

IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY, MARYLAND

KATHRYN SZELIGA, *et al.*
Plaintiffs,

v.

Case No. C-02-CV-21-001816

LINDA H. LAMONE, *et al.*
Defendants.

_____ /

NEIL PARROTT, *et al.*
Plaintiffs,

v.

Case No. C-OZ-CV-21-001773

LINDA H. LAMONE, *et al.*
Defendants.

* * * * *

MOTION FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF

Stephen M. Shapiro respectfully moves for leave to file the attached *amicus curiae* brief. The brief is limited in scope to the remedies that the court could consider if the court determines at trial that the congressional districts enacted in December 2021 are impermissible. Consistent with precedent, this brief sets out alternative congressional district maps that eliminate the cracking of voters in predominantly Republican precincts while maintaining other aspects of the enacted map to the extent practicable.

The material in the brief could be helpful to the court in the event that the court determines (1) that the current enacted map is impermissible; (2) that it may not be used

for the upcoming 2022 elections; and (3) that there would not be sufficient time for the General Assembly to enact a remedial map without a significant risk of unduly delaying the elections or important milestones leading up to them.

This material does not duplicate information otherwise provided by the parties. The Szeliga Plaintiffs have requested only an injunction, and the Parrott Plaintiffs have asked the court to direct the use of the map proposed by the Governor.

On March 4, 2022, the Movant requested the parties' consent to his filing this brief. The Defendants replied with no objection on March 4, 2022. The Parrott Plaintiffs consented on March 4, 2022. The Szeliga Plaintiffs replied with no objection on March 9, 2022.

In light of the foregoing, the Movant respectfully requests that the Court grant this motion and accept the attached brief for filing and consideration in these cases.

Respectfully submitted,

Dated: March 9, 2022

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CERTIFICATE OF SERVICE

I certify that on March 9, 2022, the foregoing Motion for Leave to File an *Amicus Curiae* Brief was filed electronically and served on counsel of record via the Court's MDEC system.

/s/ Stephen M. Shapiro
Stephen M. Shapiro

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* * * * *

BRIEF OF AMICUS CURIAE STEPHEN M. SHAPIRO

This brief addresses the remedies that the court could consider if the court determines that the congressional districts enacted in December 2021 are impermissible. Consistent with precedent, this brief sets out alternative congressional district maps that eliminate the cracking of voters in predominantly Republican precincts as seen in the current enacted map, while maintaining other aspects of the enacted map to the extent practicable. Elimination of cracking will require tradeoffs among these other aspects. Relatedly, the brief advises the court on how a particularly critical goal of the enacted map—the racial composition of the Fifth District—was developed, and how that goal counter-intuitively affects the design of that district and of nearby districts.

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I. INTEREST OF THE *AMICUS*

Amicus Stephen M. Shapiro lives in the Eighth Congressional District in Montgomery County. His interest is in vindicating rights that preserve effective representation for himself and other voters.¹ He is a registered Democrat² who, along with two Republican voters, filed the original pro se complaint against Maryland's 2011 congressional districts—initiating what became *Lamone v. Benisek*. He was the petitioner when that case first went before the U.S. Supreme Court as *Shapiro v. McManus* in 2015. *Amicus* later agreed to withdraw from that case after counsel more specifically focused the claims there on the harms to Republican voters.

In attempting to influence the design of the 2021 congressional districts, *Amicus* offered oral and written testimony as well as many prospective maps before both the Maryland Citizens' Redistricting Commission (MCRC) and the Legislative Redistricting Advisory Commission (LRAC). He similarly testified at the three-hour long hearing on the LRAC's recommended map that was jointly held by the House Rules and Executive Nominations Committee and by the Senate Reapportionment and Redistricting Committee on December 6, 2021—immediately after which the Senate Committee voted to approve the map without any debate or discussion of the testimony it had just received.

¹ No party or entity other than the *Amicus* contributed toward the development or filing of this brief.

² *Amicus* earlier served as a Democratic precinct chair until December 2012.

Through these efforts, *Amicus* has gained considerable experience in drafting congressional district maps and in understanding the ramifications of a district's design on its partisan and racial composition.

II. REMEDIAL MAPS MUST BE BASED ON THE ENACTED MAP

"[A] district court should take guidance from the State's recently enacted plan in drafting an interim plan." *Perry v. Perez*, 565 U.S. 388, 393 (2012). "[F]aced with the necessity of drawing district lines by judicial order, a court, as a general rule, should be guided by the legislative policies underlying a state plan—even one that was itself unenforceable—to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act." *Id.* (quoting *Abrams v. Johnson*, 521 U.S. 74, 79 (1997)). "[T]he [enacted] state plan serves as a starting point for the district court. It provides important guidance that helps ensure that the district court appropriately confines itself to drawing interim maps that comply with the Constitution and the Voting Rights Act, without displacing legitimate state policy judgments with the court's own preferences." *Id.* at 394.

Therefore, if this court finds that the cracking of Republican voters among the districts of Maryland's enacted 2021 congressional map is impermissible and that time does not permit affording the General Assembly the opportunity to redraw the map, then this court should "uncrack" those impacted voters while maintaining other legislative goals reflected by the enacted map to the extent practicable. It would be inconsistent with *Perry* and *Abrams* for the court to merely swap in the MCRC map, which the Governor proposed but which the General Assembly did not enact.

III. PROSPECTIVE MAPS “UNCRACKING” THE ENACTED MAP

Amicus offers five prospective maps uncracking the enacted map for the court’s consideration, along with the partisan and racial composition data for each map.³ While it is relatively straightforward to uncrack the 3rd, 6th, and 7th districts, it is less straightforward to design the other districts consistent with the partisan goals and structure of the enacted map. It is clearly not possible to maintain all of the partisan goals and structural elements of the enacted map with uncracked versions of the 3rd, 6th, and 7th districts. Thus it is necessary to identify options that maintain these goals and structure to the extent possible—which will require trade-offs. See *Bethune-Hill v. Va. State Bd. of Elections*, 368 F. Supp. 3d 872, 878-79 (E.D. Va. 2019). The four prospective maps incorporate four prospective sets of trade-offs. *Amicus* suggests that in keeping with the language of *Perry v. Perez* at 393 and *Abrams v. Johnson* at 79, that maintaining the “policy judgments” underlying the enacted map—which are largely the legislature’s partisan political goals—should have priority over maintaining structural aspects that may now, within an uncracked map, be inconsistent with the partisan goals.

Amicus will first address uncracking the 3rd, 6th, and 7th districts, and then address the issues regarding the other districts—particularly the 4th and 5th districts.

³ *Amicus* used “Dave’s Redistricting App” (“DRA”) to develop these prospective maps. See *About DRA*, Dave’s Redistricting, <https://davesredistricting.org/maps#aboutus> (last visited Mar. 6, 2022); *Dave’s Redistricting*, Wikipedia, https://en.wikipedia.org/wiki/Dave%27s_Redistricting (last visited Mar. 6, 2022).

Complexities relating to the 4th and 5th districts are the primary reasons why *Amicus* is providing the court with five prospective maps rather than a single recommendation.⁴

The prospective maps, along with their associated partisan and racial statistics, are shown in Appendices 1 through 5. The enacted map, along with its partisan and racial statistics, is shown in Appendix 6. The maps and associated racial and partisan statistics can also be accessed online (the maps are slightly clearer online):

Version 1: <https://davesredistricting.org/join/7ebc6028-773c-4e09-a417-eabfa6eb2b56>

Version 2: <https://davesredistricting.org/join/44787e6a-3f25-41a8-a5eb-7050955b87e3>

Version 3: <https://davesredistricting.org/join/36e39991-756e-4804-9f24-9a8123411a4c>

Version 4: <https://davesredistricting.org/join/81dbb4fc-42a7-458f-8320-f15f1c1466fd>

Version 5: <https://davesredistricting.org/join/a564f77a-09c6-4080-a2f7-f6d75485fb73>

As Enacted: <https://davesredistricting.org/join/f4532575-5bd7-487e-a7eb-b84ddf0c0b46>

Amicus is ready to provide the court or any party a copy of the census block equivalency file—an Excel spreadsheet linking each census block to its assigned district—for any of these maps.⁵

⁴ Another reason for providing multiple maps is that those that are the most consistent with the enacted map's structure are now the least consistent with its political goals.

