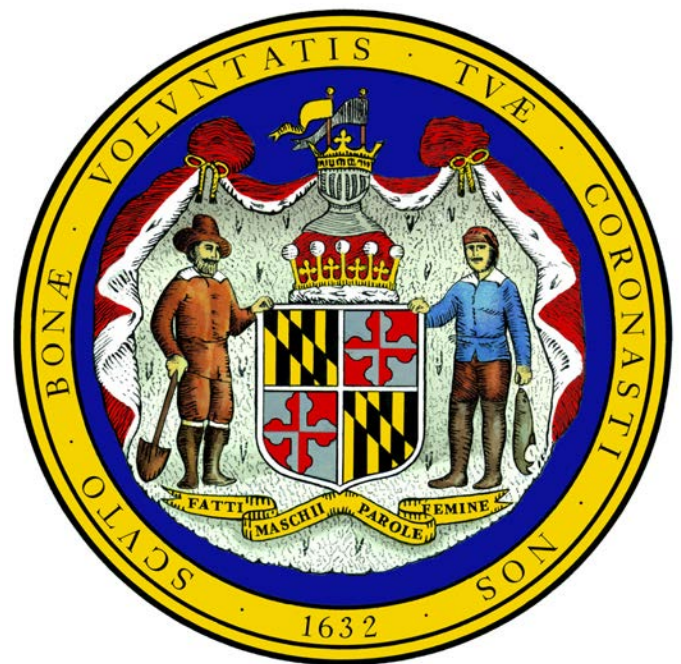




Report of Maryland's Emergency Commission on Sixth Congressional District Gerrymandering April 2, 2019



April 1, 2019

Larry Hogan
Governor, State of Maryland
100 State Circle
Annapolis, MD 21401

Dear Governor Hogan:

Since you created the Emergency Commission on Sixth Congressional District Gerrymandering in November, we have worked diligently to develop a plan for new Sixth District lines that will provide a satisfactory remedy in response to a federal court's finding that the existing map is unconstitutional. We applaud your leadership in seeking a positive resolution to this problem.

As part of our work, we held five hearings across the western part of the state to gather input from citizens. We heard widespread discontent with a gerrymander that divides counties and historic communities for political gain, deprives rural and Western Maryland of a voice of their own choosing and confuses and demoralizes residents by leaving it often unclear who represents a community.

Last week we submitted to you a map that we are confident achieves much greater compactness and keeps communities together in a far better fashion than the old. At hearings the public expressed thanks for our efforts and found the proposed lines both fairer and more practical than the old.

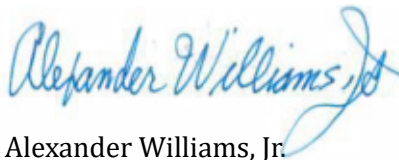
We are proud of the impartial and nonpartisan spirit of our commission and its deliberations and hope that our work may serve as a model for future redistricting efforts statewide that invite nonpartisan citizen participation, public submissions and transparency; mandate the disregarding of information about party registration, past voting history and the residence of incumbents in drawing lines; and provide public access to meetings through streamed and archived media.

We respectfully submit this report and stand ready to continue to assist you in your efforts to make redistricting reform in Maryland a reality.

Sincerely,



Walter Olson
Co-Chair



Alexander Williams, Jr.
Co-Chair

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Emergency Commission on Sixth Congressional District Gerrymandering Commission Members

Governor Hogan appointed three initial members to the commission, one a registered Republican, one a registered Democrat and one registered with no party affiliation.

Walter Olson (co-chair), a Frederick County resident, is a senior fellow with the Cato Institute and the author of four books and many other writings on law, government and public policy.

Alexander Williams, Jr. (co-chair), a Prince George's County resident, is a retired U.S. District Judge, a former elected State's Attorney for Prince George's County and a widely recognized civic leader in Maryland and beyond.

Ashley Oleson, an Anne Arundel County resident, is administrator for the League of Women Voters of Maryland. The League has been a leading voice calling for redistricting reform and educating voters on the issue.

The initial members, by consensus, selected six more members from a public application process.*

Maury S. Epner, Esq., a registered Republican living in Montgomery County, has resided in what is currently the 6th Congressional District for more than 30 years and has served as a federal prosecutor, private practice attorney and adjunct professor of law at the University of Maryland.

Luis T. Gutierrez, Jr., a registered Democrat living in Montgomery County, has over 20 years of experience in biopharmaceutical and medical technology industries and is currently a self-employed consultant to medical product developers. He is also the former president, CEO and board member of Theranostics Health, Inc. (now Avant Diagnostics).

Christopher Howard, a registered Democrat living in Anne Arundel County, is a software engineer with Clarity Business Solutions and an adjunct professor of Computer Science and Technology at the University of Maryland University College. His career focus is supporting technology development in defense and aerospace industries and he is a member of the local chapter of the National Society of Black Engineers.

Deborah Lundahl, a registered Republican living in Frederick County, serves on that county's ethics commission and works as an accounting manager for Redeemer Lutheran Church and program administrator for Building Veterans. She is a former public information officer for Carroll County and nursing home program coordinator for the Montgomery County Board of Elections.

