

**IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF MARYLAND  
GREENBELT DIVISION**

MS.PATRICIA FLETCHER, )  
*et al.*, )

Civ. Action No.: RWT-11-3220

Plaintiffs, )

v. )

LINDA LAMONE in her official )  
capacity as State Administrator of )  
Elections for the state of Maryland; )  
And ROBERT L. WALKER in his )  
official capacity as Chairman of the )  
State Board of Elections, )

Defendants. )

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DECLARATION AND EXPERT REPORT OF TODD EBERLY, Ph.D.

**DECLARATION OF TODD EBERLY, Ph.D.**

I, Todd Eberly, being competent to testify, hereby affirm on my personal knowledge as follows:

1. I am Todd Eberly, Ph.D., and am an Assistant Professor of Political Science and Coordinator of Public Policy Studies at St. Mary's College of Maryland. My mailing address is Department of Political Science, 202 Kent Hall, St. Mary's College of Maryland, 18952 East Fisher Road , St. Mary's City, Maryland 20686-3001.
2. I specialize in American Politics, Institutions, and Policy - with a focus on the political and policy legacies of the Great Society. I teach and write about Maryland politics. My CV is attached to this declaration as Attachment A.
3. Before joining the St. Mary's College Political Science Department, I was a senior research analyst with the Hilltop Institute, a health policy firm based on the campus of the University of Maryland Baltimore County (UMBC) that works to improve the health and social outcomes of vulnerable populations through research, analysis, and evaluations on behalf of government agencies, foundations, and other organizations. During my tenure, I was responsible for health program evaluation, survey design and implementation, and data analysis. Dr. Eberly possesses expertise in Medicaid managed care, the State Children's Health Insurance Program (SCHIP), and Medicare and Medicaid long-term and acute care policy. I have published and presented original research at regional and national conferences on topics ranging from racial disparities in access to health care to analyses of the state of the American political system.

4. I have been asked to prepare testimony that examines the history of racial animus and discrimination in Maryland, the legacy of past discrimination as seen through the receipt of public assistance and disparities in health, and a review of the state of Maryland's recently enacted Congressional district maps and the impact of those maps on the representation of racial and ethnic minority voting populations in Maryland. It is my opinion that Maryland has a well documented history of racial discrimination. This legacy of discrimination, while not as pervasive as in the states of the old Confederacy, is still relevant and has an impact on racial and ethnic minorities to this day.
5. Research into racial and ethnic discrimination and disparities documents that black and Hispanic populations are especially affected – though their historical circumstances of discrimination differ. To state briefly, black and Hispanic Americans – when compared to the majority white population – are disproportionately served by state and federal public assistance programs, experiences higher levels of unemployment, and are less likely to have private health insurance. The black and Hispanic populations in the United States are younger on average than the white population and more likely to contain single parent families. Black and Hispanic populations are also more likely to be located in metropolitan regions as compared to whites. Black and Hispanic children are more likely than white children to be poor and to have parents with lower education levels and black and Hispanic children score lower on achievement tests. Compared to whites, black and Hispanic households report more problems in their neighborhoods, including crime, litter and housing deterioration, and poor public services. Homeownership is also significantly less common among the black and Hispanic populations and research shows that both populations are more likely to be subject to discrimination in the housing market. These

differences combine to create a cumulative disadvantage that may build over a life course. (Council of Economic Advisers for the President's Initiative on Race 2009). In Maryland, the high school graduation rate for blacks and Hispanic is 61.6 and 63.6 percent respectively and white students participate in advanced placement Math and Science courses at a rate three times that of black and Hispanic students. Maryland is considered to be the 4th most segregated state with regard to black students and the 13th most segregated state for Hispanic students. Fully 52.1 percent of black students and 23.2 percent of Hispanic students in Maryland attend a school that has a 90-100 percent minority student body (The Leadership Conference on Civil and Human Rights 2011).

6. *A Brief History of Racial Discrimination in Maryland* - To many, Maryland's nick name "The Free State" is erroneously assumed to be a reference to Maryland's continuance in the Union during the Civil War. Maryland's border with Pennsylvania, the so-called Mason-Dixon line, is considered to symbolize an historic and cultural boundary between the Northern United States and the Southern United States and as such the boundary between the legality of slavery prior to the 13<sup>th</sup> Amendment. Yet Maryland did not secede from the Union following the election of Abraham Lincoln in 1860. As such, Maryland finds itself in a strange place historically – neither of the North nor the South.
7. In truth, Maryland was hotbed of southern sympathy and many Marylanders were eager to join the Confederacy. In the election of 1860, Abraham Lincoln received less than 3 percent of the vote – as southern Democrat John Breckinridge carried the popular vote. To prevent secession, Maryland's governor, Thomas Hicks, initially refused to convene a special session of the General Assembly. The speaker of the Maryland House of delegates, Elbridge Kilbourn, was known to be on the side of the seceded states and

counties where Breckinridge had enjoyed strong support were well represented in the Assembly (Brugger 1988).

