Report and Recommendations of the Montgomery County Redistricting Commission
2021

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Montgomery County Redistricting Commission 2021

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Pre-Report Charter Requirements

The Montgomery County Charter, as amended by the voters in the 2020 general election, states that the County shall be divided into seven Council districts. Each Council district must be compact[1] in form and be composed of adjoining (contiguous) territory[2]. Populations of the council districts must be substantially equal.[3] Before 2020, the Charter required the County to be divided into five Council districts. The new requirement for seven districts will apply to the 2022 election, and the County Council will consist of eleven members, with four at-large members.

The County Charter required the Council to appoint a Redistricting Commission to make recommendations on new Council District boundaries no later than February 1, 2021. The Council established a Commission on Redistricting.

Each political party that polled at least 15% of the total vote cast for all candidates running for the Council in the last preceding regular election was required to have at least one but not more than four party members on the Commission. As a result of the 2018 General Election, there are two parties recognized that polled more than 15%: the Democratic Party and the Republican Party. The Commission includes four Democratic party members and two Republican members. The remaining five members include two Independents, two members unaffiliated with a political party, and a member of the Libertarian party. At least one member of the Commission resides in each Council district. No person on the Commission holds any elected office.[4]

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[1] Compactness is a requirement for a close union of territory rather than a requirement dependent upon a district being of any particular shape or size. But it is subservient to the federal constitutional requirement of substantial equality of population among districts. In *Ajamian v. Montgomery County*, 99 Md. App. 665 (1994), the Court rejected the challenge that the Montgomery County Council District plan was not sufficiently compact because one district was much larger geographically than others. The population deviation was within the acceptable 10% deviation, so the greater geographical area did not affect voting strength.

[2] The contiguity requirement mandates that there be no division between one part of a district's territory and the rest of the district; in other words, contiguous territory is territory touching, adjoining and connected, as distinguished from territory separated by other territory. An island is a territory separated by other territory.

[3] The County has used total population for the purpose of redistricting. Even though the U.S. Constitution requires the use of districts of equal total population for districts drawn for the House of Representatives, some jurisdictions have used the voting age populations to define equal population. Supreme Court in 2016 held total population, not just voting-age population, may be used in districting. *Evenwel v. Abbott*, __ U.S. __, 136 S. Ct. 1120, 194 L. Ed. 2d 291 (2016).

Over time, the courts have established a formula for analyzing the "maximum population deviation" among districts for legislatively-enacted redistricting plans for state or local representatives. The court first creates a hypothetical ideal district by dividing the total population of the political unit (state, city, or county) by the total number of district-elected representatives who serve that population (in our case, that number is 7). Then the court adds together the percentage population variation of the largest and smallest district in comparison to the ideal district. If that figure is under 10% the court regards the difference as *de minimis* and is unlikely to find an Equal Protection violation. If that figure is over 10% the court regards the difference as presumptively invalid, and the government must provide substantial justification to sustain the plan.

[4] Montgomery County Charter, Sec. 104. Redistricting Procedure.

The boundaries of Council districts shall be reviewed in 1972 and every tenth year thereafter. Whenever district boundaries are to be reviewed, the Council shall appoint, not later than February 1 of the year before the year in which

Redistricting Commission Membership

The Council appointed the following members to the Commission:

NAME	PARTY AFFILIATION	Council District
Imad Aldean Ahmad	Libertarian	1
Laura Ard	Independent	1
Mariana Cordier	Unaffiliated	3
Keshia Desir	Unaffiliated	4
Arthur Edmunds	Democrat	2
Valerie Ervin	Democrat	5
Bruce Goldensohn	Republican	3
Jason Makstein	Independent	2
Nilmini Rubin	Republican	1
Samuel Statland	Democrat	1
David Stein	Democrat	5

Imad Aldean Ahmad is president of the Minaret of Freedom Institute, and president and chief scientist of Imad-ad-Dean, Inc. Dr. Ahmad is a member of the North American Association of Islamic and Muslim Studies, the Association of Muslim Chaplains, the History of Science Society, the International Astronomical Union, and the American Astronomical Society. Dr. Ahmad received an A.B. in Astronomy from Harvard University and a Ph.D. in Astrophysics from the University of Arizona. Dr. Ahmad is a registered Libertarian and resides in Bethesda in District 1.

Laura Ard is retired and is active in the Lobby Corps Committee with the League of Woman Voters. Ms. Ard also worked 20 years for the World Bank as a lead financial sector specialist. Ms. Ard received a B.A. in Business from Baylor University. Ms. Ard is a registered Independent and resides in Bethesda in District 1.

Mariana Cordier is an attorney and founding member of Cordier Law Office, LLC, in Rockville and has over 19 years of experience litigating civil and criminal cases in state and federal courts.

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redistricting is to take effect, a commission on redistricting. The Commission shall be composed of eleven registered voters who reside in the County. The Commission shall include at least one but no more than four members of each political party which polled at least fifteen percent of the total vote cast for all candidates for the Council in the last preceding regular election. At least one member of the Commission shall reside in each Council district. The Commission shall, at its first meeting, select one of its members to serve as its chair. No person who holds any elected office shall be eligible for appointment to the Commission.

By November 15 of the year before the year in which redistricting is to take effect, the Commission shall present a plan of Council districts, together with a report explaining it, to the Council. Within thirty days after receiving the plan of the Commission, the Council shall hold a public hearing on the plan. If within ninety days after presentation of the Commission's plan no other law reestablishing the boundaries of the Council districts has been enacted, then the plan, as submitted, shall become law. After any redistricting plan or any other law amending the boundaries of Council districts becomes law, the boundaries of the Council districts so established shall apply to the next regular election for Councilmembers and to any special election held or appointment made to fill a vacancy on the Council that occurs after those boundaries are established.

She is a member of the Maryland Hispanic Bar Association. Ms. Cordier also served on the Governor's Commission on Hispanic Affairs from 2004 to 2012 and in the Montgomery County Latin American Advisory Group from 2008 to 2013. Ms. Cordier received a Juris Doctorate from Washburn University School of Law and a B.A. in Political Science from American University. Ms. Cordier is registered Unaffiliated and resides in Potomac in District 3.

Keshia Desir is the census and mass incarceration project manager for the Washington, D.C.-based nonprofit organization, Common Cause and is a member of its Redistricting and Representation Team. Ms. Desir received a B.A. in Psychology from Florida Gulf Coast University and an M.A. in Political Science from American University. She is unaffiliated with a political party and resides in Wheaton in District 4.

Arthur Edmunds was in the Global Business Services group of the IBM Corporation in Bethesda, where his clients included the Internal Revenue Service, Centers for Medicare and Medicaid Services, and other federal agencies. He is the former chair of the Montgomery County Upcounty Citizens Advisory Board (UCAB) and a member of the Montgomery County Democratic Party. Mr. Edmunds received his B.S. from Benedict College and an MBA from Atlanta University. He is registered as a Democrat and resides outside the town of Laytonsville in District 2.

Valerie Ervin is a special assistant with Prince George's County Public Schools. She is a former Montgomery County Councilmember who served for seven years. She was chair of the Education Committee and served as president of the Council in 2011, which is the last time a Commission on Redistricting met. Ms. Ervin received a Master of Public Administration in Public Policy and Administration from the University of Baltimore and a B.A. in Labor Studies from the National Labor College. Ms. Ervin is a registered Democrat and resides in Silver Spring in District 5.

Bruce Goldensohn is a member of the Montgomery County Board of Appeals and serves as a commissioner on the Governor's Commission on Service and Volunteerism. Mr. Goldensohn served as mayor, a planning commission member, and a Councilmember for the City of Gaithersburg. He received a B.A. in Government and Politics from Queens College. Mr. Goldensohn is a registered Republican and resides in the city of Gaithersburg in District 3.

Jason Makstein is a software engineer for Leidos, focusing on air traffic control software for the Federal Aviation Administration. Mr. Makstein received a B.S. in Computer Science from Pennsylvania State University and an M.S. in Computer Science from Johns Hopkins University. Mr. Makstein is a registered Independent and resides in North Potomac in District 2.

Nilmini Rubin works on international policy programs and campaigns for Meta through PRO Unlimited. She co-founded Fix the System, a D.C.-based coalition of organizations advocating for election integrity, campaign finance reform, and voting rights. Previously, Ms. Rubin was the executive vice president at Tetra Tech in Arlington, VA, leading the international energy business unit. Ms. Rubin received a B.A. in Economics and Development Studies from the University of California at Berkeley, and an MBA from the Haas School of Business at the University of California at Berkeley. She is a registered Republican and resides in Chevy Chase in District 1.

Samuel Statland was the Past President and co-founder of Statland & Katz, Ltd. He is a Board Member of the Akhmedova Ballet Academy, former Chairman of the Montgomery County Board of Elections, former member of the Montgomery County Public Finance Commission, former Board Member of the Greater Silver Spring Chamber of Commerce, the Silver Spring and Wheaton Redevelopment Steering Committees, and the Montgomery County Democratic Central Committee. Mr. Statland successfully lobbied for the enactment of Absentee Voting on Demand (Voting by Mail), was a panelist on *21 This Week*, and is a fundraiser and supporter of Mobile Medical Care. Mr. Statland received his B.A. in Political Science from American University. He is a registered Democrat and resides in Kensington in District 1.

David Stein is a math teacher in the Science, Mathematics, and Computer Science Program at Montgomery Blair High School. He is the head Montgomery County Education Association building representative at Blair High School and the elected faculty representative for the Instructional Leadership Team. Mr. Stein received his Master of Education from the University of Maryland and his B.A. in Political Science from the University of Michigan. He is a registered Democrat and resides in Silver Spring in District 5.

At its first meeting on February 10, 2021, as required by the Charter, the Commissioners selected one of its members, Mariana Cordier, to serve as Chair, and one of its members, Arthur Edmunds, to serve as Vice Chair.

Post Report Charter Requirements

The Charter requires the Commission to submit its recommended plan for redistricting to the Council no later than November 15, 2021.

Within 30 days of receiving this report and recommended redistricting map, the Council must hold a public hearing. The mapped redistricting plan is customarily introduced as a bill at the request of the Redistricting Commission. The Council must take action on the Bill within 90 days of receiving the plan. The Council may amend the plan or approve the plan as submitted.

If within 90 days after presentation of the Commission's plan, no other law reestablishing the boundaries of the Council districts has been enacted, then the plan, as submitted, becomes law.

Maryland Law

Open Meetings Act

The Maryland Open Meetings Act requires that the public be provided with reasonable notice of the time, location, and agenda of meetings of public bodies. As a group of non-government employees, appointed by a County Council resolution, and mandated by the County Charter, the Redistricting Commission is a "public body" under the Maryland Open Meetings Act.

The Act applied to "meetings" of the Commission.[5] According to the Act, meetings must be held in places reasonably accessible to individuals who would like to attend these meetings. The public was allowed to attend all meeting of the Commission in a virtual manner. All meetings and agendas of the Commission were posted in advance of the meetings and posted on the Council's website with information on how anyone could "attend" the meeting. Meetings were also the subject of Council press releases. The press releases were published in advance of the Commission's meetings. All minutes of meetings were posted after Commission approval. There were no closed meetings of the Commission. The Commission conducted 12 meetings.

Prison population

Under Maryland law[6], Maryland census data must be adjusted for purposes of creating congressional, state legislative, and local districting plans. The law requires changes to the census data to reassign Maryland residents in correctional institutions to their last known address and to exclude out-of-state residents in correctional institutions from redistricting populations.[7] Those adjustments to the census population were made by the Maryland Department of Planning. A total of 649 people were added to the County's population because of this adjustment. Unless otherwise note, all population numbers used in the report reflect the population, including prisoners.

Equal Protection - Federal Requirements[8]

Council Districts must comply with federal laws mandating equality in voting: the 14th and 15th Amendments to the U.S. Constitution and the Voting Rights Act. The 14th Amendment's Equal Protection Clause mandates that electoral districts be of nearly equal population so that each person's vote has equal weight in the election of their representative. The Equal Protection Clause prohibits using race as the predominant factor in districting to intentionally segregate voters based upon their race and lessen the weight of their vote. The 15th Amendment of the U.S. Constitution also prohibits abridging the right to vote on the basis of race. The Voting Rights Act prohibits the denial of the equal opportunity to participate in the political process and elect candidates of their choice based on race or ethnicity.

The opportunity to participate in the political process is affected when the voices of communities of color is diluted at the polls either by the dispersal of persons of color into districts in which they constitute an ineffective minority of voters (referred as "cracking") or from the concentration of people of color into districts where they constitute an excessive majority (referred to as "packing").