⁵ The LRAC published copies of the census block equivalency files for its proposed maps and for its final recommended map, which was enacted by the General Assembly, on its web site. *Amicus* was able to upload those spreadsheets into DRA by converting their format via "Save As" from Excel Worksheet to CSV (Comma Separated Value).

A. UNCRACKING THE 3RD, 6TH, AND 7TH DISTRICTS

Starting with the westernmost part of the state, the 6th district of the enacted map consists of all of Garrett, Allegany, and Washington Counties, but only part of Frederick County before moving south into Montgomery County. The 6th district can be reasonably uncracked by having it include all of Frederick County before moving south into Montgomery County. This uncracked version of the 6th district would include 254,726 residents of Montgomery County,⁶ and the 517,200 residents of the other four counties. This uncracked 6th district does not include Carroll County. Including Carroll County in the 6th district would extend beyond uncracking Republican voters into packing them. Further, it would be more consistent with the enacted map to include Carroll County in an uncracked 3rd district than in the 6th.⁷

The 3rd district of the enacted map includes all of Howard County, most of Harford County, much of Montgomery County and Baltimore City, and a small portion of Carroll County. The 3rd district can be reasonably uncracked by removing the portions in Montgomery County and Baltimore City. These portions of the 3rd district are reasonably replaced by the remainder of Carroll County. The partisan composition of this uncracked 3rd district is largely a factor of how the politically divergent precincts of

⁶ The portions of Montgomery County included in the uncracked 6th district includes precincts closest to Frederick County, including Germantown, but does not include any precincts within Gaithersburg or Rockville, which are kept together in the 8th district.

⁷ After “uncracking” the 3rd district by removing its parts in Montgomery Co. and Baltimore City, a significant number of additional residents are needed to replace those removed. A small part of southeastern Carroll Co. is already in the enacted map’s 3rd district; the remainder of Carroll Co. is a logical fit with the rest of the 3rd district. Without Carroll Co., the 3rd district would have to move east into Cecil Co.

Baltimore County are allocated among the 2nd and 3rd districts, and how the highly Republican precincts of northern Harford County are allocated among the 1st and 3rd districts. The 3rd district could thus be designed to lean Democratic by 3 percent or to lean Republican by 3 percent. In order to avoid having the court advance a design of the 3rd district that arbitrarily favors one party or another, *Amicus* has designed the 3rd district in four of the five prospective maps to be precisely neutral—with identical percentages of voters favoring Democrats and Republicans based on prior voting history.

Consistent with the enacted map, the 3rd district in all prospective maps includes most of Harford County (including Bel Air) except for its waterfront cities, which are in the 1st district. Four of the prospective maps depart from the enacted map by placing some rural inland precincts in eastern Harford County in the 1st district. The 3rd district would lean Republican if it were to include all of these rural precincts. However, both the 2nd and 3rd districts are heavily Democratic in the enacted map. *Amicus* suggests that it is more consistent with goals of the enacted map to put part of eastern Harford County into the 1st district in order to make the 3rd district precisely even, favoring neither party, rather than for the court to make the 3rd district Republican.⁸ *See also* note

⁸ The enacted map has six Democratic-leaning districts and two competitive districts (the 1st and 2nd); however, the 1st district is only 0.70 points away from the 10-point margin at which DRA would consider it as leaning Republican, while the 2nd district is only 0.32 points from leaning Democratic. The enacted map is essentially a 7 to 1 configuration. *See* App. 6. Uncracking the 3rd, 4th, 6th, and 7th districts, while maintaining all other structural aspects as closely as possible to the enacted map—i.e., placing only the waterfront Harford Co. precincts into the 1st district and placing Anne Arundel Co. south of a line from Odenton to the Bay Bridge into the 1st district—would yield four Democratic-leaning districts, one Republican-leaning district (the 1st, by 11.22 points), and three very competitive districts (the 2nd, 3rd, and 6th). *See* App. 5. Of these competitive districts, the 2nd would lean slightly Democratic by 2.38 points, and the 3rd would lean slightly Republican by 3.30 points. Such a remedial map, having one district firmly Republican and three very competitive, would be structurally consistent with the

12, *infra*. (comparing the numbers of 1st district residents in Harford and Anne Arundel Counties in the enacted and prospective maps). And even with the 3rd district held precisely even, the 2nd district would not have as strong a Democratic margin as in the enacted map in any of the uncracked prospective versions. *See* Part IV, *infra*.

The 7th district of the enacted map—which is one of two majority black districts in the enacted map—extends from Baltimore City to northern Baltimore County as well as to a small portion of Howard County. These precincts in northern Baltimore County are highly Republican and have few black residents. The uncracked 7th district in the prospective maps is limited to Baltimore City and nearby sections of Baltimore County that have or are near precincts with significant percentages of black residents—25 percent or more. These include several relatively isolated precincts in eastern Baltimore County that have black populations near or above 50 percent and that are largely surrounded by predominantly white precincts. These include Precinct 12-013 (75 percent black) near the Dundalk Marine Terminal, and Precincts 15-017 (60 percent black) and 15-023 (70 percent black) in Essex.

B. OPTIONS FOR THE 4TH AND 5TH DISTRICTS

The 4th district of the enacted map is the other majority black district. It is centered in Prince George’s County but extends into eastern Montgomery County as well as to southern Anne Arundel County, which is largely Republican and overwhelmingly white. Importantly, the 4th district includes 570,566 residents of Prince George’s County and 201,360 residents of its other counties. This is significant because the remaining

enacted map but could not be considered consistent with the more political goals of the enacted map. Those political goals drove most of the enacted map’s structure.

population of Prince George's County plus the populations of Charles, Calvert, and St. Mary's Counties exactly equals the population of a full district—here, the 5th district. If the portion of the 4th district in Prince George's County were any larger, part of the 5th district would have to extend into one or more additional counties (Montgomery, Howard, or Anne Arundel). If the portion of the 4th district in Prince George's County were any smaller, then another district besides the 5th district would have to extend into either Prince George's County or to a Southern Maryland county. The number of 4th district residents from outside Prince George's County is also significant because at least 140,000 residents of the 4th district must be outside of Prince George's County in order for the 5th district to include enough Prince George's County precincts with very high percentages of black residents in order to make the 5th district 44 percent black.

While the 4th district is a majority black district, the enacted 5th district is 44 percent black, giving its black voters a significant opportunity to influence the election of the district's Representative. The odd goose-neck shape of the 5th District within Prince George's County reflects the placement of the county's precincts with the highest percentage of black residents into the 4th district, thereby limiting the black percentage of the 5th district to 44 percent of its residents. As the prospective maps show, just by placing more of the highly black Prince George's County precincts into the 5th district rather than into the 4th district, the 5th district would have a majority of black residents. That is, the 5th district could have readily been made a third majority black district within the structure of the enacted map.

The uncracked versions of the 4th district remove the largely white and Republican southern Anne Arundel portion. They also reduce the Montgomery County

portion to avoid or limit extending the 8th district into Howard County.⁹ The prospective maps incorporate several options for replacing these deleted and reduced portions of the 4th district and for making conforming changes to the 5th district:

Version 1 would extend the 4th district south to include all of Charles County. This would be a significant departure from the enacted map. However, it is the cleanest option—requiring no further extension into Montgomery County, nor any extension into Howard or Anne Arundel County. This leaves Howard County entirely within one district, the 3rd district, and places Anne Arundel County within only three districts, consistent with the enacted map (though one of these would be the 5th district in lieu of the 4th). Version 1 maintains the 5th district at 44 percent black. However, since the 5th district would extend into the largely white areas of southern Anne Arundel County that are currently in the 4th district, the Prince George’s County precincts placed into the 5th district would need to include more highly black precincts than in the current enacted map in order to maintain the 5th district’s black population at 44 percent. Version 1 places 569,031 residents of Prince George’s County in the 4th district. As all of Charles County would be in the 4th district, the 5th district would include 165,301 residents of Anne Arundel Co.—to include the south county residents within the 4th district of the enacted map as well as residents of western Anne Arundel County near Laurel.