8. Secession was further averted as well through the presence of federal forces, the suspension of habeas corpus, and the arrest of prominent newspaper editors and civic leaders (Pietila 2011). Though Maryland was home to many free blacks (in fact Baltimore City was home to the largest population of free blacks in any U.S. city at the time) there were serious currents of anti-black sentiment. In 1860 a delegate to the Maryland General Assembly proposed the enslavement of all blacks in Maryland proclaiming “I would have all negroes to be slaves in order that all whites be free.” The measure was put to referendum, but rejected by voters (Pietila 2011).
9. Slavery was officially abolished in Maryland by the constitution of 1864, but the vestiges of two centuries of slavery remained long after. The same constitution that abolished slavery, contained provisions that awarded representation in the Maryland House of Delegate not on the basis of total population, but rather on the basis of total white populations (Pietila 2011). “Black codes” requiring that blacks obtain employment, restricting black travel, and prohibiting black testimony against whites remained in effect until struck down by federal law. Opposition to black education remained strong and at the turn of the last century black education was clearly substandard. Black children were educated in schools deemed unsuitable for white children and the state appropriated substantially less to support black schools as compared to white schools. County governments typically augmented state funds for white schools, but rarely for black schools. There were no black high schools in the state (Pietila 2011). In 1910, a state

study showed that nearly half of all register black voters were illiterate. Among white voters the rate was less than 10 percent.

10. High rates of illiteracy led many political leaders to seek literacy tests for voting.

Maryland state elections in 1903 were largely run on the issue of race with the state Democratic party declaring the “political destinies of Maryland should be shaped and controlled by the white people of the state (Brugger 1988, 420) .” Following the decisive Democratic victories, a constitutional amendment was drafted that would limit the right to vote to only those who were eligible prior to the adoption of the 15<sup>th</sup> Amendment to the U.S. Constitution and those who could read and comprehend a passage from the Maryland constitution. The state legislature passed the measure and then sent it to the voters for approval. Though voters defeated the proposed amendment, other efforts toward vote suppression were enacted or attempted by the assembly. These measures included the elimination of all means of party identification on ballots and a prohibition against any identifying candidates on campaign literature through any means but the written word. As a result, illiterate voters were unable to determine how to vote. Also, in *Myers v. Anderson*, 238 US 368 (1915), the U.S. Supreme Court struck down Maryland’s attempt to adopt a similar plan that provided the right to vote to those who could vote prior to the adoption of the 15<sup>th</sup> Amendment, and their male descendants through statute. These restrictions were not enacted statewide, rather they were applicable only to counties with large black populations (Brugger 1988). The assembly then declared that intrastate passenger rail and ship accommodations must provide for the segregation of the races (Brugger 1988). Attempts to disenfranchise black voters continued with a proposed constitutional amendment in 1911 that would have limited voting rights to those with at

least \$500 worth of property, the Maryland legislature further stipulated that only white voters were permitted to vote on the amendment. Maryland's governor vetoed the measure.

11. As the agricultural economy of the 19<sup>th</sup> century gave way to the industrial and manufacturing opportunities of the 20<sup>th</sup>, many black residents in Maryland migrated from southern Maryland and the Eastern Shore to the growing urban areas of the state. But even as efforts to disenfranchise black voters failed, structural features of Maryland's electoral system minimized black representation. The constitution of 1867 established representation in the Maryland General Assembly not based on population but rather geographic location. As such rural areas tended to be over represented as compared to the more heavily populated urban areas. Between 1920 and 1970 the black population in Baltimore City increased from 15 percent of the city's total population to 46 percent. Baltimore City was becoming home to a majority of the state's black population (Orr 1999).
12. But even as Maryland's population was shifting away from rural areas and toward urban centers in the twentieth century, its process of legislative apportionment remained unchanged. The fast growing urban and suburban areas were under-represented while rural counties continued to dominate the Assembly, especially in the Senate. In 1964, the United States Supreme Court determined state legislative districts must be based on population, otherwise violating the equal protection clause of the Fourteenth Amendment. As such, many states, Maryland included, developed and implemented new strategies that embodied the concept of "one man, one vote." In 1972, the state adopted its current approach to apportionment which divides the state into 47 legislative districts – each with

equal population – electing one senator and three members of the House of Delegates (Maryland.Gov 2011).