**Two other volunteer members of the commission, Matthew Douglas and Kathleen Tabor, both registered as unaffiliated, were selected from the public application process and served with the commission through March 1, 2019 when it was discovered that they did not meet all the requirements laid out in the executive order creating the commission. The commission appreciates the participation of these former members and their commitment to good government and a better redistricting process. All the commission's decisions both up to and after March 1, 2019 were the result of unanimous votes reflecting the unanimous consensus among commissioners on the principles involved.*

Governor Hogan's Executive Order



The State of Maryland

Executive Department

EXECUTIVE ORDER
01.01.2018.29

Emergency Commission on Sixth Congressional District Gerrymandering

- WHEREAS, The United States District Court for the District of Maryland (the "U.S. District Court") in *Benisek v. Lamone*, Case No. 1:13-cv-03233-JKB, found that the State's 2011 congressional redistricting plan violated Maryland citizens' rights established by the First Amendment to the United States Constitution;
- WHEREAS, The U.S. District Court permanently enjoined the State from conducting any further elections for members of the U.S. House of Representatives from Maryland under the 2011 congressional redistricting plan;
- WHEREAS, The U.S. District Court ordered the State to redraw Maryland's Sixth Congressional District boundaries on the basis of compactness and geographic contiguity, and with regard for natural boundaries, boundaries of political subdivisions, and geographic and other communities of interest, and without considering how citizens are registered to vote or have voted in the past or to what political party they belong;
- WHEREAS, The U.S. District Court further ordered that the State submit a constitutional redistricting plan to the U.S. District Court;
- WHEREAS, The U.S. District Court's order is currently stayed until no later than July 1, 2019;
- WHEREAS, The threat of federal judicial intervention in the drawing of the Sixth Congressional District necessitates proactive State measures to remedy the unconstitutional boundaries;
- WHEREAS, Correcting this serious constitutional injury with new lawful maps will enable a large number of Maryland voters to more fully participate in congressional elections;

WHEREAS, The integrity of the redistricting process is essential to the success of democracy;

WHEREAS, Fairness in the redistricting process is what the citizens of Maryland expect and deserve; and

WHEREAS, The process of redistricting should be fully transparent and subject to public input and scrutiny;

NOW THEREFORE, I, LAWRENCE J. HOGAN, JR., GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE CONSTITUTION AND LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

- A. There is an Emergency Commission on Sixth Congressional District Gerrymandering (the "Commission").
- B. Membership.
 1. The Commission consists of the following members appointed by the Governor:
 - a. One registered with the Democratic Party;
 - b. One registered with the Republican Party;
 - c. One not registered with either the Democratic Party or the Republican Party; and
 - d. Six selected from a public application process, apportioned as follows:
 - i. Two registered with the Democratic Party;
 - ii. Two registered with the Republican Party; and
 - iii. Two not registered with either the Democratic Party or the Republican Party.
 2. Each appointee shall be a voter who, for at least three years immediately preceding the date of appointment, has been registered in the State continuously with the same political party or continuously with neither the Democratic Party nor the Republican Party.

3. No appointee may be:
 - a. A representative or candidate for representative in the U.S. Congress;
 - b. An officer or employee of a political party or political committee;
 - c. A member of staff of the Governor, Maryland General Assembly, or U.S. Congress; or
 - d. A current or former registered lobbyist.
4. The selection of members shall be intended to produce a Commission that is independent from legislative influence and reasonably representative of the State's diversity and geography.
5. The Governor shall appoint one or more members to chair the Commission.
6. A vacancy shall be filled in the same manner that the initial appointments are made.

C. Duties.

1. The Commission shall prepare a plan adjusting the boundary lines of the Sixth Congressional District, and any other districts for Maryland's representatives in the U.S. Congress (the "congressional districts") as it may deem necessary or appropriate to address the constitutional violations with regard to that district, in conformance with the following standards:
 - a. Each member of Congress shall be elected from a single-member district;
 - b. The population of all congressional districts shall be equal to the extent practicable; and
 - c. Adjusted congressional districts shall:
 - i. Comply with the U.S. Constitution;
 - ii. Comply with federal law, including the Voting Rights Act;

- iii. Comply with all applicable judicial direction, rulings, judgments, or orders;
 - iv. Respect natural boundaries and the geographic integrity and continuity of any municipal corporation, county, or other political subdivision to the extent practicable;
 - v. Be geographically compact and include nearby areas of population, to the extent practicable;
 - vi. Not account for how citizens are registered to vote, how they have voted in the past, or what political party they belong to; and
 - vii. Not account for the domicile or residence of any individual, including an incumbent officeholder or a potential candidate for office.
2. The Commission shall exercise judgment that is impartial and that reinforces public confidence in the integrity of the redistricting process.

D. Procedures.

1. A majority of the members of the Commission shall constitute a quorum for the transaction of any business.
2. The Commission shall hold meetings at such times and such places as it deems necessary, provided that public notice is given at least three days in advance. The meetings shall be accessible to the general public in accordance with the Maryland Open Meetings Act or other applicable law.
3. Public participation. The Commission shall:
 - a. With at least seven days' public notice, conduct regional summits — including at least one in the Sixth Congressional District — to allow citizens to offer comment on the boundaries of the congressional districts to be adjusted;
 - b. Provide an electronic portal for citizens to review redistricting data and submit their comments about redistricting; and
 - c. Undertake any other activities it deems appropriate to solicit public input in the redistricting process.

