

**UNITED STATES DISTRICT COURT  
DISTRICT OF MARYLAND**

WICOMICO COUNTY BRANCH  
OF THE NAACP, et al.,

*Plaintiffs,*

v.

WICOMICO COUNTY, MARYLAND,  
et al.,

*Defendants.*

Civil Action No. 1:23-cv-03325-MJM

**PLAINTIFFS' MEMORANDUM OF LAW  
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 1

II. FACTUAL BACKGROUND..... 3

    A. Demographics of Wicomico County ..... 3

    B. Wicomico County Election System..... 4

    C. Defendants have Resisted Compliance with the Voting Rights Act,  
        Necessitating Court Intervention ..... 5

III. ARGUMENT ..... 7

    A. Legal Standard for Preliminary Relief..... 7

    B. Legal Framework for Analysis of Voting Rights Act Claims ..... 8

    C. Plaintiffs Are Substantially Likely to Succeed in Showing that Wicomico  
        County’s Hybrid Election Structure Violates Section 2 ..... 9

        1. *Gingles* Precondition One: Wicomico’s Black population is  
            sufficiently large and geographically compact to form a majority in  
            two single-member districts ..... 9

        2. *Gingles* Precondition Two: The relevant communities are cohesive..... 10

        3. *Gingles* Precondition Three: White voters vote sufficiently as a  
            bloc to usually defeat Black voters’ preferred candidates ..... 13

        4. Totality of the Circumstances and the Senate Factors ..... 15

    D. Having Established the *Gingles* Preconditions and Shown Totality of  
        Circumstances Favor Relief, Plaintiffs’ Request for a Preliminary  
        Injunction Must be Granted ..... 26

        1. To the Extent Resolution 70-2024 Demands Voters’ Endorsement  
            of the 5-2 Election System, the Amendment is Unlawful and  
            Should Be Stricken ..... 26

        2. Black Wicomico County voters, including Plaintiffs, will suffer  
            irreparable harm absent an injunction..... 27

        3. The balance of equities and the public interest favor relief ..... 29

IV. CONCLUSION..... 30

**TABLE OF AUTHORITIES**

<b><u>Cases</u></b>	<b><u>Page(s)</u></b>
<i>Ala. State Conf. of NAACP v. Ala.</i> , 2020 WL 583803 (M.D. Ala. Feb. 5, 2020) .....	11
<i>Baltimore County Branch of the NAACP v. Baltimore County</i> , 2022 WL 657562 (D.Md. Feb. 22, 2022) .....	14, 29
<i>Bartlett v. Strickland</i> , 556 U.S. 1 (2009).....	9
<i>Billy Gene Jackson v. City of Salisbury</i> , Civil Action No. Y-86-587 (D. Md.) .....	19
<i>Board of Supervisors’ of Elections of Anne Arundel County v. Smallwood</i> , 327 Md. 220 (Md. 1992).....	27
<i>Brown v. Board of Education</i> , 347 U.S. 483 (1954).....	24
<i>Burdick v. Takushi</i> , 504 U.S. 428 (1992).....	28
<i>Cane v. Worcester Cnty., Md.</i> , 840 F. Supp. 1081 (D. Md. 1994).....	11, 14
<i>Centro Tepeyac v. Montgomery Cnty.</i> , 722 F.3d 184 (4th Cir. 2013) (en banc) .....	8
<i>Citizens for a Better Gretna v. City of Gretna, La.</i> , 834 F.2d 496 (5th Cir. 1987) .....	11
<i>Clark v. Calhoun County</i> , 88 F.3d 1393 (5th Cir. 1996) .....	15
<i>Collins v. City of Norfolk, Va.</i> , 883 F.2d 1232 (4th Cir. 1989) .....	17
<i>Georgia State Conf. of NAACP v. Fayette Cnty. Bd.</i> , 775 F.3d 1336 (11th Cir. 2015) .....	15
<i>Giovani Carandola, Ltd. v. Bason</i> , 303 F.3d 507 (4th Cir. 2002) .....	29

*Holloway v. City of Virginia Beach*,  
 531 F. Supp.3d 1015,1085 (E.D.Va. 2021), *vacated on other grounds*, 42 F.  
 4th 266 (4th Cir. 2022).....17

*Ill. Bd. of Elections v. Socialist Workers Party*,  
 440 U.S. 173 (1979).....28

*Jackson v. Edgefield County, South Carolina School Board*,  
 650 F. Supp. 1176 (D.S.C. 1986).....17

*Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*,  
 4 F.3d 1103 (3d Cir. 1993).....15

*Johnson v. De Grandy*,  
 512 U.S. 997 (1994).....9, 15

*League of Women Voters of N. Carolina v. North Carolina*,  
 769 F.3d 224 (4th Cir. 2014) .....28

*LULAC v. Perry*,  
 548 U.S. 399 (2006).....9

*Marylanders for Fair Representation v. Schaefer*,  
 849 F. Supp. 1022 (D. Md. 1994).....14, 19

*McLaughlin v. Caldwell*,  
 Civil Action No. 93-Y-1599 (D. Md. 1993) .....19

*Mo. State Conf. of the NAACP v. Ferguson-Florissant Sch. Dist.*,  
 894 F.3d 924 (8th Cir. 2018) .....15

*Montgomery County v. Board of Supervisors of Elections for Montgomery  
 County*,  
 311 Md. 512 (Md. 1988).....27

*NAACP v. City of Niagara Falls*,  
 65 F.3d 1002 (2d Cir. 1995).....15

*NAACP-Greensboro Branch v. Guilford Cnty. Bd. of Elections*,  
 858 F.Supp.2d 516 (M.D.N.C. 2012) .....29, 30

*Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*,  
 354 F.3d 249 (4th Cir. 2003) .....29

*Nken v. Holder*,  
 556 U.S. 418 (2009).....29

<i>Obama for Am. v. Husted</i> , 697 F.3d 423 (6th Cir. 2012) .....	28
<i>Republican Party of N.C. v. Hunt</i> , 841 F.Supp. 722 (E.D.N.C. 1994).....	28
<i>Roe v. Dep’t of Defense</i> , 947 F.3d 207 (4th Cir. 2020) .....	29
<i>Sanchez v. Colorado</i> , 97 F.3d 1303 (10th Cir. 1996) .....	15
<i>Taliaferro v. N.C. State Bd. of Elections</i> , 489 F. Supp. 3d 433 (E.D.N.C. 2020).....	29
<i>Thornburg v. Gingles</i> , 478 U.S. 30 (1986).....	<i>passim</i>
<i>United States of America v. Wicomico County, Md.</i> , Civil Action No. MJG-87-2557 (D. Md. 1991).....	5
<i>United States v. Charleston Cnty.</i> , 316 F. Supp. 2d 268 (D.S.C. 2003), <i>aff’d</i> , 365 F.3d 341 (4th Cir. 2004).....	9
<i>United States v. Charleston Cnty., S.C.</i> , 365 F.3d 341 (4th Cir. 2004) .....	13
<i>United States v. City of Cambridge, Md.</i> , 799 F.2d 137 (4th Cir. 1986) .....	28
<i>United States v. South Carolina</i> , 720 F.3d 518 (4th Cir. 2013) .....	7
<i>Uno v. City of Holyoke</i> , 72 F.3d 973 (1st Cir. 1995).....	15
<i>Williams v. Salerno</i> , 792 F.2d 323 (2d Cir. 1986).....	28
<i>Winter v. Natural Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	8
<b><u>Statutes</u></b>	
52 U.S.C. § 10301(a) .....	8
52 U.S.C. § 10301(b) .....	8
Civil Rights Act Amendment and Title VI.....	24

Constitution and the Voting Rights Act.....28

Md. Code Ann., Educ. § 3-13A-01–02.....4

Resisted Compliance with the Voting Rights Act .....5

Voting Rights Act .....2, 8, 26, 30

Voting Rights Act Section 2 ..... *passim*

**Other Authorities**

*5-Year 2015-2019 American Community Survey (“ACS”)* .....23

*Assessment, Accountability and Performance Reporting, Maryland Public School Enrollment by Race/Ethnicity and Gender and Number of Schools* (Sept. 30, 2022), [https://marylandpublicschools.org/about/Documents/DCAA/SSP/20222023Student/2023\\_Enrollment\\_ByRace\\_Ethnicity\\_Gender.pdf](https://marylandpublicschools.org/about/Documents/DCAA/SSP/20222023Student/2023_Enrollment_ByRace_Ethnicity_Gender.pdf).....4