13. Though many political scientists theorized the cumulative effect of legislative reapportionment following the *Baker v Carr* and *Reynolds v. Sims* decisions would be the increased electoral representation of black and other minority citizens, the effect was not as substantial as initially expected (Fiorina 2009). The trend toward urbanization had largely peaked by the early 1970s and the population was now moving away from the urban centers and into the new and growing suburbs. But much of the exodus to the suburbs was limited to whites leaving the urban centers. In Baltimore City, black residents as a share of the city's population increased from 46 percent in 1970 to 59 percent in 1990. This rise was not driven by the influx of new black residents; rather it resulted from a dramatic decline among white residents. Between 1970 and 1990 the number of black resident in Baltimore City increased by 15,000 but the number of white residents fell by 190,000. As a result of these population shifts to the city's suburbs Baltimore City's presence in the Maryland General Assembly began to decline (Orr 1999).
14. In this respect, Maryland's black population had been historically underrepresented by an apportionment process that ignored population and overrepresented rural areas even as population shifts were growing Maryland's urban areas. By the time apportionment was changed to reflect population, disproportionately black urban population centers were increasingly losing population as whites moved to the suburbs. According to the 2010 Census, the African American population remains heavily concentrated in Baltimore City and county, Montgomery county, and Prince Georges county - combined these four

regions are home to 78% of the Black population, but only 56% of the state's total residents.

15. *Evidence of the Legacy of Discrimination* - Much of my research has been in the area of health disparities and specifically the provision of care through the Medicaid program. Medicaid is a federal/state program intended to provide health care services to low income individuals and pregnant women. The program serves a disproportionate number of black and Hispanic individuals as compared to their representation in the general population. Their overrepresentation in the Medicaid program speaks to their increased representation among the ranks of the poor and those lacking access to private health insurance. In 2006, I undertook a comprehensive study of Maryland's Medicaid program (commonly referred to as HealthChoice) to determine whether there was evidence of racial disparities within the program. I compared white, black, Hispanic, and Asian participants with regard to their receipt of basic preventive and also examined differences in family income, overall health status, primary language, and availability of physicians within neighborhoods. A summary of my findings is presented below.

16. *Overrepresentation of Minority Populations in Maryland Medicaid*- Maryland is home to a racially and ethnically diverse population. As such, it would be expected that the state's Medicaid program would be diverse as well. However, the racial and ethnic breakdown of the state's Medicaid recipients suggests that Black and Hispanic residents are far more represented among the state's poor and are less likely to have access to private insurance. In 2007, the racial composition of the state Medicaid program was 53.8 percent black, 27.6 percent white, 11.5 percent Hispanic, and 2.3 percent Asian (Hilltop Institute 2009).

According to the 2010 Census, Maryland's population was 29.4 percent black, 58.2 percent white, 8.2 percent Hispanic, and 5.6 percent Asian. By a factor of roughly two to one, black residents are overrepresented in the state Medicaid program and white and Asian residents are underrepresented. Hispanics are overrepresented by about 40 percent.

17. *Additional Population Characteristics of Maryland Medicaid Recipients* - Much of this research focuses on adults between the ages of 20 and 64. Individuals over the age of 64 receive Medicare and thus they would not be represented in a study of the Medicaid program. Additionally, disparate levels of health, income, and educational attainment among adults may well be representative of the cumulative effects discrimination. As stated by the National Research Council, "to produce systemic differences in health status, ethnic differences must be associated with systematically different developmental experiences, and systematically different 'qualities' of interaction between the developing individual and his or her intimate, civic, and socioeconomic environment (National Research Council 2004, 148-149)." Assuming that race/ethnicity plays a role predicting an individual's life course or experiences may seem to be intuitive. Influences such as childhood poverty, inadequate education, reduced employment opportunity, and lower lifetime earnings disproportionately affect racial/ethnic minorities as compared to whites (Massey and Denton 1993).

18. Adult Medicaid eligibility is largely limited to low-income individuals with disabling health conditions and to moderate to low-income pregnant women. As such, women comprise approximately three-quarters of the adult Medicaid population (see Table One). As compared to white program participants, black and Hispanic participants were

younger, more likely to be female, had lower incomes, and lived in areas with fewer available physicians.

**Table One: Mean Population Characteristics for Adults 20-64**

Variable	<u>1997</u>						<u>2004</u>					
	Black		White		Hispanic		Black		White		Hispanic	
	Mean	S.E.	Mean	S.E.	Mean	S.E.	Mean	S.E.	Mean	S.E.	Mean	S.E.
Preventive Care Visit	<b>0.553</b>	0.003	0.653	0.003	<b>0.539</b>	0.013	<b>0.646</b>	0.002	0.707	0.002	<b>0.686</b>	0.008
Male	<b>0.191</b>	0.003	0.264	0.003	<b>0.139</b>	0.009	<b>0.231</b>	0.001	0.279	0.002	<b>0.149</b>	0.006
Female	<b>0.809</b>	0.003	0.736	0.003	<b>0.861</b>	0.009	<b>0.769</b>	0.001	0.721	0.002	<b>0.851</b>	0.006
Age	<b>33.943</b>	0.071	35.331	0.069	<b>33.456</b>	0.283	<b>35.632</b>	0.042	36.470	0.058	<b>32.794</b>	0.196
Income (1000s)	<b>2.779</b>	0.034	3.092	0.030	<b>2.814</b>	0.134	<b>4.387</b>	0.022	4.593	0.028	<b>6.008</b>	0.139
Employed	0.170	0.002	0.168	0.002	0.177	0.010	<b>0.188</b>	0.001	0.199	0.002	<b>0.317</b>	0.008
English	<b>0.809</b>	0.003	0.925	0.002	<b>0.802</b>	0.010	<b>0.982</b>	0.000	0.986	0.001	<b>0.744</b>	0.008
Rural	<b>0.146</b>	0.002	0.400	0.003	<b>0.121</b>	0.008	<b>0.101</b>	0.001	0.394	0.002	<b>0.142</b>	0.006
Suburban	<b>0.433</b>	0.002	0.484	0.003	<b>0.831</b>	0.009	<b>0.373</b>	0.002	0.456	0.002	<b>0.764</b>	0.007
Urban	<b>0.421</b>	0.002	0.116	0.002	<b>0.048</b>	0.005	<b>0.525</b>	0.002	0.151	0.002	<b>0.094</b>	0.005
Physician/Enrollee Ratio (100s)	<b>1.544</b>	0.004	1.242	0.003	<b>1.391</b>	0.013	<b>1.369</b>	0.002	1.225	0.002	<b>1.403</b>	0.010
Months Enrolled	<b>8.095</b>	0.027	8.604	0.024	<b>6.575</b>	0.109	<b>8.560</b>	0.013	8.122	0.018	<b>6.701</b>	0.065