4. The Commission may adopt such other procedures as may be necessary to ensure the orderly transaction of business, including the creation of committees.
5. The Commission may designate additional individuals, including interested citizens, elected officials, educators, or specialists with relevant expertise, but excluding the individuals identified in Section B(3), to serve on any committee.
6. The Commission may consult with units of State government and outside experts to obtain such technical assistance and advice as it deems necessary to complete its duties.
7. By March 4, 2019, the Commission shall:
 - a. With at least seven affirmative votes of the members, approve and certify a proposed redistricting plan that separately sets forth adjusted district boundary lines for the Sixth Congressional District and other congressional districts as it may deem necessary or appropriate to address the constitutional violations with regard to that district;
 - b. Approve and certify a proposed map that corresponds to the redistricting plan; and
 - c. Publicize the proposed plan and map in a manner reasonably designed to achieve broad public availability and access.
8. Until March 26, 2019, the Commission shall accept and review public comments about the proposed plan and map.
9. By April 2, 2019, the Commission shall:
 - a. With at least seven affirmative votes of the members, approve and certify a final redistricting plan that separately sets forth adjusted district boundary lines for the Sixth Congressional District and other congressional districts as it may deem necessary or appropriate to address the constitutional violations with regard to that district;
 - b. Approve and certify a final map that corresponds to the redistricting plan;

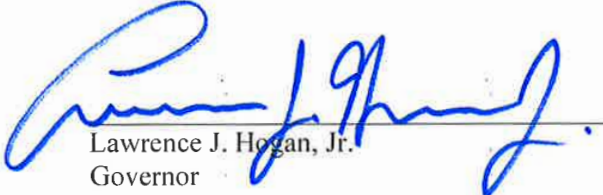
- c. Submit the final plan and map to the Legislative Office of the Office of the Governor; and
- d. Issue a report that explains the basis for the Commission's decisions, including the standards used and applied.

10. The Commission may issue additional reports as directed by the Governor.

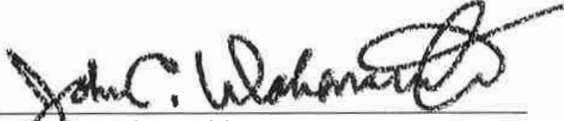
- E. The Office of the Governor shall prepare and transmit the final, certified redistricting plan and map for introduction in the General Assembly as emergency legislation in its session commencing on January 9, 2019.
- F. Membership on the Commission shall not be compensated, but members are entitled to reimbursement for expenses as provided by law.
- G. The Commission shall terminate on July 1, 2019, unless the Governor declares before that date that the Commission shall remain in operation.
- H. The Office of the Governor shall provide the Commission with staff and consultants as necessary and feasible.
- I. All units of State government subject to the supervision and direction of the Governor shall cooperate with and assist the Commission in carrying out its responsibilities.

Given Under my Hand and the Great Seal of the State of Maryland, in the City of Annapolis, this 26th Day of November, 2018.




Lawrence J. Hogan, Jr.
Governor

ATTEST:


John C. Wobensmith
Secretary of State

Legal Background

Through most of Maryland history, there has continuously been a U.S. House district drawing a majority of its population from western Maryland. That changed after the 2010 census, when Maryland officials redrew the lines of the Sixth Congressional District. Much of Frederick County as well as all of Carroll County were removed from the Sixth District and assigned instead to the Eighth or, in the case of part of Carroll County, to the First. The changes were acknowledged both at the time and since as meant to ensure the election of an additional Democratic representative. To accomplish that goal, about 350,000 mostly Democratic residents were moved into the district and a similar number of mostly Republican residents were moved out. In 2012, a Democrat beat a Republican who had served since 1993.

In November 2013, several residents of the current Sixth District sued in federal court, claiming that the redrawn Sixth District deprived them of their First Amendment rights. In December 2015, the U.S. Supreme Court ordered the case to a three-judge panel. In August 2017, that court declined given the then state of the litigation to require a map change for 2018 elections. In its June 2018 ruling in *Benisek v. Lamone*, the U.S. Supreme Court affirmed that ruling.

On November 7, 2018, after hearing further evidence, the three-judge panel unanimously ruled that the state, in drawing the Sixth Congressional District, had violated the plaintiffs' First Amendment rights by intentionally and unconstitutionally targeting Republicans, thereby diminishing their ability to elect a representative ("representational rights") and to associate ("associational rights").

As to representational rights, the court held that partisan vote dilution – that is, the placement of citizens in a district where their political party makes up a smaller share of the electorate – is improper when it is specifically intended to penalize them for their political viewpoint. The three-judge panel held that a violation of representational rights can be proved if (1) a district was redrawn with the specific intent to burden citizens because of their voting history or political party; (2) the redrawn district imposed "tangible and concrete" adverse effects on the ability of the burdened citizens to have an effective electoral voice; and (3) those effects would not have resulted absent the intent. The court ruled that plaintiffs had proved all three elements of this test and had therefore shown the state to have violated their representational rights.

