contradictory ways in which Dr. Morrison approaches analysis of communities of interest in his declaration in *Fletcher v. Lamone* as compared to the report for this litigation. It is also evident in his failure to frame his intent inquiry in an open-ended form by assessing whether the evidence *supports or refutes* the intention of legislators to burden Republicans. Rather, he considers whether he can muster evidence in support of plaintiffs' pre-set claim of intentional discrimination.

As Dr. Morrison puts it, "I have also been asked to determine whether there is objective demographic evidence *supporting the conclusion* that the Maryland General Assembly specifically intended to burden the representational rights of Maryland Republicans because of how they had voted in the past and the political party with which they had affiliated."[25]

[23] Raymond S. Nickerson, "Confirmation Bias: A Ubiquitous Phenomenon in Many Guises," 2 *Review of General Psychology* 175-176 (1998).
[24] *Ibid.*
[25] Morrison Report at 4 (emphasis added).

Dr. Morrison's claim that legislative intent can be inferred from "objective demographic evidence" is also illustrative of confirmation bias. No evidence, whether demographic or otherwise, simply leaps out and speaks for itself. Evidence must be culled, selected, and interpreted, especially as it relates to a complex causal question such as the intent of a legislative body. In addition, Morrison's report is not limited to demographic material, but also attempts to provide a historical analysis of the redistricting process in Maryland primarily based on non-demographic, documentary evidence.

It is also telling that in pursuing this historical inquiry to assess intent, Morrison goes well beyond his role as a demographer. In his statement of qualifications Dr. Morrison cites no expertise, training or publications related to the historical analysis of intent: "My principal expertise centers on applications of demographic analysis in tracking socioeconomic trends and envisioning their consequences for public policy. In particular, I specialize in performing demographic analysis pertaining to the *effects* of Congressional and other redistricting plans."[26] At least one court has previously cited Dr. Morrison for attempting to provide analyses and opinions beyond his demographic expertise.[27]

VI. DR. MORRISON'S DECLARATION IN *FLETCHER V. LAMONE* REFUTES HIS REPORT IN THIS LITIGATION.

Only Dr. Morrison's report addresses the key question of whether the 2011 congressional redistricting plan establishes a community of interest in CD6. Dr. Morrison concludes that the 2011 Congressional Plan "dismembered existing communities of interest" by "switch[ing] out" "small-town native-born Marylanders and replac[ing] them with outsiders."[28] But Dr. Morrison's 2011 declaration submitted on behalf on plaintiffs' in *Fletcher v. Lamone*, effectively proves, by the very criteria he deems sufficient, that adopted CD6 represents a community of interest. In his *Fletcher* declaration, Dr. Morrison opines that CD5 in plaintiffs' alternative plan represents a community of interest. As the enclosed map indicates, this district runs nearly the length of the state from Charles County in southern Maryland to Baltimore County in the north (see map below). He reaches this conclusion solely on the basis of alleged commuter flows along this long stretch of Maryland territory:

> "The counties between Baltimore and Washington D.C. comprise a regional corridor that is functionally integrated by regionwide transportation linkages facilitating extensive daily flows of commuting. The commuters between suburban residences and workplaces throughout this regional corridor constitute a natural community of interest defined by the common needs and the shared concerns of workers who reside within the vast commuter shed between Baltimore and

[26] Morrison Report at 1.
[27] *Milwaukee Branch of NAACP v. Walker*, 851 N.W.2d 262, 291 (2014) (holding circuit court did not err in finding that Dr. Morrison "did not 'possess sufficient training or experience to prepare or to offer reliable expert testimony as to election procedures generally nor, specifically the proportion of persons eligible to vote in Wisconsin who lack a Photo ID required by Act 23.'").
[28] Morrison Report at 9, 75.

> Washington D.C. Plaintiffs' Proposed Congressional District # 5 *encompasses this natural community of shared interest*." [29]

In reaching an opposite conclusion regarding CD6 in Maryland's 2011 redistricting plan, Dr. Morrison does not analyze or even cite any of the factors that he examined in his *Fletcher v. Lamone* declaration. Conversely, in his *Fletcher* declaration regarding CD5, Dr. Morrison does not reference the cultural or educational institutions, media markets, newspapers, urban versus rural residence, socio-economic factors, foreign versus native birth, etc. that are the basis for his conclusions regarding CD6. Rather, in the *Fletcher* case, Dr. Morrison contended that patterns of transportation and commuting *are sufficient*, in and of themselves, to establish a congressional district as representing a community of interest.

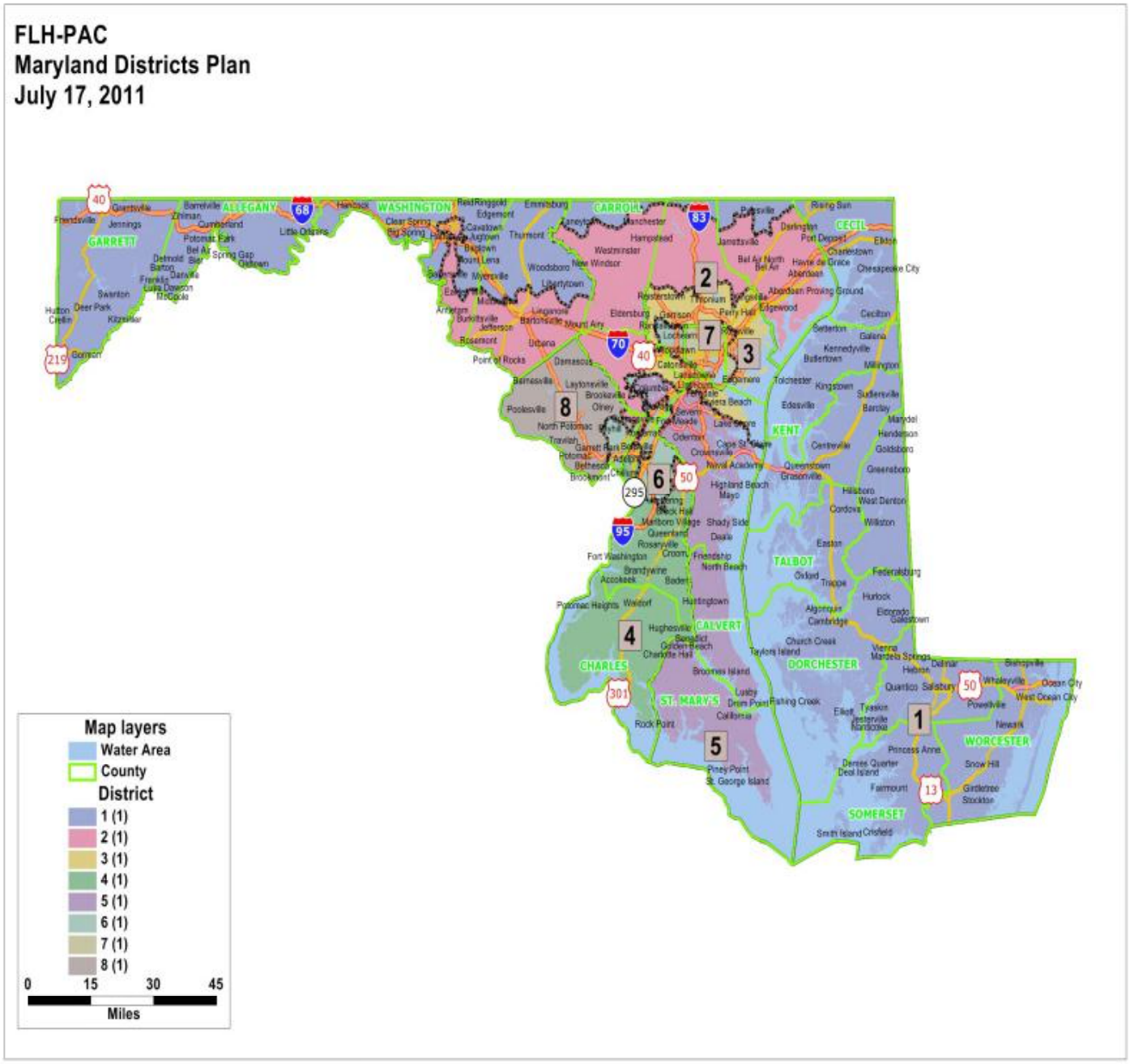
According to Dr. Morrison's *sufficient standard* of transportation and commuting, CD6 represents far more of a community of interest than the CD5 that Dr. Morrison defends in his *Fletcher* declaration. The communities included in the adopted CD6 are united by the I-270 Corridor which establishes a community of interest as affirmed through a recent study by the Maryland State Department of Transportation, State Highway Administration:

> "The I-270/US 15 Corridor serves local and long distance trips between the Washington, DC metropolitan area, central and western Maryland, and beyond. Known as the "Technology Corridor", this area is home to many high-tech industries and research facilities as well as commercial, cultural and recreational activities. … The I-270/US 15 Corridor is one of the most traveled north-south transportation corridors in Maryland. The Corridor provides an essential connection between the Washington, DC metropolitan area and central and western Maryland, and is critical from both a personal transport and goods transport perspective."[30]

[29] Dr. Peter Morrison Decl. and Rebuttal Report at 1, *Fletcher v. Lamone*, No. 11-3220, (D.Md. Dec. 16, 2011), ECF No. 49-3 (emphasis added).

[30] Maryland State Department of Transportation, State Highway Administration, "Purpose and Need," pp. I-2, 6, https://appsoads.maryland.gov/WebProjectLifeCycle/FR192_11/HTDOCS/Documents/Purpose_and_Need/Purpose%20and%20Need%20(from%20DEIS).pdf.

FLH-PAC
Maryland Districts Plan
July 17, 2011



The State Highway Administration study goes on to elaborate upon other critical connections along the I-270 Corridor that even extend into Allegany and Garrett counties:

> "The Corridor also serves a major commuter population that works in the District of Columbia, southern Montgomery County, and Frederick County, and provides access to employment opportunities within the Corridor itself. The majority of these commuters travel from the City of Frederick or upper Montgomery County into central and lower Montgomery County (i.e. Bethesda, Rockville, and Gaithersburg) and Washington, DC. In addition, the Corridor provides the primary travel path from the population centers of the Washington metropolitan area to recreational sites located in western Maryland and to historic resources within/near the project area, such as the Monocacy National Battlefield and the C&O Canal National Historical Park."[31]

Consistent with this analysis, the Maryland State Suburban Alliance has termed the I-270 Corridor "the state's number-one job-creation corridor."[32]

In his *Fletcher* Declaration, Dr. Morrison cites no such studies in support of his contention that there is a transportation corridor comparable to I-270 that links together Charles, Prince George's, Howard, and Baltimore Counties in the *Fletcher* plaintiffs' CD5. He relies solely on his own construction of commuter flow data, which draws on out-of-date information from 2000 and 2003.