*Bold type for black and Hispanic individuals indicates significant difference from whites,  $p < 0.05$ .*

19. As compared to white enrollees, black enrollees are significantly more likely to reside in an urban environment, have lower reported earnings, and live in an area with fewer physicians per Medicaid recipient. The regional difference is significant as studies have shown a link between environment and health. Families residing in urban areas face higher population density and crowding, inadequate or unaffordable housing, and reduced access to health resources (Prentice 2006) (Copeland 2005). These factors may negatively affect black health care use. These neighborhood effects are important and may reflect as

well a legacy of discrimination. As black Marylanders began to migrate to Baltimore City, Baltimore responded by enacting private covenants that forbid black residents from living in white neighborhoods. Such covenants remained until the Supreme Court struck them down the late 1940s (Pietila 2011). But the effects of these covenants linger in highly segregated neighborhoods in Maryland.

20. High enrollee to physician ratios and shorter average months of enrollment could negatively impact care access and use by Hispanic enrollees. Hispanic enrollees overwhelmingly reside in suburban environments but are more similar to black enrollees with regard to income and physician to Medicaid recipient ratios.
21. *Receipt of Preventive Care in Maryland Medicaid* - The data presented in Table Two show that black and Hispanic access rates for adult preventive services under the program in 1997 were significantly lower than for white adults. Among white adults, 65.3 percent received a preventive care service in 1997 as compared to 55.3 percent of black adults and 53.9 percent of Hispanic adults. Among the comparatively small Asian/Pacific Islander population the access rate exceeded 74 percent. Black (55.3% to 61.7%), white (65.3% to 67.4%) and Hispanic (53.9% to 62.8%) adults experienced significant increases in access in 2001, while Asian/Pacific Islander adults (74% to 64.5%) experienced a significant decrease, although their access rate was still higher than for black adults and statistically indistinguishable from white and Hispanic adults. Even with the increases, the disparities evident in 1997 were still present in 2001.
22. The disparate levels of access evident in 1997 and 2001 persisted in 2004, but were reduced. White (70.7%) adults experienced the highest levels of access and rates for Asian/Pacific Islander (70.6%) and Hispanic (68.6%) adults were statistically

indistinguishable. Black (64.6%) adults had made gains, but still lagged behind them by over 6.1 percentage points. Overall, by 2004 white enrollees experienced a 5.4 percentage point increase (65.3% to 70.7%), Hispanic enrollees saw a 14.7 percentage point increase (53.9% to 68.6%), while the percentage of black adults receiving preventive care increased by 9.3 percentage points (55.3% to 64.6%). A review of the Maryland Medicaid program shows that racial and ethnic disparities do exist – not only with regard to program participation, but also with regard to service receipt, physician availability, income, and primary language.

**Table Two: Preventive Care Access Rates, Adults Aged 20-64**

	<u>1997</u>	<u>2001</u>	<u>2004</u>
	<u>Mean</u>	<u>Mean</u>	<u>Mean</u>
	<u>(CI)</u>	<u>(CI)</u>	<u>(CI)</u>
<b>All</b>	0.608 (0.604, 0.612)	0.635* (0.633, 0.638)	0.668* (0.665, 0.670)
<b>White</b>	0.653 (0.647, 0.658)	0.674* (0.670, 0.678)	0.707* (0.703, 0.711)
<b>Black</b>	0.553 (0.547, 0.560)	0.617* (0.613, 0.620)	0.646* (0.643, 0.650)
<b>Hispanic</b>	0.539 (0.514, 0.564)	0.628* (0.609, 0.646)	0.686* (0.671, 0.702)
<b>Asian/Pacific Islander</b>	0.742 (0.721, 0.764)	0.645* (0.624, 0.667)	0.706 (0.687, 0.725)
<b>Other</b>	0.535 (0.513, 0.557)	0.559 (0.542, 0.576)	0.623* (0.609, 0.637)

\* Denotes significant difference from 1997,  $p < 0.05$ .