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[5] A meeting occurs when the public body considers public business in any of the following circumstances: (1) a quorum of the public body's members (6 out of 11 members of the Commission) is present at an "actual meeting"; (2) a quorum is deemed present by virtue of communications that would "rise to the level of a 'meeting,'"; (3) if the quorum came together only by chance or social reasons, it nevertheless used the occasion to discuss public business.

[6] "No Representation Without Population Act" of 2010 (SB 400, HB 496).

[7] In 2011, the total adjustment for Montgomery County was the addition of some 600 people. Adding the 600 or some prisoners back into the more than one million other residents does not materially affect Council redistricting in Montgomery County.

[8] A more complete memorandum of legal issues authored by Erin Ashbarry, Associate County Attorney, is attached to this report.

The number of Districts in which the communities of color form an effective majority may be roughly proportional to its share of the population in the relevant area. Although "proportionality" or "rough proportionality" is not a "safe harbor" for defendants, the Supreme Court has recognized that it is a strong indication that minority voters of color have equal opportunity "to participate in the political process and elect representative of their choice".[9]

In addition to compactness and contiguity, the Supreme Court has recognized four traditional districting criteria: 1) Respect for political subdivisions; 2) Preservation of communities of interest; 3) Incumbency protection; and 4) Geography. If race is the predominant motivating factor, the court will subject the plan to "strict scrutiny" and require the government to demonstrate a compelling government interest to support its predominant consideration of race. The government may subordinate traditional districting criteria to race only if there is a compelling governmental interest.

The Commission considered race and ethnicity as a factor in redistricting, but it was not the predominant motivating factor for drawing the lines that separate districts.

COUNTY DEMOGRAPHICS 2020

Target Population in Council Districts

In 2010, the total population of the County (including prisoners at their last address before imprisonment) was 971,284. The 2011 Redistricting Commission was required to recommend five Council districts. The population of each had to be within 5 percent of 194,256 (the total population divided by 5).

The County's total population in 2020 was 1,062,710 (including prisoners). Since 2010, the County's population increased by 91,426 people or 9.4 percent. This is a smaller absolute increase and percentage increase than from 2000 to 2010, when the population grew by almost 100,000 residents, or 11.3 percent.

If five Council Districts were still required, the target population in each District would be 212,542.[10] With the requirement for seven districts, the target total population becomes 151,815, some 60,727 fewer residents than would have been required in each of the five Districts.

All Council Districts recommended by the Commission are smaller geographically and in total population than the districts approved in 2011.[11]

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[9] In *Bartlett v. Strickland,* 556 U.S. 1, 129 S.Ct. 1231 (2009), the Court found a minority group must constitute a numerical majority (50% or more) in a compact geographical area in order for Section 2 of the Voting Rights Act to require a legislative district to be created or protected to prevent dilution of voting strength.

[10] Each new Council district will have 14% of the County's total population.

[11] As the geography of the County has not changed since 2011 and the number of Council Districts increased, the size of at least some districts must decrease. As a percentage, the number of Council Districts increased more than population growth; therefore, all Districts must have less population than the Districts created in 2011.

RACE AND ETHNICITY

Montgomery County's population has continued to diversify since 2010. Nearly 60 percent of residents are people of color or of Hispanic origin. The table below displays the changes in population over time by major Census racial/ethnic group. (The table does not include 649 prisoners allocated to Montgomery County.)

Race/Ethnicity	2010	% of Total	2020	% of Total	Growth
Non-Hispanic White	478,765	49.3%	430,980	40.6%	-47,785
Hispanic	165,398	17.0%	217,409	20.5%	52,011
Black or African American (Non-Hispanic)	161,689	16.6%	192,714	18.2%	31,025
Asian & Pacific Islander (AAPI)	135,104	13.9%	162,912	15.3%	27,808
Other Race	30,821	3.2%	58,046	5.5%	27,225

The Redistricting Commission looked at the geographic distribution of County residents by race and ethnicity to avoid either unintentionally cracking[12] or packing[13] residents of color. No one major racial/ethnic classification, except non-Hispanic White, comprises 50 percent of the population in any large subarea of the County. The non-Hispanic White population is concentrated in western Montgomery County (Bethesda, Potomac, Travilah, Darnestown, and Poolesville) and northeastern Montgomery County (Damascus, Patuxent, Laytonville, and Olney). It is impossible to map seven compact, contiguous areas in the County, with 151,000 residents each, that do not include at least one District that is more than 50 percent non-Hispanic White. The combined non-Hispanic White and Hispanic/Latino populations also comprise more than 50% of the total population in all areas where there is not a concentration of non-Hispanic White residents.
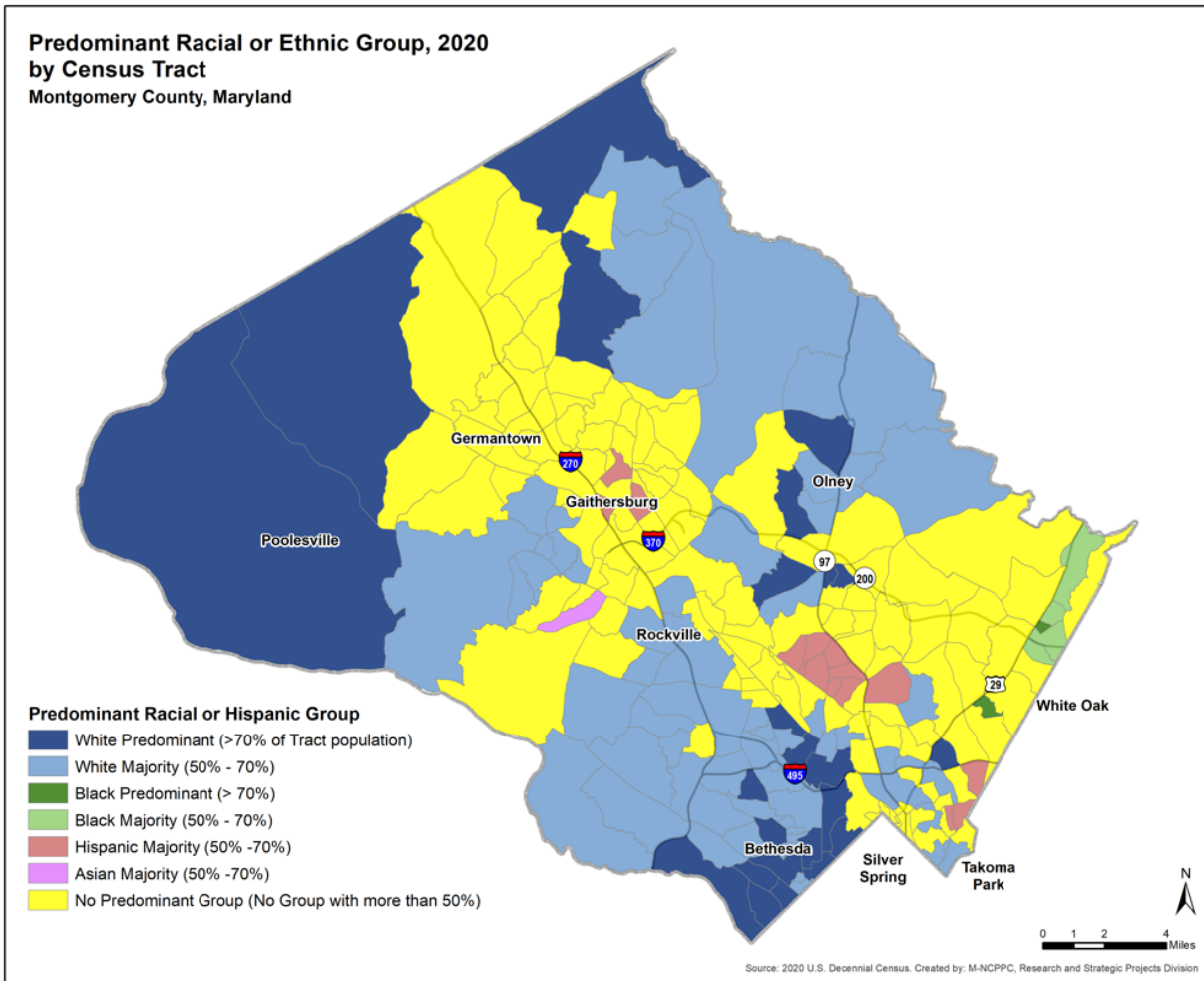
When classified into separate Census ethnic/racial categories, Hispanic/Latino, non-Hispanic Black/African American, or AAPI residents do not comprise a majority of any compact, contiguous area of the County with 151,000 people.[14] There is a high percentage of Hispanic/Latino residents in Wheaton and Aspen Hill but not a majority for a compact District of 151,000 residents. Black/African American residents comprise a high percentage of the total population along the eastern Montgomery County border but not a majority for a District of 151,000 people. Relative to other racial and ethnic concentrations, the County's AAPI population is widely dispersed but the percentage of AAPI residents is higher in the western area of the County, and highest southwest of Rockville.

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[12] Cracking is spreading like-minded voters apart across multiple districts to dilute their voting power in each. This denies the group representation in multiple districts.

[13] Packing is concentrating like-minded voters together in one district to reduce their voting power in other districts. This gives the group representation in a single district while denying them representation across districts.

[14] There are small geographic areas of the County that do have Hispanic, non-Hispanic Black/African American and AAPI majorities, but not large areas.

The map below shows the relative racial/ethnic concentrations across subcounty areas[15]:

Predominant Racial or Ethnic Group, 2020
by Census Tract
Montgomery County, Maryland

Predominant Racial or Hispanic Group
- White Predominant (>70% of Tract population)
- White Majority (50% - 70%)
- Black Predominant (> 70%)
- Black Majority (50% - 70%)
- Hispanic Majority (50% -70%)
- Asian Majority (50% -70%)
- No Predominant Group (No Group with more than 50%)

Source: 2020 U.S. Decennial Census. Created by: M-NCPPC, Research and Strategic Projects Division

PUBLIC OUTREACH

Under the leadership of Commissioner Statland, Commissioners actively sought to engage the Community in the process of drawing new Council Districts as much as possible. The Commission accomplished its outreach goal by contacting and presenting a virtual Powerpoint presentation to 40 distinctive community stakeholder groups. Those stakeholders included political parties, civic associations, communities of interest, County Regional Service Centers, and Citizens Advisory Boards. Every member of the Commission participated in the virtual Presentations and heard the needs, wants, and redistricting desires of Montgomery County citizens.

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[15] This map was prepare by the Montgomery County Planning Department, part of the Maryland National Park and Planning Commission.

The Commission received over 400 individual comments after three maps were presented for consideration. In addition, Commissioner's benefited from letters sent by all of the municipalities, some candidates for Council Districts, and County Councilmembers. Several maps drawn by interested citizens were submitted for the Commission's consideration. Citizens were heard from loudly and clearly but not all wishes could be accommodated in a single map. Commissioners realize that tough choices are necessary for any map that divides the County into seven Districts. Over 60 comments were received after a single map was voted upon by the Commission.

THE COMMISSION'S GROUND RULES FOR CREATING COUNCIL DISTRICTS

Equal Population: Equal Protection Clause of the 14th Amendment and the County Charter requires that the legislative districts across the County be substantially equal in population. The Commission is recommending Districts that are plus or minus 5% of the County's 2020 population divided by 7 (151,815).

Compactness: Having the minimum distance between all the parts of a constituency (a circle, square or a hexagon is the most compact District). The Commission recognizes that the shape of the County does not lend itself to District circles or squares but considered compactness in its deliberations, avoiding excessively narrow districts. The Commission was informed that there is no judicially approved test for compactness.

Contiguity: All parts of a District being connected at some point with the rest of the district. The Commission's recommended Districts are contiguous (no island areas).

Minority Representation: The Commission gave due consideration to the racial composition of the County and the location of areas were persons of color make-up a majority of residents. However, race was never the sole consideration for the District recommendation.

Preservation of political subdivisions: This refers to municipal boundaries when drawing Council districts. Resident populations of municipalities should not be split by the District boundaries recommended by the Commission.

Preservation of communities of interest: Geographical areas, where the residents have common political interests. The Commission tried not to split neighborhoods with a common affinity into multiple districts. The Commission found that a map that did not split one community or another was not possible.

The Commission decided that the Cities of Rockville and Gaithersburg should be in a single district.