<https://www.wicomicocounty.org/DocumentCenter/View/14132/Res-XX-2024-County-Charter-Amendment> .....3

Jeffrey Goldberg, *The Color of Suspicion*, N.Y. Times (June 20, 1999).....26

L. Woolever, *Turning Tides: After Decades of Silence, the Eastern Shore Begins to Reckon with Its Difficult History* .....21

S. Rep. No. 97-417 (1982).....15

*The Silent Shore at 205* .....24

Wicomico County Charter .....1

Wicomico County Charter Art. II, § C-201 .....4

*Wicomico County Sheriff’s Facebook Post Questioned* (Oct. 17, 2017; updated Oct. 22, 2021), [https://www.wboc.com/archive/wicomico-county-sheriffs-facebook-post-questioned/article\\_9d56ff0f-9e96-57ed-b315-8beefdc2aab4.html](https://www.wboc.com/archive/wicomico-county-sheriffs-facebook-post-questioned/article_9d56ff0f-9e96-57ed-b315-8beefdc2aab4.html);.....25

## I. INTRODUCTION

Against the backdrop of the Eastern Shore's shameful history of racial subjugation and oppression, Black voters of Wicomico County, the Wicomico County Branch of the NAACP, the Caucus of African American Leaders ("CAAL"), and the Watchmen with One Voice Ministerial Alliance, come forward together today calling for change. To gain a greater voice in their local government, Plaintiffs seek immediate change to enjoin the racially discriminatory election system Defendants use to block Black participation in both the Wicomico County Council and Board of Education.

Wicomico County's population is increasingly diverse racially: data show the County's Black population is now 30 percent of its total, the Black, Indigenous and People of Color ("BIPOC") population 42 percent, and BIPOC student population a clear majority—62 percent of Wicomico's public school student population. However, Defendants maintain nearly all-white control over the County government and its school system by employing a racially discriminatory partial at-large system with two seats elected at-large, and five from single member districts (the "5-2 system") that have persistently kept six of seven seats majority white notwithstanding the growing BIPOC population. Due to the County's racially polarized electorate, the 5-2 system enables the white majority to override the will of minority voters, discourages Black candidacies, and prevents residents of color from electing their chosen representatives. In recent weeks, the County Council has sought to enshrine the 5-2 system in the Wicomico County Charter by approving it for referendum in the November 2024 election.

Importantly, Defendants know they are perpetuating a racially discriminatory system. The use of at-large council seats has been challenged as discriminatory since the 1980s, and Defendants were repeatedly warned during the last redistricting process in 2021 that the maps would exclude fair representation of minority voters in County government. Defendants chose to ignore and

override those warnings. As summed up by CAAL’s Mary Ashanti, Defendants’ retention and expansion of this system despite years of complaints is a calculated means of suppressing Black voices amid the region’s rising diversity: the system operates “just as it was designed to – keeping Black people in their place, confined to their one lonely opportunity.” Declaration of Mary Ashanti (“Ashanti Decl.”), attached as Exhibit 1, at ¶ 19.

The combination of Defendants’ discriminatory election system, racially polarized voting, and severe socioeconomic disparities between Black and white residents resulting from Wicomico’s long history of racial oppression ensures that Wicomico residents of color lack equal access to the political process and to fair representation in their government. But this clear Voting Rights Act violation can be easily cured because the County’s BIPOC population is sufficiently large and geographically compact to establish two majority-Black opportunity districts in a racially fair district system for the seven Council and School Board seats. Indeed, this is precisely the scenario Section 2 of the Voting Rights Act was intended to remedy.

For Wicomico’s Black residents, the real-life consequences of the denial of fair representation caused by this system are profound. Wicomico County NAACP President Monica Brooks cites “heartbreaking” examples of Black school children openly taunted with viscous racial slurs but left unprotected by white school officials; Black residents disrespected and dismissed at Council meetings; Black Lives Matter protesters publicly condemned by the Sheriff; and, most recently, the NAACP openly snubbed and refused entry to the County Office Building by the white County Executive. Declaration of Monica Brooks (“Brooks Decl.”), attached as Exhibit 2 at ¶¶ 5, 14, 16–20.

Now, despite this lawsuit and Plaintiffs’ compelling evidence, Defendants are doubling down in their resistance to change. On June 18, 2024, while purporting to entertain the idea of



switching to a system of single-member districts, the Council approved, by supermajority vote, a measure on the November 2024 ballot for a Charter Amendment that would require retention of the 5-2 system. Although publicly portrayed as a question for voters about whether to eliminate Wicomico County's Office of County Executive,<sup>1</sup> part and parcel of any vote *for* the measure is an unlawful requirement that the voter reaffirm use of the 5-2 election structure for future elections. For Black voters, including Plaintiffs, who may wish to support elimination of the Executive's Office, this creates an unacceptable Hobson's choice. Consequently, the looming referendum dramatically increases the urgency for the Court's intervention to invalidate Defendants' discriminatory system.

Accordingly, as set forth below, Plaintiffs ask that the Court 1) declare unlawful and preliminarily enjoin Defendants' 5-2 election system as violative of Section 2 of the Voting Rights Act of 1965; and 2) pursuant to this ruling, strike that portion of Resolution 70-2024 that requires use of the 5-2 election system as a prerequisite to elimination of the Office of Wicomico County Executive. All relevant factors counsel in favor of this relief.

## **II. FACTUAL BACKGROUND**

### **A. Demographics of Wicomico County**

Generations of Black residents of Wicomico County have been subjected to egregious racial discrimination and oppression deeply impacting their lives. Thus, despite consistent Black population growth over three decades, Wicomico's white population remains dominant by almost all socioeconomics measures. Declaration of William S. Cooper ("Cooper Decl."), attached as Exhibit 3, at ¶¶ 22, 23, 29. According to the 2020 census, about 58.2 percent of County residents

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<sup>1</sup> Resolution 70-2024, available at <https://www.wicomicocounty.org/DocumentCenter/View/14132/Res-XX-2024-County-Charter-Amendment>.

are white, and 29.9 percent Black, with a BIPOC population total of about 41.8 percent. Cooper Decl. ¶ 21. Since 2000, the total BIPOC population increased by about 80 percent, the Black population by about 42 percent, and the Latine population increased by about 285 percent. Cooper Decl., Figure 1. Meanwhile, the white population has declined. *Id.* The school system is even more diverse, with over 62 percent of Wicomico County’s public-school population made up of students of color.<sup>2</sup>

The BIPOC community is concentrated in the City of Salisbury and Fruitland, which together have a population of over 38,000 people, more than enough to create two majority-Black districts within a countywide seven-district plan, doubling Black voters’ election opportunities. Cooper Decl., Figure 4.

#### **B. Wicomico County Election System**

Since 1990, the Wicomico County Council has been made up of seven members, two elected at-large, and five from single-member districts. Wicomico County Charter Art. II, § C-201. All of the Council members serve four-year terms, and are scheduled to hold office until the next election in November 2026. *Id.* at § 203. Currently, Wicomico County also has a County Executive, elected at-large, who also serves a four-year term. *Id.* at Art. IV § C-403–404. In 2016, Defendants initiated, and voters passed a referendum to convert the Wicomico County Board of Education from an appointed to an elected body, employing the same election structure and district lines as the County Council. Md. Code Ann., Educ. § 3-13A-01–02 (West); Declaration of Eddie Boyd (“Boyd Decl.”), attached as Exhibit 4, at ¶ 15; Brooks Decl. ¶ 12.

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<sup>2</sup> See Maryland State Dep’t of Education Div. of Assessment, *Accountability and Performance Reporting, Maryland Public School Enrollment by Race/Ethnicity and Gender and Number of Schools* (Sept. 30, 2022), [https://marylandpublicschools.org/about/Documents/DCAA/SSP/20222023Student/2023\\_Enrollment\\_ByRace\\_Ethnicity\\_Gender.pdf](https://marylandpublicschools.org/about/Documents/DCAA/SSP/20222023Student/2023_Enrollment_ByRace_Ethnicity_Gender.pdf).