⁹ The uncracked 6th district and 8th district leave 36,058 Montgomery Co. residents to be placed in another district. *Amicus* placed those residents in the 4th district, consistent with the enacted map, rather than the 5th. Enlarging the 4th district in Montgomery Co. beyond that number requires moving that additional number of residents of the 6th or 8th district into adjoining counties. Thus, Version 2 has 27,349 Howard Co. residents in the 8th district, and Versions 3, 4, & 5 have 40,239 Howard Co. residents in the 8th district.

Version 2 would maintain Charles County in the 5th district, consistent with the enacted map. In lieu of Charles County, the 4th district would include additional precincts with significant black populations in Montgomery, Howard, and Anne Arundel Counties.¹⁰ This further extension of the 4th district into Montgomery County would move 27,349 residents of Howard County into the 8th district. With part of southern and eastern Howard County within the 4th and 8th districts, the 3rd district expands to additional precincts within Baltimore County, moving the 2nd district further south in Anne Arundel County. The 5th district would include only the southernmost portion of Anne Arundel County, with the areas around Laurel being in the 4th and 2nd districts. The 5th district would remain 44 percent black. While Version 2 is more consistent with the enacted map than Version 1 with respect to the structure of the 4th and 5th districts, Version 2 would split Anne Arundel County among four districts and Howard County among three districts.

Versions 3 and 4 further increase the extent of the 4th district in Montgomery and Anne Arundel Counties—bringing the 4th district to include a combined total of 201,360 residents of Anne Arundel, Howard, and Montgomery Counties, as well as 570,566 residents of Prince George’s County—consistent with the enacted map.¹¹ Relatedly, this permits all of the 5th district to fit within the remainder of Prince George’s County and the three Southern Maryland counties—also consistent with the enacted map, which

¹⁰ The 4th district in Version 2 has 63,407 residents of Montgomery Co., 57,934 residents of Howard Co., and 24,962 residents of Anne Arundel Co. This is about the minimum number of residents outside of Prince George’s Co. that must be in the 4th district in order for the 5th district to have a population that is 44 percent black.

¹¹ The 4th district in Versions 3, 4, & 5 has 76,297 residents of Montgomery Co., 57,934 residents of Howard Co., and 67,128 residents of Anne Arundel Co.

removes the 5th district from Anne Arundel County entirely and splits that county among three districts (the 1st, 2nd, and 4th). This structure further increases the extent of the 8th district into Howard County and of the 2nd district into Anne Arundel County. Version 3 maintains the 5th district to be 44 percent black. Version 4 is identical to Version 3 except that it swaps certain Prince George's County precincts between the 4th and 5th districts in order to make the 5th district a majority black district. Version 5 is almost identical to Version 3 with respect to the 4th and 5th districts, but its 1st district more closely following the enacted map's structure. As earlier discussed, *see* note 8, *supra*, this makes the resulting map so strongly Republican that it cannot be considered consistent with the policy goals of the enacted map. *See* App. 5.

IV. DISCUSSION

The question for the court, should the court determine that the current enacted map contains impermissible elements, would be how to replace the map for the approaching 2022 elections. That is, what version of a replacement map would be most in keeping with *Perry v. Perez* and *Abrams v. Johnson*—maintaining the structure and policy goals of the enacted map to the greatest extent consistent with removing its impermissible elements.

Amicus suggests that it is not practical to maintain all of the enacted map's structure and the policy goals reflecting that structure—particularly those goals as to the partisan composition of the districts. Given the practical need for a remedial uncracked map to incorporate some tradeoffs among the structural elements and political goals of the enacted map, *Amicus* suggests that any remedial map should include a 5th district that maintains at least a 44 percent black population, consistent with the enacted map. This

reflects an important policy goal. With this percentage of black voters, the 5th district is at least an “influence district” and very likely a “crossover district.” *See Bartlett v. Strickland*, 556 U. S. 1, 13 (2009) (defining these terms in the context of the Voting Rights Act). This is particularly likely to be true since Maryland holds closed primary elections; black voters, at 44 percent of overall voters, are likely to constitute a majority of Democratic voters, and Democrats constitute 66 percent of all voters in the enacted 5th district. While it is not mandatory for the General Assembly to establish such districts, it was within its discretion to do so. *Id.* at 15, 23-25. It may well be that the General Assembly ought to have fashioned the 5th district as a majority black district along the lines of Version 4. *See id.* at 18. However, even if the failure to design the 5th district as a majority black district might have been inconsistent with the Voting Rights Act, it would not be a shortcoming that this court is obligated to remedy, as neither set of plaintiffs has raised such a claim. *See Perry v. Perez*, 565 U.S. at 397 (citing, *inter alia*, *Upham v. Seamon*, 456 U.S. 37, 42–43 (1982)). Therefore, the court should not adopt Version 4, which includes a majority black 5th district, unless the other priorities reflected in the enacted map would be better met through Version 4 than through any of the other prospective maps. This is not the case.

Amicus suggests that the other priorities the court should consider in comparing the prospective maps and the enacted map would be (1) the structure of individual districts; (2) the partisan compositions of the 1st and 2nd districts; and (3) the number of districts that individual counties are split among.

Looking at the structure of individual districts, Charles County is in the 5th district of the enacted map and of Versions 2 through 5, but it is in the 4th district of

Version 1. Further, while none of Anne Arundel County is within the 5th district of the enacted map (or of Versions 3, 4, or 5), some of Anne Arundel County is in the 5th district of Version 1, and more of Anne Arundel County is in the 5th district of Version 2. Lastly, more Prince George's County precincts with very high percentages of black residents are assigned to the 4th district of the enacted map and of Versions 3 and 5 than are assigned to the 4th district of Versions 1, 2, and 4. This explains the thin "goose neck" appearance of the 5th district near Bowie in both the enacted map and in Versions 3 and 5. In Versions 1, 2, and 4, many of those precincts (having a high percentage of black residents) are assigned to the 5th district in order to maximize the percentage of its population that is black—44 percent in Versions 1 and 2 (which also include largely-white southern Anne Arundel County in the 5th district), and 50.5 percent in Version 4. In summary, the structure of the 4th and 5th districts is closest to that of the enacted map in Versions 3 and 5, and furthest from the enacted map in Version 1. Between these extremes, the structure of the 4th and 5th districts is slightly closer to that of the enacted map in Version 4 than in Version 2.

With respect to the structure of the 2nd district in Anne Arundel County, the order is reversed. Version 1 is closest to the enacted map, followed by Version 2 (both having Fort Meade in the 2nd district), by Version 5 (without Fort Meade but with the north Arundel waterfront areas), and then Versions 3 and 4 (extending the 2nd district to the Calvert County line). However, the differences between the 2nd district in Versions 1 and 2 are slight, and even the 2nd district in Versions 3 and 4 do not depart from the enacted map to the same extent as the 4th and 5th districts depart from the enacted map in Version 1 (by placing Charles Co. in the 4th district).

As to the structure of the 1st district, Version 5 is closest to the enacted map, while the 1st district of Versions 1 through 4 is somewhat less similar in Harford and Anne Arundel Counties. *See* note 12, *infra*. (comparing numbers of residents in each).

The situation is very different as to the partisan compositions of the 1st and 2nd districts. In the enacted map, the 1st district has a Republican margin of 9.3 percent, and the 2nd district has a Democratic margin of 9.7 percent. In all of the prospective maps, the Republican margin of the 1st district is higher, and the Democratic margin of the 2nd district is lower. Version 1 has the highest Democratic margin for the 2nd district at 8.7 percent, followed by Version 2 (7.2 percent), Versions 3 and 4 (6.5 percent), and Version 5 (2.4 percent). Version 5 has the lowest Republican margin for the 1st district at 11.2 percent, followed by Version 2 (15.0 percent), Version 1 (16.1 percent), and Versions 3 and 4 (18.3 percent). Thus it is likely that the 1st district of the enacted map and of all five prospective maps would elect a Republican representative.¹² However, it is less likely that the 2nd district of the prospective maps would elect a Democratic representative, but it is more likely in Version 1 than in Versions 3 and 4, and least likely in Version 5.¹³ Thus, with respect to the partisan intentions of the enacted map,

¹² Therefore, in each of the prospective maps, the departure of the partisan makeup of the 1st district from that of the enacted map is of no significance. Anne Arundel Co. contains 206,032 residents of the 1st district in Version 1, 201,995 in Version 2, 196,314 in Versions 3 & 4, 220,116 in Version 5, and 229,872 in the enacted map. Correspondingly, Harford Co. contains 110,484 residents of the 1st district in Version 1, 114,521 in Version 2, 120,202 in Versions 3 & 4, 96,400 in Version 5, and 86,644 in the enacted map. The remainder of Harford Co. is in the 3rd district—which includes all of Carroll Co. in the prospective uncracked maps.