The smallest geographic unit used to create Council Districts were the voting precincts defined by the Board of Elections as of 2020. (Voting precincts are outlined on the individual District maps.)
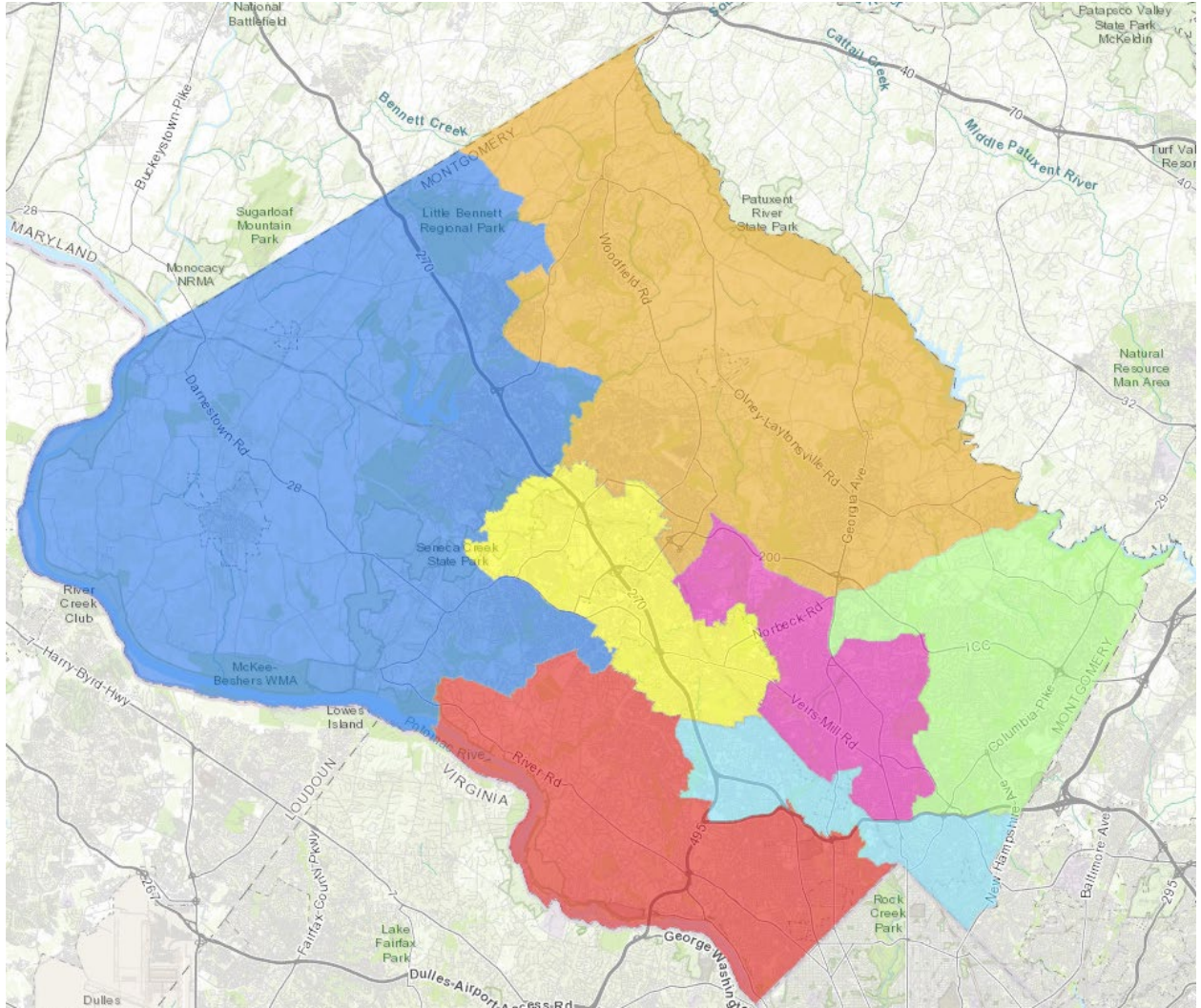
DISTRICT ATTRIBUTES[16]

The map recommended by the Commission has the following attributes:

1) all Commission ground rules were followed;
2) the historic growth of non-white populations are respected by the creation of six districts where communities of color are in the majority;
3) it creates an eastern County district where the non-Hispanic African American population is the largest ethnic/racial group;
4) it creates a Wheaton district where the Hispanic population is the largest ethnic/racial group;
5) it also creates up County districts that include much of the current District 2, with the addition of a northeastern up County district that does not divide Laytonville;
6) 7 of the Districts passed the Commission's eye test for compactness.

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[16] A map, viewable at any scale with optional reference layers is located at:
https://gismontgomery.maps.arcgis.com/apps/webappviewer/index.html?id=e74800c960094a05a4f88a45586fc634

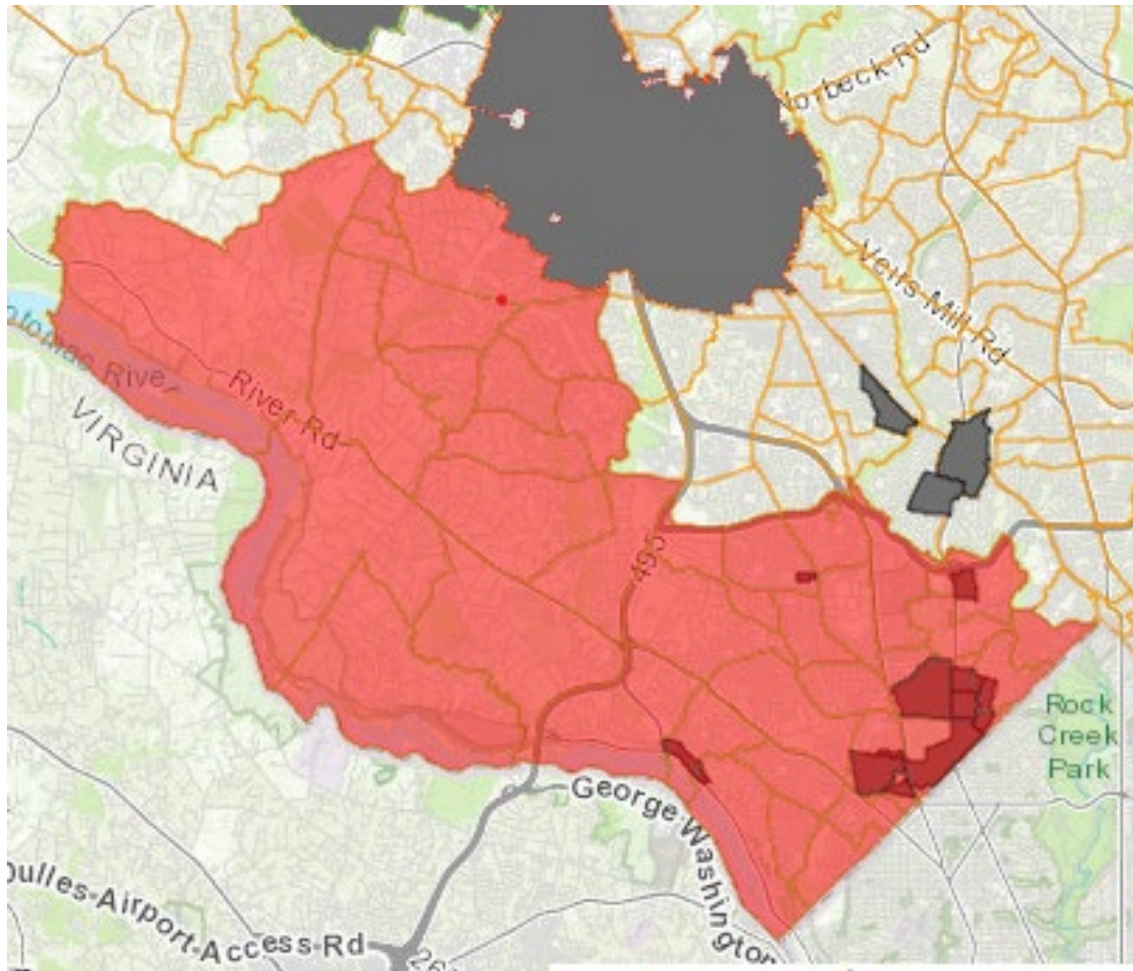# RECOMMENDED DISTRICT MAP

Legend

Commission Council District Proposal

- 1
- 2
- 3
- 4
- 5
- 6
- 7

DISTRICT GEOGRAPHIC CONTENT
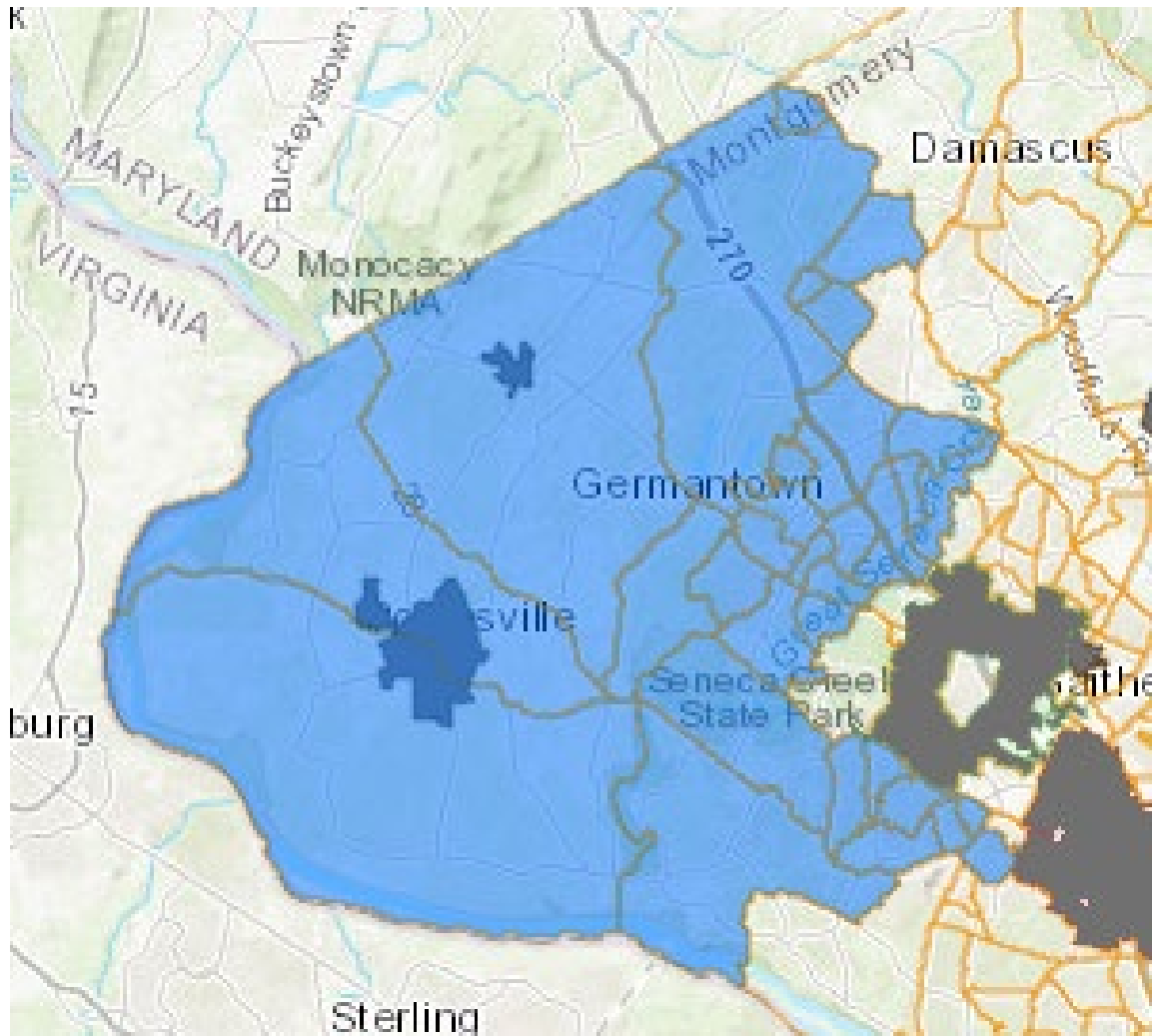
District #1

District #1 includes the southwestern portion on the County. It encompasses the communities of Bethesda, Friendship Heights, Chevy Chase, Palisades, Cabin John, Potomac, and Travilah.

District #2

District #2 includes the northwestern parts of the County. It encompasses the communities of Darnestown, Poolesville, Dickerson, Boyds, Barnesville, Germantown, and Clarksburg.