In the history of Wicomico County, only once—nearly half a century ago—has a BIPOC candidate been elected to an at-large seat on either the County Council or Board of Education. Moreover, since adoption of the 5-2 system, there has never been more than one Black member of the County Council or the Board of Education at a time, with the sole Black official on each elected from the single majority-Black district. Boyd Decl. ¶¶ 12, 15-16; Brooks Decl. ¶¶ 12-14; Ashanti Decl. ¶¶ 18, 23.

**C. Defendants have Resisted Compliance with the Voting Rights Act, Necessitating Court Intervention**

For decades, Wicomico County has resisted efforts to address the disenfranchisement of Black Wicomico County residents. Up until 1990, there were five seats on the County Council, all elected at-large. Under this system, no Black candidate, nor any other person of color, was ever elected to the Council, with the exception of Emerson Holloway who served from 1978 to 1981. Declaration of Carl Snowden (“Snowden Decl.”), attached as Exhibit 5, at ¶ 18; Boyd Decl. ¶ 6. In 1987, the U.S. Department of Justice filed suit challenging the at-large system under Section 2 of the Voting Rights Act. *United States of America v. Wicomico County, Md.*, Civil Action No. MJG-87-2557 (D. Md. 1991) (unpublished and unavailable electronically); Snowden Decl. ¶ 18. While vigorously defending against the lawsuit, the County introduced a referendum to expand the Council to seven seats, with two maintained at-large, and five from single member districts, the current 5-2 system. Boyd Decl. ¶ 9. This system was opposed by the Black community, with Plaintiff Dr. Eddie Boyd speaking out against any retention of at-large seats and presenting alternative five and seven-district options that were racially fair. *Id.* The County rejected these alternative proposals and instead, implemented the 5-2 plan through a popular referendum; this has consistently limited Black voters to a single majority-Black opportunity district, just as Dr. Boyd had argued it would. Boyd Decl. ¶ 9; Snowden Decl. ¶ 19.

In 2013, Plaintiffs Wicomico County NAACP and CAAL, along with the ACLU, urged the U.S. Department of Justice to revisit the discriminatory election system that has continued to dilute Black voting strength in Wicomico County. Snowden Decl. ¶ 24; Boyd Decl. ¶ 14; Ashanti Decl. ¶ 20. Included in the submission was a racial polarization analysis revealing the necessity of reform, and a sample seven-district plan demonstrating how to overcome the discrimination. But to no avail: Wicomico County made no changes, and the discriminatory system was left to continue its disenfranchisement of Black voters. Snowden Decl. ¶¶ 24–25.

Instead of moving toward a fairer system, in 2016 Defendants took the opposite approach by expanding use of the illegal 5-2 system to Board of Education elections. Prior to that, Wicomico's seven-member School Board was appointed by the Governor of Maryland, and the Board typically included more than one Black member. Boyd Decl. ¶ 15. However, since 2016, when Defendants shifted to an elected Board using the 5-2 structure, there has only been a single Black member at any time, with Black candidates losing bids for at-large seats, as well as in majority white districts. Boyd Decl. ¶ 16. This structure, which consistently maintains white control in six of seven Board seats, does not fairly represent a school system where over 60 percent of students are BIPOC. *Id.*

Defendants were again clearly warned that their election system is discriminatory and unlawful during the 2021 round of redistricting, this time by their own appointed committee—which included now County Executive Julie Giordano as a member. During multiple Redistricting Committee meetings to consider and recommend best options for changes to the election plan following the decennial Census, committee members Dr. William Nagel and Mark Danderson raised concerns about discrimination inherent in the 5-2 system, even debating the issue with

Ms. Giordano at times. *See* Brooks Decl., Attachments A–D. In keeping with past form, however, Defendants disregarded these concerns, leading to this lawsuit.

Defendants’ resistance to systemic reform continues. On June 18, 2024, the County Council voted in favor of eliminating the County Executive’s office through referendum and expressly requires use of the 5-2 election structure that disenfranchises Black resident voters as prerequisite to the Executive’s removal. In tying the question posed to voters to the unlawful 5-2 election system and seeking voters’ endorsement of that unlawful system, Defendants triggered an urgent need for the Court to resolve Plaintiffs’ challenge to this system. Otherwise, Plaintiffs and other Black voters who want to see the County Executive’s office eliminated would be forced to choose between their support for that and their opposition to an election system that dilutes their voting strength—an impermissible choice.

In sum, Wicomico County suffers from systemic voter disenfranchisement, and the at-large feature prevents equal opportunities for the Black resident voters. Without immediate legal intervention, the County will continue to resist reforms necessary to give Black voters the chance to elect representatives of their choice.

### **III. ARGUMENT**

#### **A. Legal Standard for Preliminary Relief**

The purpose of a preliminary injunction is to “prevent irreparable harm during the pendency of a lawsuit ultimately to preserve the court’s ability to render a meaningful judgment on the merits.” *United States v. South Carolina*, 720 F.3d 518, 524 (4th Cir. 2013) (quotations omitted). A court may enter a preliminary injunction if plaintiffs show “(1) they are likely to succeed on the merits, (2) they are likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor, and (4) an injunction is in the public interest.”

*Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Centro Tepeyac v. Montgomery Cnty.*, 722 F.3d 184, 188 (4th Cir. 2013) (en banc). “In each case, courts must ‘balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.’” *Winter* at 24 (citation omitted).

## **B. Legal Framework for Analysis of Voting Rights Act Claims**

Section 2 of the Voting Rights Act of 1965 (“VRA”) prohibits any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. § 10301(a). As the Supreme Court explained nearly four decades ago:

The essence of a § 2 claim is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters to elect their preferred representatives. This Court has long recognized that multimember districts and at-large voting schemes may operate to minimize or cancel out the voting strength of racial [minorities in] the voting population.

*Thornburg v. Gingles*, 478 U.S. 30, 47 (1986) (internal quotations omitted).

To prevail, a Section 2 plaintiff must show (1) the minority group is “sufficiently large and geographically compact to constitute a majority in a single-member district”; (2) the minority group “is politically cohesive”; and (3) “the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Id.*, at 50–51 (1986). Once these *Gingles* “preconditions” are established, courts also consider “the totality of the circumstances”—including factors identified in the Senate Report accompanying the 1982 amendments to the VRA—to determine whether “the political processes leading to nomination or election in the State or political subdivision are not equally open to participation” by members of the minority group. *Id.* at 43–44 (quoting 52 U.S.C. § 10301(b)). But “it will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish

a violation of § 2 under the totality of circumstances.” *United States v. Charleston Cnty.*, 316 F. Supp. 2d 268, 277 (D.S.C. 2003) (citation omitted), *aff’d*, 365 F.3d 341 (4th Cir. 2004).

