January 17, 2020

Mayor Chris Cerino
Chestertown Town Hall
118 North Cross Street
Chestertown, MD 21620
chris@chestertown.com

Dear Mayor Cerino:

I write on behalf of the American Civil Liberties Union of Maryland and the Kent County Branch of the NAACP, to express concerns about the election system currently in place in Chestertown. The existing four-ward election system in Chestertown is severely malapportioned, and also unfairly dilutes Black voting strength. Since the current election plan is dated 1995, it appears that the reason for this malapportionment may be that the Town has failed to redistrict periodically to keep pace with its legal and constitutional obligations. As a result, Chestertown's current system violates the constitutional principle of one-person, one-vote. A second problem with the existing plan is its splitting of Black population between Wards 3 and 4. This means the one district in the election plan considered to be a Black opportunity district (Ward 3) provides less opportunity for Black voters and candidates than is possible, raising racial fairness concerns under the Voting Rights Act.

One Person, One Vote

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution requires election districts to be as equal in population as possible. This requirement of "substantially" equal population among election districts is known as the "one-person, one-vote" rule, and applies to all political subdivisions, including municipalities like Chestertown. *Board of Estimate of City of New York v. Morris*, 489 U.S. 688, 692 (1989), *citing Avery v. Midland County*, 390 U.S. 474, 479-81 (1968); *Ellis v. Mayor & City Council of Baltimore*, 352 F.2d 123, 124 (4th Cir. 1965). As shown in the analysis attached as Exhibit 1, Ward 3 in Chestertown's existing election plan has roughly twice the population of Ward 1, thus giving individual voters of Ward 1 a disproportionate voice in local elections, and Ward 3 voters proportionately less

voice. The overall deviation[1] among the districts in Chestertown's election system is more than 96 percent – a variation that is constitutionally unacceptable. *Latino Political Action Committee, Inc. v. City of Boston*, 568 F.Supp. 1012 (D. Mass. 1983) (Districting plan was unconstitutional where there was 23.6 percent population variance between smallest and largest districts); *Kapral v. Jepson*, 271 F.Supp. 74 (D. Conn. 1967)(election plan was unconstitutional where disparity between most populous district and least populous district was approximately two to one). The impropriety of a 96 percent deviation is especially problematic where, as here, it is possible to create a plan with districts of equal population.[2] As illustrated in Exhibits 2a and b, it is easy to create a four-ward plan for Chestertown that meets one-person, one-vote requirements, while also accommodating incumbent council members.[3]

Voting Rights Act

A second problem with Chestertown's election plan relates to the plan's splitting of Black voters between districts in a way that limits Black election opportunities. According to 2010 Census data, Chestertown's overall population is 22 percent Black, with a Black voting-age population of nearly 20 percent. Although this significant Black population is concentrated in certain neighborhoods, for election purposes it has been split between Ward 3 (35% Black) and Ward 4 (25% Black). The result is a dilution of the Black vote, compounding the malapportionment problem that also gives all Ward 3 voters less political voice.

It is possible to rectify the problems of malapportionment and racial fairness at the same time, by creating one ward within a four-ward plan that has a substantial plurality of Black voting-age population (VAP). Our illustrative plan demonstrates one way this can be done, with the Black voting age population in Ward 3 increasing to 43.6 percent.

It is imperative that the problems with Chestertown's election system be corrected in advance of the next election, and we would be happy to support you in your efforts to do this. Please contact me or have your counsel contact me if you would like to discuss this matter.[4]

---

[1] "Deviation" in this context means the total percentage population disparity between the plan's largest and smallest districts. This is calculated by adding the percentage greater than average district population in the largest district and the percentage lower than average population in the smallest district. Although there is not a bright-line rule, courts generally consider a plan to be constitutionally suspect if the total deviation between the smallest and largest districts is more than ten percentage points. Here, Ward 3, the largest district, is 70 percent greater than average, and Ward 1, the smallest district, is 26 percent less than the average, for an overall plan deviation of 96 percent, far exceeding a constitutionally acceptable deviation.

[2] As you know, districting in Chestertown is complicated slightly by the presence of Washington College and its students, who, while permitted to vote locally, typically do not. For this reason, we have included the College population in the plan, but split it between two Wards, and removed the students in calculating deviations.