District #3

District #3 includes the municipalities of Rockville and Gaithersburg where there are residents. It also includes Washington Grove and the area between the municipal boundaries.
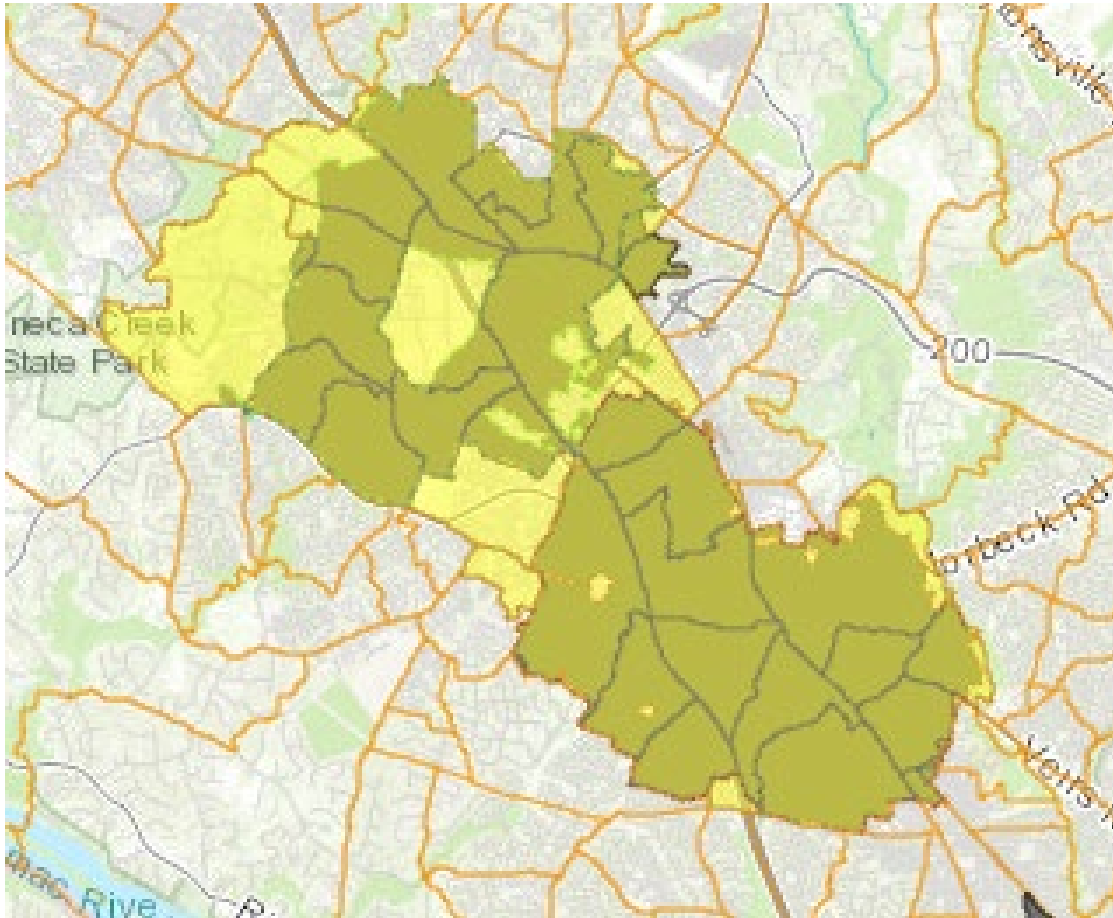
District #4

District #4 includes the southeast portion of the County and goes north by northwest from there. This District includes Takoma Park, Silver Spring, Long Branch, West Silver Spring, Kensington, Garrett Park and North Bethesda.
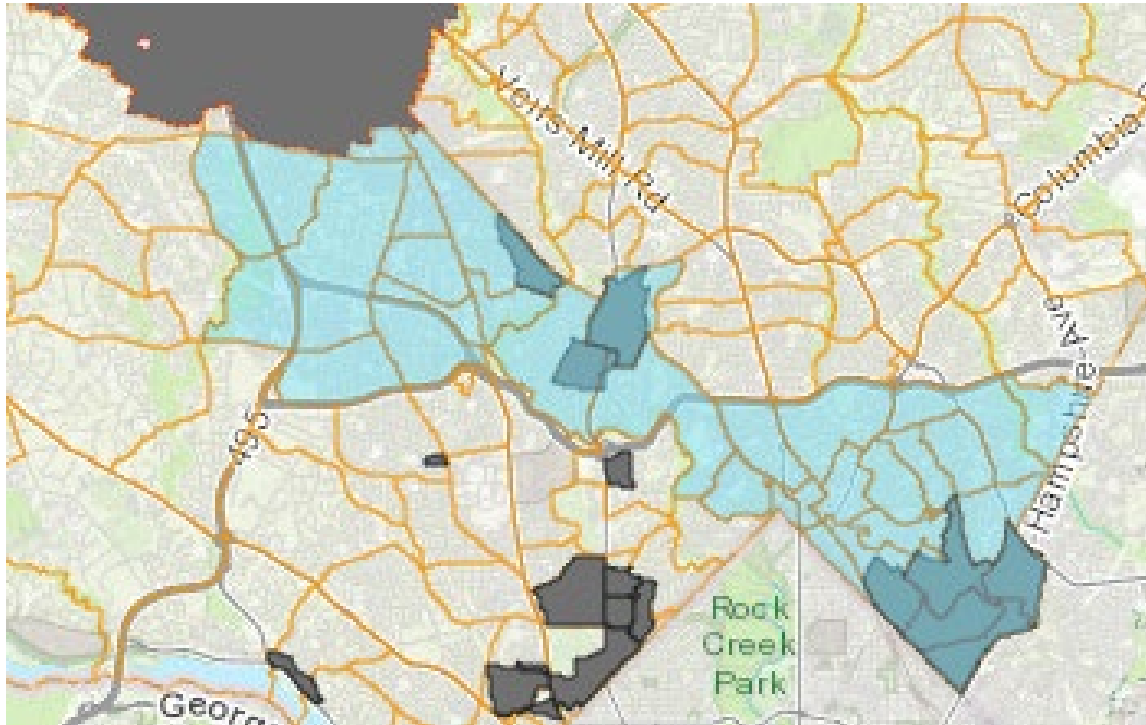
District #5

District #5 include the eastern area of the County between the Capital Beltway (I-495) and Ednor Road. It includes Four Corners, Kemp Mill, White Oak, Hillandale, Calverton, Colesville, Fairland, Burtonsville, Spencerville, Layhill, Bel Pre/ Strathmore and Leisure World.
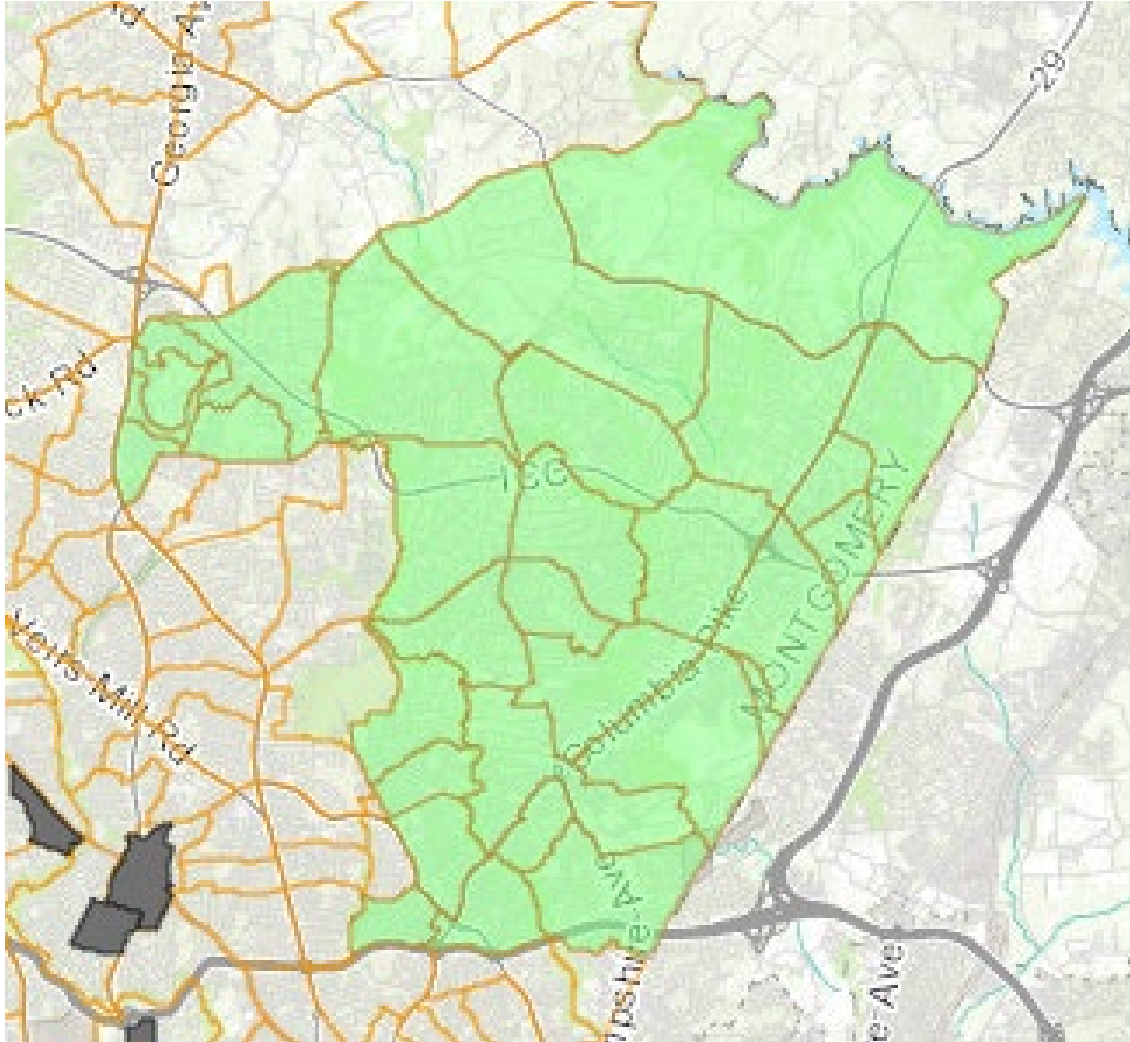
District #6

District #6 occupies the east central portion of the County. This District includes Wheaton and Aspen Hill. It also is home to Forest Glen, Glenmont, Rock Creek, and Derwood.
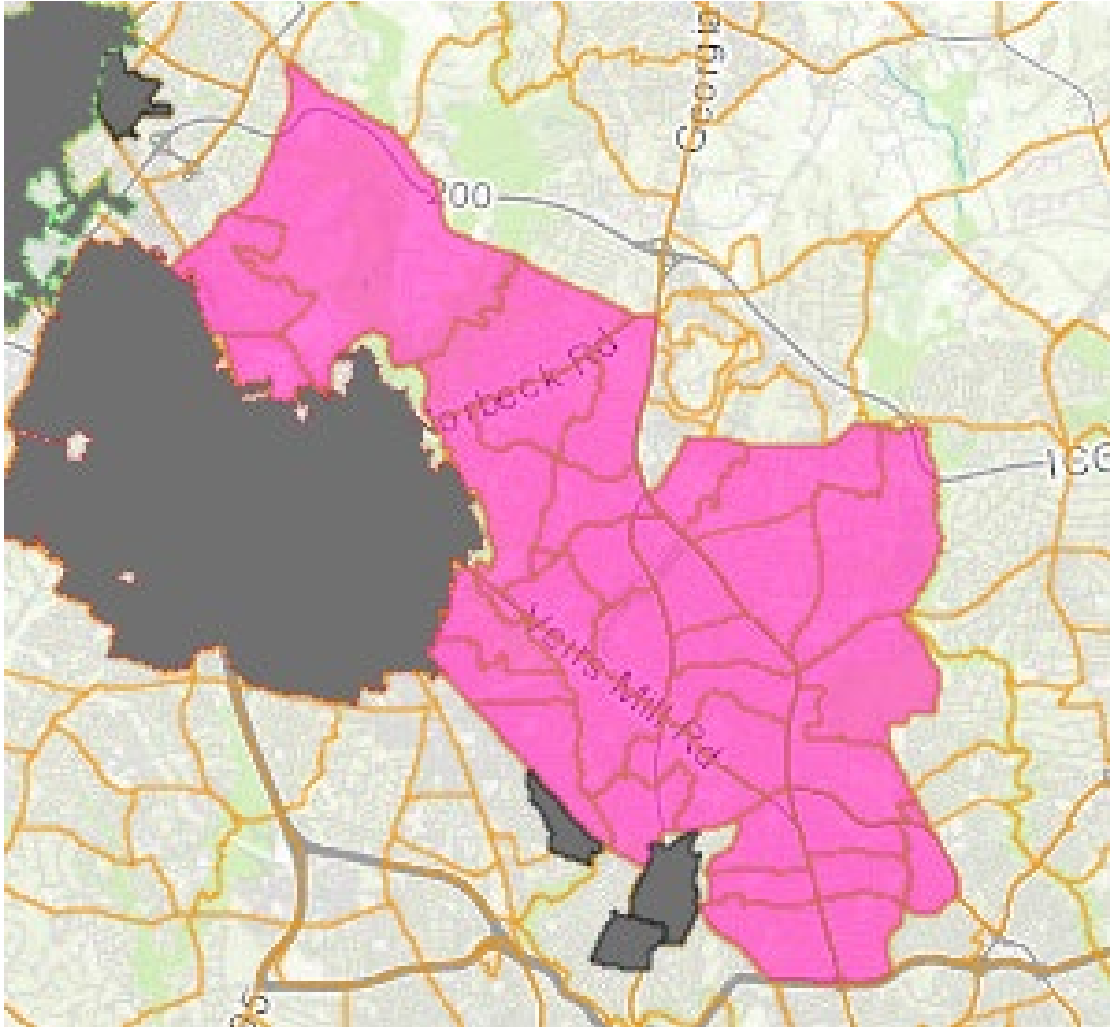
District #7