Analysis of commuter flow data additionally demonstrates that the commuting linkages existing in CD6 are substantially stronger than those Dr. Morrison found to establish a community of interest in the *Fletcher* plaintiffs' proposed CD5. Table 4 below reports the location of jobs, and corresponding commuter flow, from the District of Columbia northwest through the counties included in CD6 in the 2011 congressional plan. It compares these results to the corresponding commuter flow data from Baltimore City south through the counties included in the proposed CD5 defended by Dr. Morrison in his *Fletcher* declaration. As indicated in Table 4, CD6 establishes a much more united community of interest by Dr. Morrison's standard than did the CD5 analyzed in his *Fletcher* declaration. Only 16.4 percent of jobs are outside the commuting region of DC through counties of CD6, compared to a *more than double* 35.3 percent for the commuting regions from Baltimore City through the counties included in the *Fletcher* plaintiffs' CD5. In other words, people living in CD6 spend more of their time and work life in the same area, and, to the extent Dr. Morrison has previously indicated that such patterns establish a community of interest, the residents of CD6 exhibit this characteristic more strongly than the district he analyzed in *Fletcher.*

[31] *Ibid*. at I-7.
[32] Suburban Maryland Transportation Alliance, "I-270," http://www.mdtransportation.org/category/i-270-corridor/.

TABLE 4
LOCATION OF JOBS, CD6 IN ADOPTED 2011 CONGRESSIONAL PLAN COMPARED TO CD5 IN DR. MORRISON'S *FLETCHER* DECLARATION

ADOPTED MARYLAND CONGRESSIONAL PLAN CD6 LOCATION OF JOBS FOR COUNTY RESIDENTS								
County	Mont.	Frederick	Wash.	DC	Alleg.	Garrett	Other	**% Other**
Montgomery	298,590	4,854	299	107,123	33	3	91,406	**18.2%**
Frederick	26,131	68,885	1,968	4,088	9	0	18,381	**15.4%**
Washington	3,462	10,848	48,261	788	132	0	6,350	**9.1%**
Allegany	290	109	588	35	25,541	544	3,198	**10.6%**
Garrett	45	47	78	13	1,714	10,856	1,342	**9.5%**
ALL COUNTIES	328,518	84,743	51,194	112,047	27,429	11,403	120,677	**16.4%.**
PROPOSED PLAINTIFFS' PLAN, *FLETCHER V. LAMONE*, CD5 LOCATION OF JOBS FOR COUNTY RESIDENTS								
County	Charles	Prince George's	Howard	Balt.		Balt. City	Other	**% Other**
Charles	27,746	14,641	457	168		315	31,081	**41.8%**
Prince George's	3,936	175,443	8,812	2,912		6,700	245,160	**55.3%**
Howard	62	13,652	58,824	11,922		15,907	47,142	**32.0%**
Baltimore	72	5,201	23,385	203,234		117,027	54,042	**13.4%**
MEAN % OTHER	31,816	208,937	91,478	218,236		139,949	377,425	**35.3%**
Source: 2010 American Community Survey, 5-Year Estimates								

TABLE 5
LOCATION OF JOBS, CD6 IN ADOPTED 2011 CONGRESSIONAL PLAN COMPARED TO CD5 IN DR. MORRISON'S *FLETCHER* DECLARATION

ADOPTED MARYLAND CONGRESSIONAL PLAN CD6 LOCATION OF JOBS OUTSIDE COUNTY OF RESIDENCE								
County	Mont.	Frederick	Wash.	DC	Alleg.	Garrett	Other	**% Other**
Montgomery		4,854	299	107,123	33	3	91,406	**44.9%**
Frederick	26,131		1,968	4,088	9	0	18,381	**36.3%**
Washington	3,462	10,848		788	132	0	6,350	**29.6%**
Allegany	290	109	588	35		544	3,198	**67.3%**
Garrett	45	47	78	13	1,714		1,342	**41.4%**
ALL COUNTIES	29,928	15,858	2,933	112,047	1,888	547	120,667	**42.5%**
PROPOSED PLAINTIFFS' PLAN, *FLETCHER V. LAMONE*, CD5 LOCATION OF JOBS OUTSIDE COUNTY OF RESIDENCE								
County	Charles	Prince George's	Howard	Balt.		Balt. City	Other	**% Other**
Charles		14,641	457	168		315	31,081	**66.6%**
Prince George's	3,936		8,812	2,912		6,700	245,160	**91.6%**
Howard	62	13,652		11,922		15,907	47,142	**53.2%**
Baltimore	72	5,201	23,385			117,027	54,042	**27.5%**
MEAN % OTHER	4,070	33,494	32,654	15,002		139,949	377,425	**62.6%**
Source: 2010 American Community Survey, 5-Year Estimates								

Table 5 provides an additional level of analysis that looks only at jobs outside the county of residence. The results reported in Table 5 indicate that for CD6 a minority of 42.5 percent of non-residential jobs are outside of CD6 and DC, whereas for the *Fletcher* plaintiffs' CD5, a majority of 62.6 percent of non-residential jobs are outside the counties of CD5 and Baltimore City. More residents of CD6 live and work in the same area as each other.

Montgomery County and DC are also connected to western Maryland not just through roadways, but also through the MARC rail line that runs from DC to Martinsburg, West Virginia as indicated in the map below. The map also indicates that there is no comparable rail line that runs from Charles County through Howard County to Baltimore County and Baltimore City.

Dr. Morrison's attack on the idea of the I-270 counties comprising a community of interest is based in part on his assertion that the relevant measure is the number of each county's residents who commute to Washington, D.C. But as the state study cited above makes clear, the I-270 corridor significantly encompasses jobs and commuter flows within the Maryland counties, not just between these counties and DC. For example, Dr. Morrison's Table 2 on page 65 of his report indicates that only 3.4 percent of Frederick County workers hold jobs in DC. However, the Table fails to report that 26,131 Frederick County workers (21.9 percent) hold jobs in Montgomery County. Moreover, in his *Fletcher* Declaration, Dr. Morrison himself focused primarily on commuting within Maryland counties included in CD5, not on commuting into Baltimore City.

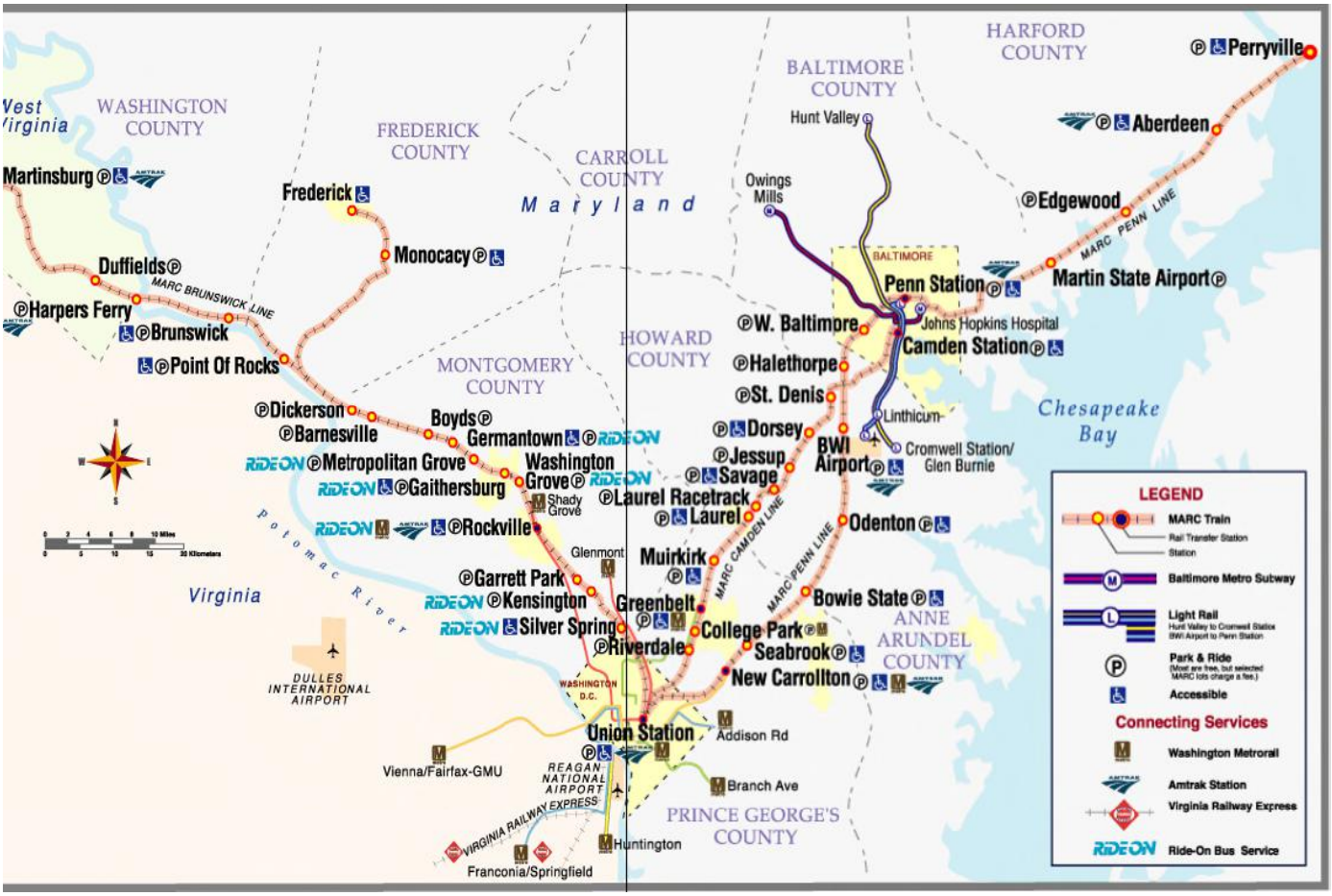
Dr. Morrison also claims that the creation of an I-270 based district was not a consideration at the time of the 2011 redistricting. He relies, however, not on contemporaneous evidence but on the post-hoc testimony some six years later from the depositions of Mr. Hawkins and Robert J. Garagiola. Dr. Morrison fails to note that at the time of the redistricting, then State Senator Garagiola said, "I think there's a lot more in common with northern and western Montgomery County and Frederick County and Washington County and even further west than there is with Harford or Baltimore County."[33]

In fact, the concept of a community of interest established by linkages through the I-270 corridor was a main point of emphasis in the presentation to the General Assembly made by the Governor's Advisory Redistricting Commission (GRAC) during the redistricting process.[34] Many citizens testifying in the public hearings held by GRAC in Frederick and Shady Grove in Montgomery County stressed the community of interest along the I-270 corridor. Witnesses also noted that the proposed north/south configuration of CD6 into Montgomery County established more of a community of interest than the previous configuration that included Baltimore, Carroll, Harford counties. The following are examples from the public hearing.

[33] Heather Keels, "Proposed Congressional Redistricting Plan Has Local Republicans Crying Foul," *Herald-Mail.Com*, October 8, 2011, http://articles.herald-mail.com/2011-10-08/news/30259492_1_congressional-districts-state-legislative-districts-special-session.

[34] *GRAC*, "Recommended Congressional Plan," http://www.washingtonpost.com/wp-srv/politics/documents/redistricting_advisory_committee_100411.pdf.

MARYLAND AREA REGIONAL COMMUTER SERVICE*



- Source, *Legislative Handbook, Volume II, Government Services in Maryland*, p. 142, http://dls.state.md.us/data/polanasubare/polanasubare_natresenvntra/Volume-II-Chapter-9.pdfp..