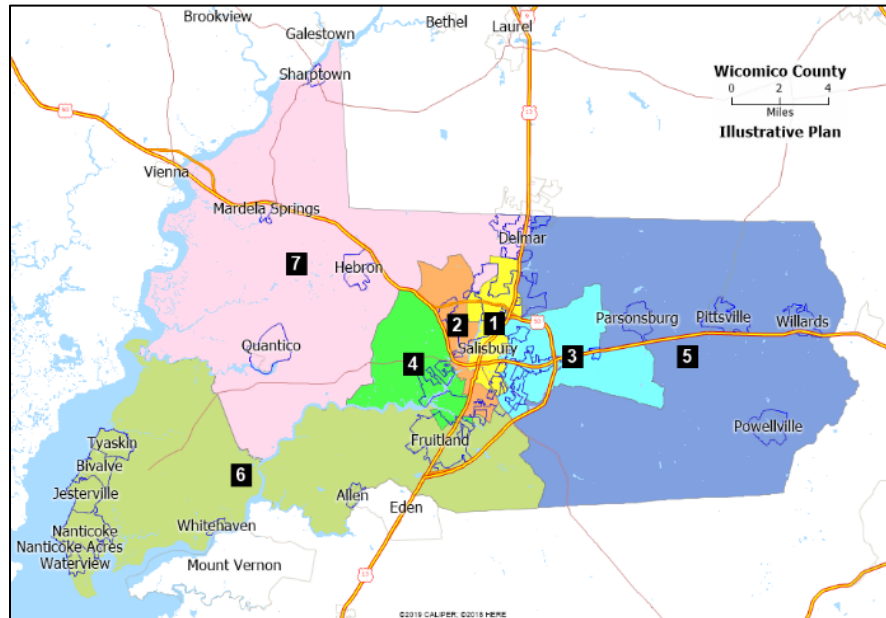
**C. Plaintiffs Are Substantially Likely to Succeed in Showing that Wicomico County’s Hybrid Election Structure Violates Section 2**

**1. *Gingles* Precondition One: Wicomico’s Black population is sufficiently large and geographically compact to form a majority in two single-member districts**

The first *Gingles* precondition is readily satisfied here because by eliminating the at-large structure, it is possible to create an additional reasonably compact district with a sufficiently large minority population to elect candidates of its choice. *LULAC v. Perry*, 548 U.S. 399, 430 (2006) (quoting *De Grandy*, 512 U.S. at 1008). The numerosity aspect of this precondition involves a “straightforward,” “objective, numerical test: Do minorities make up more than 50 percent of the voting-age population in the relevant geographic area?” *Bartlett v. Strickland*, 556 U.S. 1, 18 (2009). Here, they do.

To support the first *Gingles* precondition, Plaintiffs submit as Exhibit 3 the Declaration of William Cooper, a demographer with over 40 years of experience drawing maps for redistricting purposes. Mr. Cooper presents an Illustrative Plan that contains two majority-Black districts in and around Salisbury—District 1 (50.3% BVAP) and District 2 (56.7% BVAP).

Plaintiffs' Illustrative Plan is shown below (Cooper Decl., Figure 6):



Mr. Cooper explains, the Black/BIPOC community is concentrated in the City of Salisbury and Fruitland. Cooper Decl., ¶ 19, Figure 7. Therefore, “the Black population in Wicomico County is sufficiently numerous and geographically compact to allow for two majority-Black districts in a 7-district plan, based on the 2020 Census.” Cooper Decl. ¶ 16. In each of these two districts, the Black population is sufficiently large to constitute a majority among the district’s voting age population. *Id.* The first *Gingles* precondition is satisfied.

## 2. *Gingles* Precondition Two: The relevant communities are cohesive

The second *Gingles* precondition is also satisfied because Black voters in Wicomico County are politically cohesive. *Gingles*, 478 U.S. at 51. “Bloc voting by blacks tends to prove that the black community is politically cohesive, that is, it shows that blacks prefer certain candidates whom they could elect in a single-member, black majority district.” *Id.* at 68.

Dr. Kassra Oskooii, a professor of political science at the University of Delaware and an expert in voting rights, analyzed voting patterns in Wicomico County to assess racial polarization in voting. *See generally* Declaration of Dr. Kassra Oskooii, attached as Exhibit 6 (“Oskooii



Decl.”). Dr. Oskooii examined election data from 2012 to 2022 using two widely accepted methodologies to assess whether voting is racially polarized: (i) iterative ecological inference analysis, and (ii) the ecological inference rows by columns “RxC” analysis. Oskooii Decl. ¶ 3; *see also Cane v. Worcester Cnty., Md.*, 840 F. Supp. 1081, 1087 (D. Md. 1994) (employing similar expert analysis in finding racially polarized voting in Worcester County); *Ala. State Conf. of NAACP v. Ala.*, 2020 WL 583803, at \*29, n.27 (M.D. Ala. Feb. 5, 2020) (recognizing ecological inference as the “gold standard” for racially polarized voting analysis).

Dr. Oskooii’s analysis included Wicomico County voting data from 30 local, state, and federal general elections as well as three state and federal Democratic Party primary elections. Oskooii Decl. ¶¶ 18, 22. Dr. Oskooii finds that Black voters in Wicomico County “voted cohesively for candidates disfavored by White voters in 32 out of 33 countywide contests analyzed” at both state and local levels, including Democratic primaries where political affiliation was not a factor.<sup>3</sup> *Id.* at ¶¶ 5(b).

Racial polarization is particularly striking in Wicomico elections involving Black candidates challenging white candidates, and it is these elections that courts have consistently held to be most probative in assessing minority vote dilution. *See, e.g. Cane*, 840 F. Supp at 1090 (citing *Citizens for a Better Gretna v. City of Gretna, La.*, 834 F.2d 496, 503 (5th Cir. 1987)). Most recently, in 2022, Black voters in Wicomico County strongly preferred Black candidate (now Governor) Wes Moore while white voters strongly preferred his white opponent, Daniel Cox. On average, *over 93 percent* of Black voters cohered behind Moore, whereas less than 30 percent of white voters supported Moore. Oskooii Decl. ¶ 34. Wicomico County follows a pattern of racially

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<sup>3</sup> The only exception to Dr. Oskooii’s categorical finding of racially polarized voting was the Board of Education election in 2022, where all of the candidates were white.

polarized voting dating back to 2012: Ben Jealous received over 91 percent of the Black vote in the 2018 gubernatorial election, Anthony Brown received over 92 percent of the Black vote in the 2014 gubernatorial election, and Barack Obama won over 92 percent of the Black vote in the 2012 Presidential election. *Id.* at ¶¶ 34–36.

Local Wicomico County elections also reveal an overwhelming pattern of polarization: Dr. Oskooii found racially polarized voting in seven of the eight local elections he analyzed.<sup>4</sup> *Id.* at ¶ 41. In County Council contests for the two at-large seats, elections in 2014, 2018, and 2022 all show racially polarized voting. *Id.* at ¶ 44. Of note, Jamaad Gould, the only Black candidate in 2018 and the Black preferred candidate, came in fourth place, and in 2014, Black-preferred candidate Laura Mitchell, who received 82 percent of the Black vote, lost to white-preferred candidates John Cannon and Matt Holloway, who received 43 percent and 48 percent of the white vote, respectfully. *Id.* Similar results occurred in the County Executive races: in 2022, almost 94 percent of Black voters supported the Black candidate for County Executive, Ernest Davis, but he lost to Julie Giordano, who received 75.5 percent of the white vote in the County. *Id.* at ¶ 42. And for Wicomico County Board of Education, in 2018, the election featured two Black candidates, Talana Watson and Tyrone Cooper, who were preferred by the Black community, but lost because of candidates Donald Lee Fitzgerald and Michael Murray, both white candidates preferred by the white community. *Id.* at ¶ 46.

Finally, Dr. Oskooii’s analysis in three statewide Democratic primary elections illustrates that the pattern of racially polarized voting in Wicomico County is not explained by partisanship. In the 2016 U.S. Senate, 2022 Attorney General, and 2022 Governor Democratic primaries, a

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<sup>4</sup> Again, the sole exception to Dr. Oskooii’s categorical finding of racially polarized voting was the Board of Education election in 2022, where all of the candidates were white.

Black Democrat was preferred by Wicomico County Black voters, while a white Democrat was preferred by white Wicomico County voters. *Id.* at Figure 5. In all three elections, the Black preferred candidate lost in Wicomico County. *Id.* at Table 6. For instance, in the 2022 Attorney General primary, about 78.5 percent of Black Wicomico voters chose Black Democrat Anthony Brown, but white Democrat Katie O’Malley received more votes in Wicomico County despite losing statewide. *Id.* at ¶ 49. Similar results occurred in the 2022 gubernatorial and the 2016 U.S. Senate primaries, where Wes Moore and Donna Edwards were the Black preferred candidates, but lost in Wicomico County to white Democrats Peter Franchot for governor and Chris Van Hollen for U.S. Senate. *Id.* at ¶¶ 50–51. This establishes that Black voters in Wicomico County consistently vote cohesively, regardless of partisanship. The second *Gingles* precondition is satisfied.