District #7 includes Sandy Spring/Ashton, Olney, Norbeck/Norwood, Montgomery Village, Goshen, Brookville, Brighton, Laytonsville, Cedar Grove, Damascus, Mt. Airy, and Woodbine.

DISTRICT POPULATION TABLES

Total District Population and Deviations from Target (151,815)

District	Population	Percentage Deviation
1	154,919	2.04%
2	152,824	0.66%
3	155,966	2.73%
4	150,626	-0.78%
5	147,673	-2.73%
6	145,076	-4.44%
7	155,626	2.51%

District Demographics; Total Population

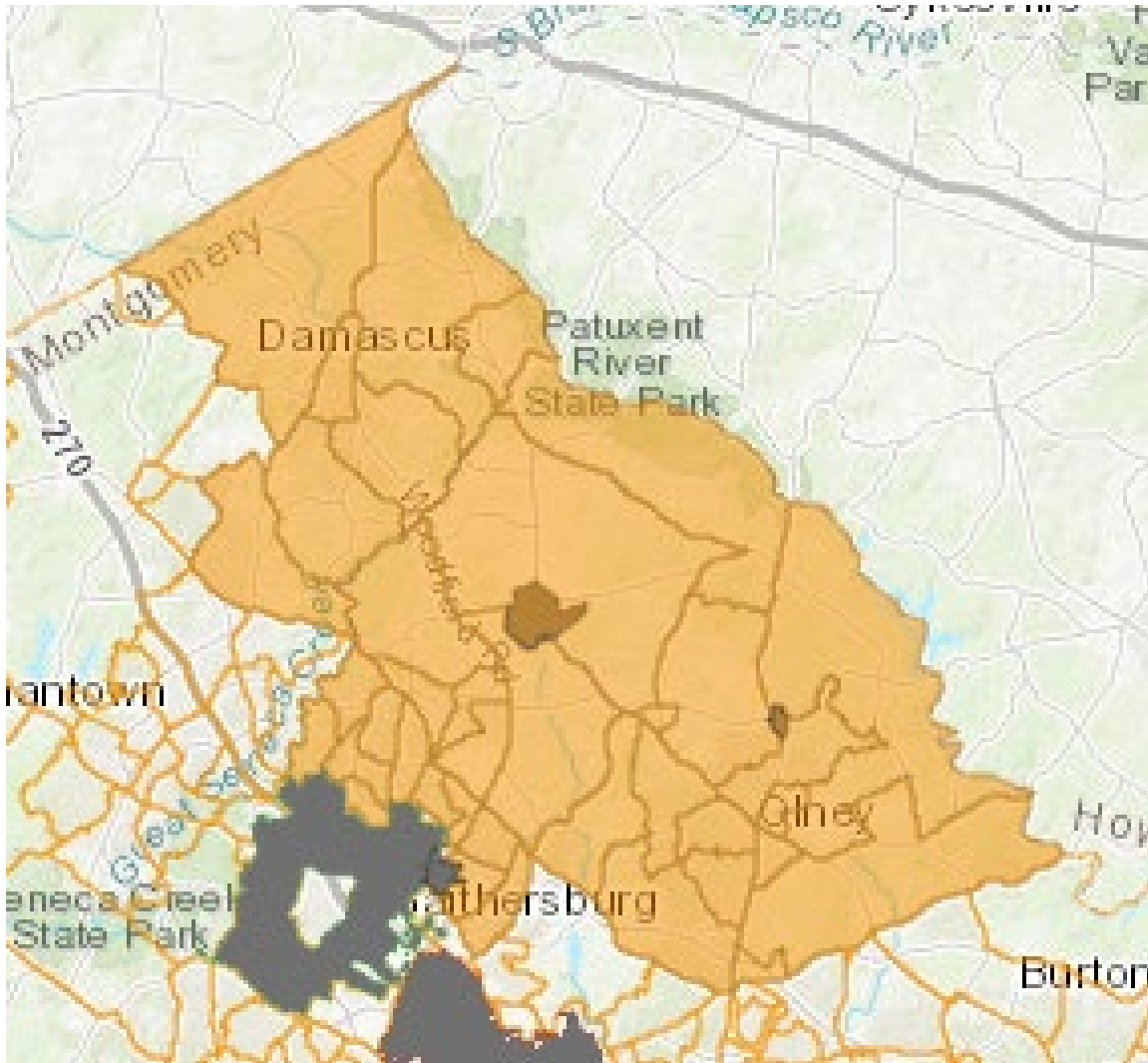| District	Asian	Black	Hispanic	Other	White	Total
1	24,458	7,533	12,399	8,956	101,573	154,919
2	36,316	29,700	26,758	8,249	51,801	152,824
3	30,908	21,363	35,520	8,473	59,702	155,966
4	14,361	31,439	29,309	8,782	66,735	150,626
5	17,331	54,260	27,236	7,465	41,381	147,673
6	17,730	24,565	51,718	7,643	43,420	145,076
7	21,816	24,229	34,613	8,496	66,472	155,626

District Demographics; Total Percentages

District	%Asian	%Black	%Hispanic	%Other	%White
1	15.8%	4.9%	8.0%	5.8%	65.6%
2	23.8%	19.4%	17.5%	5.4%	33.9%
3	19.8%	13.7%	22.8%	5.4%	38.3%
4	9.5%	20.9%	19.5%	5.8%	44.3%
5	11.7%	36.7%	18.4%	5.1%	28.0%
6	12.2%	16.9%	35.6%	5.3%	29.9%
7	14.0%	15.6%	22.2%	5.5%	42.7%

District Voting Age Demographics - Population

District	Asian	Black	Hispanic	Other	White	Total
1	19,001	5,727	8,797	5,016	81,219	119,760
2	28,173	21,153	18,670	4,684	42,457	115,137
3	24,998	16,338	25,038	5,186	50,659	122,219
4	11,901	24,810	20,664	5,439	55,299	118,113
5	14,721	40,781	19,144	4,885	34,485	114,016
6	14,812	19,022	36,746	4,749	35,945	111,274
7	17,209	17,889	23,705	4,868	54,578	118,249

District Voting Age Demographics – Percentages

District	%Asian	%Black	%Hispanic	%Other	%White
1	15.9%	4.8%	7.3%	4.2%	67.8%
2	24.5%	18.4%	16.2%	4.1%	36.9%
3	20.5%	13.4%	20.5%	4.2%	41.4%
4	10.1%	21.0%	17.5%	4.6%	46.8%
5	12.9%	35.8%	16.8%	4.3%	30.2%
6	13.3%	17.1%	33.0%	4.3%	32.3%
7	14.6%	15.1%	20.0%	4.1%	46.2%

Expedited Bill No. xx-21
Concerning: Elections   –   Council Boundaries – Redistricting
Revised: Draft No.   2
Introduced: _____
Expires: _____
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None _____
Ch. _____ , Laws of Mont. Co. _____

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: County Council

AN EXPEDITED ACT to:
  (1) revise the boundaries of Council districts; and
  (2) generally amend the law related to elections and redistricting.

By amending
  Montgomery County Code
  Chapter 16, Elections
  Section 16-2

Boldface	*Heading or defined term.*
Underlining	*Added to existing law by original bill.*
[Single boldface brackets]	*Deleted from existing law by original bill.*
Double underlining	*Added by amendment.*
[[Double boldface brackets]]	*Deleted from existing law or the bill by amendment.*
* * *	*Existing law unaffected by bill.*

The County Council for Montgomery County, Maryland approves the following Act:

   Sec. 1. Section 16-2 is repealed and approved as follows:

16-2. Boundaries of Council districts.

   The boundaries of the [5] 7 Council districts required under Section 103 of the County Charter are [as follows] shown on a Geographic Information Systems (GIS) map located on the Council's website and identified as the 2021 Approved Council District Map.

   [*District 1:* The southern boundary of District 1 begins at the junction of the boundary lines of Montgomery County, Maryland, the District of Columbia, and Fairfax County, Virginia; then northwesterly, meandering along west bank of the Potomac River, the boundary line of Montgomery County and Fairfax County; then continuing northwesterly, meandering along the Potomac River, to the boundary line of Montgomery County, Maryland and Loudoun County (Virginia); then continuing northwesterly and northeasterly along the western boundary of the Potomac River to its junction with the boundary of Montgomery County, Maryland and Frederick County, Maryland; then northeasterly along the Frederick County boundary line to its junction with the center line of Dickerson Road (MD Route 28); then southeasterly and southwesterly along the center line of Dickerson Road (MD Route 28), continuing as Darnstown Road (MD Route 28); then continuing southeasterly along the center line of Darnestown Road (MD Route 28) to its intersection with the center line of Turkey Foot Road; then southeasterly along the center line of Turkey Foot Road to its junction with the center line of Travilah Road; then easterly and northeasterly along the center line of Travilah Road to its junction with center line of Piney Meetinghouse Road; then southerly along the center line of Piney Meetinghouse Road to its intersection with the Potomac Electric Power Company right-of-way; then southeasterly along Potomac Electric Power Company right-of-way to its intersection with the center line of Falls Road (MD Route 189); then easterly to its junction with the center line of Montrose Road; then easterly along the

center line of Montrose Road and a straight line of prolongation to its junction with the center line of Rockville Pike (MD Route 355); then northwesterly along the center line of Rockville Pike (MD Route 355) to its intersection with the center line of Halpine Road and a line of prolongation to the center line of the CSX Railroad right-of-way; then southeast along the center line of the CSX Railroad right-of-way to its intersection with the municipal boundary of the Town of Kensington; then northeasterly and east along the Town of Kensington municipal boundary line to the center line of Connecticut Avenue (MD Route 185); then north along the center line of Connecticut Avenue (MD Route 185) to its junction with the center line of Lawrence Avenue; then east along the center line of Lawrence Avenue to its junction with the center line of University Boulevard West (MD Route 193); then northeasterly along the center line of University Boulevard West (MD Route 193) to its intersection with the center line of Drumm Avenue; then southwesterly along the center line of Drumm Avenue and continuing south along a line of prolongation to its junction with the center line of Meredith Avenue (at Oberon Street); then south along the center line of Meredith Avenue to its intersection with the center line of Edgewood Road; then westerly along the center line of Edgewood Road and a line of prolongation to the center line of the CSX Railroad right-of-way; then continuing southeasterly along the CSX Railroad right-of-way to its intersection with the center line of Brookville Road; then southwesterly along the center line of Brookville Road to its junction with the center line of Lyttonsville Place; then southeasterly along the center line of Lyttonsville Place to its intersection with the center line of the Georgetown Branch Trail; then southwesterly along the center line of the Georgetown Branch Trail to its junction with Brookville Access Road; then southwest along the center line of Brookville Access Road to its junction with the center line of Grubb Road; then southeasterly along the center line of Grubb Road to its intersection with the center line of East West Highway (MD Route 410); then

northeasterly, easterly and northeasterly along the center line of East West Highway (MD Route 410) to its junction with the center line of Rosemary Hills Drive; then southeasterly along a line of prolongation from the center line of Rosemary Hills Drive to its intersection with the boundary line of Montgomery County, Maryland and the District of Columbia; then southwesterly along the boundary line of Montgomery County to the junction of the boundary line of Montgomery County, Maryland, the District of Columbia and Fairfax County, Virginia, the point of beginning.**]**