- **Testimony of Bob Kresslein:**

I'd like to see you consider a couple of different factors. One is, sort of the communities of interest we have – Senator Brinkley indicated -- you know -- if you look at Carroll County and west, we have a lot of similarity, but I would also posit that if you go south and east, you're going to find a lot of things in common. If you look at historically, upper Montgomery County, look toward Frederick, for many, many years that area has picked up quite a lot of population. And if you look at transportation patterns, you'll see that -- you know - -70 and 270 combined right here in Frederick County. And if you're on that road every day going to work you know there's an awful lot of people from Washington County, even into Pennsylvania and West Virginia and Virginia that get on that road and go on into Montgomery County to work or into Washington, D.C. metropolitan area.[35]

- **Testimony of Dan Rupli:**

There is no community of interest between Harford County and Garrett County. There is very little community of interest between Allegany and Carroll. … There is no community of interest either in -- or a shared media that reaches the district. We're a kind of patchwork, and I would like very much to see the district go into northern Montgomery County.[36]

- **Testimony of Don DeArmon (Former Democratic Nominee State Senate D3):**

So my sense is, having campaigned in those areas, that when you start there, that Carroll, and certainly, Baltimore and Harford Counties, their orientation is much more toward a Baltimore County or a Baltimore City direction. And Frederick is increasingly, and it's – as Bob Kresslein pointed out, we're heading southeast, and our orientation is toward Montgomery County.[37]

- **Testimony of Myrna Whitworth (Democratic Chair Frederick County):**

I also understand that you and this commission are looking at two factors, diversity and national natural and political boundaries or – and I strongly believe that if you look at those, you will find that our current configuration, as others here today have indicated, makes little sense. Historic – right now, Frederick is the gateway to Western Maryland. It's the largest population center, and among Frederick County residents are those people from Urbana, who very much look south. Frederick County, many of the people here look south, go down the 270 corridor and have businesses and jobs in the Greater Washington Metropolitan area. And so, to look at Frederick and west, as well as to look at Frederick south, gives a much more natural boundary to what the Sixth Congressional District should look like.[38]

[35] GRAC, Public Hearing Tr. at MCM000021-22.
[36] *Ibid*. at MCM000026-27.
[37] *Id.* at 31.
[38] *Id.* at MCM000032-33.

- **Testimony of Andrew Duck (Former Democratic nominee CD6):**

Frederick and Washington counties have really become part of the Washington suburbs, and I think as such, the community of interest makes it more relevant for them to be lumped with Montgomery County than with people from Harford or Baltimore County. So I think, both in terms of making it viable for someone to reach the voters, and in terms of better representing the population, it would make more sense to re-orient the district to include more of Montgomery County and less and none of Harford and Baltimore and less of Carroll, as you put those communities in with the Baltimore County area that they are naturally a part of.[39]

- **Testimony of Retired Democratic Delegate Sue Hecht:**

It's my experience that Frederick County and the greater Hagerstown area, especially along the I-270 corridor, increasingly identifies itself with the exurbia of the Washington D.C., not Baltimore City and its suburbs. Even though Frederick is in the enviable position of sitting 50 miles as an apex of both Washington and Baltimore City triangle, the more new Western Maryland residents maintain close ties with Montgomery County and D.C. area, not as much with the Baltimore. … We've heard about the thousands of commuters that come down I-270 and Route 15, coming through Frederick. They're most of the majority -- vast majority of those folks are going to jobs in the Washington Metropolitan Area, not Baltimore. We've heard about our mass transit links that go to Washington through the [MARC], not Baltimore. Frederick is part of the Greater Washington initiative and an affiliate of the Greater Washington Board of Trade. …
We are not included in the similar Greater Baltimore initiative. … Frederick is part of WASHCOG, or the Washington Council of Government.[40]

- **Testimony of Elizabeth Paul (Democratic Chair, Washington County):**

[Y]ou all heard that Montgomery County is part of our district and historically that region has had close ties to the Frederick area, as well as the western counties up here, and certainly more so than upper Baltimore and Harford County which were added in 2002.

Residents of the more populated parts of the sixth district are more aligned with Washington, D.C. suburbs by transportation routes such as I-270 and the MARC Commuter Trains, by employment in the D.C. Metro area and Northern Montgomery County as opposed to Baltimore suburbs or Harford County.[41]

[39] *Id*. at MCM000037-38.
[40] *Id*. at MCM000050-51.
[41] *Id*. at MCM000071-72.

The final testimony that I present is from Steve Shapiro. This testimony is particularly significant because Mr. Shapiro was an original plaintiff in this litigation, although he has since withdrawn.

- **Testimony of Steve Shapiro:**

Ideally, Montgomery County, with its fairly large population, would have one district entirely within its borders and share about one half of a district with an adjoining part of the state. A reasonable option to do this would be to maybe take the western third of Montgomery County and pair it with Western Maryland, which, based on history and geography, would be a reasonable situation and one that existed several decades ago. Keeping the Montgomery section about equal in size to the Western Maryland section I think would keep it from being overly dominated by the Montgomery section and, thus, would be fair to the Western Maryland residents, as well as to the Montgomery County residents.[42]

The idea of a district representing the growing communities along the I-270 corridor was also discussed in the press at the time of the redistricting process, which culminated in the 2012 referendum on the congressional plan. "'Congressional Districts 6 and 8 are drawn to reflect the North-South connections between Montgomery County, the I-270 Corridor, and western portions of the State,' the plan outline says," reported the *Herald Mail*.[43] "Maryland's congressional districts are being redrawn to conform with population changes in the 2010 census. Supporters of the changes say the new map reflects a demographic shift along the Interstate 270 corridor," reported the Associated Press.[44] "The MARC's Brunswick line, which runs from Washington's Union Station to Martinsburg, W.Va., has seen a 34 percent increase in train ridership in the past decade, and there are roughly 10,000 more cars per day on Interstate 270 than 10 years ago. Nowhere is the growth more apparent than in the rolling developments in Urbana, the first exit off I-270 in Frederick County," reported the *Baltimore Sun*.[45]

Irrespective of whether they reviewed statistical data, members of the Maryland legislature, like the citizens who testified in the public hearings, were familiar with the I-270 corridor and the role it played for commuting, jobs, and culture in the state. For example, Senate President Mike Miller, arguably the most influential member of the General Assembly, was asked in deposition if he had reviewed "any data concerning commuting patterns on I-270 before you voted on the proposed congressional map in 2011?"[46] Miller responded that "I drive it every second week or so. I spoke to the people in Frederick last week. … Plus I'm familiar with economic development part of the state. My job is to bring jobs to the state and improve economic development, and I-

[42] *Id*. at MCM000217.
[43] Heather Keels, "Proposed Congressional Redistricting Plan Has Local Republicans Crying Foul," *Herald Mail*, October 8, 2011, http://articles.herald-mail.com/2011-10-08/news/30259492_1_congressional-districts-state-legislative-districts-special-session.
[44] Brian Witte, "O'Malley Releases Congressional Redistricting Plan," Associated Press, October 11, 2011, available at, e.g. http://baltimore.cbslocal.com/2011/10/15/aide-omalley-redistricting-map-set-for-release/.
[45] Bret Lake, "Congressional Redistricting: Democrats Eyeing Western Maryland," *Baltimore Sun*, August 6, 2011, http://www.baltimoresun.com/news/maryland/.
[46] Miller Depo. Tr. at 19:11-13.

270 is very important to link areas that need economic development within the Washington Metropolitan Area."[47]

VII. THE MORRISON REPORT SUFFERS FROM SERIOUS ERRORS OF SELECTION AND INTERPRETATION.

The one-sided and erroneous approach to the evidence that Dr. Morrison uses in his report for this litigation further reflects its confirmation bias as well as a lack of essential knowledge of Maryland circumstances. The following are examples of such issues:

1) **Frostburg State University**. Dr. Morrison cites this University in Allegany County to claim that "western Maryland has its own institutions of higher learning." He fails to recognize that Frostburg is a cosmopolitan institution that draws students from across the state of Maryland, from out of state, and even from other countries, as indicated in Table 6.

2) The Maryland Symphony Orchestra. Morrison cites this orchestra located in Hagerstown, Maryland in Washington County as another example of the distinction between Western Maryland and the Washington suburbs. He cites no evidence in support of his claim that the orchestra has an audience primarily from Western Maryland and the claim is refuted by the Orchestra itself. According to the Orchestra's website: "It is one of only four professional symphony orchestras in Maryland and audience members from South Central Pennsylvania, West Virginia's Eastern Panhandle, the Shenandoah Valley of Virginia and *the Baltimore-Washington Metropolitan area* are drawn to concerts held at the historic Maryland Theatre in downtown Hagerstown."[48]

3) Local Television. While Dr. Morrison admits that "some Western Maryland residents can view local affiliates from Washington, D. C. or Baltimore," he goes on to state that there are also local stations in Hagerstown.[49] However, he fails to note that Frederick and Garrett counties also have local TV stations WFPT TV in Frederick and WGPT TV in Oakland. He incorrectly identifies WWPX as located in Hagerstown, when it is actually located in Martinsburg, West Virginia. The station's website notes that "a sale to Benchmark Communications (which would have converted the station to a CBS affiliate for Winchester, Virginia and Hagerstown, Maryland under the WUSQ-TV callsign) fell through."[50]

[47] Miller Depo. Tr. at 19:14-22.
[48] Maryland Symphony Orchestra, "About the MSO," http://www.marylandsymphony.org/about-mso (emphasis added).
[49] Morrison Report at 8 n.6.
[50] *WWPX-TV*, https://www.revolvy.com/topic/WWPX&item_type=topic.

TABLE 6
GEOGRAPHIC DISTRIBUTION OF STUDENTS AT FROSTBURG STATE UNIVERSITY

County	Number	Percent
Allegany County	919	17.0%
Garrett County	192	3.5%
Washington County	375	6.9%
Frederick County	360	6.7%
Carroll County	146	2.7%
Montgomery County	461	8.5%
Prince George's County	581	10.7%
Baltimore County	360	6.7%
Baltimore City	209	3.9%
Anne Arundel County	258	4.8%
Other Maryland Counties	882	16.3%
Out-of-State	551	10.2%
Foreign	116	2.1%
TOTAL	**5,410**	
Source: "Enrollment Geography, Fall 2013," received from Maryland Higher Education Commission, 2 June 2015.		

4) Local Newspapers. Dr. Morrison again admits that "individuals in western Maryland subscribe to *The Washington Post* and *Baltimore Sun*."[51] He goes on to state that "western Maryland has its own daily newspapers," citing *The Herald-Mail* in Hagerstown.[52] Frederick, however, also has its own local newspaper, the *Frederick News-Post*; as does Allegany County, the *Cumberland Times-News*; and Garrett County, *The Republican* in Oakland. Thus, the local press actually divides rather than unites the counties associated with western Maryland.