23. *Race and the Proposed Congressional District Map* - According to the 2010 census, Maryland has a fast growing minority population - in fact, the state is over 40% minority. However, minority voters are not as geographically diverse as the state's white population. Nearly 60 percent of the state's Black population reside in Prince Georges county and Baltimore City. Montgomery county is home to over 40% of the Asian

population and over 60% of the growing Hispanic population reside in Montgomery and Prince Georges counties.

24. Though Blacks compose 30% of the state's population they are heavily concentrated in Baltimore City and county, Montgomery county, and Prince Georges county - combined these four regions are home to 78% of the Black population (add Charles county and that rises to 82%). With regard to the total population of the state, those four counties are home to only 56% of the state's residents. The concentrated nature of the black population creates a problem for Democrats when redistricting - blacks are the most reliable Democratic voting bloc, but their concentration in a compact area in the central part of the state makes it difficult to offset more conservative voters in western, southern and northern Maryland and on the eastern shore.
25. The only way to dilute those areas is to create districts that divide minority communities and join them with sometimes far-flung conservative areas. In the state's new map one can see that this has been done in the 2nd, 3rd, 4th, 5th, 6th, 7th, and 8th districts. Baltimore City's 620,000 residents are divided among 3 congressional districts - they help to create the majority-minority 7th congressional district, but so called "surplus" voters are then used to dilute more conservative suburbs in Anne Arundel and Baltimore counties and rural areas of Harford and Baltimore counties. In the last gubernatorial election Democratic incumbent Martin O'Malley won Baltimore city by a margin of 82% to 16% over Republican Bob Ehrlich. The two split the Baltimore county vote. In Anne Arundel, Ehrlich won 54% to 43% and in Harford he won 65% to 34%.
26. Baltimore City has seen its population shrink to the point where it could occupy a single congressional district, inclusive of its Baltimore county suburbs - instead, the state's new

map would continue to spread the City's 400,000 black voters across the 2nd, 3rd, and 7th congressional districts. A single, compact and cohesive majority-minority district could be created by joining all of Baltimore City with its southwest suburbs in Baltimore county - home to much of the county's black population. I believe the only reason such a district was not created is explained by the results from 2010 gubernatorial. Republican voters in the surrounding communities needed to be offset. Baltimore City is divided across 3 districts and divided solely for that purpose. To further dilute probable Republican voters Baltimore and Anne Arundel county are divided across 4 districts and Harford across 2.

27. Prince Georges county, home to 840,000 Marylanders, including 560,000 black residents is divided among the 4th and 5th districts. The 4th district is a majority-minority district oddly joined with Anne Arundel county. In the most recent gubernatorial election in Maryland, Prince Georges county voted for Democrat O'Malley by a margin of 88% to 11% over Republican Ehrlich. Prince Georges county is over 60% larger than Anne Arundel and with the more Republican Anne Arundel county divided among 4 districts Democratic voters, mostly black, from Prince Georges county and Baltimore City are used to neutralize the Republican strength there.

28. Given the size of Prince Georges county and the large surplus of Democratic votes there, it is then used to dominate the 5th district. Charles county voted for O'Malley by a 2-to-1 margin over Ehrlich, but Ehrlich won Calvert and St. Mary's (as well as Anne Arundel) handily. Anne Arundel, Calvert, and St. Mary's counties could form a single congressional district positioned on the western shore of the Bay - but it likely would be a Republican district.

29. Montgomery county, with 950,000 residents, voted 68% to 31% for O'Malley and is divided across 3 districts. The 6th congressional district currently includes all of western Maryland, Frederick and Carroll counties, and northern Baltimore and Harford counties. Ehrlich won all of those counties in 2010 and carried the district 62% to 33%. To counter that Republican advantage, the new map drops most of Frederick county as well as all of Carroll and the sections of Baltimore and Harford counties from the district. They are replaced with a sizable chunk of Montgomery county to create a marginally Democratic district. Much of the rest of Montgomery county is then used to offset the addition of Frederick and Carroll county to the 8th district - with a smidge of Montgomery going to the 3rd district as well.
30. The manner in which minority voters in Baltimore City, Montgomery and Prince Georges Counties are cracked and placed into sprawling districts is perhaps more disturbing given the history "segregationist voting" in many of the counties surrounding those three. According to one study, the three counties of southern Maryland as well as the counties of Baltimore, Carroll and Anne Arundel have a greater history of segregationist voting, yet many minority voters in Baltimore City, Montgomery and Prince Georges counties have seen their voting power diluted as they have been placed into districts containing voters from counties with a history of voting against the interests of racial and ethnic minorities (Brugger 1988, 793).
31. The net effect of all of this being a new congressional map that will likely yield 7 Democratic members of Congress (including 2 elected from majority-minority districts) and 1 Republican. This is a considerable accomplishment in a state where Republicans routinely receive about 40% of the statewide vote. But it comes at a cost to

minority voters. Not only could Baltimore City and its immediate suburbs form a single majority-minority district, the three DC area counties of Montgomery, Prince Georges, and Charles are home to 46% of the state's black population. There is nearly equal divide between black and white voters among the three counties, but they are also home to 64% of the state's fast growing Hispanic population - providing a distinct advantage to minority candidates. And that advantage matters as it is an undeniable reality in America that black candidates are rarely elected from non majority-minority districts.