¹³ Anne Arundel Co. contains 214,099 residents of the 2nd district in Version 1, 303,418 in Version 2, 321,990 in Versions 3 & 4, 298,118 in Version 5, and 237,311 in the enacted map. These numbers are primarily driven by the amount of the 3rd district in Baltimore Co. As parts of the 4th and 8th districts move into Howard Co., the 3rd

Version 1 is the most consistent, followed by Version 2, then by Versions 3 and 4, and then Version 5—by far the least consistent.

Looking at the splits of counties among districts, the enacted map has Howard County within two districts and Anne Arundel County within three districts. Version 1 has Howard County within only one district and Anne Arundel County within three districts. Versions 2 through 4 have Howard County within three districts. Version 2 has Anne Arundel County within four districts, and Versions 3 and 4 have Anne Arundel County within three districts. Thus Version 1 is closest to the enacted map with respect to county splits among districts, followed by Versions 3 and 4, and then by Version 2.

V. SUMMARY AND CONCLUSION

Summarizing, the order of consistency with the enacted map is as follows:

Structure: Version 5 (most), 3, 4, 2, and 1 (least)

Partisan goals: Version 1 (most), 2, 3 & 4, and 5 (least)

County Splits: Version 1 (most), 3, 4, & 5 (tied), and 2 (least)

Unfortunately, the results above do not lead to a straightforward conclusion as to the prospective map that is the most consistent with the enacted map. However, since the partisan goals of the enacted map largely drove its structure, then it follows that the court should give greater weight to maintaining the partisan goals of the enacted map than maintaining its structure—particularly where certain aspects of the enacted structure may

expands into Baltimore Co., moving the 2nd district further south into Anne Arundel Co. The partisan leaning of the 2nd district depends much more on the specific Baltimore Co. and Anne Arundel Co. precincts it contains rather than the raw numbers in each county.

now be at odds with maintaining the partisan goals of the uncracked map. In this regard, the partisan departure of Version 5 from the enacted map is so great that Version 5 should not be adopted as a remedial map, particularly as its structure is only slightly more consistent with the enacted map than the other prospective versions.

If, as *Amicus* suggests, the court ought to give the greatest weight to maintaining the partisan goals of the enacted map where maintaining some elements of its enacted structure would now be inconsistent with those goals, then the court should find that Version 1 is the most consistent with the enacted map; it affords the 2nd district the highest Democratic margin—notwithstanding that its structure is the least consistent because it would place Charles County in the 4th district.¹⁴ Version 1 is also the simplest remedial map, with the fewest splits of Howard and Anne Arundel Counties, consistent with the enacted map.

If the court determines that the structural divergence of Version 1 precludes it from being the most consistent replacement for the enacted map, then *Amicus* would suggest that the court find that Version 2 is the overall most consistent remedial map. Version 2 more closely incorporates the general structure of the enacted 4th and 5th districts by placing Charles County in the 5th district. The Democratic margin of the 2nd district in Version 2 is between that of Version 1 and of Versions 3 & 4. The greatest drawback to Version 2 is that it does split Anne Arundel County among four districts.

Amicus suggests that Versions 3, 4, and 5 are less consistent options because they afford the 2nd district a smaller Democratic margin (much smaller in Version 5), even

¹⁴ *Amicus* allows that the enacted map's placement of Charles Co. in the 5th district could well reflect policy goals beyond the enacted map's overall partisan policy goals.

they are more structurally consistent with the enacted map than Versions 1 and 2.

Version 4 would increase the percentage of black residents in the 5th district to over 50 percent, rather than the 44 percent of the enacted map and of all the other prospective versions.

Respectfully submitted,

Dated: March 9, 2022

/s/ Stephen M. Shapiro
Stephen M. Shapiro, AIS No. 2003160006
5111 Westridge Road
Bethesda, Maryland 20816
(301) 229-6241
SShapiro2018@law.gwu.edu

CERTIFICATE OF SERVICE

I certify that on March 9, 2022, the foregoing Brief of *Amicus Curiae* Stephen M. Shapiro was filed electronically and served on counsel of record via the court's MDEC system.



/s/ Stephen M. Shapiro
Stephen M. Shapiro

APPENDIX 1

- Uncracked Version 1 – Map
- Uncracked Version 1 – Partisan & Racial Data


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CountyCity


PrecinctBlock


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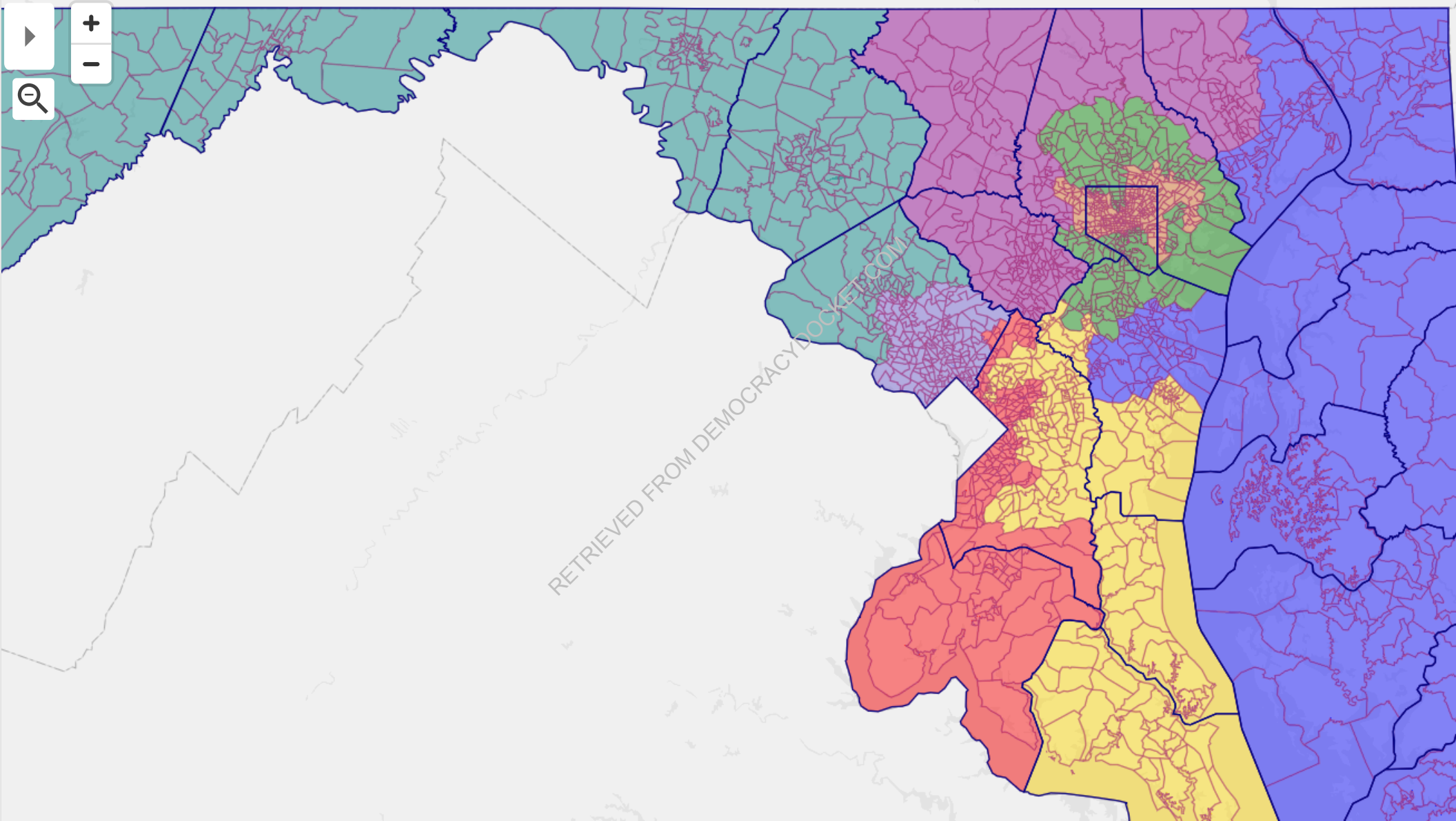
 Map