As to associational rights, the three-judge panel held that citizens have a right to associate in furtherance of political beliefs and aims, including through political parties. It ruled that a violation of associational rights can be proved if: (1) a district was redrawn with the specific intent to burden citizens because of their voting history or political party; (2) the redrawn district burdened the ability of those citizens to associate in furtherance of political beliefs and aims; and (3) the intent caused those effects. Again, the court ruled that plaintiffs had proved all three elements of this test. Among the burdens, it found that after the redistricting Republican voters suffered significant political confusion and disengagement, which resulted in a decline in their voting and fundraising strength.

The three-judge panel ordered the state to draw a new Sixth Congressional District for the 2020 congressional elections, relying on geographic contiguity, compactness, regard for natural and political-subdivision boundaries and regard for geographic and other communities of interest. The state was not to consider citizens' voter registration, voting history or political party.

The state subsequently asked the U.S. Supreme Court to hear the case, after which the three-judge panel agreed to stay its order until the earlier of July 1, 2019, or the date on which the U.S. Supreme Court decided the case. On March 26, 2019, the U.S. Supreme Court heard oral argument and a decision is expected before the court adjourns for the summer.

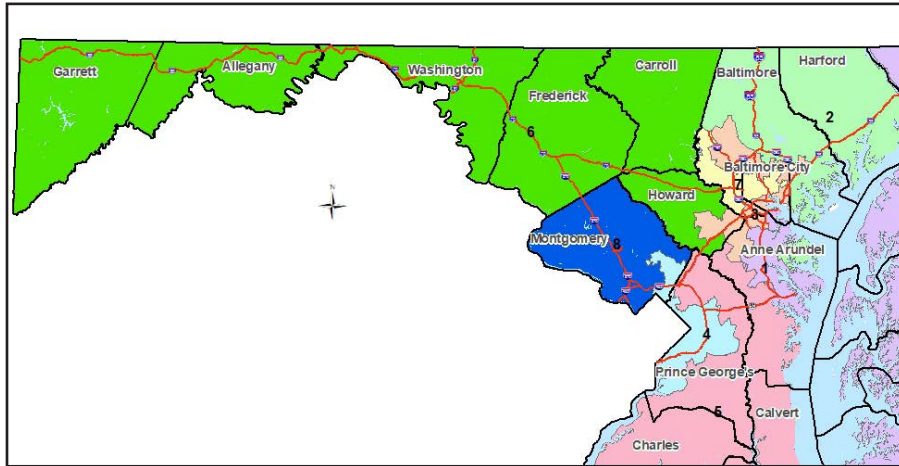


Figure 1 – 1992 Congressional District 6

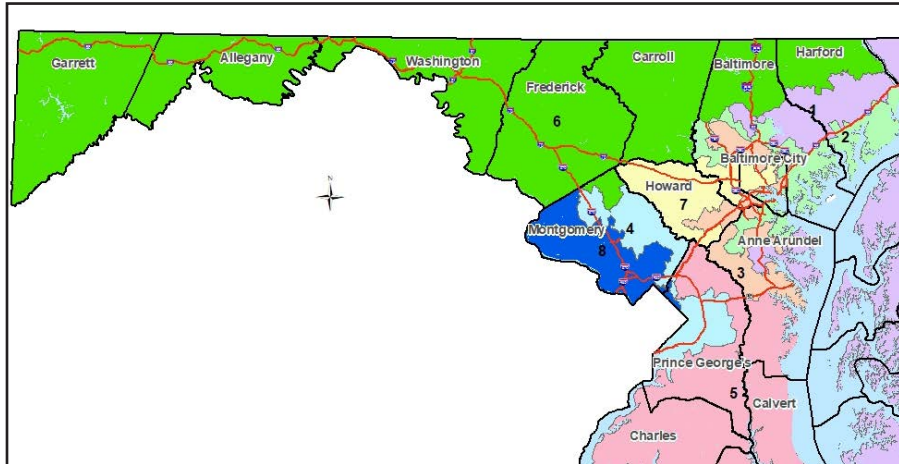


Figure 2 – 2002 Congressional District 6

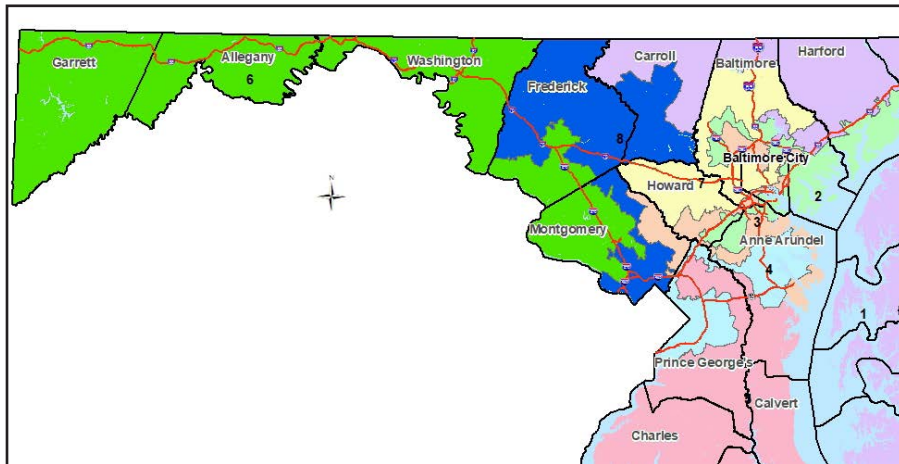


Figure 3 – 2011 Congressional District 6

Commission Duties and Plan of Work

The Governor created the independent commission, comprised of registered Republicans, Democrats and unaffiliated voters in such a manner as to avoid a majority of registrants from any one party. The process was “intended to produce a commission that is independent from legislative influence and reasonably representative of the state’s diversity and geography.” The three initial members (Olson, Williams and Oleson) all served on the Maryland Redistricting Reform Commission, which was established by Governor Hogan by executive order in 2015 and issued a report on November 3 of that year.