5) Common Media Market: In examining media, Dr. Morrison fails to take into account the testimony of several witnesses at the public hearings who stated that western Maryland and Montgomery County share a common greater-Washington, DC media market, whereas Carroll, Harford, and Baltimore counties are oriented to the greater-Baltimore media market. For example, Elizabeth Paul, Chair of the Washington County Democratic Central Committee testified that, "We are linked by media outlets including print and television. For example, many more people subscribe to the Washington Post than the Baltimore Sun in this area. The TV markets include us in the Greater D.C. Metro area and not Baltimore, unlike Carroll, upper Baltimore and Harford."[53] Similarly, Bob Kresslein a resident of Frederick County testified that, "Those of us here in Frederick County and west primarily in our media [*sic*] from Washington, D.C. market, if you look --- where, if you've got a satellite T.V., you're pretty much getting channels 4, 9, and 7. That's what you're going to get your local news. Many more people get the Washington Post than the Baltimore Sun."[54]

Data on media markets in Maryland confirms this testimony. According to the advertising company, Truck Ads, the Washington media market includes the counties of Montgomery, Frederick, Washington, and Allegany, encompassing every county within the 2011 CD6, except for the thinly populated Garrett County. Echo Star Knowledge Base, designates these same counties as part of the Washington, DC TV Market, but not the counties of Carroll, Harford, and Baltimore, which it designates as part of the Baltimore TV market.[55]

6) The Secession Movement. Dr. Morrison devotes two pages to describing a secession movement in western Maryland as indicative of the distinctiveness of the area of the state. Yet Dr. Morrison never demonstrates that this movement represents anything more than a small number of extremists who do not represent the people of western Maryland. According to the CBS News story that Dr. Morrison cites in his report, "more than a thousand have signed petitions" for secession. That number amounts to less than one-sixth of one percent of the total population of the five counties involved, which are home to more than 660,000 people.[56]

7) The Referendum Vote on the 2011 Congressional Redistricting Plan. Dr. Morrison discusses the miniscule secession movement for two pages of his report, but ignores the fact that the voters of the counties in CD6 had an opportunity to vote up or down on Maryland's 2011

[51] Morrison Report at 8 n.7.
[52] *Ibid.*
[53] GRAC, Public Hearing Tr. at MCM000072-73
[54] GRAC, Public Hearing Tr. at MCM000023.
[55] Truck Ads, "Designated Market Map," http://www.truckads.com/Designated_Market/Washington_DC.htm#map; Echo Star Knowledge Base, "TV Markets," http://www.dishuser.com/TVMarkets/.
[56] Mary Bubula, "Some Western Md. Residents Want to Form Their Own State," *CBS Baltimore*, February 10, 2014, http://baltimore.cbslocal.com/2014/02/10/some-western-md-residents-want-to-form-their-own-state/.

congressional redistricting plan, which opponents petitioned for referendum in the general election of 2012. As indicated in Table 7, voters in 4 of the 5 counties included in CD6 voted in favor of the adopted congressional plan. Voters rejected the plan only in Garrett County, which cast just 11,616 votes in the referendum election and rejected the plan by just 770 votes. Voters in the other western Maryland counties of Allegany, Washington, and Frederick voted in favor of the plan.

It is most unusual for a state's redistricting plan to be tested by a vote of the people in a referendum. This vote cuts to the heart of plaintiffs' claim that the legislature sought to retaliate against the people of western Maryland in crafting Congressional District 6. If the voters in western Maryland believed that the legislature had retailed against them, the referendum gave the voters in the opportunity to express their displeasure directly and concretely. *They could have voted down the plan. They did not.* Only the very lightly populated Garrett County voted against it, by a small margin. Because of its low population, in any possibly configured congressional district, Garrett County was to be at the mercy of the other counties in congressional elections.

8) The Rural Composition of Prior CD6. The Morrison Report as well as the McDonald Report characterizes the prior CD6 as comprising counties that are largely rural in their demography. However, as indicated in Table 8, according to "objective" U.S. Census classifications, these counties were predominantly urban, not rural. The only exception is the very lightly populated Garrett County. It is true that these counties do not contain any major cities like Baltimore, but neither does Montgomery County.

As these examples indicate, Dr. Morrison's analysis is not "objective," but is guided by his own assumptions about what counts demographically for people as a community of interest and how to interpret the information that he does present. Dr. McDonald has criticized such a subjective approach to using demographic data for defining communities of interest, explaining that "'identifying' neighborhoods using demographic data . . .*requires making assumptions about what demographic characteristics are most relevant to community*."[57] Dr. McDonald instead advocates the inference of "neighborhoods and communities from common patterns of activity and/or shared activities," through data collection that would "identify travel patterns[and] land usage patterns." An analysis of travel patterns is provided in Section VI of this report above.[58]

[57] Altman & McDonald, "Redistricting Principles for the 21st Century" at 1196 (emphasis added).
[58] *Ibid.* at 1195-96.

TABLE 7
RESULTS OF 2012 REFERENDUM ON ADOPTED CONGRESSIONAL REDISTRICTING PLAN, 4 COUNTIES IN CD6

County	Number For Plan	Number Against Plan	Percent For Plan
Allegany County	13,250	12,671	**51.1%**
Garrett County	5,423	6,193	**46.7%**
Washington County	28,414	27,776	**50.7%**
Frederick County	59,538	45,863	**56.5%**
Montgomery County	261,122	139,546	**65.2%**
Source: Maryland State Board of Elections, "Congressional Districting Plan, November 2012, http://www.elections.state.md.us/elections/2012/results/general/gen_detail_qresults_2012_4_0005S-.html.			

TABLE 8
URBAN PERCENTAGE OF POPULATION IN COUNTIES IN CD6 UNDER MARYLAND'S 2001 CONGRESSIONAL PLAN

County	Total Population	Urban Population	Percent Urban
Allegany County	75,087	54,624	72.7%
Garrett County	30,097	4,846	16.1%
Washington County	147,430	103,953	70.3%
Frederick County	233,385	174,554	74.8%
Carroll County	167,134	101,106	60.5%
TOTAL	**653,133**	**434,078**	**66.5%**
U.S. Census, 2010, URBAN AND RURAL Universe: Total population, 2010 Census Summary File 1.			

VIII. THE MORRISON REPORT IS BASED ON A FUNDAMENTAL MISUNDERSTANDING BETWEEN THE SOCIO-ECONOMIC CHARACTERISTICS OF CONSTITUENTS AND REPRESENTATION

Both Dr. Morrison and Dr. McDonald claim that major differences between Montgomery County and the four more western counties in adopted 2011 CD6 are socio-economic. A series of tables that Dr. Morrison highlights in his report show that residents in western Maryland have relatively high poverty and unemployment rates, and low incomes and levels of educational attainment. As shown in Dr. Morrison's tables, the residents are also heavily dependent on welfare assistance programs such as food stamps and Medicaid. But Dr. Morrison's analysis stops here. He does not analyze whether grouping such commonalities translate into effective representation for persons sharing these socio-economic disadvantages.

Tables 9 to 11 below examine key votes by Roscoe Bartlett, the representative from the prior CD6, on education, welfare, employment, and poverty issues that affect the lives of persons who share the socio-economic characteristics of western Maryland. The results reported in these Tables demonstrate that Representative Bartlett voted no on the key programs that would benefit persons of lower socio-economic standing. Representative Bartlett's no votes cannot be explained by party affiliation given that in most of these votes Bartlett was out of line with the great majority of voters in the House of Representatives.[59]

[59] The source of key votes is VoteSmart, Roscoe Bartlett's Voting Records, https://votesmart.org/candidate/key-votes/26891/roscoe-bartlett#.WQk1DRPyvIU.

The point is that economic statistics do not speak for themselves in identifying "communities of interest." The voters of former CD6 continued to elect Roscoe Bartlett regardless of the record I note below, and I am not criticizing that choice in any way. However, it is further evidence that communities may not coalesce or identify *themselves* based on certain commonalities that a demographer could point to as "objective demographic fact." Instead, any such socio-economic statistics must be analyzed and interpreted with respect to what they mean politically for disadvantaged communities in a congressional district.

TABLE 9
KEY VOTES ON EDUCATION, REPRESENTATIVE BARTLETT

Bill	**Central Provisions**	**Bartlett**	**House Vote**
Student Loan Lenders & Grants 2007 HR2699	Increases Pell Grants and lowers interest rates on student loans, allows 180-day loan deferment for veterans.	No	292Y 97N
Reverse the Raid on Student Aid 2007 H Amend 772	Reduces student loan interest rates. Appropriations funds for graduate education of low income and Hispanic students.	No	199Y 220N
Higher Education Amendments of 2008 HR4137	Expands & increases value of Pell Grants for low income students. Requires publication of college costs.	No	380Y 49N
National Volunteer Program Expansion 2009 HR 1388	Expands opportunities for student service, especially disadvantaged youth, and expands Americorps teacher program.	No	321Y 105N

TABLE 10
KEY VOTES ON HEALTH, REPRESENTATIVE BARTLETT

Bill	Central Provisions	Bartlett	House Vote
Extension of Funding for Transitional Medical Assistance and Abstinence Education 2007 S1701	Extends Medicaid coverage for families with increased earnings up to 185 percent above poverty level, continues abstinence education.	No	291Y 126N
State Children's Health Insurance Program (CHIP) Reauthorization 2007 HR 976	Appropriations for the Children's Health Insurance (CHIP) program.	No	265Y 159N
Medicare Bill 2008 HR 6331	Expands Medicare benefits, especially for low-income seniors.	No	355Y 59N
Medicaid Extensions & Changes 2008 HR 5613	Prevents certain Medicaid regulations from being changed until April 1, 2009, including regulations for the Children's Health Insurance Program, graduate medical education, optional case management services, outpatient hospital services, and provider taxes.	No	349Y 62N
Children's Health Insurance Program Reauthorization and Expansion 2009 HR 2	Expands coverage of CHIP program. Prohibits aid to undocumented immigrants. Raises cigarette tax for funding.	No	289Y 139N

TABLE 11
KEY VOTES ON UNEMPLOYMENT AND PUBLIC ASSISTANCE,
REPRESENTATIVE BARTLETT

Bill	Central Provisions	Bartlett	House Vote
Section 8 Voucher Adjustments Act 2007 HR 1851	Improves access to housing assistance for low income families.	No	333Y 83N
Farm, Nutrition, & Energy Act 2007 HR 2419	Increases spending on certain forms of agricultural assistance, extends selected agricultural assistance programs until 2012, provides funding for the purchase of certain foods for domestic nutrition programs, lowers income tax credits for ethanol producers,	No	231Y 191N
Emergency Extended Unemployment Compensation Act 2008 HR 5749	Allows states to enter into an agreement with the federal government to extend unemployment compensation for individuals who have already received the maximum regular compensation under state law.	No	274Y 137N
Medicaid Extensions & Changes 2008 HR 5613	Prevents certain Medicaid regulations from being changed until April 1, 2009, including regulations for the Children's Health Insurance Program, graduate medical education, optional case management services, outpatient hospital services, and provider taxes.	No	349Y 62N
Unemployment Benefits Extension 2010 HR 4851	Extends unemployment benefits.	No	289Y 112N

IX. THE RELIANCE ON VOTE DILUTION ANALYSIS UNDER THE VOTING RIGHTS ACT IN DR. MCDONALD'S REPORT IS MISPLACED

In his report, Dr. McDonald purports to apply standard vote dilution analysis under the Voting Rights Act to analyze alleged partisan gerrymandering in CD6, identifying his methodology as "[t]he approach typically used in voting rights litigation."[60] There are several problems with this approach. Dr. McDonald never explains why standards developed for protected minority groups under the Voting Rights Acts should be applied to political partisans. Unlike racial groups, there is no reliable way to identify partisan groups. Party registration or identification is a highly imperfect form of identification because party registration does not assure voting for the party in any given election. For example, Dr. McDonald's own survey data presented on page 8 of his report indicated that only 69 percent of self-identified Democrats indicated an intent to vote for Democratic candidate John Delaney in the 2012 congressional election in CD6 and only 64 percent of self-identified Republicans indicated an intent to vote for Republican candidate Roscoe Bartlett. Moreover, as of the general election of 2016, 23 percent of registered voters in CD6 were not registered as either Democrats or Republicans.[61] Dr. McDonald's survey data indicates no clear party preference in voting for this group. Their political partisan loyalties regarding Maryland's two major parties defy any clear definition.