**3. *Gingles* Precondition Three: White voters vote sufficiently as a bloc to usually defeat Black voters’ preferred candidates**

In Wicomico County, “the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Gingles*, 478 U.S. at 51. Such bloc voting need not be motivated by racial animus or bias. *United States v. Charleston Cnty., S.C.*, 365 F.3d 341, 348 (4th Cir. 2004). Instead, “legally significant” white bloc voting refers to the frequency with which, and not the reason why, whites vote cohesively for candidates who are not backed by minority voters. *Id.* at 348–49.

In the same 33 elections discussed above, Dr. Oskooii found high levels of white bloc voting for candidates running against the candidates whom Black voters cohesively supported, particularly in racially contested elections. In statewide or federal elections, Dr. Oskooii finds no Black candidate preferred by Black voters received more than 30 percent of the white vote in Wicomico County, even when those candidates won the statewide vote by comfortable margins,

as with Governor Moore in 2022. *Id.* at ¶ 37. Likewise, in the seven endogenous contests analyzed, only one Black-preferred candidate (a white candidate) won out of 11 available seats. *Id.* at ¶ 47. As a result, Dr. Oskooii concludes that white voters “voted as a bloc to deny all Black candidates (or 100%) preferred by Black voters from winning the plurality or majority of Wicomico County votes in any of the countywide elections examined between the years 2012 to 2022.” *Id.* at ¶ 5(e). In all of the examples explained above where Black Wicomico voters voted cohesively for a particular preferred candidate, white Wicomico voters voted as a bloc to defeat the Black preferred candidate and elect the white candidate. Oskooii Decl. Figures 1–6.

This means that Black candidates will lose when Black voters do not make a majority, as is true for at-large seats and four of the five districts. Indeed, Dr. Oskooii’s racial polarization analysis matches the reality of Black candidates who entertain the possibility of running for office at-large or in any majority white district. *See* Declaration of Amber Green (“Green Decl.”), attached as Exhibit 7, ¶¶ 9–12; Declaration of Luc Angelot (“Angelot Decl.”), attached as Exhibit 8, ¶ 6. Time and again, results have shown that Black representatives are limited to the single district where the Black community makes a majority of the population. Ashanti Decl. ¶ 23, Brooks Decl. ¶ 15, Angelot Decl. ¶ 6, Green Decl. ¶¶ 9–12. *See also Gingles*, 478 U.S. at 68 (“Bloc voting by a white majority tends to prove that blacks will generally be unable to elect representatives of their choice.”).

Other courts evaluating racially polarized voting in Maryland have reached the same conclusion. *See Baltimore County Branch of the NAACP v. Baltimore County*, 2022 WL 657562 at \*10 (D.Md. Feb. 22, 2022) (finding “the White majority in the County votes sufficiently as a bloc to enable it usually to defeat the minority's preferred candidate.”); *Cane*, 840 F. Supp. at 1090; *Marylanders for Fair Representation v. Schaefer*, 849 F. Supp. 1022, 1059 (D. Md. 1994). While

Section 2 does not guarantee Black electoral success, “vote dilution” can be inferred “from political famine.” *Johnson v. De Grandy*, 512 U.S. 997, 1017–18 (1994).

Overall, the evidence demonstrates that the Black community’s preferred candidates have consistently lost, and without court intervention will continue to lose, elections in Wicomico County. The third *Gingles* precondition is satisfied.

#### **4. Totality of the Circumstances and the Senate Factors**

Once the three *Gingles* prerequisites are established, courts evaluate the totality of the circumstances, with special attention to the “Senate factors”, including: the extent to which members of a protected class are elected; the presence of racially polarized voting; any history of official discrimination in voting practices; discriminatory housing, education, and employment practices; and lack of responsiveness of officials to Black community needs. *Gingles*, 478 U.S. at 38–40 (citing S. Rep. No. 97-417, at 28–29 (1982)). “[I]t will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances.” *Georgia State Conf. of NAACP v. Fayette Cnty. Bd.*, 775 F.3d 1336, 1342 (11th Cir. 2015).<sup>5</sup> This is not that unusual case: Plaintiffs easily satisfy the *Gingles* preconditions, and make a compelling showing as to the totality of the circumstances, including the Senate factors.

##### **a. Factors 2 and 7: Black candidates have consistently been shut out of at-large offices due to racially polarized voting in Wicomico County**

The Supreme Court has instructed that “the most important” of the Senate Factors are the “extent to which minority group members have been elected to public office in the jurisdiction”

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<sup>5</sup> See also *Mo. State Conf. of the NAACP v. Ferguson-Florissant Sch. Dist.*, 894 F.3d 924, 930 (8th Cir. 2018); *Sanchez v. Colorado*, 97 F.3d 1303, 1322 (10th Cir. 1996); *Clark v. Calhoun County*, 88 F.3d 1393, 1396 (5th Cir. 1996); *NAACP v. City of Niagara Falls*, 65 F.3d 1002, 1019–20 n.21 (2d Cir. 1995); *Uno v. City of Holyoke*, 72 F.3d 973, 983 (1st Cir. 1995); *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1116 n.6 (3d Cir. 1993).

and the “extent to which voting in the elections of the state or political subdivision is racially polarized.” *Gingles*, at 47, n.15. As such, it is key for the Court to consider that no Black candidate has been elected at-large, nor in any majority-white district, to the County Council or School Board in Wicomico County’s 5-2 system over the course of 40 years. Snowden Decl. ¶¶ 23.

While the Black and BIPOC population of Wicomico County has grown significantly over the last three decades—Black population grew from 22.3 percent in 1990 to 29.9 percent of the County’s population in 2020; BIPOC population grew from 28.5 percent in 2000 to 41.7 percent in 2020—this population growth has not translated to the election of more Black or BIPOC officials. *See* Cooper Decl. ¶¶ 20–21; Brooks Decl. ¶ 23. Nor has the loss of white population share—falling from 71.6 percent to 58.3 percent of the total county population over the last 20 years—resulted in any reduction of white elected officials; at all relevant times, white men and women have held 86 percent of elective County Council and School Board seats. Cooper Decl. ¶¶ 20–21; Snowden Decl. ¶ 19. To recap:

- With just one exception almost half a century ago, no Black official has ever been elected at-large to the County Council or Executive position, nor to the Board of Education.
- Since the 5-2 system took effect for Council elections, no Black candidate has been elected at-large or in any of the four majority white districts, despite attempts by well-qualified Black candidates. Clear examples of this are seen in the last-place finishes behind three white candidates of Black candidates Edward Taylor in 2010 and Jamaad Gould in 2018 for at-large council seats.
- Since 2016, when the 5-2 election system was adopted for School Board, no Black candidate has been elected at-large, nor to any of the four majority white districts. Examples include the 2018 defeats at-large by Black candidates Talana Watson and Tyrone Cooper, who placed third and fourth to white candidates for two Board seats.
- Since the adoption of the 5-2 plan there has never been more than one Black member at a time on the Council or School Board with the sole member elected to each from the majority-Black district.
- Since 2006, when the County instituted an at-large elective system for its County Executive, no Black candidate has ever been elected to the post. In 2022, for example,

racial polarization was demonstrated yet again by Black candidate Ernest Davis’s loss to white candidate Julie Giordano.

Oskooii Decl. ¶¶ 41–47; Boyd Decl. ¶¶ 12–15; Ashanti Decl. ¶¶ 22-23; Brooks Decl. ¶ 10; Snowden Decl. ¶ 26.<sup>6</sup> In each of these elections, Wicomico voters were diametrically opposed along racial lines regarding which candidate they supported.<sup>7</sup> Oskooii Decl. ¶¶ 41–47.

These defeats show how the use of at-large structures submerge Black voters in the larger electorate, enabling the white majority to override Black voter preferences so that their candidates of choice are always defeated. As the Fourth Circuit has noted, “at-large voting in a multimember political unit . . . may prevent minorities from electing representatives of their choice by diluting their voting strength.” *Collins v. City of Norfolk, Va.*, 883 F.2d 1232, 1236 (4th Cir. 1989).<sup>8</sup> It does so in Wicomico County.