Duties of the Commission as outlined in the Executive Order

Prepare a plan adjusting the boundary lines of the Sixth Congressional District and any other districts for Maryland’s representatives in the U.S. Congress as it may deem necessary or appropriate to address the constitutional violations with regard to that district, in conformance with the following standards:

- Each member of Congress shall be elected from a single-member district
- The population of all congressional districts shall be equal to the extent practicable
- Adjusted congressional districts shall:
 - Comply with the U.S. Constitution
 - Comply with federal law, including the Voting Rights Act
 - Comply with all applicable judicial direction, rulings, judgments or orders
 - Respect natural boundaries and the geographic integrity and continuity of any municipal corporation, county or other political subdivision to the extent practicable
 - Be geographically compact and include nearby areas of population, to the extent practicable
 - Not account for how citizens are registered to vote, how they have voted in the past or what political party they belong to
 - Not account for the domicile or residence of any individual, including an incumbent officeholder or a potential candidate for office

The federal court ordered the State of Maryland to redraw the Sixth Congressional District boundaries on the basis of compactness and geographic contiguity and with regard for natural boundaries, boundaries of political subdivisions and geographic and other communities of interest and without considering how citizens are registered to vote or have voted in the past or to what political party they belong.

Timeline of Events and Locations

Governor Hogan Announces Executive Order – November 26, 2018
Applications Close for Public Members – December 10, 2018
Final Commission Announced – December 20, 2018
First Full Commission Meeting – January 4, 2019 (Annapolis)
Public Hearing #1 – January 14, 2019 (Frederick Community College)
Public Hearing #2 – January 31, 2019 (Montgomery College – Rockville)
Public Hearing #3 – February 6, 2019 (Allegany College – Cumberland Campus)
Public Map Submission Period Opens – February 13, 2019
Commission Workshop – February 20, 2019 (Public Conference Call due to inclement weather)
Public Map Submission Period Closes – February 27, 2019
Commission Adopts Proposed Map – March 1, 2019 (Annapolis)
Proposed Map Published and Posted Online for Public Comment – March 4, 2019
Public Hearing on Proposed Map #1 – March 12, 2019 (BlackRock Center for the Arts – Germantown)
Public Hearing on Proposed Map #2 – March 20, 2019 (Hagerstown Community College)
Final Commission Workshop – March 22, 2019 (Annapolis)
Last Day for Public Comment on Map – March 26, 2019
Commission Approves Map (Public Conference Call) and Sends to Governor – March 27, 2019
Commission Approves Report (Public Conference Call) and Sends to Governor – April 1, 2019

Public Hearings Before Map Proposal

To ensure that citizens could share their thoughts and suggestions with the commission directly, the commission held five regional hearings, three before the adoption of a proposed map and two afterward. These hearings were held in locations selected to target residents affected by Sixth District gerrymandering and those most likely to be affected by the commission's proposed map. All of the commission's public hearings and workshops/deliberative sessions were live-streamed and archived online so as to promote transparency and allow citizens that were unable to attend in person to follow along.

What follows is a sampling of themes of testimony offered at each public hearing. For complete minutes and to watch video of any hearing, please visit the commission's website, Governor.Maryland.gov/free-and-fair/.

Public Hearing #1, Frederick

The commission held its first public hearing on January 14, 2019 at the Jack B. Kussmaul Theatre on the campus of Frederick Community College.

Themes from testimony:

- Freedom of speech and the right to choose elected representation need to be honored.
- The issue is indicative of a national problem, not just Maryland.
- Frederick and Carroll counties are "two peas in a pod" as far as common interests and long-standing connections but the current map divides them.
- Residents feel disenfranchised. "We would like to have our voice back." "We have no representation."
- Commission should be bold and propose changes statewide, as necessary.
- Speakers included many active in both Democratic and Republican politics. Also contributing were Frederick County's Election Director and an election board member, as well as a member of the Carroll County Board of Commissioners.
- Encouragement to consider using algorithms to compile maps.
- Figuring out what district you live in shouldn't be hard, but it is with the current map.

"Our votes have been stolen from us. It's just not right."

Angela McIntosh, Frederick



Public Hearing #2, Rockville

The commission held its second public hearing on January 31, 2019 at the Theatre Arts Arena at Montgomery College – Rockville.