Unlike racial identifications, people change their party affiliations. A study by the Pew Research Center found that identification as an independent serves as a transition for people moving in and out of identification as Republicans or Democrats. "The recent changes in partisan identification," the study found, "serve as a reminder that affiliation with a party is an attitude, one which can and does change. Previous research has shown that few people switch immediately from Republican to Democratic identification or vice versa. Most of the movement is from independents who assume a party label or from partisans who no longer identify with their former party." The study found that 72 percent of independents had at one time identified as a Democrat or Republican, or both.[62]

Even more unstable than changes in party identification are shifts in party voting, which can change according to the issues and personalities presented by given elections. Consider, for example, voters in Washington County, which was entirely contained within CD6 both in the 2001 and the 2011 redistricting plans. As indicated in Table 12 political loyalties in congressional elections in Washington County shifted from the presidential election year of 2008 to the presidential election year of 2012. In 2008, the Republican congressional candidate Roscoe Bartlett prevailed in Washington County with 57.1 percent of the two-party vote, whereas in 2012, Bartlett lost Washington County with 49.3 percent of the two-party vote. Both years were presidential election years, with the same Democratic candidate on the ticket. So, should

[60] McDonald Report at 3.
[61] *Ibid.* at 3, 8; Maryland State Board of Elections, "Turnout by Party and Congressional District, 2016," http://www.elections.state.md.us/elections/2016/turnout/general/Official%20by%20Party%20and%20Congressional.pdf.
[62] Pew Research Center, "Trends in Party Affiliation," September 23, 2010, http://www.people-press.org/2010/09/23/section-3-trends-in-party-affiliation/.

Washington County be considered a Democratic or a Republican County? Its racial composition can be objectively determined through Census data, but not its partisan composition.

TABLE 12
PARTISAN VOTING IN WASHINGTON COUNTY, CONGRESSIONAL ELECTIONS OF 2008 AND 2012

Election	Vote For Democratic Candidate	Vote For Republican Candidate	Percent Republican
2012	29,381	28,565	**49.3%**
2008	24,277	32,278	**57.1%**
Source: Maryland State Board of Election, 2008 and 2012 General Elections, http://elections.state.md.us/elections/2008/results/general/gen_detail_results_2008_4_BOT00806.html; http://elections.state.md.us/elections/2012/results/general/gen_detail_results_2012_4_BOT00806.html.			

In addition, Dr. McDonald's analysis omits a crucial component of voting rights analysis, an examination of the totality of circumstances facing the protected racial group. A voting rights analysis considers whether, under the "totality of circumstances," an electoral system interacts with social and historical conditions to cause an inequality in the political process. The United States Department of Justice, in explaining how litigation is conducted under the Voting Rights Act, highlights the consideration of the "totality of circumstances" as follows:

"In 1982, Congress extended certain provisions of the Act such as Section 5 that were set to expire, and added protections for voters who required assistance in voting. At the same time, it examined the history of litigation under Section 2 since 1965 and concluded that Section 2 should be amended to provide that a plaintiff could establish a violation of the section if the evidence established that, in the context of the "totality of the circumstance of the local electoral process," the standard, practice, or procedure being challenged had the result of denying a racial or language minority an equal opportunity to participate in the political process."[63]

[63] United States Department of Justice, Section 2 of the Voting Rights Act, https://www.justice.gov/crt/section-2-voting-rights-act.

In his *Backus* deposition, Dr. McDonald recognized that examination of the totality of the circumstances is an essential component of the "typical" voting rights analysis:

> "Well, Section 2, in the terms of the effect prong of Gingles, is that there have to be three conditions present in order to require the drawing of an effective minority district. One, that there must be a presence of racially polarized voting. One, that it's possible to draw the district in a compact manner. And thirdly, what's known as the totality of the circumstances. It's a number of other factors outside the electoral system. Essentially, they're about the past history of discrimination within the jurisdiction."[64]

While Dr. McDonald asserts that his analysis in this litigation is based in the typical voting rights analysis, he provides no such totality analysis in his current report. He has not demonstrated that Maryland has a history of officially discriminating against Republicans or whether as a result of any alleged discrimination Republicans suffer disadvantages relative to Democrats in socio-economic conditions such as income, poverty, education, housing, and health.

Without scrutiny of the totality of circumstances, Dr. McDonald's standard would lead to a violation whenever the ability of a partisan group (however defined) "to elect a candidate of their choice was diminished by district lines that had an effect of diluting their vote." By that standard, unless all district lines are frozen in place with respect to their partisan leanings, virtually every redistricting plan would exhibit vote dilution.

Consider, for example, the case of the swing state of Pennsylvania. Barack Obama won Pennsylvania with 52.7 percent of the two-party vote in 2012 and the state was closely divided in 2016, with Trump winning 50.4 percent of the two-party vote. Yet under a plan drawn by a Republican legislature, in 2012 Republicans won 13 U. S. House seats in Pennsylvania (72%), compared to only 5 won by Democrats (28%). In 2016, Republicans again won 13 U. S. House seats in Pennsylvania (72%), compared to only 5 won by Democrats (28%). An application of Dr. McDonald's voting rights standard to the partisan alignment in Pennsylvania would preclude a more equitable redistricting of House seats, because any such redistricting would require diluting the votes of Republicans in several of the current districts.

X. DR. MCDONALD'S REPORT CONTRADICTS HIS SCHOLARSHIP AND PRIOR TESTIMONY

Dr. McDonald purports to be assessing the intent of Maryland legislators "by examining how well the Sixth Congressional District followed traditional redistricting principles of minimizing county splits and compactness."[65] This, however, is not a meaningful standard. Dr. McDonald's own scholarship indicates that adherence to so-called "traditional redistricting principles" is not a "hedge" against gerrymandering:

[64] McDonald Dep. at 57:22-25, 58:1-8, *Backus v. South Carolina*, No. 3:11-03120 (D.S.C. Feb. 27, 2012), ECF No. 158.
[65] McDonald Report at 4.

> "Some posit that traditional redistricting principles can act as a hedge against gerrymandering. One should be cautious, however, about putting one's faith in traditional redistricting principles to produce politically neutral outcomes. Chief Justice Brennan pessimistically noted that following traditional criteria, such as drawing pleasing shapes, is a not a gerrymandering cure, stating that, 'this politically mindless approach may produce, whether intended or not, the most grossly gerrymandered results' . . . And, as the next section describes, facially neutral criteria such as geographic compactness are likely to systematically favor one party."[66]

In this same article, Dr. McDonald further notes that there are many purported "traditional redistricting principles," beyond minimizing county splits and compactness: "population equality, contiguity, compactness, respect for existing political boundaries, respect for communities of interest, preservation of district cores, and nesting of districts."[67] In his *Backus* deposition Dr. McDonald states that, "All of these traditional redistricting principles could be or are indicators. They're not by themselves determinative."[68]

In addition, Dr. McDonald states that compactness is not a coherent standard by which to judge districts: "Compactness refers to the shape of a district, but is formally ill-defined. Scholars have proposed over fifty compactness measures, which have not resulted in clarity, since these measures conflict and can be manipulated."[69] Dr. McDonald also criticizes the use of compactness criteria because they have an inherent bias to favor Republicans: "Furthermore, computation-intensive analysis of process measures, enabled by computing advances, has identified potential biases--such as the tendency of compactness criteria to advantage the Republican party, because its support tends to be more evenly distributed geographically."[70] Similarly, Jowei Chen and Jonathan Rodden examined "automated districting simulations based on precinct-level 2000 presidential election results in several states." [71] They found that, "results illustrate a strong relationship between the geographic concentration of Democratic voters and electoral bias favoring Republicans."[72]

In his scholarship, Dr. McDonald stresses the importance of creating competitive districts. "There is also a greater issue of accountability. A legislature composed solely of uncompetitive districts is not accountable to the people. … Without the fear of defeat, majority legislative parties are not responsive to the needs of the nation or their state; they are at best responsive to their base. Restoring accountability of incumbent members through competition within their districts will encourage accountability of national and state parties, and thus uphold the principles of voter choice that are necessary for a functioning democracy to work."[73]

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[66] Altman & McDonald "Redistricting Principles for the 21st Century," p. 1187.
[67] *Ibid.*, pp.1189-1190.
[68] McDonald Dep. at 38:22-25, *Backus v. South Carolina*, No. 3:11-03120 (D.S.C. Feb. 27, 2012), ECF No. 158.
[69] Altman and McDonald, "Redistricting Principles for the 21st Century," p. 1190.
[70] *Ibid*., pp. 1195.
[71] Jowei Chen and Jonathan Rodden, "Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures," 8 *Quarterly Journal of Political Science* 239, 240 (2013).
[72] *Ibid.*
[73] Michael P. McDonald, "Redistricting and Competitive Districts," in *Electoral Competition and American Politics* 241 (Michael P. McDonald and John Samples, eds., 2006).

The three co-authors of a 2014 article in the Journal of Elections, concluded that "[c]ompetitive campaigns have been found to increase citizens' participation, engagement and learning."[74] These scholars found that "competitive elections have positive effects that endure for at least a year beyond the campaign season, reinforcing the idea that political competition plays a robust role in American representative democracy."[75]

However, Dr. McDonald fails to consider the competitiveness criteria in his evaluation of CD6 in Maryland, even though the Maryland legislature created CD6 as a competitive district. Legislators acknowledged the goal of a competitive CD6 at the time of the redistricting process. According to Democratic State Senator Rich Madaleno, "If you go with a competitive western Maryland district, the way that works is clearly that district comes further into Montgomery County, substantially into Montgomery County. Which historically that district did have. If you remember Congresswoman Byron, Beverly Byron, and her husband before her that district comprised roughly half of Montgomery County at one time. So, we are used to being associated with a western Maryland District."[76] State House Speaker Mike Busch said, "I think the numbers will show that it makes it [CD6] pretty competitive."[77]

The Cook Political Report in 2012 included Maryland's CD6 among its competitive U.S. House districts, rating it a narrow Democrat +2 percentage points. Cook calculates such ratings by comparing the district's average Democratic or Republican Party share of the two-party presidential vote in two presidential contests to the national average. Cook said that the district was "likely Democratic," and the *New York Times* evaluation rated it as "leans Democratic."[78] The average Republican vote across all statewide elections held in this district from 2012 to 2016 is 47 percent (Table 1), which places it within Dr. McDonald's "competitive" range of 45 to 55 percent.[79]

The district also emerges as competitive, although favoring Democrats, under Dr. McDonald's methodology of the "normalized presidential vote." He calculates this measure by subtracting from the two-party presidential vote in the district the two- party presidential vote nationwide. He says "I then add back 50 percent to conceptualize district competitiveness around 50 percent."[80] In 2012 Obama won 52.7 percent of the national vote and 55.4 percent of the District 6 vote for a normalized presidential vote of 52.7 percent, well within the competitive range. In 2016 Clinton won 51.7 percent of the national vote and 56.2 percent of the District 6 vote for a normalized presidential vote of 54.5 percent, also within the competitive range.[81] Table 1 above indicates that Republicans overwhelmingly won CD6 in the 2014 gubernatorial election and very