The cause of this vote dilution is persistent and entrenched racial polarization, in voting and all aspects of civic life in Wicomico County, as discussed above, and in Dr. Oskooii’s Declaration. Black voters in Wicomico County have demonstrated “strong cohesion” in voting patterns over a decade of primary and general election contests, and white voters consistently vote

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<sup>6</sup> The same pattern is seen in elections for state legislative office in Wicomico County: no Black person has ever been elected to the Senate or House of Delegates from Wicomico or anywhere on the Eastern Shore, with the sole exception of Delegate District 37A, a majority-Black district ordered into effect by a three-judge federal court as a result of voting rights litigation brought by the NAACP. Plaintiff Eddie Boyd recalls a “memorable example” of that in the 1998 at-large election in delegate District 38, when local Black hero Lt. Col. Ernest Leatherbury—the highest-ranking Black Maryland State Police official in history—finished behind three white candidates.

<sup>7</sup> Black candidates for statewide offices have been wholly unsuccessful within Wicomico County, sometimes even when successful statewide. These losses include: (i) the loss of Anthony Brown to Larry Hogan in the 2014 gubernatorial race; (ii) the loss of Ben Jealous to Larry Hogan in the 2018 gubernatorial race; (iii) the loss of Donna Edwards to Chris Van Hollen in the 2016 Democratic primary for U.S. Senate; (iv) the loss of Wes Moore to Dan Cox in the 2022 gubernatorial race; (v) Anthony Brown’s 2022 losses for Attorney General to his Democratic primary opponent Katie Curran O’Malley and his general election opponent Michael Peroutka and (vi) the loss of county executive Angela Alsobrooks to Congressman David Trone in the 2024 Democratic primary for U.S. Senate.

<sup>8</sup> *Accord, Holloway v. City of Virginia Beach*, 531 F. Supp.3d 1015,1085 (E.D.Va. 2021), *vacated on other grounds*, 42 F. 4th 266 (4th Cir. 2022) (“Staggered terms . . . prevent the Minority Community from concentrating their votes on a single candidate and increasing the chances that that candidate gets elected.”); *Jackson v. Edgefield County, South Carolina School Board*, 650 F. Supp. 1176, 1203 (D.S.C. 1986) (invalidating at-large election system).

as a bloc to defeat Black voters' candidates of choice, particularly in racially contested elections. Sections III.C.2 and III.C.3, *supra*; Oskooii Decl. ¶ 5.

As to racial polarization, Black candidates' consistent and uninterrupted losses to white candidates speak for themselves, and their dispiriting message is inescapable to the Plaintiffs. Dr. Boyd cannot forget the 1998 House of Delegates defeat of his friend, local Black hero and Maryland State Police Lt. Col. Ernest Leatherbury: "that defeat reinforced for me what I already knew about how deep racial polarization in voting patterns prevented even the most celebrated Black candidates from winning office." Boyd Decl. ¶ 13. Twelve years later, Monica Brooks heard the same resounding message in Edward Taylor's last place showing at-large after three terms as the accomplished District 1 Councilman: "Ed Taylor lost that election because he was a Black man. And the rest of us should take note." Brooks Decl. ¶ 11. Even today's youngest generation of political candidates understand that winning outside of District 1, the Black designated District, is an impossibility. Green Decl. ¶ 9; Angelot Decl. ¶ 6.

Racial polarization ensures that Black candidates are shut out of at-large public offices in Wicomico County; these two "most important" Senate factors are established.

**b. Factors 1 & 3: Wicomico County and its municipalities have a long history of official, voting-related discrimination, including use of election features that enhance discrimination**

Black residents of Wicomico County have endured a long and disgraceful history of racial discrimination across state, county and municipal government that has silenced their voices and diminished their ability to participate in the public life of their communities. The reality of Wicomico County's nearly all-white government and school administration showcase the ongoing legacy of the long history of official discrimination with respect to voting, and highlight the urgent need for court intervention currently.



In *Marylanders for Fair Representation*, this Court traced the history of race discrimination with respect to voting rights suffered by Black residents of Wicomico County and the Eastern Shore from the turn of the 20<sup>th</sup> Century through the 1990s, refusing to “turn a blind eye to the Eastern Shore's ‘history of official discrimination’ that impaired blacks’ rights to register and to vote,” such as the Maryland's General Assembly 1904 enactment of the “Poe amendment” to the state constitution, which would have disenfranchised most Black voters. 849 F. Supp. At 1061. Moreover, the Court noted, discriminatory voting practices “are not only found in the history books” citing numerous restrictions limiting Black voter participation through the 1980s, such as “dual registration,” which required voters to register separately for municipal and non-municipal elections; and use of state supported, all-white volunteer fire companies as a slating organization for white candidates. *Id.* “Even today,” the Court added, “counties on the lower Shore continue to locate polling places in white-dominated volunteer fire companies, a hostile environment that may depress black electoral participation.” *Id.* (citations omitted).

Voting rights abuses extend beyond the County, to municipal disenfranchisement efforts in Wicomico's towns and cities. In Salisbury, the at-large municipal election system was challenged in 1987 in the case *Billy Gene Jackson v. City of Salisbury*, Civil Action No. Y-86-587 (D. Md.), resulting in a consent decree where the City conceded to a violation of Section 2 of the Voting Rights Act. Snowden Decl. ¶ 20. And Wicomico cities Salisbury, Fruitland, and Delmar all used non-resident voting schemes that allowed predominantly white, non-resident property owners to vote in municipal elections, diluting resident Black votes, a scheme finally challenged and undone in 1993. *McLaughlin v. Caldwell*, Civil Action No. 93-Y-1599 (D. Md. 1993). Snowden Decl. ¶ 21–22.

It is this long history that Wicomico's discriminatory election practices of today continue and build upon. Despite years of complaints from Black voters, Defendants extended the discriminatory 5-2 system to School Board elections in 2016, further oppressing Black residents with significant impacts for Wicomico's BIPOC children. Just as former Board member Dr. Eddie Boyd protested would happen, use of this system has cut in half Black School Board representation from that when he served under the appointed system. Boyd Decl. ¶ 16.

Furthermore, Defendants know their election systems are racially discriminatory and exclusionary, but persist in employing them anyway. Wicomico County Redistricting Committee minutes show that, during deliberations, members Dr. William Nagel and Mark Danderson argued that the hybrid at-large single member districts map dilutes Black representation, debating the matter with now County Executive Julie Giordano. *See* Brooks Decl. ¶ 22 and Attachments A–D. Dr. Nagel noted that almost no BIPOC people have been elected to the at-large positions, and that despite Black people accounting for 30 percent of the county population, Black voters were packed into one district, giving Black voters just 14 percent of council seats. Brooks Decl. Attachment C at 6. Nagel argued that unless the County adopted a system with no at-large seats, it would be unable to improve equity, and likely subject to legal liability. *Id.* at 9. As with all prior warnings however, Defendants ignored Dr. Nagel's counsel as well, knowingly conducting 2022 elections for Council and School Board in a way that violates the fundamental rights of Wicomico's Black residents.

**c. Factor 1: Discrimination across the Eastern Shore has caused racial oppression over centuries, with lasting impacts today.**

The history of race relations on Maryland's Eastern Shore is a deeply troubling one, from the time of the first settlers and continuing through the 19th and 20th centuries, with impacts of the Shore's caste system persisting today. "Backwards" has long been a term used to describe the

Eastern Shore, says writer Lydia Woolever, “justly so, as many of these small towns still feel stuck in something closer to the middle of the 20th century than 21 years into the 21st. On the Eastern Shore, past remains prologue, and decades of silence leave old wounds unhealed.” L. Woolever, *Turning Tides: After Decades of Silence, the Eastern Shore Begins to Reckon with Its Difficult History*, Baltimore Magazine, February, 2021.

Chronicling the history of race relations on the Eastern Shore, Woolever starts with the arrival of the first African Americans in bondage in 1619, when “tens of thousands of men, women, and children of African descent were brought by boat to tidewater ports that speckled the shorelines, tangling race and economics in a brutal web for centuries” and continues through the 20th Century, when “the legacy of slavery would take on new forms, like segregated restaurants, theaters, schools, and hospitals, with Blacks and whites still living in separate silos[.]” *Id.*

Carl Snowden portrays a similar picture of the Eastern Shore even in the late 20th Century, saying crossing the Bay Bridge was akin to “stepping back in time” to a “world characterized by racial apartheid not seen in other parts of our state for decades.” Snowden Decl. ¶ 10.