Themes from testimony:

- Western Maryland is different from Montgomery County.
- Keep similar communities with shared values and interests together.
- Urban areas are well represented while rural areas are not and it is not easy for an elected representative to serve both kinds of areas.
- Community is tired of repeated major line changes and wants compact and contiguous districts that don't change constantly.
- Independent commission format should be used to draw all the maps, not just this emergency map.
- Damascus and vicinity have been needlessly split between multiple districts.
- Keep districts compact. Respect natural boundaries.

“Thank you for showing us what a fair process can look like.”

Mary Lanigan, Gaithersburg



Public Hearing #3, Cumberland

The commission held its third public hearing on February 6, 2019 at the College Center Theater at Allegany College of Maryland – Cumberland.

Themes from testimony:

- Garrett and Allegany counties do not have the same issues as Montgomery County. “This is Appalachia.” Just compare one with the other on housing prices.
- An Allegany County commissioner said constituent services suffered under the 2011 map and the representative visited less often.
- One view: 2001 map “that followed the Mason Dixon Line” combined same sorts of communities. Another view: northern Harford County too far away to make sense being with us.
- “There’s only one reason” for the current map and that’s politics.
- Not a matter of one party or the other, Democrat Beverly Byron and Republican Roscoe Bartlett represented the old Sixth Congressional District and they both understood communities like ours.
- Local candidates can’t financially compete with money raised by Montgomery County representatives for their campaigns.
- An area like western Maryland does have its own small cities such as Cumberland that have same issues as cities downstate. Seek common interest, but don’t be afraid to combine cities with more rural areas.

*“Their offices are remote
and I don’t feel I have their
attention.”*

William Stookey, Allegany County

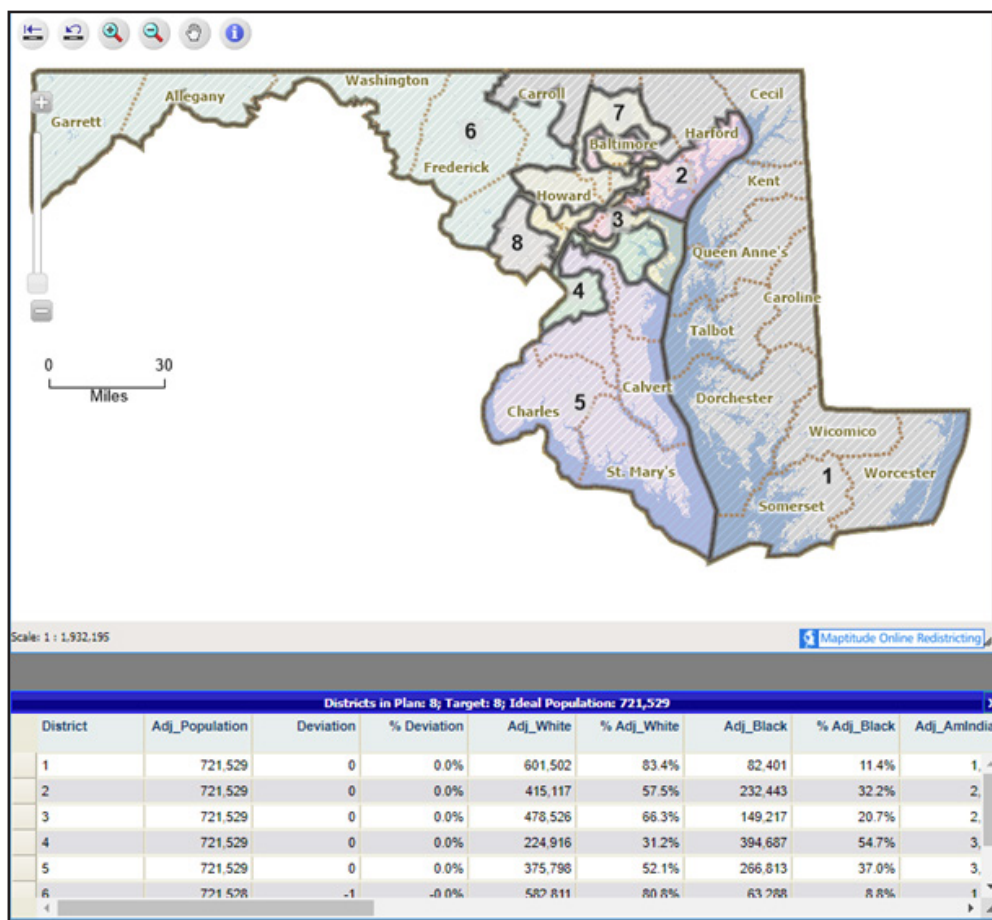
In addition to the public hearings, the commission accepted and considered online comments. Many of these comments echoed those heard at the public hearings. In addition to issues relating to the Sixth Congressional District, there was a group of comments requesting that perceived gerrymandering be addressed in the First Congressional District. Some of these expressed partisan dissatisfaction and some felt that Eastern Shore communities did not have a commonality of interests with communities north and west of Baltimore.

Public Map Submissions

A key element of the commission’s plan of work was to invite public map submissions, sometimes known as third-party plans. Most arrived by way of an online web application created for that purpose, while some arrived by way of separate data file submission. Anyone was free to submit or share a map including members of the commission itself.