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[74] Heather Evans, Michael J. Ensley, and Edward G. Carmines, "The Enduring Effects of Competitive Elections," 24 Journal of Elections, Public Opinion, and Parties, 455 (2014).
[75] *Ibid.* at 455.
[76] Video at http://www.marylandjuice.com/2011/09/2012-redistricting-sen-rich-madaleno.html#more;
[77] Associated Press, "6th Congressional District Would Include More of Montgomery County," *Daily Record*, October 4, 2011, http://thedailyrecord.com/2011/10/04/6th-congressional-district-would-include-more-of-montgomery-county/.
[78] Cook Political Report, "2012 Competitive House Race Chart," http://cookpolitical.com/archive/chart/house/race-ratings/2012-07-26_14-08-01; Ballotpedia, "Maryland's Sixth Congressional District Elections, 2012," https://ballotpedia.org/Maryland%27s_6th_Congressional_District_elections,_2012.
[79] McDonald, "Redistricting and Competitive Districts" at 224.
[80] *Ibid.*
[81] *Id.* at 223.

narrowly in the 2014 election for Attorney General. In the 2014 congressional election, John Delany came with just 1,525 votes of losing CD 6 (fewer than 1 percent of votes cast), despite the advantages of incumbency.[82]

Consistent with Dr. McDonald's assessment of competitive districts, CD6 in 2012 elected the moderate Democrat John Delaney, rather than the outlier Republican Roscoe Bartlett. Delaney won the Democratic nomination by defeating the more liberal Garagiola, a sitting State Senator.[83] According to an analysis by GovTrack, Bartlett was among the 25 most conservative members of the U. S. House of Representatives in his last term. In contrast, GovTrack ranked Delaney in 2015 as only the 160th most liberal member of the House, making him the 34th most conservative Democrat out of 192 fellow Democrats.[84] As Dr. McDonald has concluded, in his scholarship, "District competition also affects other aspects of politics, such as the degree of political polarization in Congress, as 'more competitive districts tend to produce more moderate candidates."[85]

Dr. McDonald also fails to note that Delaney was not elected with the votes of Montgomery County only, but, as indicated in Table 13, he also won Washington County and the parts of Frederick County included in CD6. Table 13 also indicates that when combined, Delaney carried the four Maryland counties wholly or partially in CD6 under both maps. In addition, as indicated in Table 14, there was no diminution in congressional turnout in the three western Maryland counties included entirely within CD6, when the congressional election of 2012 is compared to the congressional election in the prior presidential year of 2008 under the 2001 congressional redistricting plan. Rather, turnout increased in each county.

[82] http://elections.state.md.us/elections/2014/results/General/gen_results_2014_2_00806.html.
[83] John Fritze, "Democrats Fall in Behind Outsider Delaney," *Baltimore Sun*, April 4, 2012, http://www.baltimoresun.com/news/breaking/bs-md-sixth-battle-begins-20120404-story.html.
[84] Govtrack, "Roscoe Bartlett," https://www.govtrack.us/congress/members/roscoe_bartlett/400017; "John Delaney, https://www.govtrack.us/congress/members/john_delaney/412544/report-card/2015.
[85] McDonald, "Redistricting and Competitive Districts," p. 233.

TABLE 13
COUNTY BREAKDOWN OF VOTE, 2012 GENERAL ELECTION FOR U.S. CONGRESS, WESTERN COUNTIES CD6

County	John Delaney (D)	Roscoe Bartlett (R)	Percent Delaney
Allegany	11,966	15,730	43.2%
Frederick	31,079	20,148	60.7%
Garrett	3,864	8,445	31.4%
Washington	29,381	28,565	50.7%
Total Western Maryland	**76,290**	**72,888**	**51.1%**
Source: Maryland State Board of Elections, http://www.elections.state.md.us/elections/2012/results/general/gen_detail_results_2012_4_BOT00806.html.			

TABLE 14
COUNTY BREAKDOWN OF CHANGES IN VOTER TURNOUT, 2008 AND 2012 GENERAL ELECTIONS COMPARED

County	Voters 2008	Voters 2012	Percent Change
Allegany	28,190	28,761	+**2.0%**
Garrett	12,364	12,700	+**2.7%**
Washington	58,915	60,761	+**3.1%**
Total	**99,469**	**102,222**	+**2.8%**
Statewide	2,661,905	2,734,176	+**2.7%**
Source: Maryland State Board of Elections, 2008 General Election and 2012 General Election, http://www.elections.state.md.us/elections/2008/turnout/general/2008_Presidential_General_Congressional_District_06.html; .			

Dr. McDonald correctly indicates that it was possible to create an alternative district more favorable to Republicans than the adopted 2011 CD6. He says that the district is purportedly more compact, although Dr. McDonald has criticized the use of compactness criteria, which he says is biased toward Republicans. Moreover, there are always a myriad of alternative districts that can be created in any plan that are "better" on some selected criteria than the districts in the adopted plan. Dr. McDonald has failed to demonstrate that the alternative district would serve other legitimate redistricting purposes of the plan. The creation of the alternative district would also change the adopted plan beyond CD6 and CD8, since moving counties and precincts out of adopted CD6 would ripple across the state in the adopted plan. Dr. McDonald gave no assurance that the proposed district would respect the legitimate redistricting goals of other areas of the state, such as respecting the non-retrogression mandate of § 2 of the Voting Rights Act in Districts 4 and 7; disallowing a crossing of the Chesapeake Bay; ensuring that District 2 continued to contain all major military installations in Maryland; ensuring all incumbents continued to reside in their district; and ensuring precise mathematical population equality.

XI. DR. MCDONALD'S METHODOLOGY CANNOT ESTABLISH INTENT

Dr. McDonald's methodology is inadequate to prove that the Maryland legislature intentionally discriminated against Republican-leaning voters in CD6 for their political expression. In *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), the U.S. Supreme Court outlined several factors that it identified as relevant to ascertaining whether legislation was enacted with intentional discriminatory intent: (1) discriminatory impact; (2) historical background; (3) the sequence of events leading up to the decision; (4) procedural or substantive deviations from the normal decision-making process; and (5) contemporaneous viewpoints expressed by the decision-makers. This methodology is consistent with the approach followed by historians in evaluating intent.

Dr. McDonald does not examine the historical background to demonstrate a history of official discrimination in Maryland against Republican-leaning voters. He does not explore the sequence of events leading to the adoption of the 2011 Maryland congressional redistricting plan. He does not evaluate the procedures for adopting the plan, including the referendum on the plan in the November 2012 general election. He does not consider the testimony at public hearings or the presentation of the GRAC to the Maryland General Assembly. He does not cite a single contemporaneous statement by anyone involved in the adoption of the congressional redistricting plan. Dr. Morrison's report, although it does examine some contemporary statements, also fails to consider most of the *Arlington Heights* elements.

Neither Dr. McDonald nor Dr. Morrison considers several possible alternative explanations for the adoption of the plan and CD6, that are separate from any intent to retaliate against voters in CD6 for their political expression. These include, for example, the creation of a community of interest, the unpacking of prior CD8, the reflection of Maryland's domination by the Democratic Party, and the response to Republican gerrymandering in other states, and the assurance that CD1 will not cross the Chesapeake Bay. All these alternative considerations will be addressed below.[86]

[86] Democratic Party has won every statewide election for national office (president and US Senate) during the past three decades. As of the time of redistricting in 2011 the Democrats held a better than 2 to 1 registration advantage

XII. DR. MCDONALD MISUNDERSTANDS MARYLAND'S REPORTING OF ELECTION RESULTS

Dr. McDonald describes as follows his procedure for allocating statewide election results to CD6 from 2012 to 2016:

> "I did some estimation to construct statewide election results within the adopted Sixth Congressional District. Maryland reports complete election results by county *and election results for early voters only by precinct.* Election results are thus available for Allegany, Garrett, and Washington counties, which are entirely contained within the Sixth Congressional District. I estimated precinct-level Election Day candidate tallies for the parts of the Sixth Congressional District contained in Frederick and Montgomery counties. I apportioned the county total Election Day vote for the candidates by the proportion of the early vote a candidate received within a given precinct, relative to the county. I added the known early vote total and estimated Election Day vote total for each precinct, and sum the votes across Frederick and Montgomery counties' precincts assigned to the Sixth Congressional District. I then summed the votes for all counties to produce district-wide totals for the Sixth Congressional District."[87]

However, as indicated above and demonstrated by the precinct results excerpt for the 2012 general election, reproduced exactly from the Maryland State Board of Elections website without modification, Maryland does not report not early votes by precinct. Instead, Maryland reports by precinct only election night votes, that is, votes cast on Election Day. This excerpt clearly shows that the only results reported by the Board of Elections by precinct are for the election night votes and not as Dr. McDonald indicates for early votes. Thus, Dr. McDonald's fails to accurately reflect how Maryland reports election results and is estimating procedure is corresponding flawed by this error.

EXCERPT FROM MARYLAND STATE BOARD OF ELECTIONS PRECINCT RESULTS

2012 General Election,
http://www.elections.state.md.us/elections/2012/election_data/index.html,
All_By_Precinct_2012_General

"County","Election District","Election Precinct","Cong","Legs","Candidate Name","Party","Office Name","Office District","Winner","Write-In?","Election Night Votes","Election Night Votes Against"
"01","001","000","06","01C","Barack Obama","DEM","President - Vice Pres","","Y","","66",""
"01","001","000","06","01C","Mitt Romney","REP","President - Vice Pres","","","","351",""

over Republicans and have maintained that edge through the elections of 2016. http://elections.state.md.us/elections/2010/turnout/general/2010_Congressional_District.html#Dem; http://elections.state.md.us/elections/2016/turnout/general/Official%20by%20Party%20and%20County.pdf

[87] McDonald Report at 9 (emphasis added).

XIII. ALTERNATIVE EXPLANATIONS FOR THE CONFIGURING OF CD6

Both the Morrison Report and the McDonald Report are incomplete. Plaintiffs' experts fail to consider several plausible and reasonable explanations for the new configuration of CD6 that have nothing to do with any intent to retaliate against voters for their political expression.

A. Unpacking Prior CD8

One of the ways in which a district plan disadvantages a political party is through the packing of its voters into a district well beyond what is needed for election of that party's candidates. The result of packing is large numbers of wasted voters to the detriment of the party that dominates the packed districts. Adam B. Cox in his article in the Supreme Court Review explains the impact of packing, using Democratic voters as his example: "Packing Democratic voters into a small number of districts where they constitute large supermajorities ensures Democratic victories in those districts but reduces the total number of seats Democrats capture by increasing the number of wasted Democratic votes-that is, votes cast for Democrats that are either unnecessary or insufficient to win a seat."[88]

By 2008, CD8 under the 2001 redistricting plan was an overwhelmingly packed district. Plaintiffs' expert Dr. McDonald defines for districts "two competitiveness ranges, 45–55 and 48–52 percent."[89] As indicated in Table 15, congressional election results in 2008 and 2010 for CD8 under the 2001 redistricting plan were some 23 to 25 percentage points beyond McDonald's outer range for competitive districts. These results clearly showed former CD8 to be a packed district to the disadvantage of Democrats. For these two elections, the number of wasted Democratic votes is an extraordinary 264,581 votes. I am not claiming here that Democrats deliberately packed CD8 in the prior redistricting, but, as noted above, packing can be a natural result of the distribution of voters and of demographic change over time.

CD8 under the 2001 plan bordered only CD4 and CD6. CD4, which is an African-American voting rights district, was already packed with Democrats and did not present an alternative for the unpacking of CD8. That left CD6 as the reasonable alternative for unpacking CD8 and the 2011 redistricting plan did precisely that. As indicated in Table 16, the 2011 plan succeeded in substantially unpacking CD 8. For the congressional elections of 2012 and 2014, (also, one presidential and one midterm year election), the Democratic percentage in CD8 dropped by some 12 to 14 percentage points. The number of wasted votes plummeted from 264,581 to 153,362, a decline of 111,219 wasted votes.