Decades had passed, and still the large Black populations of Shore communities remained completely absent from government, business and civic life. You could go into a government office or a local shop and never see a Black face; those who were employed were hidden in the back rooms, engaged only in service work or sweeping up after white people. Black Shore residents felt afraid, oppressed and hopeless.

Snowden Decl. ¶ 11.

Further, in describing the *current* situation in Wicomico County, Dr. Eddie Boyd notes that governance of the County is little changed from the way it was in 1990, and governance of the school board has gotten worse. Boyd Decl. ¶¶ 16-20. For the Plaintiffs, the County’s current day domination by white officials and residents is just more of what they have long known. Wicomico natives like longtime activist Mary Ashanti, who grew to adulthood in the County amid stark

segregation and racism, describe feeling disrespected and unseen, portraying white officials in charge of local government as oblivious to Black community concerns. Ashanti Decl. ¶ 24.

Even today, overt racism persists in the County, and is being driven into the minds of the community's youngest generation, with egregious incidents of racial hatred blasted across social media. As recent high school graduate Luc Angelot recounts, just in 2022: "the high-school aged child of a white Wicomico School Board member posted a video of himself on social media brandishing what appeared to be a scoped rifle, threatening Black students and encouraging others to shoot at [n-word]s 'for fun.'" Angelot Decl. ¶ 12. Amber Green, who ran for County Council in 2022, recounts the intense racism and abusive messages she received for suggesting in her campaign that public safety dollars would be better spent on community based projects and other organizations that could better address public safety needs than police. Green Decl. ¶ 10.

NAACP President Monica Brooks sums up white officials' obliviousness:

In school, diversity is tokenized, and very few Black teachers and professionals are present for children to look up to and learn from. It is difficult for Black children to go to school and not see themselves represented by teachers and others in positions of power. Instead of considering policies to promote diversity, debate during the most recent school board elections centered on censorship of books and restrictions on teaching the truth about Black history. In practice, this has meant that that these days Black children are only taught platitudes around Black History Month and Martin Luther King Jr., and education about Black culture is completely forgotten amid false allegations about "critical race theory."

Brooks Decl. ¶ 18.

**d. Factor 5: Wicomico County's legacy of discrimination has produced severe socioeconomic disparities**

Black residents of the region today bear continuing effects of this longstanding racial caste system, including in housing, education, employment and throughout public life.

*Economic Opportunity:* Whites in Wicomico County consistently outpace Blacks across a broad range of socio-economic measures, as reported in the *5-Year 2015-2019 American Community Survey* (“ACS”). For example:

- Median income for Black households (\$43,728) is one-third less than white households (\$62,410). Cooper Decl. ¶ 29(c).
- Per capita income for Black individuals (\$20,762) is one-third less than white individuals (\$32,635). *Id.*
- Black families (15.8%) live below the poverty level at three times the rate of white families (5.1%), with more than a quarter of all Black Wicomico children living in poverty. *Id.*
- Black family income is only 64 percent that of white Wicomico families. *Id.*
- Three times as many Black residents (32.6%) as white residents (10.3%) qualify for food stamps. *Id.*

*Employment:* With regard to employment, although a comparable percentage of Blacks (67.6%) work in the labor force as whites (67.9%) and a comparable percentage of Blacks (40.9%) as whites (40.6%) work full time, the earnings they bring home are consistently less. Cooper Decl. ¶ 29(d). Data show that Black workers, both male and female, employed full time, year-round, earn substantially less money than do their white counterparts. *Id.* For Black men among this group, average income (\$38,445) is dramatically less than it is for white men (\$53,817), meaning Black men average just 71 cents for every dollar earned by white men. *Id.* The Black unemployment rate (for the working age population ages 16–64—expressed as a percent of the civilian labor force)—is almost double that of whites. At the time of the survey, 12 percent of working-age African-Americans were unemployed, compared to 6.8 percent for the white work force. *Id.*

*Housing:* Wicomico County is heavily segregated—a legacy of racially discriminatory County policies that promoted racial and economic segregation. As historian Dr. Charles Chavis,

Jr. recounts in his book, *The Silent Shore*, Black residents were concentrated in “four, including Cuba, Georgetown, Jersey, and California, all of which were built on “undesirable” land near the Wicomico River and its affluents . . .” *The Silent Shore* at 205. After the destruction of Georgetown and Cuba to accommodate Routes 13 and 50, Black residents relocated to Jersey Heights. One legacy of this discrimination is that only half as many Black (32.3%) as white County residents (68.6%) own their own homes. Cooper Decl. ¶ 29(b).

*Education:* Wicomico County’s school district remained strictly segregated long after *Brown v. Board of Education*, 347 U.S. 483 (1954) despite many efforts to implement desegregation plans in the early 1960. It was not until 1974—after the County was found in violation of the Fourteenth Amendment and Title VI of the Civil Rights Act and had its federal education funding terminated—that the school district finally desegregated its schools.

As noted above, issues of discrimination continue to the present in Wicomico schools. For example, in 2016 complaints from students and parents caused the U.S. Department of Justice to take the extraordinary step of intervening legally, after its investigation showed that Wicomico County Public Schools were engaging in discrimination against Black and Latine students. The investigation concluded that staff over-relied on school resource officers to address routine classroom management issues, with Black students overrepresented in the incidents, and that Black and Latine students, meanwhile, received harsher consequences than white students but were not misbehaving in more serious ways. Early in 2017, the Wicomico school system entered into a settlement agreement with the Justice Department requiring ongoing reporting through 2019 to demonstrate measures taken to ameliorate the discrimination. Boyd Decl. ¶ 17. Notwithstanding this agreement, egregious incidents of racial threats and violence continue to arise in Wicomico schools. For example, in 2019, middle school and high school students in Mardela Springs

complained to school officials that racist songs had been posted to a music sharing website used by students, including songs with lyrics celebrating slavery using racial slurs, and advocating whips to enforce white supremacy. Boyd ¶ 18. And in June 2022, the high-school aged child of a white Wicomico School Board member posted a video of himself on social media brandishing what appeared to be a scoped rifle, threatening Black students and encouraging others to shoot at [n-word]s “for fun.” Despite calls that she resign from the School Board, she refused, instead forging ahead with an unsuccessful reelection campaign. Boyd ¶ 19.

This persistent legacy of discrimination is also reflected in levels of educational attainment. Black residents (16.8%) are half as likely to have college degrees as white residents (31.4%) Cooper Decl. ¶ 29(a). Black residents (16.7%) are also almost twice as likely as white residents (9.3%) to have not completed their high school education. *Id.*

**e. Additional Factor: Wicomico County is not responsive to its Black residents**

There is, and historically has been, a lack of responsiveness on the part of County officials to the particularized needs of the Black residents of Wicomico County. As discussed above, the County’s long history of discriminatory policies and practices in education, housing, employment, and public safety reflect the County’s continuing failure to address the needs of its Black voters. Section III.C.4.d. *infra*. NAACP President Monica Brooks cites numerous egregious examples of Defendants’ current unresponsiveness to Black community concerns that she and other NAACP members have endured, including white school officials failing to take action to protect children from being assailed by white classmates with the N-word, the local Sheriff’s adversarial response to any complaints from Black residents,<sup>9</sup> and the County Executive’s refusal to meet with her or

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<sup>9</sup> *Wicomico County Sheriff’s Facebook Post Questioned*, WBOC.COM (Oct. 17, 2017; updated Oct. 22, 2021), [https://www.wboc.com/archive/wicomico-county-sheriffs-facebook-post-questioned/article\\_9d56ff0f-9e96-57ed-](https://www.wboc.com/archive/wicomico-county-sheriffs-facebook-post-questioned/article_9d56ff0f-9e96-57ed-)

engage in any dialogue with the NAACP—even turning her away from the County office building when she tried to visit to schedule an appointment. Brooks Decl. ¶¶ 18–20.