[*District 2:* The southern boundary of District 2 begins at the junction of the center line of Lake Winds Way and the center line of Travilah Road; then westerly along the center line of Travilah Road to its junction with the center line of Turkey Foot Road; then northwesterly along the center line of Turkey Foot Road to its junction with the center line of Darnestown Road (MD Route 28); then southwesterly and northwesterly along the center line of Darnestown Road (MD Route 28), continuing northeasterly and northwesterly as Dickerson Road (MD Route 28) to the boundary line of Montgomery County, Maryland and Frederick County, Maryland; then northeasterly along Montgomery County, Maryland and Frederick County, Maryland boundary line to the point at Parrs Spring where the boundary lines of Montgomery County, Maryland, Frederick County, Maryland, and Howard County, Maryland converge; then southwesterly and southeasterly along the boundary line of Montgomery County, Maryland and Howard County, Maryland following the center line of the Patuxent River to its intersection with the center line of Mullinix Mill Road; then southwesterly along the center line of Mullinix Mill Road to its junction with the center line of Damascus Road (MD Route 108); then southeasterly along the center line of Damascus Road (MD Route 108) to its junction with the center line of Jarl Drive; then southwesterly along the center line of Jarl Drive and a line of prolongation to its junction with the center line of Great Seneca

Creek; then meandering southeasterly and southwesterly along the center line of Great Seneca Creek to its intersection with the center line of Woodfield Road (MD Route 124); then southwesterly along the center line of Woodfield Road (MD Route 124) to its junction with the center line of the north end of Hadley Farms Drive; then westerly, southerly and southeasterly along a line encompassing all of the streets connected to Hadley Farms Drive to the junction of that line with the center line of Cabin Branch Tributary at a point east and south of Boxberry Terrace; then meandering southwesterly along the center line of Cabin Branch Tributary to its intersection with the center line of Snouffer School Road; then southeasterly along Snoufffer School Road to its intersection with the center line of Flower Hill Way; then southerly and southeasterly along the center line of Flower Hill Way to its junction with the center line of Woodfield Road (MD Route 124); then southwesterly along the center line of Woodfield Road (MD Route 124) to its intersection with the center line of Emory Grove Road; then northwesterly along Emory Grove Road to its intersection with the center line of Goshen Road; then south along the center line of Goshen Road to its intersection with the center line of Odend'hal Avenue; then west along the center line of Odend'hal Avenue to its intersection with the center line of Lost Knife Road; then northwest along the center line of Lost Knife Road to its junction with Montgomery Village Avenue (MD Route 124); then southwest along Montgomery Village Avenue (MD Route 124) to the municipal boundary of the City of Gaithersburg; then west, north, northwesterly along the City of Gaithersburg municipal boundary line to its junction with the center line of Watkins Mill Road; then northeast along the center line of Watkins Mill Road to its junction with the municipal boundary line (north of Whetstone Run); then northwesterly, southwesterly, west, and southwest along the municipal boundary line to its junction with the center line of Old Game Preserve Road, immediately north of the Potomac Electric Power Company right-of-way; then northwesterly along the center line of

Old Game Preserve Road to its junction with the center line of Arrowsmith Court; then northwesterly along the center line of Arrowsmith Court to its junction with the center line of Game Preserve Road; then southwesterly along the center line of Game Preserve Road to its intersection with the center line of North Frederick Avenue (MD Route 355); then northerly along the center line of North Frederick Avenue (MD Route 355) to its intersection with the center line of Great Seneca Creek; then meandering westerly and southerly along the center line of Great Seneca Creek to its intersection with the center line of the Potomac Electric Power Company right-of-way; then southeasterly along the center line of Potomac Electric Power Company right-of-way to its intersection with the center line of Darnestown Road (MD Route 28); then easterly along the center line of Darnestown Road (MD Route 28) to its intersection with the center line of Dufief Mill Road; then southwesterly along the center line of Dufief Mill Road to its junction with the center line of Lake Winds Way; then southerly along the center line of Lake Winds Way to its junction with the center line of Travilah Road, the point of beginning.**]**

[*District 3:* The southwestern boundary of District 3 begins at the center line of the Potomac Electric Power Company right-of-way and the center line of Piney Meetinghouse Road; then northwesterly and northerly along the center line of Piney Meetinghouse Road to its junction with the center line of Travilah Road; then southwesterly along the center line of Travilah Road to its junction with the center line of Lake Winds Way; then northwesterly along the center line of Lake Winds Way to its junction with the center line of Dufief Mill Road; then northeasterly along the center line of Dufief Mill Road to its junction with the center line of Darnestown Road (MD Route 28); then northwesterly along the center line of Darnestown Road (MD Route 28) to its junction with the center line of the Potomac Electric Power Company right-of-way; then northwesterly along the center line of the Potomac Electric Power Company right-of-way to its intersection with the center line of Great

Seneca Creek; then meandering northeasterly along the center line of Great Seneca Creek to its intersection with the center line of Frederick Road (MD Route 355); then southeasterly along the center line of Frederick Road (MD Route 355) to its intersection with the center line of Game Preserve Road; then northeast along the center line of Game Preserve Road to its junction with the center line of Arrowsmith Court; then southeasterly along the center line of Arrowsmith Court to its junction with the center line of Old Game Preserve Road; then southeasterly along the center line of Old Game Preserve Road to its junction with the northwestern municipal boundary line of the City of Gaithersburg immediately north of the Potomac Electric Power Company right-of-way; then north, easterly, northeasterly, and southeasterly along the municipal boundary line of the City of Gaithersburg to its intersection with the center line of Watkins Mill Road; then southwesterly along the center line of Watkins Mill Road to its junction with the municipal boundary (south of Whetstone Run); then southeasterly and south along the municipal boundary line of the City of Gaithersburg to its intersection with the center line of Montgomery Village Avenue (MD Route 124); then northeasterly along the center line of Montgomery Village Avenue (MD Route 124) to its junction with the center line of Lost Knife Road; then southeasterly along the center line of Lost Knife Road to its junction with Odend'hal Avenue; then east along the center line of Odend'hal Avenue to its junction with the center line of Goshen Road; then north along the center line of Goshen Road to its intersection with the center line of Emory Grove Road; then southeasterly along the center line of Emory Grove Road to its intersection with the center line of Woodfield Road (MD Route 124); then southwesterly along the center line of Woodfield Road (MD Route 124) to its junction with the center line of Midcounty Highway; then southeasterly along the center line of Midcounty Highway to its junction with the center line of Shady Grove Road; then northeasterly along the center line of Shady Grove Road to its junction with the center line of Muncaster Mill Road (MD Route

115); then southeasterly along the center line of Muncaster Mill Road (MD Route 115) to its junction with the center line of Norbeck Road (MD Route 28); then east along the center line of Norbeck Road (MD Route 28) to its junction with a line of prolongation to the northeastern boundary of Leisure World of Maryland; then southeasterly, southwesterly and westerly along the Leisure World of Maryland boundary line to its junction with the center line of Georgia Avenue (MD Route 97); then southeasterly along the center line of Georgia Avenue (MD Route 97) to its junction with the center line of Aspen Hill Road; then west and southwesterly along the center line of Aspen Hill Road to its junction with Veirs Mill Road (MD Route 586); then northwest along the center line of Veirs Mill Road (MD Route 586) to its intersection with the center line of Rock Creek; then southeasterly meandering along the center line of Rock Creek to its junction with the southern boundary line of Rock Creek Park; then west, north and west along the Rock Creek Park boundary line to its junction with the southeast corner of the boundary line of Parklawn Memorial Park Cemetery; then westerly and northerly along the Parklawn Memorial Park Cemetery boundary to its junction with the center line of an unnamed creek; then northwesterly meandering along the unnamed creek to a line of prolongation to the center line of Fishers Lane; then west along the center line of Fishers Lane and a line of prolongation to the center line of Halpine Road; then southwest along the center line of Halpine Road to its intersection with the center line of Rockville Pike (MD Route 355); then southeasterly along the center line of Rockville Pike (MD Route 355) to its junction with a line of prolongation to the center line of Montrose Road; then westerly along the center line of Montrose Road to its junction with the center line of Falls Road (MD Route 189); then southwesterly along the center line of Falls Road (MD Route 189) to its junction with the center line of the Potomac Electric Power Company right-of-way; then northwesterly along the center line of the

Potomac Electric Power Company right-of-way to the center line of Piney Meetinghouse Road, the point of beginning.]

[*District 4:* The southeastern boundary of District 4 begins at the junction of the center line of Ednor Road and the center line of the Patuxent River, the boundary line of Montgomery County, Maryland and Howard County, Maryland; then northwesterly meandering along the county boundary line to its intersection with the center line of Mullinix Mill Road; then southwesterly along the center line of Mullinix Mill Road to its junction with the center line of Damascus Road (MD Route 108); then southeasterly along the center line of Damascus Road (MD Route 108) to its junction with the center line of Jarl Road; then southwesterly along the center line of Jarl Road to its junction with the center line of Great Seneca Creek; then east and southwesterly meandering along the center line of Great Seneca Creek to its intersection with the center line of Woodfield Road (MD Route 124); then southeasterly along the center line of Woodfield Road (MD Route 124) to its north junction with the center line of Hadley Farms Drive; then westerly, southerly and southeasterly along a line encompassing all streets connected to Hadley Farms Drive to a junction with the center line of Cabin Branch Tributary at a point south of Boxberry Terrace; then meandering southwesterly along the center line of the Cabin Branch Tributary to its intersection with the center line of Snouffer School Road; then southeasterly along the center line of Snouffer School Road to its intersection with the center line of Flower Hill Way; then southwesterly and southeasterly along the center line of Flower Hill Way to its intersection with the center line of Woodfield Road (MD Route 124); then southwest along the center line of Woodfield Road (MD Route 124) to its junction with the center line of Midcounty Highway; then southeasterly along the center line of Midcounty Highway to its junction with the center line of Shady Grove Road; then northeasterly along the center line of Shady Grove Road to its junction with the center line of Muncaster Mill Road (MD

Route 115); then southeasterly along the center line of Muncaster Mill Road (MD Route 115) to its intersection with the center line of Norbeck Road (MD Route 28); then east along the center line of Norbeck Road (MD Route 28) to its junction with a line of prolongation to the northeastern boundary of Leisure World of Maryland; then southeasterly, southwesterly and westerly along the Leisure World of Maryland corporate boundary line to its junction with the center line of Georgia Avenue (MD Route 97); then southeasterly along the center line of Georgia Avenue (MD Route 97) to its junction with the center line of Aspen Hill Road; then west and southwesterly along the center line of Aspen Hill Road to its junction with the center line of Veirs Mill Road (MD Route 586); then northwest along the center line of Veirs Mill Road (MD Route 586) to its intersection with the center line of Rock Creek; then meandering southeasterly along the center line of Rock Creek to its junction with the southern boundary line of Rock Creek Park; then west, north and south along the Rock Creek Park boundary line to its junction with Parklawn Memorial Park Cemetery continuing west along the Parklawn Memorial Park Cemetery boundary line; then southwest, northwest and north along the Parklawn Memorial Park Cemetery boundary line to its junction with the center line of an unnamed creek; then meandering west along the center line of that unnamed creek to the center line of Fishers Lane; then west along the center line of Fishers Lane and a line of prolongation to the center line of the CSX Railroad right-of-way; then continuing southeasterly along the center line of the CSX Railroad right-of-way to its junction with the center line of Summit Avenue; then northeast along the center line of Summit Avenue to its junction with the municipal boundary of the Town of Kensington; then northeast and east along the municipal boundary line of the Town of Kensington to its intersection with Connecticut Avenue (MD Route 185); then north along the center line of Connecticut Avenue (MD Route 185) to its intersection with the center line of Lawrence Avenue; then east along the center line of Lawrence

Avenue to its junction with the center line of University Boulevard West (MD Route 193); then northeasterly along the center line of University Boulevard West (MD Route 193) to its junction with the center line of Drumm Avenue; then southwesterly along the center line of Drumm Avenue and a line of prolongation to the center line of Drumm Avenue to its intersection with the center line of Plyers Mill Road; then east along the center line of Plyers Mill Road to its intersection with the center line of Georgia Avenue (MD Route 97); then southeast along the center line of Georgia Avenue (MD Route 97) to its intersection with the center line of Dennis Avenue; then easterly along the center line of Dennis Avenue to the center line of Sligo Creek; then northerly meandering along the center line of Sligo Creek to its junction with the center line of University Boulevard West (MD Route 193); then southeasterly along the center line of University Boulevard West (MD Route 193) to its junction with a line of extended prolongation (at Arcola Avenue) following that line northeasterly and southeasterly to its junction with the center line of Northwest Branch; then northerly meandering along the center line of Northwest Branch to a line of prolongation and its convergence with the center line of Springbrook Drive; then southeasterly along the center line of Springbrook Drive to its junction with the center line of Warrenton Drive; then northeasterly along the center line of Warrenton Drive to its junction with New Hampshire Avenue (MD Route 650); then north along the center line of New Hampshire Avenue (MD Route 650) to its junction with the center line of Norwood Road; then northwesterly along the center line of Norwood Road to its junction with the center line of Ednor Road; then northeasterly along the center line of Ednor Road to its junction with the center line of the Patuxent River, the boundary line of Montgomery County, Maryland and Howard County, Maryland, the point of beginning.]