32. Montgomery, Prince Georges, and Charles County could occupy 3 congressional districts - possibly creating 2, or perhaps 3, majority-minority districts in the region. Coupled with the Baltimore City/suburbs region Maryland's Congressional delegation would be home to 3 members elected from majority-minority districts - a reasonable number given that Maryland's population is over 45% minority.
33. The 1st congressional district could encompass the eastern shore and Harford county (and the Hereford zone school district in northern Baltimore County). The sixth congressional district could extend to Carroll county and incorporate bordering neighborhoods on western Baltimore county and north western Howard county as needed to achieve equal population sizes. The rest of Baltimore and Howard county would join in a district (with some of southern Howard joining the Montgomery, Prince Georges, Charles grouping).
34. *Why were the districts Drawn as they Were?* - According to Maryland Senate President and advisory committee member Thomas V. Mike Miller Jr. (D-Calvert) "Congressman Sarbanes lived in Baltimore County, but wanted to continue to represent the capital city Annapolis (Linskey and Fritze 2011)." This of course is the root of the problem. In a democracy, the people are supposed to go to the polls and select their representative.

Under the process just completed, the Redistricting Commission let the representatives select their constituents. But not all representatives were afforded such an accommodation. It is highly doubtful that Republican Representative Roscoe Bartlett asked to have his district fundamentally reconfigured and I suspect any request he may have made to keep Frederick and Carroll counties within the 6<sup>th</sup> Congressional district would have been ignored. Essentially, Sen. Miller publicly acknowledged the GRAC committed a political gerrymandering.

35. Sen. Miller argued as well "Maryland is a small state ... and it doesn't have many rural, conservative areas that would vote for Republicans that could comprise a district of 700,000 people (Newman 2011)." This is of course wrong, especially if you include the suburban areas that Republicans often carry. Election returns from Baltimore county, Garrett, Allegheny, Washington, Frederick, Carroll, and Harford counties as well as St. Mary's, Calvert, Anne Arundel county, and nearly every county on the state's Eastern shore and Harford county demonstrate that much of Maryland votes Republican. The reason the state's adopted map is so racially gerrymandered is because Maryland is full of regions that would and do vote Republican and these regions surround four counties and Baltimore City that are compact minority communities and vote Democratic. Democrats are the clear majority party in Maryland - but it is hardly a one party state. In fact, Maryland is consistently a 60% Democratic and 40% Republican state in most statewide elections (Eberly 2011).

36. Finally, Miller defended the state's map, arguing "the change is quite modest" as compared to the prior map. It's hard to reconcile that claim with the fact that, based in Census data, only 174,000 Marylanders actually needed to be moved in or out of the

state's prior districts in order to create districts with equal populations. Instead, the state's new map would move over 1.5 million Marylanders - nearly a third of the state's residents. The state's map represents a concerted and significant effort to create an additional Democratic seat in Maryland's Congressional delegation. But the compact nature of the state's racial and ethnic minority population coupled with the geographic dispersion of white voters compelled the state to break up racial and ethnic minorities and use those voters to dilute white, conservative voters in the rest of the state.

37. It is often remarked that Democrats enjoy a 2-to-1 voter registration advantage over Republicans in the state. This is quite true and Table Three below shows party registration numbers as of June, 2011.

Table Three

<b>Current Voter Registration Breakdown in Maryland</b>			
Democrat	1,937,041		56.3%
Republican	913,945		26.6%
Independent	532,687		15.5%
Misc	56,407		1.6%
<b>Total</b>	<b>3,440,080</b>		

38. Democrats hold a 56% to 26.6% registration advantage over Republicans. But the table shows two other important things often overlooked in a discussion of Maryland politics 1) though Democrats outnumber Republicans they still make up only 56% of all voters and 2) Independent or Unaffiliated voters make up a sizable chunk of the state's electorate. As the majority party, it makes sense that Democrats hold all or most (in fact all) statewide elected offices - Governor, Comptroller, Attorney General, both U.S. Senators. But regional offices should be a bit more competitive - still the Democrats hold 6 of 8 seats in the state's Congressional delegation (75%), 98 of the 141 seats in the

House of Delegates (70%), and 35 of the 47 seats in the state Senate (75%). This is a pretty impressive accomplishment for a party that lays claim to only 56% of voters.