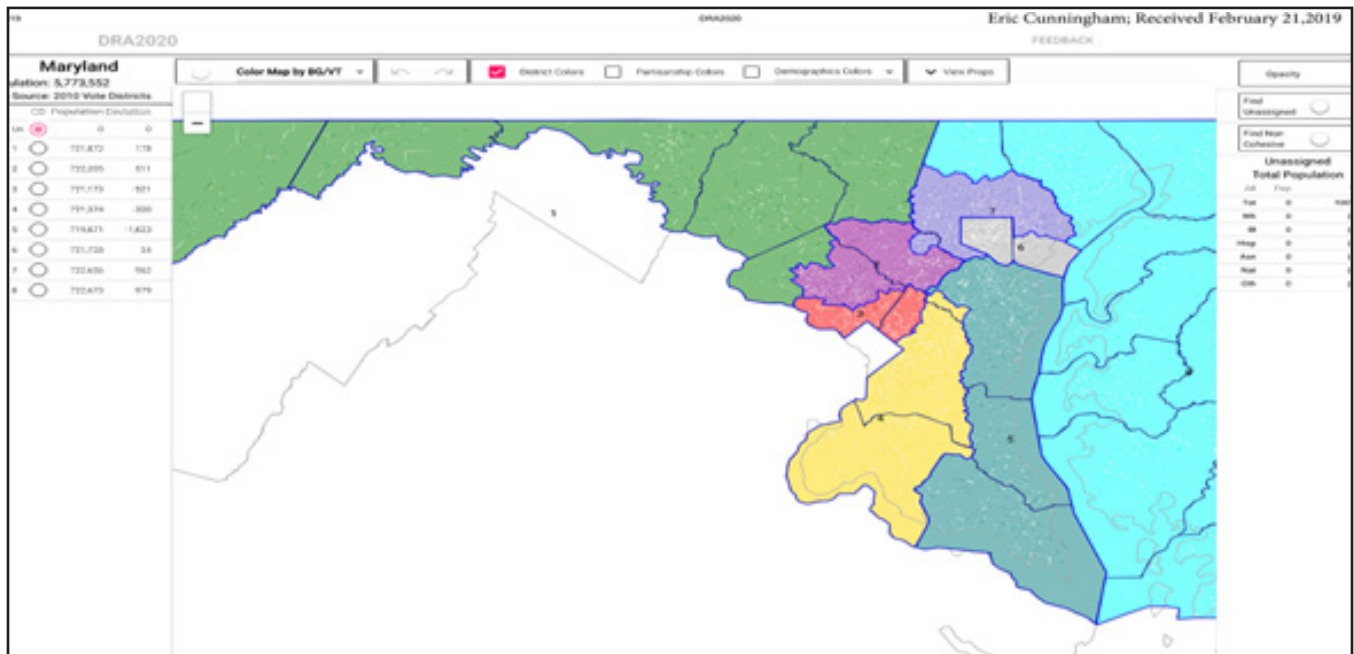
The online application, driven by redistricting software, allowed any online user to establish an account, experiment with lines and publicly share a resulting plan. Users could start with the existing 2011 congressional districts, or with someone else’s shared map, as a jumping-off point before redrawing lines as they wanted. Along with updating lines and allowing fine magnification down to census blocks, the software also provided a running total of population numbers so as to enable users to verify before sharing that a final effort was compliant with the requirements of population equality between districts and contiguity. Running demography counts also allowed for insight as to whether a given map might raise concerns of minority vote dilution under the federal Voting Rights Act. Consistent with the commission’s mandate not to consider such factors, the online version of the software did not provide any information about partisan registration or voting history, although by the nature of things members of the public were free to seek such information elsewhere if they chose. (See Figures 1 and 2)

Figure 4 – Map drawn by online application embodying “two-district solution” (swap of territory between 6 and 8), with demographic table



Members of the public could also submit plans via email by assembling the specified database and using private commercial or open source software of their choice to create a map, transmitted along with accompanying documents and materials to the commission. Several maps were submitted this way.

Figure 5 – Sample plan submitted via email to commission website that would redraw all eight districts (not adopted)



Overall, members of the public shared or submitted 28 plans, some of which were near-duplicates or updates of earlier submissions, or were incomplete in that they either did not meet or approximate population equality between districts, or required movement of land to or from districts other than the Sixth Congressional District without specifying how those other districts were to make up population to balance those changes. The maps that were both unique and complete or nearly so fell into two groups. A large majority proposed an entire remap of the state’s eight districts. Typically, these “all-eight” maps adjusted lines all over the state from scratch in ways that respected principles of compactness and congruence with county boundaries, whether or not the resulting changes related specifically to bringing the Sixth District into compliance with the federal court’s ruling.

The other grouping of submissions constituted “two-district solution” maps, which adjusted the boundaries only of the Sixth and Eighth districts and did not alter the remaining districts. The four maps in this category bore a family resemblance to each other in that all chose to move the Frederick and Carroll County portions of the Eighth into the Sixth, so that the remaining question to be decided was how best to divide Montgomery County. Each of the four proposals would have drawn a somewhat different line across that county.

In principle it might have been possible for someone to have steered a middle course between “all-eight” and “two-district” concepts by submitting a map that altered more than two but less than eight districts so as to further improve the remedy provided for the Sixth while not imposing extensive changes in more distant parts of the state. However, no member of the public submitted such a plan and similar efforts by members of the commission failed to establish any workable solutions. All submitted plans can be found on the commission’s website.