[*District 5:* The southwestern boundary of District 5 begins at the boundary line of Montgomery County, Maryland and the District of Columbia (at Rosemary

Hills Drive); then continuing northwest along a line of prolongation to its junction with the center line of East West Highway (MD Route 410); then west along the center line of East West Highway (MD Route 410) to its intersection with the center line of Grubb Road; then northwest along the center line of Grubb Road to its junction with the center line of Brookville Access Road; then north along the center line of Brookville Access Road to its junction with the center line of Georgetown Branch Trail; then northeasterly along the center line of the Georgetown Branch Trail to its intersection with the center line of Lyttonsville Place; then northwesterly along the center line of Lyttonsville Place to its junction with the center line of Brookville Road; then northeasterly along the center line of Brookville Road to its intersection with the center line of the CSX Railroad right-of-way; then northwesterly along the center line of the right-of-way of the CSX Railroad and a line of prolongation east to the center line of Edgewood Road; then east along the center line of Edgewood Road to its intersection with the center line of Meredith Avenue; then north along the center line of Meredith Avenue and a line of prolongation (at Oberon Street) to the center line of Drumm Avenue; then northwesterly along the center line of Drumm Avenue to its intersection with the center line of Plyers Mill Road; then east along the center line of Plyers Mill Road to its intersection with the center line of Georgia Avenue (MD Route 97); then southeasterly along the center line of Georgia Avenue (MD Route 97) to its intersection with the center line of Dennis Avenue; then easterly along the center line of Dennis Avenue to the center line of Sligo Creek; then northerly meandering along the center line of Sligo Creek to its junction with the center line of University Boulevard West (MD Route 193); then southeasterly along the center line of University Boulevard West (MD Route 193) to its junction with a line of prolongation (at Arcola Avenue); then northeasterly along the center line of that line of prolongation extending northeasterly to its junction with the center line of

Northwest Branch; then northerly meandering along the center line of Northwest Branch to a line of prolongation easterly to the center line of Springbrook Drive; then easterly along the center line of Springbrook Drive to its junction with the center line of Warrenton Drive; then northeasterly along the center line of Warrenton Drive to its junction with the center line of New Hampshire Avenue (MD Route 650); then north along the center line of New Hampshire Avenue (MD Route 650) to its junction with the center line of Norwood Road; then northwesterly along the center line of Norwood Road to its junction with the center line of Ednor Road; then northeasterly along the center line of Ednor Road to its junction with the center line of the Patuxent River, the boundary line of Montgomery County, Maryland and Howard County, Maryland; then southeasterly meandering along the Patuxent River, the county boundary line, to its junction with the boundary line of Montgomery County, Maryland and Prince George's County, Maryland; then southwesterly along the county boundary line, continuing as the county boundary to its junction with the boundary line of Montgomery County, Maryland and the District of Columbia (Eastern Avenue); then northwest and southwest along the county boundary line to a point of prolongation from East West Highway (at Rosemary Hills Drive), the point of beginning.**]**

Sec. 2. Expedited Effective Date.

The Council declares the district boundaries are effective immediately for the purpose of regulating Council elections conducted after December 31, 2021. This Act takes effect on the date on which it becomes law.

Approved:

_____

Tom Hucker, President, County Council   Date

Approved:

_____

Marc Elrich, County Executive   Date

This is a correct copy of Council action.

_____

Selena Mendy Singleton, Esq., Clerk of the Council   Date

Marc Elrich
County Executive

OFFICE OF THE COUNTY ATTORNEY

Marc P. Hansen
County Attorney

MEMORANDUM

TO: Redistricting Commission Members

FROM: Erin J. Ashbarry
Associate County Attorney

DATE: March 9, 2021

RE: Legal Issues in Redistricting:
1.   Traditional Districting Criteria
2.   Substantially Equal Population: One Person, One Vote
3.   The Voting Rights Act of 1965 and Racial Gerrymandering
4.   Equal Protection Clause and Racial Gerrymandering
5.   Constitutional Challenges to Political Gerrymandering

This memo's purpose is to provide the Commission with a legal road map of its duties. The County Charter's requirements for Council districts are terse: the Commission must create **seven** districts[1] that are: (1) compact in form, (2) composed of adjoining territory, and (3) substantially equal in population.[2]

Council districts the Commission creates must also comply with federal laws mandating equality in voting: the 14th and 15th Amendments to the U.S. Constitution and the Voting Rights Act. The 14th Amendment's Equal Protection Clause mandates that electoral districts be of nearly equal population so that each person's vote has equal weight in the election of their representative.[3] The Equal Protection Clause also prohibits using race as the predominant factor

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[1] In the November 2020 election, County voters approved Question C on the ballot to amend the County's Charter to: expand the County Council to consist of 11, rather than the current 9, Councilmembers; **increase from 5 to 7 the number of Council districts;** and elect 7 Councilmembers by district and 4 Councilmembers at large.

[2] Section 103 of the Montgomery County Charter states: "Each [Council] district shall be compact in form and becomposed of adjoining territory. Populations of the council districts shall be substantially equal."

[3] The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution states, "no State shall ... denyto any person within its jurisdiction the equal protection of the laws." *See also Voinovich v. Quilter,* 507 U.S. 146, 160-61 (1993).

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(37)

in districting to intentionally segregate voters based upon their race and lessen the weight of their vote.[4] The 15th Amendment of the U.S. Constitution also prohibits abridging the right to vote onthe basis ofrace.[5] The Voting Rights Act, enacted in 1965 to enforce the 15th Amendment,[6] prohibits the denial, on the basis of race or color, of the equal opportunity to participate in the political process and elect candidates of their choice.

As you create the seven districts that are compact in form, composed of adjoining territory, and substantially equal in population, you must be solicitous of the Voting Rights Act'sprohibition against voting procedures that have the purpose or effect of abridging the right to vote based on race, but mindful of the Equal Protection Clause's prohibition against intentionally segregating voters based upon race.

I.   **TRADITIONAL DISTRICTING CRITERIA: COMPACTNESS, CONTIGUITY, AND OTHERS**

Over the years, the courts have identified a number of valid considerations when drawing districts. These include: (1) compactness, (2) contiguity, (3) respect for political subdivisions, (4) community shared interests, (5) geography, and even (6) avoiding contests between incumbents or protection of incumbency. [7] Two of these considerations are mandatory under our Charter: compactness and contiguity. These two factors are intended to prevent political gerrymandering.[8]

A.   Compactness

When reviewing our Charter's compactness requirement, the Maryland Court of Special Appeals looked to cases construing an identical compactness requirement in the State Constitution.[9]

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[4] *See Bush v. Vera,* 517 U.S. 952, 959 (1996); *Shaw v. Reno,* 509 U.S. 630, 641-643 (1993).

[5] The Fifteenth Amendment states, "The right of citizens of the United States to vote shall not be denied or abridgedby the United States or by any State on account of race, color, or previous condition of servitude."

[6] *See In re Legislative Redistricting of the State,* 370 Md. 312, 326 n.8 (2002).

[7] *See Miller v. Johnson,* 515 U.S. 900,916 (1995); *Abrams v. Johnson,* 521 U.S. 74, 98 (1997).

[8] *In re Legislative Districting,* 299 Md. 658, 675 (1982). The term gerrymander "was given birth in 1812 followinga cartoonist's drawing of a Massachusetts legislative district that he described as appearing like a 'salamander.' An astute observer suggested that the district might more properly be described as a 'gerrymander' after then Governorof Massachusetts Eldridge Gerry who had a role, albeit a minor one, the construction of the district." *In re Legislative Districting,* 299 Md. at 676 n. 8.

[9] *Ajamian v. Montgomery County,* 99 Md. App. 665, 690 (1994). Art. III, § 4 of the Maryland Constitution requiresthat "[e]ach [state] legislative district shall ...   be compact in form."

[T]he ideal of compactness, in geometric terms, is a circle, with the perimeter of a district equidistant from its center. With the possible exception of Colorado, however, no jurisdiction has defined or applied the compactness requirement in geometric terms. On the contrary, most jurisdictions have concluded that the constitutional compactness requirement, in a state legislative redistricting context, is a relative rather than an absolute standard.[10]

Compactness is a requirement for a close union of territory rather than a requirement dependent upon a district being of any particular shape or size. But it is subservient to the federal constitutional requirement of substantial equality of population among districts.[11]

B.   Contiguity

Like our Charter, the State Constitution also has a contiguity requirement.[12] "The contiguity requirement mandates that there be no division between one part of a district's territory and the rest of the district; in other words, contiguous territory is territory touching, adjoining and connected, as distinguished from territory separated by other territory."[13]

Contiguity is also subservient to the federal constitutional requirement of equality of population among districts.[14]

II.   SUBSTANTIALLY EQUAL POPULATION: ONE PERSON, ONE VOTE

The Equal Protection Clause of the Fourteenth Amendment requires that state and local districts assure that one citizen's vote is approximately equal in weight to that of every other citizen, also known as the "one person, one vote" principle. This means that the government must give each qualified voter an equal opportunity to participate in an election, "and when members of an elected body are chosen from separate districts, each district must be established on a basis that will ensure, as far as is practicable, that equal number of voters can vote for proportionally equal numbers of officials."[15]

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[10] *In re Legislative Districting,* 299 Md. 658, 676 (1982).

[11] *See In re Legislative Districting,* 299 Md. 658, 680 n.14 (1982).

[12] Art. III,§ 4 of the Maryland Constitution states that "[e]ach [state] legislative district shall consist of adjoining territory."

[13] *In re Legislative Districting,* 299 Md. 658, 675 (1982).

[14] *See In re Legislative Districting,* 299 Md. 658, 680 (1982).

[15] *Hadley v. Junior College Dist. of Metro. Kansas City,* 397 U.S. 50, 56 (1970).

Over time, the courts have established a formula for analyzing the "maximum population deviation" among districts for legislatively enacted redistricting plans for state or local representatives.[16] The court first creates a hypothetical ideal district by dividing the total population[17] of the political unit (state, city, or county) by the total number of district-elected representatives who serve that population (in our case, that number is 7). Then the court adds together the percentage population variation of the largest and smallest district in comparison to the ideal district. If that figure is under 10% the court regards the difference as *de minimis* and is unlikely to find an Equal Protection violation. If that figure is over 10% the court regards the difference as presumptively invalid and the government must provide substantial justification to sustain the plan.[18] Finally, there is a level of population disparity beyond which the government can offer no possible justification. Although it is not clear precisely what that upper level is, the Supreme Court has stated that a maximum deviation of 16.4% "may well approach tolerable limits."[19]

The Commission should strive to create districts which meet the formula described above. In our case, the hypothetical ideal district is the total county population divided by 7. The sum of the percentage variation of the largest and smallest district in comparison to that ideal district should be under 10%.