39. There are two possible explanations for the Democrats' hold on offices within the state 1)

Independent and Republican voters actually vote for Democrats or 2) Maryland's 8 Congressional and 47 legislative districts have been politically gerrymandered such that Democrats are able to outperform their actual voter registration advantage.

40. *How do Independent and Unaffiliated voters vote?* Below is a table with election results and voter turnout for a selection of Maryland elections dating back to 2004. Included are the 2004 and 2008 presidential election, the 2010 gubernatorial election, and the results from the 2010 election in Maryland's 2nd and 5th Congressional districts. Included are the total votes received by the Republican and Democratic candidate as well as the total votes cast by Democrats, Republicans, and Independent/Unaffiliated voters. It is clear we can throw out explanation 1 (that Independent and Republican voters vote for Democrats). In nearly every election included in the table (and in nearly every election in Maryland) the Democratic candidate receives a vote total either just above, or in some cases just below, the total number of Democrats who voted in the election. In each election the Republican candidate received substantially more votes than there were Republicans voting. In 2004, George W. Bush received 1.024 million votes, yet only 733,000 Republicans voted. In 2010, Bob Ehrlich received 776,000 votes when only 578,000 Republicans voted. By way of contrast, O'Malley received 1.044 million votes which was 29,000 votes fewer than the total number of Democrats who cast ballots. Even in Congressional districts, Republicans outperform their partisan turnout.

Table Four

Partisan Leanings of Independent Voters in Maryland									
Election	Office	Election Results		Total Voters				Effective Share of Independents Won by Republicans	Effective Share of Independents Won by Democrats
		Republican	Democrat	Democrats	Republicans	Independents	Total		
2004 Election	President	Bush	Kerry						
		1,024,703	1,334,493	1,340,778	733,643	299,529	2,395,791	97.2%	-2%
2008 Election	President	McCain	Obama						
		959,862	1,629,467	1,549,293	732,755	369,406	2,661,905	61.5%	22%
2010 General Election	Governor	Ehrlich	O'Malley						
		776,319	1,044,961	1,073,423	578,031	200,703	1,873,541	98.8%	-14%
	57th Cong. District	Lollar	Hoyer						
		83,575	155,110	149,831	68,216	21,982	244,847	69.9%	24%
	2nd Cong. District	Cardarelli	Ruppersberger						
		69,523	134,133	135,069	57,462	20,551	215,618	58.7%	-5%
<b>Weighted Average</b>								<b>77.8%</b>	<b>6.4%</b>

41. In Maryland, Independent/Unaffiliated voters overwhelmingly vote for Republican candidates, regardless of the office and regardless of turnout. To be fair, in every election some Republicans do vote Democrat and some Democrats do vote Republican (but most studies show that only about 10% of voters cross party lines when voting). Republicans candidates in Maryland consistently outperform their share of registered voters casting ballots. In the 2004 presidential contest and the 2010 gubernatorial race I estimate that Republicans claimed the support nearly all Independent/Unaffiliated voters (in all likelihood Republicans actually won quite a few Democrats and O'Malley received more than 1.2% of Independents - but it all comes out in the wash). In 2004 68% of Independents turned out, but only 35% turned out in 2010 - yet they still broke for the Republican by similar margins. 2004 and 2010 may be poor examples. Bush was an incumbent president and Ehrlich a former governor. So I included the 2008 presidential election and two Congressional elections from 2010, each with an incumbent Democrat. Turn out by Independents in 2008 was similar to 2004 and turnout in the two Congressional districts was essentially the same as the 2010 statewide turnout. In the

three elections covered Democrats outperformed Democratic turnout in 2 of the 3. In the Presidential election and in the 5th Congressional district race I estimate that Democrats carried 22% to 24% of the Independent vote. Republicans picked up between 59% and 70% of the Independent vote.

42. In Maryland, regardless of the election, Independent voters break heavily toward the GOP. This rather consistent support for GOP candidates suggests that Republicans actually claim a larger share of Maryland's voters than registration number suggest. Averaging the elections highlighted above (and placing a greater weight on higher turnout elections) suggests that Republicans receive about 77% of the Independent vote, Democrats about 6% and the remainder actually goes to third party candidates. The table below shows an alternate breakdown of each party's effective partisan strength in the state if we were to reallocate Independent voters according actual election results. Democrats gain very little and remain at 57% of the electorate, Republicans see their share of the electorate jump from 26.6% to 38.6% and true Independent voters dwindle.

Table Five

<b>Effective Voter Registration Breakdown in Maryland</b>		
Assume 77% of Independents support Republicans		
Democrat	1,970,897	57.3%
Republican	1,328,420	38.6%
Independent	84,355.89	2.5%
Misc	56,407	1.6%
<b>Total</b>	<b>3,440,080</b>	

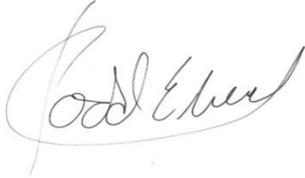
43. How do Democrats hold 75% of Congressional seats, 70% of the seats in the House of Delegates, and 75% of the seats in the state Senate given the party's clear 60% ceiling in voter preference statewide? The answer is the very sort of political gerrymandering

evident in the state's proposed congressional district map and the dilution of minority voting power described in this report.