[88] Adam B. Cox, "Gerrymandering and Disaggregated Districts,' *Supreme Court Review*, 2004 429 (2004).
[89] Michael P. McDonald, "Redistricting and Competitive Districts," in *The Marketplace of Democracy: Electoral Competition and American Politics* 224 (McDonald and Samples, eds., 2006). Similarly, Barack Obama prevailed in the 2008 presidential election with 74.5 percent of the vote, not counting absentee and provisional ballots, which statewide were more favorable to Democrats. Maryland State Board of Elections, State Precinct Reference for 2008 Election, http://www.elections.state.md.us/elections/2008/election_data/index.html.

TABLE 15
PACKING IN CD8 UNDER MARYLAND'S 2001 REDISTRICTING PLAN AND WASTED VOTES
2

Election	Democratic Votes	Republican Votes	Democratic Percentage	Wasted Democratic Votes
2008	229,740	66,351	**77.6%**	**163,389**
2010	153,613	52,421	**74.6%**	**101,192**
Total	**383,353**	**118,772**	**76.3%**	**264,581**
Source, Maryland State Board of Elections, General Elections of 2008 and 2010, http://www.elections.state.md.us/elections/2008/results/general/gen_results_2008_4_00808.html; http://www.elections.state.md.us/elections/2010/results/General/gen_results_2010_2_00808.html.				

TABLE 16
UNPACKING OF CD8 UNDER MARYLAND'S 2011 REDISTRICTING PLAN AND WASTED VOTES

Election	Democratic Votes	Republican Votes	Democratic Percentage	Wasted Democratic Votes
2012	217,531	113,033	**65.8%**	**104,499**
2014	136,722	87,859	**60.9%**	**48,863**
Total	354,254	200,892	**63.8%**	**153,362**
Source: Maryland State Board of Elections, 2012 and 2014 General Elections, http://www.elections.state.md.us/elections/2012/results/general/gen_results_2012_4_00808.html; http://elections.state.md.us/elections/2014/results/General/gen_results_2014_2_00808.html.				

B. Realizing the Democratic Majority

Maryland is one of the most Democratic-dominated states in the nation. Yet Maryland Democrats' position, holding 75 percent of congressional seats after the 2010 elections, lagged behind the percentage of congressional seats held by the dominant party in most other states that were dominated by either political party. Table 17 reports the percentage of congressional seats held after 2010—the last election before redistricting--by relatively medium-sized states like Maryland (4 to 12 congressional districts) in which one party gained at least 60 percent of the vote in the 2008 vote for president. As indicated in Table 17, Maryland's percentage of the two-party presidential vote was about comparable to other states. Yet Maryland's percentage of congressional seats was *13 percentage points below* the average percentage of congressional seats won by the respective party that controlled the redistricting process in the 5 states.

An instructive comparison is provided by Massachusetts, which has just one more congressional seat than Maryland. Democrats about equally dominate the two states. However, all 9 congressional seats in Massachusetts were held by Democrats after 2010, compared to 6 of 8 seats in Maryland.

After the 2011 redistricting Maryland was in line with other party-dominated states. As indicated in Table 18, Maryland's percentage of the two-party presidential vote was about comparable to other states; so too was its percentage of seats held by the dominant party as compared to other states. Once again Democrats held all 9 congressional seats in the comparable state of Massachusetts.[90]

C. Responding to the Nationwide Context of Congressional Redistricting

Plaintiffs' experts fail to draw the important distinction between state legislative and congressional redistricting. Each state establishes a redistricting plan that is dispositive for the seats comprising its state legislature. But the composition of the U. S. Congress reflects the results of redistricting plans by all states with more than a single representative. Thus, the context for any one state's congressional redistricting decisions includes the redistricting processes taking place in other states. Adam B. Cox explains that, "Congressional political gerrymanders pose different analytic, normative, and constitutional questions than do state legislative gerrymanders. The latter implicate the composition of the whole legislative body, while the former affect only a part."[91]

The Maryland Constitution explicitly recognizes the distinction between state legislative and congressional redistricting. The Constitution stipulates specific requirements for legislative redistricting plans, but none for congressional redistricting plans. [92]

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[90] For uncontested elections, results are imputed from presidential election results.

[91] Adam B. Cox, "Partisan Gerrymandering and Disaggregated Redistricting," *Supreme Court Review* 2004 451 (2004).

[92] The Constitution of Maryland, Article III, Section 4 specifies that "Each legislative district shall consist of adjoining territory, be compact in form, and of substantially equal population. Due regard shall be given to natural boundaries and the boundaries of political subdivisions. There is no requirement in the constitution for congressional districts. http://msa.maryland.gov/msa/mdmanual/43const/html/const.html.

TABLE 17
DOMINANT PARTY STATES: PERCENT VOTES CONGRESS AND PRESIDENT 2008, PERCENT CONGRESSIONAL SEATS WON*

State	Dominant Party	Vote For Dominant Party 2008 President	Congressional Seats Won by Dominant Party 2010	Congressional Seats Won by Second Party 2010
Alabama	Republican	60.9%	6 (86%)	1 (14%)
Connecticut	Democrat	61.3%	5 (100%)	0 (0%)
Arkansas	Republican	60.2%	3(75%)	1(25%)
Maryland	Democrat	62.9%	6 (75%)	2 (25%)
Massachusetts	Democrat	63.2%	9 (100%)	0 (0%)
Oklahoma	Republican	65.7%	4 (75%)	1(25%)
All States		**62.4%**	**33 (87%)**	**5 (13%)**
Difference MD All States		**+0.5%**	**-12%**	**+12%**

TABLE 18
DOMINANT PARTY STATES: PERCENT VOTES CONGRESS AND PRESIDENT 2012, PERCENT CONGRESSIONAL SEATS WON*

State	Dominant Party	Vote For Dominant Party 2012 President	Congressional Seats Won by Dominant Party 2012	Congressional Seats Won by Second Party 2012
Alabama	Republican	61.2%	6 (86%)	1 (14%)
Arkansas	Republican	62.2%	4 (100%)	0 (0%)
Kansas	Republican	61.1%	4 (100%)	0 (0%)
Kentucky	Republican	61.5%	5 (83%)	1 (17%)
Maryland	Democrat	63.3%	7 (88%)	1 (12%)
Massachusetts	Democrat	61.8%	9 (100%)	0 (0%)
Oklahoma	Republican	66.8%	5 (100%)	0 (0%)
Tennessee	Republican	60.4%	7 (78%)	2 (22%)
Utah	Republican	74.6%	3 (75%)	1 (25%)
All States		**63.7%**	**50 (91%)**	**6 (11%)**
Difference MD All States		**-0.4%**	**-1%**	**+1%**

In formulating its 2011 redistricting plan for its contribution to the U. S. Congress, Maryland's legislators faced two critical contextual issues. First, Republicans, having gained the advantage in more state governments than Democrats during the period of post-2000 redistricting had used partisan gerrymandering to boost their representation in Congress. Second, Republicans had gained control of additional states for the post-2010 redistricting and were poised for another round of gerrymandering that would further expand their edge in congressional elections.

Plaintiffs' expert Dr. McDonald, writing in 2011, clearly explicated this political context of the Republican-dominated gerrymandering of congressional seats.

> "The defining characteristic of the 2010 midterm elections is likely the historic success of Republican candidates in federal and state races, following back- to-back decisive victories for Democrats. A fairly clear picture has now emerged as to who will control redistricting in each state. *Republicans appear well-poised to cash in on their electoral wins by creating redistricting plans that will tilt the electoral balance for the upcoming decade in their favor in large, battleground states where partisan gerrymandering is most potent*."

> "Republicans control 16 states, Democrats control six states, and the remaining 15 states have divided government. As several political commentators, including myself, have noted, the Republicans' prize states include Florida, Michigan, North Carolina, Ohio, Pennsylvania, and Texas. Democrats were stripped of their largest prize- California- by the passage of a ballot initiative in 2010 that gave control of congressional redistricting to a state legislative commission established in 2008, and they only control one state where they can greatly alter the congressional balance of power, Illinois. … *Republicans were also in a great position 10 years ago.* Now, they control only three more critical states- North Carolina, Ohio, and Tennessee- than they did 10 years ago (numerically, they control more states, but these three are the most consequential)."[93]

Similarly, Gary Jacobson, arguably the nation's foremost scholar of congressional elections, found that "Republicans enjoyed two advantages in redistricting after the 2000 Census. First, the states that gained seats after 2000 were more Republican in their voting habits that were the states that lost seats … Second, Republicans controlled the redistricting process in several of the large states that were set to lose or gain seats, and they used that control effectively to boost their House representation."[94] In an article published in the *Yale Law and Policy Review*, J. Gerald Hebert, the former Acting Chief of the U. S. Justice Voting Rights Section, who contributed an amicus brief on behalf of plaintiffs in earlier stages of this litigation, cites three examples of invidious partisan gerrymandering following the 2000 U.S. Census, all in Republican controlled states. "The redistricting experiences in Florida, Michigan, and Texas following the 2000 U.S. census provide compelling examples of the danger of unfettered partisan redistricting."[95]

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[93] Michael P. McDonald, "The 2010 Midterm Elections: Signs and Portents for the Decennial Redistricting,"44 *PS: Political Science and Politics* 311, 312 (2011). (emphasis added).

[94] Gary Jacobson, *The Politics of Congressional Elections*, 7th ed., (New York: Pearson, 2009), p. 10.

[95] J. Gerald Hebert and Marina K. Jenkins, "The Need for State Redistricting Reform To Rein in Partisan Gerrymandering," 29 *Yale Law and Policy Review* 543, 552 (2011).

Legislatures do not blind themselves to these realities of congressional as opposed to state legislative redistricting. To offset the large Republican advantage in more heavily populated, and in many cases, competitive states, with significant consequences for representation in Congress, it was reasonable for the Maryland legislature to make CD6 into a more competitive district for Democrats.

District 6 Republican Representative Roscoe Bartlett himself recognized during his 2012 reelection campaign that the Maryland legislature's congressional plan was not intended to retaliate against himself or his supporters. Rather, it responded to Republican gerrymandering across the nation. "'*It's not personal'" Bartlett said about the redistricting plan. 'They just needed another Democrat seat. The Democrats only control, I think, six states and the District [of Columbia]. Republicans control, I think, four times that. So they had to find pick-up opportunities anywhere they could.*"[96]

Then-state Senator Jamie Raskin, an advocate of redistricting reform, explained that the Maryland legislature could not have been expected to "unilaterally disarm," given Republican legislatures' advancement of party goals in larger competitive states when those gains were of much greater consequence on the partisan composition of congress. He cites the examples of North Carolina and Ohio, which both created supermajority districts of each party, resulting in a loss of representation for Democrats.[97]

As indicated by the report of demographer Bill Cooper, the Maryland legislature could have adopted a plan which would have given Democrats an edge in all 8 congressional districts, creating the potential for Democrats to control all congressional seats as they did in Massachusetts. Table 20, taken from the Cooper Report indicates that the alternative map contains 8 majority-Democratic districts. The Table also indicates that the 8-0 map preserves two majority African American districts.