[3] This illustrative plan was prepared by ACLU demographer William Cooper. Mr. Cooper drew up this plan with due consideration to the incumbents now in office, thus taking care to create a plan that would cause the least possible disruption.

[4] Additionally, given the exceptionally poor voter turnout in the Town's recent elections, we believe you should consider doing away with the staggered terms, and synchronization of municipal elections with State or federal elections, as numerous other municipalities, such as Ocean City and Baltimore City have done over the last decade.

Sincerely,

Deborah A. Jeon
Legal Director

Cc: R. Stewart Barroll, Esq.
        Email: jagmajor@verizon.net

Consolidation of elections would encourage interest and turnout in municipal elections while also saving scarce city resources.

Exhibit 1

Population Summary Report

Chestertown, MD – 1995 Plan

2010 Census adjusted data per No Representation Without Population Act of 2010 – SB 400\HB496

Ward	Adjusted Population	Deviation	% Deviation	Adjusted Black	% Adjusted Black	18+ Adjusted Pop	18+ Adjusted Black	% 18+ Adjusted Black
1	775	-276	-26.29%	24	3.10%	718	14	1.95%
2	1388	333	NA	154	11.14%	1299	129	9.93%
3	1808	737	70.19%	648	36.26%	1464	513	35.04%
4*	1310	258	NA	336	25.69%	1149	240	20.89%
	5281			1162	22.00%	4630	896	19.35%

Total Deviation   96.48%

Note

Ward 2 contains 2 Washington College dorm with a combined 2010 population of 728 persons

Ward 4 contains 1 Washington College dorm with a 2010 population of 307 persons

Exhibit 2a

Population Summary Report

Chestertown, MD – January 6, 2020 Draft
2010 Census adjusted data per No Representation Without Population Act of 2010 – SB 400/HB496

Ward	Adjusted Population	Deviation	% Deviation	Adjusted Black	% Adjusted Black	18+ Adjusted Pop	18+ Adjusted Black	% 18+ Adjusted Black
1	1041	-16	-1.52%	124	11.91%	905	77	8.51%
2*	1263	213	0.29%	275	21.77%	1138	222	19.51%
3	1086	36	3.43%	464	42.73%	842	367	43.59%
4**	1891	848	1.24%	299	15.81%	1745	230	13.18%
	5281			1162	22.00%	4630	896	19.35%

Total Deviation   4.95%

* % Deviation adjusted -- Ward 2 contains a Washington College dorm with a 2010 population of 216 persons

** % Deviation adjusted -- Ward 4 contains two Washington College dorms with a 2010 population of 819 persons

Exhibit 2b

Chestertown, MD

Map Layers

Streets

☐ Washington Dorms

Ward

Water Area

☐ 1
☐ 2
☐ 3
☐ 4
☐ Other

Miles
0 .1 .2 .3

Jan_6_2020_Draft

ORCHARD DR

STOCK...

FLATLAND RD

CROMWELL

AIRY

HIGH ST

EDGE OF TOWN DR

DEVON DR

3

MORGNEC RD

TALBOT BLVD

MANOR AVE

MANOR AVE N

N MEADOWVIE...

DIXON DR

RADCLIFFE RD

POPLAR ST

CALVERT ST

PROSPECT ST

MARYLAND 20

GATE...

WASHINGT...

S CROSS ST

...CK RD

S MILL ST

SPRING AVE

N CROSS ST

W CAMPUS AVE

BROWN ST

GREENWOOD AVE

4

ELM ST

HAACKE DR

SCHEELER RD

2

MARYLAND 213

CANNON ST

HIGH ST

N KENT ST

WALDO DR

E CAMPUS AVE

CEDAR ST

JIMSTOWN CIR

ROLLING RD

MAPLE AVE

BYFORD CT

1

SASSAFRAS DR

SCHAUBER RD

MORGNEC RD

CHURCH HILL RD

EAST ST

LYONS LN

...USLOW RD

FEY RD

PRINCESS ANNE DR

BOHEMIA DR

...NTE...

BRAYTON L...

ROUN...

HANSON RD

...OR