 Statistics

 Analyze

 Compare





Population			Shapes		Partisan Lean			Demographics (VAP)					
ID	Total	+/-			Dem	Rep	Oth	Total	White	Minority	Hispanic	Black	Asian
Un	0				0.00%	0.00%	0.00%	0	0.00%	0.00%	0.00%	0.00%	0.00%
1	771,925	0.00%	✔	✔	40.42%	56.51%	3.07%	605,775	73.97%	26.03%	4.90%	16.14%	3.00%
2	771,925	0.00%	✔	✔	52.55%	43.89%	3.56%	607,694	65.07%	34.93%	7.11%	18.41%	7.80%
3	771,926	0.00%	✔	✔	48.23%	48.23%	3.54%	594,210	64.17%	35.83%	5.12%	17.92%	11.32%
4	771,925	0.00%	✔	✔	81.30%	16.51%	2.19%	590,079	15.60%	84.40%	20.18%	59.17%	5.21%
5	771,925	0.00%	✔	✔	66.02%	31.21%	2.77%	609,292	41.31%	58.69%	8.57%	44.28%	5.09%
6	771,926	0.00%	✔	✔	48.78%	48.05%	3.17%	600,357	64.60%	35.40%	10.82%	13.57%	9.53%
7	771,925	0.00%	✔	✔	77.58%	19.45%	2.97%	608,305	27.90%	72.10%	6.61%	60.16%	4.74%
8	771,926	0.00%	✔	✔	75.27%	21.87%	2.86%	599,490	45.91%	54.09%	18.77%	18.42%	16.00%
	771,923	0.00%	✔	✔	60.24%	36.72%	3.04%	601,900	49.87%	50.13%	10.22%	31.01%	7.82%

- Notes
- The 0% population deviation is within the 0.75% threshold tolerated by the courts.
 - One district leans Republican, four lean Democratic, and three fall in the 45–55% competitive range.
 - There are four majority-minority districts.

APPENDIX 2

- Uncracked Version 2 – Map
- Uncracked Version 2 – Partisan & Racial Data

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CountyCity
PrecinctBlock

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📊Statistics

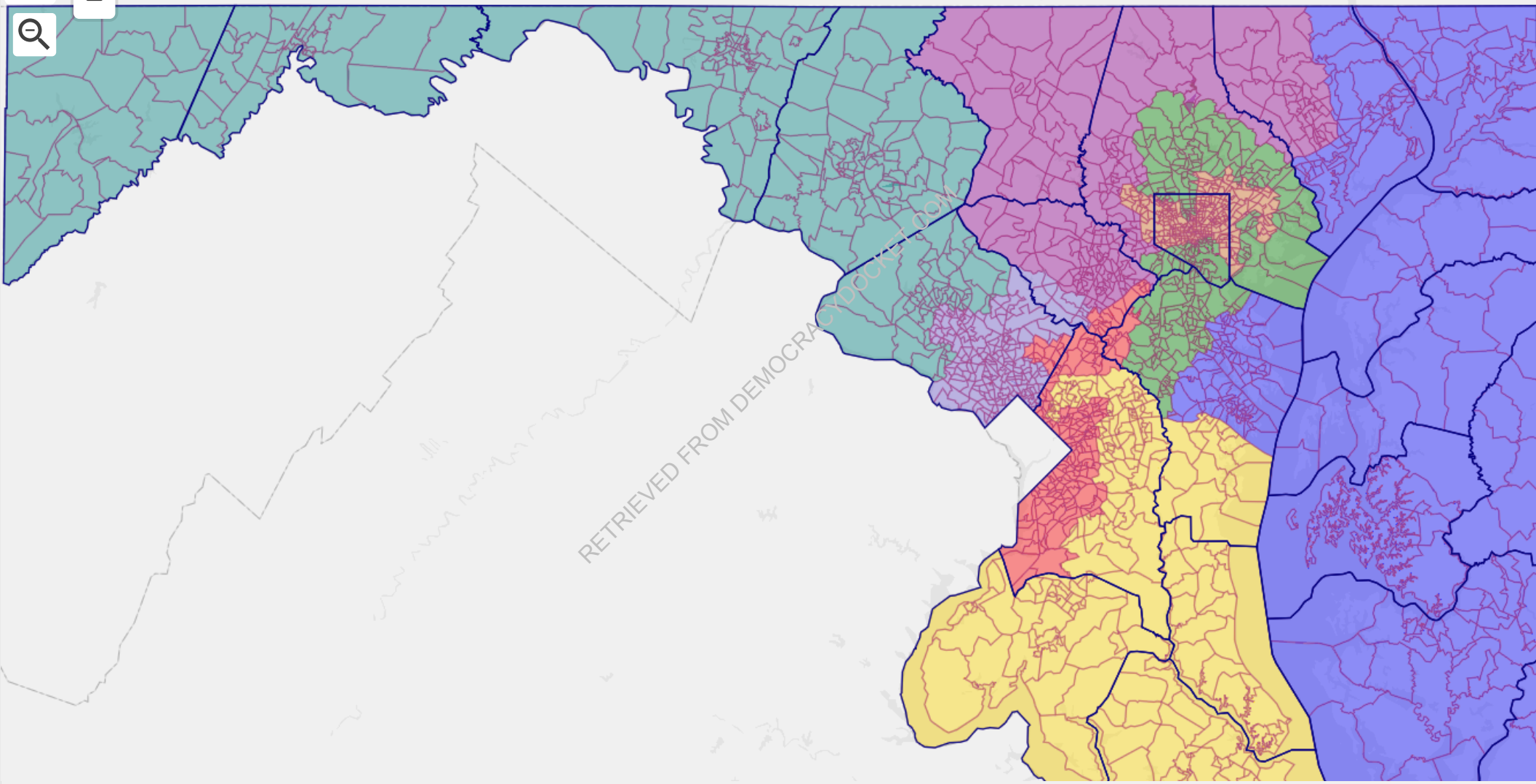
🔌Analyze



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Population			Shapes		Partisan Lean			Demographics (VAP)					
ID	Total	+/-			Dem	Rep	Oth	Total	White	Minority	Hispanic	Black	Asian
Un	0				0.00%	0.00%	0.00%	0	0.00%	0.00%	0.00%	0.00%	0.00%
1	771,925	0.00%	✔	✔	40.98%	56.00%	3.02%	608,806	73.41%	26.59%	5.54%	16.40%	2.68%
2	771,925	0.00%	✔	✔	51.80%	44.64%	3.56%	604,888	65.96%	34.04%	6.90%	17.79%	7.70%
3	771,925	0.00%	✔	✔	48.21%	48.21%	3.59%	596,367	65.27%	34.73%	5.08%	18.17%	10.04%
4	771,925	0.00%	✔	✔	85.62%	12.12%	2.26%	595,270	12.06%	87.94%	21.55%	60.07%	6.69%
5	771,926	0.00%	✔	✔	63.61%	33.71%	2.68%	602,896	42.35%	57.65%	7.20%	44.34%	5.19%
6	771,926	0.00%	✔	✔	48.72%	48.12%	3.16%	600,310	64.46%	35.54%	10.81%	13.59%	9.66%
7	771,925	0.00%	✔	✔	77.57%	19.46%	2.97%	608,239	27.89%	72.11%	6.60%	60.19%	4.73%
8	771,926	0.00%	✔	✔	74.33%	22.77%	2.89%	598,426	47.20%	52.80%	18.35%	17.47%	16.03%
	771,923	0.00%	✔	✔	60.24%	36.72%	3.04%	601,900	49.87%	50.13%	10.22%	31.01%	7.82%

- Notes
- The 0% population deviation is within the 0.75% threshold tolerated by the courts.
 - One district leans Republican, four lean Democratic, and three fall in the 45–55% competitive range.
 - There are four majority-minority districts.