The map included in the Cooper report demonstrates that the plan creates reasonably compact districts, given Maryland's unique geography. This further shows that there is no particular correlation between so-called "traditional redistricting principles" and the partisan composition of a redistricting plan. Dr. Morrison quotes Mr. Hawkins to the effect that incumbent Democratic members of Congress opposed such a redistricting plan even if it was more favorable to Democrats.[98] However, although incumbent members have an important influence on congressional redistricting, they are not the final decision-makers, and if the goal of the legislature had been to retaliate against Republican inclined voters in Maryland they could have done so more aggressively through an alternative redistricting plan. The 8-0 map would also maintain the cross-Bay configuration that was present in the 2002 congressional map, a violation of traditional redistricting principles rejected by the 2011 congressional map drawers even at the expense of achieving a more effective Democratic map (see Section XII.4 below).

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[96] Evan Serpick, "The Last Stand of Roscoe Bartlett," *Baltimore Magazine*, May 2012, http://www.baltimoremagazine.com/2012/5/5/the-last-stand-of-roscoe-bartlett (emphasis added).

[97] Jamin B. Raskin, "Nonrepresentational Line-Drawing and the Universal Representational Imperative: Why Judges Should Replace Gerrymandering with Proportional Representation," *Yale Law and Policy Review*, (Winter, 2012), http://ylpr.yale.edu/inter_alia/nonrepresentational-line-drawing-and-universal-representational-imperative-why-judges.

[98] Morrison Report at 15-16.

TABLE 19
ILLUSTRATIVE DEMOCRATIC REDISTRICTING PLAN WITH 8 DEMOCRATIC DISTRICTS

District	**Population**	**% African American 18+**	**Democratic Percentage President 2008**
1	722,429	19.6%	54.9%
2	720,465	22.4%	52.5%
3	720,600	25.1%	61.8%
4	721,571	55.8%	79.0%
5	721,786	30.1%	57.0%
6	721,529	11.3%	56.2%
7	721,892	52.2%	72.1%
8	721,959	11.3%	62.5%
Source: Report of Bill Cooper. The Democratic percentages are slightly understated because the Harvard Archive on which the report relies, does not include the absentee and provisional votes (9.1 percent of all votes), which are more Democratic (67.1%) than the election day votes (62.5%), Maryland State Board of Elections, 2012 General Election, President, http://www.elections.state.md.us/elections/2008/results/general/gen_results_2008_4_001-.html.			

D. Responding to the Goal of Realigning Congressional District 1 So That it Did Not Cross the Chesapeake Bay

The state of Maryland explicitly indicated at the time of the redistricting process that one of the goals of the congressional plan was to conform to traditional redistricting principles by reconfiguring Congressional District 1 so that it no longer crossed the Chesapeake Bay. In its presentation to the General Assembly, GRAC expressly outlined the goal of devising a plan for Congressional District 1 that, unlike the previous plan, did not cross the Chesapeake Bay. In its presentation on CD1 GRAC noted that, "9 Eastern Shore Counties are kept together. District no longer crosses the Chesapeake Bay into more urban areas of Anne Arundel County and instead runs into rural portions of Carroll County."[99] State Democratic Delegate Kathleen Dumais, one of the legislative decision-makers, in defending the 2011 congressional plan prior to the November 2012 referendum also highlighted the realignment of CD1 so that it met the goal of not crossing the Bay. In an Op Ed published on October 29, 2012, Delegate Dumais reiterated the GRAC statement on the priority of not crossing the Bay in new CD1. She wrote, "District 1 keeps the nine Eastern Shore counties together and no longer crosses the Chesapeake Bay into more urban areas of Anne Arundel County. Instead, it runs into rural portions of Carroll County."[100]

To maintain the required population for the new CD1 that did not cross the Bay, it was necessary to add in not only the population from Carroll County, which had previously been in CD6, but also the parts of Harford County and Baltimore County that were also in the prior CD6. As indicated in Table 20, taken from the Report of Bill Cooper, the amount of Anne Arundel population removed from prior CD 1 almost exactly equals the amount of population added in from Carroll County, Harford County, and Baltimore County. To assure that the new CD6 conformed to the one-person, one-vote requirement, the legislature included additional population from Montgomery County, parts of which were already in CD6 under the 2002 congressional redistricting plan. As indicated in Table 20, the transfer in and out of CD1 had no effect on racial opportunities since the areas of exchange were overwhelmingly white with very small black and Hispanic voting age populations.

[99] GRAC "Recommended Congressional Plan."
[100] Kathleen Dumais, "Md. Congressional Map is Fair, Legal," *Baltimore Sun*, October 29, 2012, http://www.baltimoresun.com/news/opinion/oped/bs-ed-redistricting-20121029-story.html.

TABLE 20
DEMOGRAPHIC STATISTICS POPULATION TRANSFERS 2011 CONGRESSIONAL PLAN CD1

CD1	Adj. Pop	Black %	Black 18+ %	Hispanic 18+ %	NH White
Removed From Anne Arundel	**107,577**	4.3%	4.2%	2.5%	89.9%
Added From CD6 in Harford, Baltimore & Carroll	**106,562**	2.0%	1.9%	1.4%	95.0%
Source: Report of Bill Cooper.					

CONCLUSION

In sum, the reports of plaintiffs' experts fail to establish any of the key elements of their claims. Moreover, the weight of the evidence and analysis contradicts these claims. Standard methods for assessing partisan gerrymandering, including the procedure used by Dr. McDonald in prior testimony, demonstrate that Maryland's 2011 congressional redistricting plan was not a partisan gerrymander. Dr. McDonald's effort to apply the standards used in voting rights analysis, moreover, does not withstand scrutiny. Similarly, application of methodology on jobs and commuting used by Dr. Morrison in a prior challenge to Maryland's 2011 congressional plan demonstrates that the new CD6 comprises a community of interest. Citizens testifying at public hearings and the Governor's Advisory Redistricting Committee stressed these aspects of the community of interest in new CD6.

Neither Dr. Morrison nor Dr. McDonald deploy a social science methodology sufficient to establish the intent of decision-makers for the 2011 congressional plan. The supposition that decision-makers intended to retaliate against Republican-leaning voters is refuted by the failure to create a partisan gerrymander, the statement of former Representative Roscoe Bartlett, the votes of the people of western Maryland themselves, and the fact that Democrats could have created a plan that gave Democrats an edge in all 8 Maryland districts. It is additionally refuted by four alternative explanations for the crafting of the 2011 congressional districts, all of them unexamined by plaintiffs' experts. These include:

1. Unpacking Congressional District 8, with its large numbers of wasted Democratic votes.

2. Realizing the Democratic majority in Maryland in conformity with other states largely dominated by one party in national elections.

3. Responding to the nationwide context of congressional redistricting that the Maryland constitution treats differently from state legislative redistricting.

4. Meeting the criterion of not crossing the Chesapeake Bay in the drawing of new Congressional District 1.

Date: May 8, 2017

Allan J. Lichtman

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United States elections, 2014

From Wikipedia, the free encyclopedia

The **2014 United States elections** were held on Tuesday, November 4, 2014, in the middle of Democratic President Barack Obama's second term. During this midterm election year, all 435 seats in the United States House of Representatives and 36 of the 100 seats in the United States Senate were contested; along with 39 state and territorial governorships, 46 state legislatures (except Louisiana, Mississippi, New Jersey, and Virginia),[1] four territorial legislatures, and numerous state and local races. This midterm election became the most expensive in history, with total spending reaching $3.7 billion (including spending by outside entities[2]), while producing the lowest turnout since 1942.[3][4][5]

The elections saw sweeping gains by the Republican Party in the Senate, House, and in numerous gubernatorial, state, and local races. The Republicans gained control of the Senate for the first time since 2006, and increased their majority in the House.[6] The Republicans also gained two seats in governors' races.[7]

Overall, the elections resulted in the largest Republican majority in the entire country in nearly a century, with 54 seats in the Senate, 247 (56.78%) in the House, 31 governorships (62%), and 68 state legislative chambers. Moreover, Republicans gained their largest majority in the House since 1928, the largest majority in Congress overall since 1928, and the largest majority of state legislatures since 1928.[8][9][10]

Political scientist Gary C. Jacobson argues that the voters treated the election as a referendum on the economy and especially on Obama's presidency. The result was the most partisan, nationalized, and president-centered midterm election in at least 60 years.[11]

2014 United States elections

Midterm elections

Election day November 4

Senate elections

Seats contested 33 seats of Class II and 3 mid-term vacancies

Net change Republican +9, Democratic −9

Map of the 2014 Senate races

Democratic hold Republican hold Republican gain

Line through state means both Senate seats were up for election

House elections

Seats contested All 435 seats to the 114th Congress

Net change Republican +13, Democratic −13

Map of the 2014 House races

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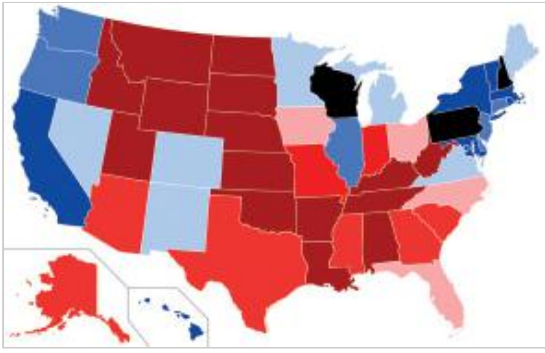
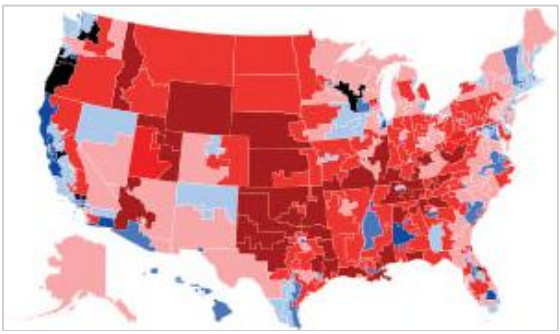
Cook Partisan Voting Index

From Wikipedia, the free encyclopedia

The **Cook Partisan Voting Index**, also called **PVI**, is a measurement of how strongly a United States congressional district or state leans toward the Democratic or Republican Party, compared to the nation as a whole. *The Cook Political Report* introduced the PVI in August 1997 to better gauge the competitiveness of each district using the 1992 and 1996 presidential elections as a baseline.[1] The index is based on analysis by the Center for Voting and Democracy (now FairVote) for its July 1997 *Monopoly Politics* report.[2]



Map by state (After the 2016 election)



Map by 115th House district (After 2016 Election)

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- 1 Calculation
- 2 Format
- 3 List of PVIs
  - 3.1 Extremes and trends
  - 3.2 By congressional district
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Calculation

PVIs are calculated by comparing the district's average Democratic or Republican Party's share of the two-party presidential vote in the past two presidential elections to the nation's average share of the same. The national average for 2004 and 2008 was 51.2% Democratic to 48.8% Republican.[1] For example, in Alaska's at-large congressional district, the Republican candidate won 63% and 61% of the two-party share in the 2004 and 2008 presidential elections, respectively. Comparing the average of these two results (62%) against the average national share (49%), this district has voted 13 percentage points more Republican than the country as a whole, or R+13.

Prior to its April 2009 update, the PVI formula was calculated by comparing district-level results for the past two presidential elections to nationwide results for the most recent election. David Nir of the Swing State Project advocated a change to the new formula, and Charlie Cook agreed, wanting an "apples to apples" comparison.[3]