44. Maryland is a 60/40 Democrat/Republican state (Eberly 2011) and state with a minority population in excess of 45 percent. As such a congressional district map with three or four majority-minority districts would be representative of the diversity of the state. As explained in this report, such a district map would prevent the state from the level of political gerrymandering that has created a 6/1 Democrat/Republican delegation (and may create a 7/1 delegation under the new map). But a 5/3 Democrat/Republican delegation would be 62.5% Democrat and 37.5% Republican. The state's geographic, political, and ethnic diversity would be more accurately represented by a map with three majority-minority districts and three Republican districts. Minority voters would no longer be denied the opportunity to fair representation and Maryland would have a map that lets voters pick the best person to represent their communities - as opposed to the current practice in which representatives pick the communities and voters most likely to vote for them. But the redistricting process, in Maryland and in many other states, is based entirely on maximizing partisan advantage, regardless of the true diversity of a state. This undermines the whole concept of representation and renders the House of Representative nothing more than a tool of the two political parties rather than a microcosm of the people.
45. The proposed map is both a racial and political gerrymander. It uses a racial gerrymander in order to politically gerrymander the Republican party. As a consequence, it dilutes minority representation.

I declare under the penalty of perjury that the forgoing is true and correct.

Signature:



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Todd Eberly  
Executed December 6, 2011

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**Todd Eberly, Ph.D.**

Coordinator, Public Policy Studies  
Assistant Professor  
Department of Political Science  
St. Mary's College of Maryland  
202 Kent Hall  
18952 E. Fisher Rd  
St. Mary's City, MD 20686  
240-895-4391 (o)  
410-598-1768 (c)  
teeberly@smcm.edu

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**RESEARCH AND TEACHING INTERESTS**

American government and politics: presidential politics, executive and legislative relations, electoral process, partisanship and polarization.

Public Policy: social welfare policy, public health policy, racial and ethnic disparities, cumulative advantage theory, federal and state policy cooperation and competition.

Research Methods: survey research, measurement, program evaluation.

**EDUCATION**

Ph.D. Public Policy, University of Maryland, Baltimore County. May, 2006

Doctoral Dissertation:

*Managing the Gap: Evaluating the Impact of Medicaid Managed Care on Service Use and Disparities in Health Care Access.*

Advisor: Dr. Cheryl Miller

B.A. Political Science (*cum Laude*), Clarion University. May, 1996

**TEACHING EXPERIENCE**

St. Mary's College of Maryland. 2007 – Present

University of Maryland Baltimore County. 2004 – 2007

- Affiliate Assistant Professor, Department of Public Policy, University of Maryland, Baltimore County. 2006 – 2007
- Part-Time Faculty, Departments of Sociology and Political Science, University of Maryland, Baltimore County. 2004 – 2007

**PROFESSIONAL EXPERIENCE**

Acting Director, Center for the Study of Democracy, St. Mary's College of Maryland. 2010-2011

Senior Analyst, Center for Health Program Development and Management, University of Maryland, Baltimore County. 2000 – 2007

Legislative Analyst, Department of Health and Mental Hygiene, Baltimore, MD. January-April, 2005 (Special Appointment).

Policy Analyst, American Medical Directors Association, Columbia, MD. 1997-2000.

Legislative Assistant, American Academy of Ophthalmology, Washington, DC. 1996-1997.

#### **AWARDS AND HONORS**

Top Political Influencer in Maryland – Campaigns and Elections Magazine (May 2011)

Faculty Student Life Award – St. Mary’s College Student Government Association (2010)

Convocation Speaker – Selected by St. Mary’s College Class of 2009 (May 2009)

National Association of Schools of Public Affairs and Administration's Annual Dissertation Award (2006)

Phi Kappa Phi Honor Society (Inducted 2006)

Graduate Research Conference: Best in Session. University of Maryland Baltimore County (2006)

University of Maryland, Baltimore County Certificate of Service (2005)

Maryland Medicaid Salute to Excellence Award (2005)

B.A., with honors, Clarion University (1996)

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**CONFERENCE PRESENTATIONS**

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“Barack Obama and the Politics of Preemption.” Midwest Political Science Association. Chicago, IL. April 23, 2010.

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**SERVICE AND MEMBERSHIPS**

Nitze Scholars Committee. St. Mary’s College of Maryland. 2009-

Teaching and Learning Committee. St. Mary’s College of Maryland. 2009-

Faculty Board of Advisors Center for the Study of Democracy. St. Mary’s College of Maryland. 2008-

Senator, University of Maryland, Baltimore County Professional and Staff Senate. 2004

**PROFESSIONAL AFFILIATIONS**

American Political Science Association

Association for Public Policy Analysis and Management

Midwest Political Science Association

Southern Political Science Association

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