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[16] The Supreme Court has repeatedly recognized that congressional apportionment plans, which are tested under Art. I, § 2 of the United States Constitution, are subject to stricter standards of population equality than are state or local legislative districting plans, which are tested under the Equal Protection Clause of the Fourteenth Amendment. *See Daly v. Hunt,* 93 F.3d 1212, 1216 n.5 (4th Cir. 1996). Court ordered apportionment plans must also meet more exacting standards. *See id.* at 1217 n.7

[17] The courts have often used total population as the pertinent measure rather than voting-age population. The use of *total* population advances "representational equality," ensuring "that all constituents, whether or not they are eligible to vote, have roughly equal access to their elected representatives to voice their opinions or otherwise to advance their interests." *Daly v. Hunt,* 93 F.3d 1212, 1223 (4th Cir. 1996). In contrast, the use of *voting age* population advances "electoral equality," ensuring "that, regardless of the size of the whole body of constituents, political power, as defined by the number of those eligible to vote, is equalized as between districts holding the same number of representatives. It also assures that those eligible to vote do not suffer dilution of that important right by having their vote given less weight than that of electors in another location." *Id.*

[18] *See Daly v. Hunt,* 93 F.3d 1212, 1217-18 (4th Cir. 1996). Unlike a § 2 Voting Rights Act case (described below), the plaintiff need not demonstrate that the malapportionment actually lessened his ability to participate in the political process or to receive equally effective access to an elected representative. The harm is presumed in one person, one vote cases.

[19] *Mahan v. Howell,* 410 U.S. 315, 329 (1973).

III.　　**VOTING RIGHTS ACT OF 1965 AND RACIAL GERRYMANDERING**

While creating districts substantially equal in population, the Commission must be aware of Section 2 of the Voting Rights Act of 1965 (the "VRA"),[20] which prohibits any law or practice which results in a denial or abridgement of the right to vote based upon race.[21] A plaintiff can establish a violation of the VRA by proving that:

> **based on the totality of circumstances,** . . . the political processes leading to nomination or election in the . . . political subdivision are not equally open to participation by members of a [protected class] 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. The extent to which members of a protected class have been elected to office in the State or political subdivision is **one circumstance** which may be considered: Provided, that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.[22]

Taken as a whole, the VRA "prohibits any practice or procedure that, interacting with social and historical conditions, impairs the ability of a protected class to elect its candidate of choice on an equal basis with other voters."[23]

Opportunity is the touchstone under the VRA; the statute only protects the plaintiffs' right to equal opportunity or equal access to the political process.[24] It does not entitle any of the protected classes to be represented by a member of its own group.[25] Under the statute, no group has a right to electoral victory.[26] In the same vein, the statute also does not entitle any group of persons to have their political clout maximized.[27]

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[20] 52 U.S.C. § 10301(b).

[21] Prior to a 1982 amendment, a plaintiff had to prove discriminatory intent. Now, a Section 2 plaintiff need not prove that the challenged law was enacted with a racially discriminatory intent, but only that the law has a discriminatory result. *Thornburg* v. *Gingles,* 478 U.S. 30, 43-44 (1986).

[22] 52 U.S.C. § 10301(b) (emphasis added).

[23] *Voinovich* v. *Quilter,* 507 U.S. 146, 153 (1993) (quotation omitted).

[24] *See Johnson v. De Grandy,* 512 U.S. 997 (1994).

[25] *Lodge v. Buxton,* 639 F.2d 1358, 1374 (5th Cir. 1982), *aff'd sub nom., Rogers* v. *Lodge,* 458 U.S. 613, 624-26 (1982).

[26] *See Whitcomb* v. *Chavis,* 403 U.S. 124, 153-55 (1971).

[27] *See Bartlett v. Strickland,* 2009 U.S. LEXIS 1842 28, 129 S. Ct. 1231, 1243 (2009); *Johnson v. De Grandy,* 512 U.S. 997 (1994).

The opportunity to participate in the political process is affected when a minority group's voice at the polls is diluted "either by the dispersal of [a minority group] into districts in which they constitute an ineffective minority of voters or from the concentration of [the minority group] into districts where they constitute an excessive majority."[28]

As described below, courts interpreting the VRA review many factors to analyze whether the right to equal opportunity or access to the political process is impaired.

A. The Three Preconditions to Suit Under the VRA

To establish vote dilution in violation of the VRA, a minority group must establish the existence of three threshold conditions: 1) the i:ninority group must be sufficiently large and geographically compact to constitute a majority in a single-member district; 2) the minority group must be politically cohesive; and 3) the white majority votes sufficiently as a bloc to enable it to usually defeat the minority's preferred candidate.[29] The plaintiffs' failure to sustain their burden of proof on any one of these three factors is fatal to their case because, in their absence, the court cannot consider the structure or device being discharged to be the cause of the minority's inability to elect its preferred candidate.[30]

B. The "Totality of the Circumstances" Test: Factors Reviewed by Courts to Decide Whether Members of a Minority Group Have Less Opportunity to Participate in the Political Process Than Others

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[28] *Voinovich v. Quilter,* 507 U.S. 146, 154 (1993). *See also League of United Latin American Citizens v. Perry,* 548 U.S. 299 (2006) (finding portion of Texas redistricting plan violated Section 2 of Voting Rights Act because it diluted voting strength of minorities).

[29] *See Abbott v. Perez,* -- U.S.--, 138 S. Ct. 2305, 2330-31 (2018); *League of United Latin American Citizens v.* Perry, 548 U.S. 399,425 (2006); *Thornburg v. Gingles,* 478 U.S. 30, 50-51 (1986). Although these preconditions apply in cases which attack purely at-large, mixed at-large/district, and purely district systems, *Grawe v. Emison,* 507 U.S. 25, 40 (1993), the proof will vary in each case. For example, as to the first factor, if plaintiffs are challenging the use of a multimember (at-large) district, they will have to show that "within each contested multimember district there exists a minority group that is sufficiently large and compact to constitute a single-member district." *Thornburg,* 478 U.S. at 50 n.16. On the other hand, plaintiffs challenging a single-member districting plan "might allege that the minority group is sufficiently large and compact to constitute a single-member district that has been split between two or more ... single-member districts, with the effect of diluting the potential strength of the minority vote. *Id.*

[30] *See Thornburg v. Gingles,* 478 U.S. 30, 48-51 (1986).

A plaintiff's satisfaction of the three necessary preconditions does not, by itself, prove a VRA violation. Under the statute, a plaintiff still has the burden of proving, "based on the totality of circumstances," the challenged electoral practice or structure results in an electoral system that is not equally open to participation by members of the plaintiffs class.[31] Plaintiff must show that members of plaintiffs class have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.[32] The statute itself identifies only "one circumstance which may be considered" - the extent to which minorities are elected over time to determine whether a district plan prohibits participation by a group or class. Over time, the Supreme Court has identified many other factors as relevant for a court to review in a VRA claim.

1. The Senate Factors

The Supreme Court reviews the following factors, identified by the Senate in 1982 when it amended the VRA, to determine whether a political process is open to participation by minorities:

1. Any history of discrimination touching the right to register, vote, or otherwise participate in the democratic process;
2. The extent of any racially polarized voting;
3. The use of any election devices (*e.g.,* majority vote requirements) which may lead to discrimination against minorities;
4. Evidence of exclusion of minorities from candidate slating procedures;
5. The extent to which the socioeconomic effects of past discrimination affect the ability of minorities to participate in the democratic process;
6. Whether campaigns have been characterized by overt or subtle racial appeal; and
7. The extent to which members of the minority group have been elected to public office in the jurisdiction.[33]

Two other factors with some "probative value" are:

1. Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; and

2. Whether the policy underlying the state or political subdivision's use of such voting qualification, pre-requisite to voting, or standard, practice or procedure is tenuous.[34]

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[31] *See Abbott,* _ U.S. at _; 138 S. Ct. 2305, 2331 (2018).

[32] *See Johnson v. De Grandy,* 512 U.S. 997, 1011-12 (1994).

[33] *See Thornburg v. Gingles,* 478 U.D. 30, 45-46 (1986).

[34] S. Rep. No. 417 at 28-29 (footnotes omitted), *reprinted in,* 1982 U.S. Code Cong. & Admin. News. (2d sess.) at 206-207.

There is no requirement that any particular number of factors be proved or that a majority of them point one way or another.

2. The Causation Factor

Courts may also consider evidence as to whether race-neutral reasons caused a lack of electoral success for minority groups. Courts have held that plaintiffs cannot prevail on a VRA claim if there is significant probative evidence that whites voted as a bloc for reasons unrelated to racial animus or racial antagonism (for example, party affiliation, organizational disarray, lack of funds, etc.).[35] In other words, a minority's lack of success in an election may be due to race-neutral reasons and not because of a lack of minority opportunity to participate that is the hallmark of a VRA violation.

3. The Proportionality Factor

Another relevant consideration is whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area.[36] Although "proportionality" or "rough proportionality" is not a "safe harbor" for defendants, the Supreme Court has recognized that it is a strong indication that minority voters have equal opportunity "to participate in the political process and elect representative of their choice."[37]

4. The "Packing" or "Cracking" of the Minority Vote

"Packing" and "cracking" can also be factors relevant to the "totality of the circumstances" analysis of a VRA claim. "Packing" occurs when politically cohesive minority voters are concentrated within a district to create a super-majority, in a situation where their numbers are large enough to constitute a majority to two or more districts. At the other end of the spectrum is "cracking" or "fragmenting;" this is when minority voters are spread out over several districts, so they do not amount to a majority to any one district. Packing and cracking have legal significance in that they dilute the vote of minority voters and deprive them of the equal opportunity to participate in the political process and elect the candidates of their choice.[38]

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[35] *See Goosby v. Town Bd. of Town of Hempstead, NY.,* 180 F.3d 476,493 (2nd Cir. 1999); *Uno v. City of Holyoke,* 72 F.3d 973, 981-83 & 986-87 (1st Cir. 1995).

[36] *See League of United Latin American Citizens v. Perry,* 548 U.S. 399,426 (2006).

[37] *See Johnson v. De Grandy,* 512 U.S. 997, 1019-20 (1994).

[38] *See Voinovich v. Quilter,* 507 U.S. 146, 153-154 (1993

IV.   EQUAL PROTECTION CLAUSE AND RACIAL GERRYMANDERING

Where governments feel pressure under the VRA to create majority-minority districts to ensure minority voters may elect a candidate on an equal basis with other voters, governments must be wary of the Equal Protection Clause's prohibition against intentionally segregating voters based upon race.[39] The following rules have emerged through a series of Supreme Court cases.[40]

The government may consider race as a factor in districting, but it cannot be the predominant motivating factor. If race is the predominant motivating factor, the court will subject the plan to "strict scrutiny" and require the government to demonstrate a compelling government interest to support its predominant consideration of race. The government may subordinate traditional districting criteria (discussed above) to race only if there is a compelling governmental interest.

Compliance with the VRA is a compelling governmental interest (allowing predominant consideration of race), but the government must have **strong evidence** that VRA liability is present.[41] (In other words, the government must have strong evidence that a minority group could establish the three preconditions to a VRA violation and under the totality of the circumstances, their opportunity to participate is not equal to other groups.)

Even then, the government must narrowly tailor its plan - race may not be a predominant factor **substantially more than reasonably necessary to avoid VRA liability.** For example, districts must still be reasonably compact because VRA does not require the government to create districts that are not reasonably compact. On the other hand, a district created need not be the most compact (need not have the least amount of irregularity) to be leastrestrictive alternative.

V.   CONSTITUTIONAL CHALLENGES TO POLITICAL GERRYMANDERING

For decades, the Supreme Court's decisions on political gerrymandering were fraught with disagreement over whether constitutional challenges to political gerrymandering present a legal issue - or a "justiciable claim" - for the Court, or whether it is a "political question," or an issue best left for resolution by the political branch of government. Although the Supreme Court at one point recognized that political gerrymandering could give rise to an equal protection clause violation, the Court's frustration with the lack of a viable test for courts to apply boiled over in *Rucho v. Common Cause,* U.S._, 139 S.C.t 2484 (2019). In *Rucho,* the Supreme Court declared that questions of political gerrymanders are not "justiciable" or subject to resolution in the courts. The case effectively closes the door to legal challenges based solely upon political gerrymanders.

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[39] The Supreme Court characterized the Equal Protection Clause and VRA as "competing hazards of liability" for any legislature engaged in redistricting: the Equal Protection Clause restricts the consideration of race, while the VRA demands consideration of race. *See Abbott v. Perez,* U.S. ' 138 S.Ct. 2305, 2315 (2018).
[40] *See Hunt v. Cromartie,* 526 U.S. 541 (1999); *Shaw v. Hunt (Shaw II),* 517 U.S. 899 (1996); *Bush v. Vera,* 517 U.S. 952 (1996); *Miller v. Johnson,* 515 U.S. 900 (1995); and *Shaw v. Reno (Shaw I),* 509 U.S. 630 (1993).
[41] *Cooper v. Harris,* U.S._, 137 S. Ct. 1455, 1464 (2017).

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