APPENDIX 3

- Uncracked Version 3 – Map
- Uncracked Version 3 – Partisan & Racial Data

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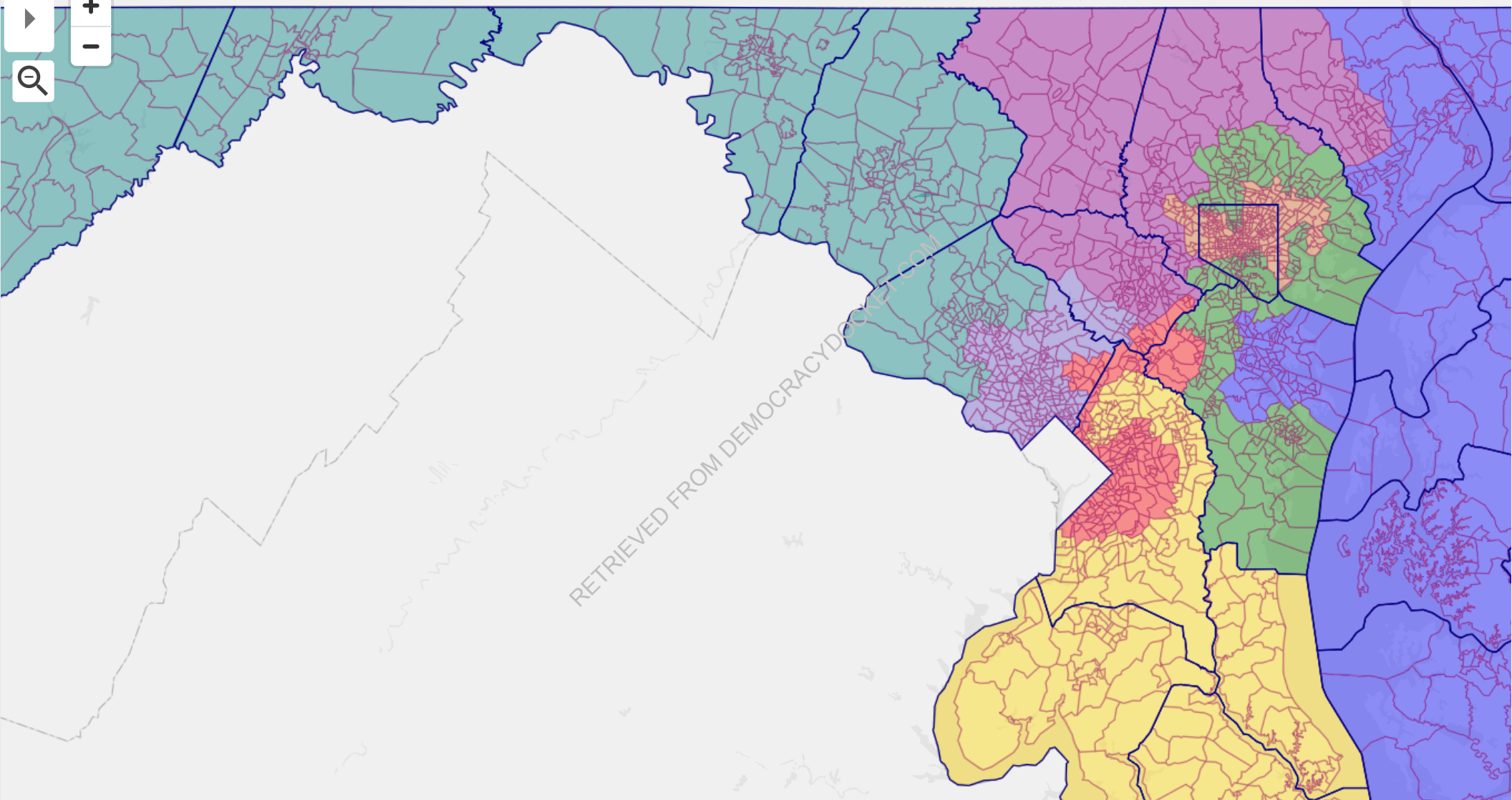
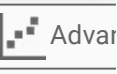
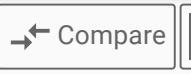
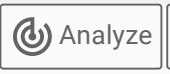
City

Precinct



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Tools



Map sa

Population			Shapes		Partisan Lean			Demographics (VAP)					
ID	Total	+/-			Dem	Rep	Oth	Total	White	Minority	Hispanic	Black	Asian
Un	0				0.00%	0.00%	0.00%	0	0.00%	0.00%	0.00%	0.00%	0.00%
1	771,925	0.00%	✔️	✔️	39.34%	57.62%	3.04%	606,942	73.94%	26.06%	5.04%	16.15%	2.78%
2	771,926	0.00%	✔️	✔️	51.47%	45.01%	3.52%	608,477	67.83%	32.17%	7.21%	16.14%	7.12%
3	771,925	0.00%	✔️	✔️	48.20%	48.20%	3.59%	596,873	65.67%	34.33%	5.05%	18.00%	9.85%
4	771,925	0.00%	✔️	✔️	85.96%	11.80%	2.24%	595,099	12.54%	87.46%	18.83%	62.65%	6.40%
5	771,925	0.00%	✔️	✔️	66.05%	31.28%	2.67%	600,751	38.32%	61.68%	10.35%	44.61%	5.94%
6	771,926	0.00%	✔️	✔️	48.72%	48.12%	3.16%	600,310	64.46%	35.54%	10.81%	13.59%	9.66%
7	771,925	0.00%	✔️	✔️	77.57%	19.46%	2.97%	608,247	27.89%	72.11%	6.60%	60.19%	4.73%
8	771,926	0.00%	✔️	✔️	74.01%	23.08%	2.91%	598,503	47.88%	52.12%	18.10%	16.83%	16.21%
	771,923	0.00%	✔️	✔️	60.24%	36.72%	3.04%	601,900	49.87%	50.13%	10.22%	31.01%	7.82%

- Notes
- The 0% population deviation is within the 0.75% threshold tolerated by the courts.
 - One district leans Republican, four lean Democratic, and three fall in the 45–55% competitive range.
 - There are four majority-minority districts.