Most relevant here is the County’s lack of responsiveness demonstrated by its persistent, ongoing refusal to adopt an election system consistent with Voting Rights Act, despite appeals from Black residents and civil rights groups over many years, including efforts by the NAACP in 2013 seeking intervention by the Department of Justice. Even more dramatic was the County’s unresponsiveness to blunt warnings from its own Redistricting Committee that retention of at-large seats is unfairly keeping Black candidates from public office. Brooks Decl. Attachments A–D.

**D. Having Established the *Gingles* Preconditions and Shown Totality of Circumstances Favor Relief, Plaintiffs’ Request for a Preliminary Injunction Must be Granted**

Plaintiffs’ evidence establishes each of the *Gingles* preconditions, and further shows that the totality of circumstances indicate Defendants’ election system violates the Voting Rights Act. Plaintiffs ask the Court to grant them expedited preliminary relief to ensure protection for their fundamental voting rights in future elections.

**1. To the Extent Resolution 70-2024 Demands Voters’ Endorsement of the 5-2 Election System, the Amendment is Unlawful and Should Be Stricken**

On June 18, 2024, the Wicomico County Council approved by supermajority Resolution 70-2024 for submission to County voters on the November ballot. This measure asks whether voters elect to eliminate the Office of the County Executive effective at the conclusion of incumbent Julie Giordano’s term in 2026—a major question that will significantly impact Wicomico County government and all residents going forward. Given that elimination of the

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b315-8beefdc2aab4.html; Jeffrey Goldberg, *The Color of Suspicion*, N.Y. Times (June 20, 1999), <https://www.nytimes.com/1999/06/20/magazine/the-color-of-suspicion.html>.



Executive would expand the powers of the County Council, several matters concerning the Council are included in the Referendum. Among these:

There shall be a County Council of Wicomico County, Maryland composed of seven (7) members, five (5) of whom shall be elected from a different Councilmanic District and two (2) of whom shall be elected from the county at large.

As set forth in Plaintiffs' Complaint and established through this Motion, the 5-2 structure is racially discriminatory and unlawful, in violation of Section 2 of the Voting Rights Act; however, Maryland law prohibits referenda that are themselves unlawful in whole or part. *Montgomery County v. Board of Supervisors of Elections for Montgomery County*, 311 Md. 512 (Md. 1988). Accordingly, Plaintiffs ask that, as part of the relief they seek herein, this offending language mandating the 5-2 system be stricken from the ballot measure before it is put to Wicomico voters in November. *See, e.g., Board of Supervisors' of Elections of Anne Arundel County v. Smallwood*, 327 Md. 220 (Md. 1992) (granting expedited relief striking portions of ballot measure deemed invalid by the court, where such language could be properly severed without changing the meaning of the question being put to voters). Voters, including Plaintiffs, should not be forced to enshrine the unlawful election system, in order to support November's Resolution for elimination of the County Executive. *See* Boyd Decl. ¶ 22; Green Decl. ¶ 14. Relief from this unlawful requirement is justified pursuant to the applicable preliminary injunction standards as set forth below.

**2. Black Wicomico County voters, including Plaintiffs, will suffer irreparable harm absent an injunction**

Wicomico County's current election system denies Black voters equal voice in their government, and as such irreparably harms Plaintiffs and thousands of other Black voters every time it is used. When confronted with dire warnings from officials on the County's 2021 redistricting committee that the 5-2 map perpetuates exclusion of Black preferred candidates from

the County Council and School Board, Defendants nevertheless proceeded to enact a “minimal impact map” seeking to maintain this discriminatory system for another decade. *See* Brooks Decl. ¶ 22 and Attachments A–D. And faced with this lawsuit, the County Council doubled down by asking voters to endorse its continued discrimination by initiating a November 2024 referendum that incorporates the 5-2 structure as a prerequisite to removing the County Executive.

“It is beyond cavil that ‘voting is of the most fundamental significance under our constitutional structure.’” *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (quoting *Ill. Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979)). Courts routinely find that restrictions on the fundamental right to vote, even for a brief period of time, constitute irreparable injury. *See, e.g., League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (“Courts routinely deem restrictions on fundamental voting rights irreparable injury.”); *Williams v. Salerno*, 792 F.2d 323, 326 (2d Cir. 1986) (the denial of the fundamental right to vote is unquestionably “irreparable harm”); *Obama for Am. v. Husted*, 697 F.3d 423, 436 (6th Cir. 2012) (same). In particular, discriminatory voting laws are “the kind of serious violation of the Constitution and the Voting Rights Act for which courts have granted immediate relief.” *United States v. City of Cambridge, Md.*, 799 F.2d 137, 140 (4th Cir. 1986).

The potential harm to Plaintiffs here is irreparable. It is impossible to provide adequate relief for claims such as the ones raised here during or after an election. *See Republican Party of N.C. v. Hunt*, 841 F.Supp. 722, 727-28 (E.D.N.C. 1994) (granting preliminary injunction because plaintiffs would be irreparably harmed if existing election method were followed). This includes Plaintiffs’ right to vote freely on proposed elimination of the Wicomico County Executive Office—a matter of enormous consequence for all Wicomico County residents—without conditioning their vote upon coerced endorsement of Defendants’ unlawful election scheme.

If preliminary relief is not granted and Plaintiffs ultimately prevail at trial, Plaintiffs' core right to political participation will have been violated. This is why courts in this District and Circuit have found irreparable harm requiring injunctive relief in redistricting schemes found likely to violate Section 2. *See, e.g., Baltimore Cnty*, 2022 WL 657562, at \*13 (granting preliminary injunction because of irreparable harm under racially dilutive plan); *NAACP-Greensboro Branch v. Guilford Cnty. Bd. of Elections*, 858 F.Supp.2d 516 (M.D.N.C. 2012) (granting preliminary injunction because irreparable harm if redistricting implemented).

### **3. The balance of equities and the public interest favor relief**

When the Defendant is a governmental actor, the balance of equities and the public interest are properly considered together. *Roe v. Dep't of Defense*, 947 F.3d 207, 230 (4th Cir. 2020) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009); *Taliaferro v. N.C. State Bd. of Elections*, 489 F. Supp. 3d 433, 438 (E.D.N.C. 2020) ("The Court considers the public interest and the balance of the equities together.")). The balance of equities points strongly in favor of preliminary relief.

First, any burden Defendants may claim pales in comparison to the deprivation of Plaintiffs' core right to political participation. The government "is in no way harmed by issuance of a preliminary injunction which prevents [it] from enforcing restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction." *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (internal quotations and citation omitted). *See also Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003).

Similarly, Plaintiffs request for invalidation of a portion of the November ballot measure would not harm defendants. The purpose of this measure is for voters to decide upon proposed elimination of the Office of the County Executive, and this question is in no way impaired by elimination of embedded provision mandating use of the 5-2 system for County Council elections.

Second, there is ample time for new electoral maps to be enacted and vetted without undermining the public's interest in an orderly election in 2026. The County, for example, could readily adopt Dr. Cooper's Illustrative Plan or develop a plan that is mutually acceptable. *NAACP-Greensboro Branch*, 858 F. Supp. at 529. Similarly, Defendants have sufficient time to strike the offending provision from the November ballot measure. As discussed, the provision is unrelated to the purpose of the measure and may be removed without undue delay.

Finally, Plaintiffs have not delayed in raising their claims. Plaintiffs filed this lawsuit in December 2023, and have been diligently attempting to resolve the case without extensive litigation over the last six months. When Defendants signaled, through their June 18 Resolution embracing the unlawful 5-2 system, that Court intervention would be needed after all, Plaintiffs shifted course immediately, acting as promptly as possible to file this motion to protect their rights asserted in this action. Plaintiffs' diligence in raising their claims and pursuing relief should further tip the scale in favor of granting relief.

The balance of equities and public interest support injunctive relief at this stage, before the election cycle begins.

#### **IV. CONCLUSION**

For the foregoing reasons, Plaintiffs request that the Court issue a preliminary injunction invalidating Defendants' 5-2 election system as violative of the Voting Rights Act, and striking from the November 2024 Referendum language asking voters to reaffirm the 5-2 system.

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Respectfully submitted,

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