APPENDIX 4

- Uncracked Version 4 – Map
- Uncracked Version 4 – Partisan & Racial Data

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CountyCity


PrecinctBlock

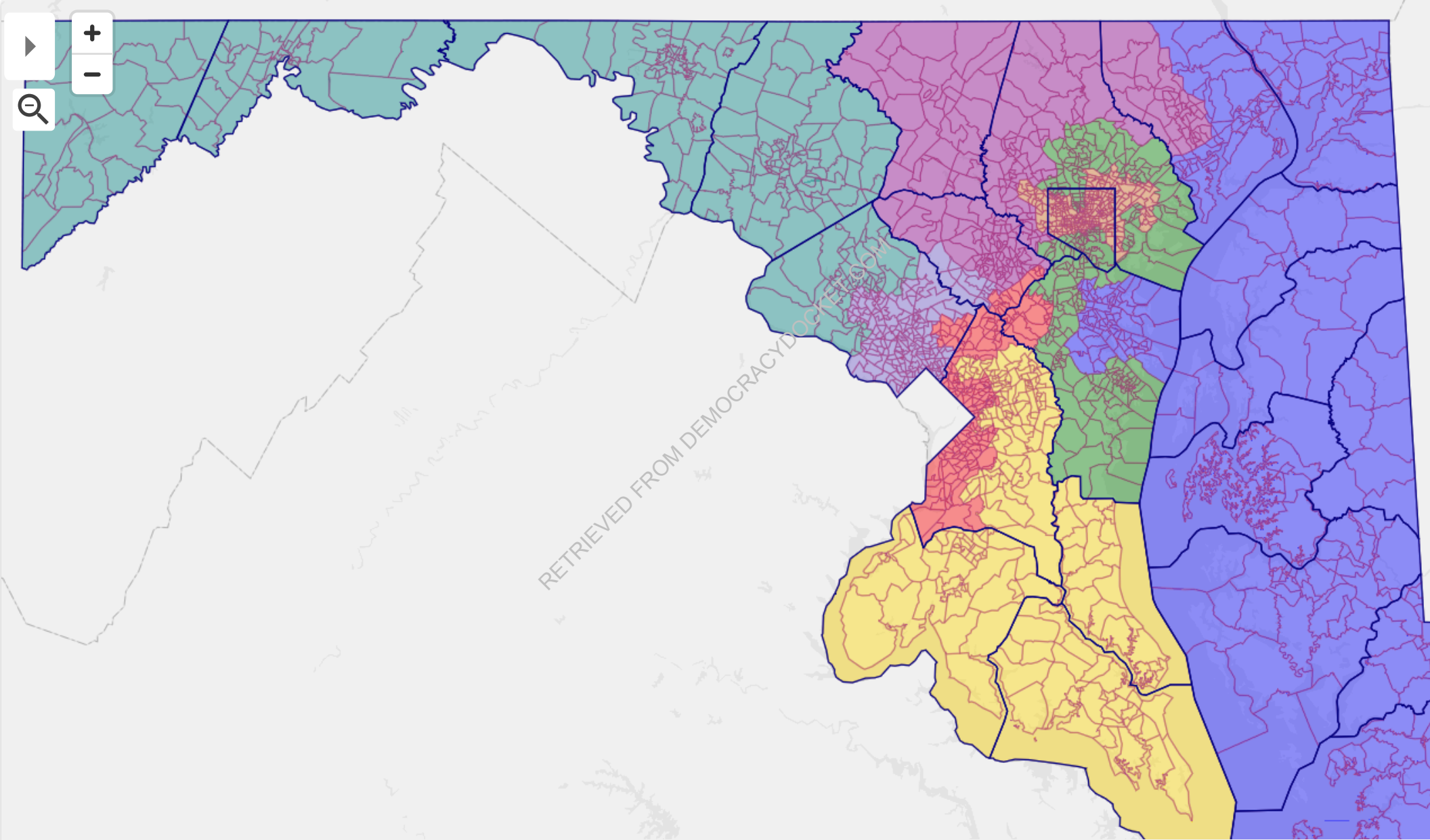
 **Tools** ▾





















 **Map**

 **Statistics**

 **Analyze**

 **Compare**



Population			Shapes		Partisan Lean			Demographics (VAP)					
ID	Total	+/-			Dem	Rep	Oth	Total	White	Minority	Hispanic	Black	Asian
Un	0				0.00%	0.00%	0.00%	0	0.00%	0.00%	0.00%	0.00%	0.00%
1	771,925	0.00%			39.34%	57.62%	3.04%	606,945	73.94%	26.06%	5.04%	16.15%	2.78%
2	771,926	0.00%			51.47%	45.01%	3.52%	608,474	67.82%	32.18%	7.21%	16.14%	7.12%
3	771,925	0.00%			48.20%	48.20%	3.59%	596,873	65.67%	34.33%	5.05%	18.00%	9.85%
4	771,925	0.00%			84.37%	13.24%	2.39%	594,235	14.39%	85.61%	22.09%	56.70%	7.16%
5	771,925	0.00%			67.65%	29.81%	2.54%	601,615	36.45%	63.55%	7.14%	50.52%	5.19%
6	771,926	0.00%			48.72%	48.12%	3.16%	600,310	64.46%	35.54%	10.81%	13.59%	9.66%
7	771,925	0.00%			77.57%	19.46%	2.97%	608,247	27.89%	72.11%	6.60%	60.19%	4.73%
8	771,926	0.00%			74.01%	23.08%	2.91%	598,503	47.88%	52.12%	18.10%	16.83%	16.21%
	771,923	0.00%			60.24%	36.72%	3.04%	601,900	49.87%	50.13%	10.22%	31.01%	7.82%

- Notes
- The 0% population deviation is within the 0.75% threshold tolerated by the courts.
 - One district leans Republican, four lean Democratic, and three fall in the 45–55% competitive range.
 - There are four majority-minority districts.

APPENDIX 5

- Uncracked Version 5 – Map
- Uncracked Version 5 – Partisan & Racial Data

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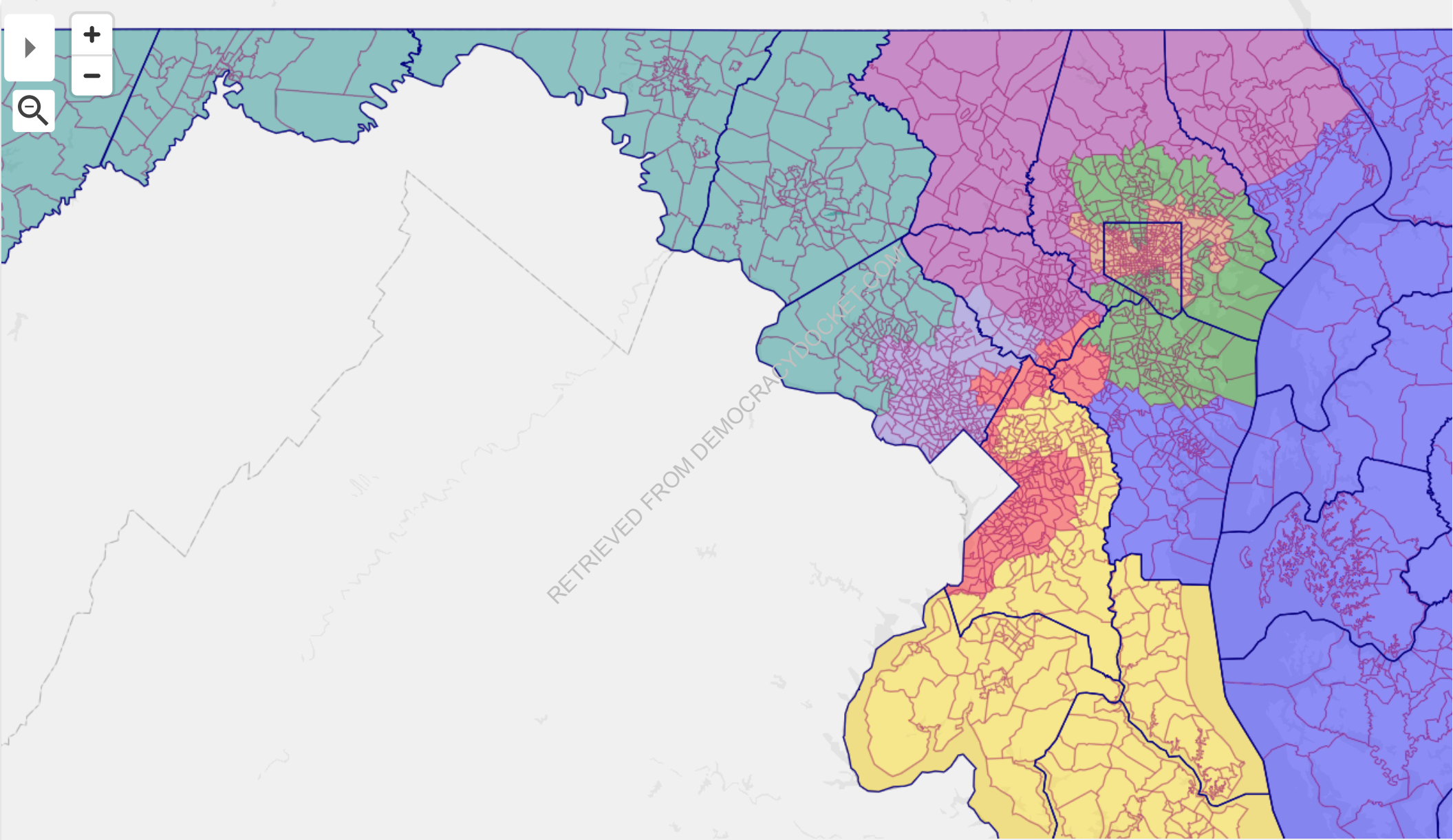
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🔄 Analyze

↔️ Compare

⌵



Population			Shapes		Partisan Lean			Demographics (VAP)					
ID	Total	+/-			Dem	Rep	Oth	Total	White	Minority	Hispanic	Black	Asian
Un	0				0.00%	0.00%	0.00%	0	0.00%	0.00%	0.00%	0.00%	0.00%
1	771,925	0.00%	✔️	✔️	42.87%	54.09%	3.03%	607,351	71.82%	28.18%	5.92%	17.44%	2.95%
2	771,926	0.00%	✔️	✔️	49.43%	47.05%	3.52%	607,986	68.97%	31.03%	6.45%	15.64%	7.11%
3	771,925	0.00%	✔️	✔️	46.56%	49.86%	3.59%	596,955	66.65%	33.35%	4.94%	17.20%	9.69%
4	771,925	0.00%	✔️	✔️	85.65%	12.12%	2.23%	599,399	13.02%	86.98%	17.81%	62.81%	6.73%
5	771,925	0.00%	✔️	✔️	65.78%	31.54%	2.69%	596,451	38.02%	61.98%	11.32%	44.33%	5.60%
6	771,926	0.00%	✔️	✔️	48.72%	48.12%	3.16%	600,310	64.46%	35.54%	10.81%	13.59%	9.66%
7	771,925	0.00%	✔️	✔️	77.57%	19.46%	2.97%	608,247	27.89%	72.11%	6.60%	60.19%	4.73%
8	771,926	0.00%	✔️	✔️	74.01%	23.08%	2.91%	598,503	47.88%	52.12%	18.10%	16.83%	16.21%
	771,923	0.00%	✔️	✔️	60.24%	36.72%	3.04%	601,900	49.87%	50.13%	10.22%	31.01%	7.82%

- Notes
- The 0% population deviation is within the 0.75% threshold tolerated by the courts.
 - One district leans Republican, four lean Democratic, and three fall in the 45–55% competitive range.
 - There are four majority-minority districts.

APPENDIX 6

- Enacted Map (December 2021)
- Enacted Map – Partisan & Racial Data

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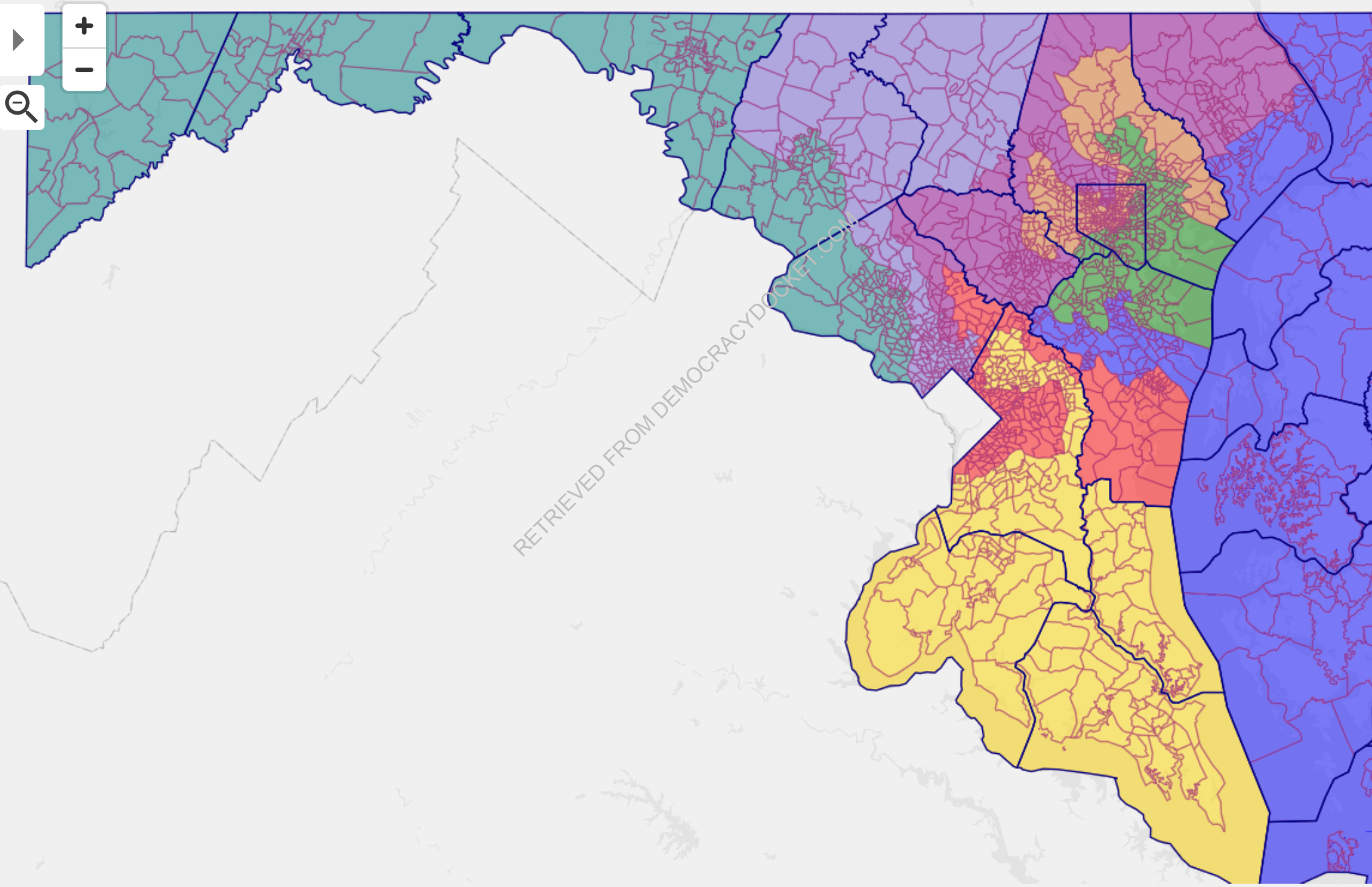
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Tools ▾

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🔄 Analyze



Population			Shapes		Partisan Lean			Demographics (VAP)					
ID	Total	+/-			Dem	Rep	Oth	Total	White	Minority	Hispanic	Black	Asian
Un	0				0.00%	0.00%	0.00%	0	0.00%	0.00%	0.00%	0.00%	0.00%
1	771,925	0.00%	✓	✓	43.81%	53.11%	3.08%	603,769	69.56%	30.44%	5.68%	19.54%	3.43%
2	771,925	0.00%	✓	✓	53.14%	43.46%	3.40%	601,414	55.96%	44.04%	8.96%	27.52%	5.87%
3	771,926	0.00%	✓	✓	54.79%	41.78%	3.42%	597,091	60.37%	39.63%	8.71%	18.43%	11.14%
4	771,926	0.00%	✓	✓	80.29%	17.40%	2.31%	598,156	20.10%	79.90%	17.83%	57.34%	4.87%
5	771,925	0.00%	✓	✓	66.02%	31.31%	2.66%	599,707	38.28%	61.72%	10.78%	44.11%	6.05%
6	771,925	0.00%	✓	✓	54.89%	41.98%	3.13%	602,679	59.22%	40.78%	11.99%	14.44%	13.05%
7	771,926	0.00%	✓	✓	71.80%	25.09%	3.12%	613,219	34.71%	65.29%	4.04%	52.64%	8.05%
8	771,925	0.00%	✓	✓	60.22%	36.67%	3.11%	599,167	60.89%	39.11%	13.98%	13.71%	10.11%
	771,923	0.00%	✓	✓	60.24%	36.72%	3.04%	601,900	49.87%	50.13%	10.22%	31.01%	7.82%

Notes

- The 0% population deviation is within the 0.75% threshold tolerated by the courts.
- No districts lean Republican, seven lean Democratic, and one falls in the 45–55% competitive range.
- There are three majority-minority districts.