Explanation of Reasoning in Map Selection

In moving toward a plan, commissioners considered public input from hearings and online comments. Among the more frequent themes were keeping nearby and similar communities together, the sense of disenfranchisement of many western Maryland residents at being split and divided among districts dominated by more urban areas and interest in wanting to return to boundaries that more closely mirror the 2000 map. Other commenters noted that the boundaries of the newer districts confused voters over what district they live in and who represents them, engendered cynicism and decreased engagement in the political process and led to perceptions that elected representatives did not visit as often and were not as well informed about local issues in parts of the far-flung district. While some public comments voiced a desire for a western Maryland district that did not include portions of any major urban counties, “the numbers just don’t work out” for that given the requirement of numerical population equality between all districts, noted Co-Chair Williams.

Many who gave testimony also expressed indignation at statewide or national aspects of the problem, including the process employed by the Maryland General Assembly and then Governor Martin O’Malley in drawing the 2011 districts. Wherever the commission visited, there was a “universal cry to stop the outrageous gerrymandering across the state.” [Commissioner Lundahl] The lines of the First District, to take one example, were “crazy” [Commissioner Howard].

One of the first major decisions the commission needed to face was whether to propose a map reforming all districts around the state, as many had urged, or confine its focus to a more localized solution.

A threshold issue was whether redrawing all eight districts would overstep the mandate language of Governor Hogan’s executive order, noted Commissioner Ashley Oleson. Both the title of that order and the name of the commission itself refer to the Sixth District and section C of the order uses the following language in setting forth commission duties: “The commission shall prepare a plan adjusting the boundary lines of the Sixth Congressional District, and any other districts for Maryland’s representatives in the U.S. Congress (the “congressional districts”) as it may deem necessary or appropriate to address the constitutional violations with regard to that District.”

While some commission members argued the language was broad enough to permit a complete redraft and redesign of all eight congressional districts, all members concurred that other issues strongly counseled against a wholesale redraw. First, the unanimous panel of federal judges that found the district unconstitutional did not find any other Maryland districts to be unconstitutional and had also made favorable mention of a two-district solution. Second, in other cases around the country where single districts have been ruled improper, judges have tended to favor solutions that were “minimally invasive” toward other parts of the state map. Third, mindful that the U.S. Supreme Court was reviewing *Lamone v. Benisek* even as the commission undertook its work, the commission believed that a more narrowly tailored remedy would be easier to defend in later court proceedings than one that sweeps more ambitiously.

Additionally, and as Co-Chair Olson noted, the commission had not been able to hold hearings in more distant parts of Maryland that might be affected by a more far-reaching map. And finally, several commissioners noted that this map is going to be a one-cycle map at best, due to the census in 2020, which will require Governor Hogan and the Maryland General Assembly to redraw all the districts. Finally, Commissioner Oleson raised the practical issue that the educational and outreach effort needed – and thus the potential for further confusion and disengagement – increases with the number of districts being changed. Others found that to be a compelling argument for addressing the unconstitutional nature of the current/2011 boundaries of the Sixth District while changing as few others as possible until the full state changes after the 2020 census.

The commission continued to leave open the possibility of intermediate solutions that involved more than two districts, but still involved little or no impact on distant areas of the state. However, no member of the public proposed a map that changed only three, four or some other intermediate number of districts. Some commissioners also sought to work with maps directly in search of an intermediate solution. The problem, they found, was that a single change such as recovering northern and eastern Carroll County from the First District led to a domino effect as territory had to be given to the First District by taking it from some other district, which in turn had to recoup its losses elsewhere, and so forth. The “balloon-squeezing” process, said Co-Chair Olson, tended to cause unexpected and unwelcome changes in remote parts of the state. For example, if the First District were to be squeezed without cascading effects on the Second or Seventh districts, it might need to cross the Chesapeake Bay Bridge into Annapolis, but Anne Arundel County is already divided among four congressional districts and a bay crossing for the First District could leave it divided among five. In general, given the convolutions of the current map, the domino or balloon-squeezing effects always seemed to leave at least one community suffering even more damage from the gerrymander than now.

Given the failure of efforts to identify intermediate plans, and proceeding cautiously under a prudent reading of its mandate, the commission thus reached consensus to confine its focus to an exchange of territory between the Sixth and Eighth congressional districts, the so-called two-district solution.

Commissioner Epner expressed regret that a narrow solution “leaves injustice on the table” and “heartily wished” it had been possible to rally behind a wider remedy, but respected and joined the consensus. Commissioner Gutierrez said the need was to “not let the perfect become the enemy of the better” and while the narrower map idea was not perfect, it was far, far better than the current map.

The commission also reached consensus that the portions of Frederick and Carroll County now in the Eighth District should be moved to the Sixth District, thus ending the current split of Frederick County. All of the four maps with two-district solutions followed this plan. The commission then proceeded to a comparison of the four maps. As one step, it spent some time examining demographic numbers to confirm that the choices were not likely to raise concerns of minority vote dilution under the federal Voting Rights Act. A separate opinion from a University of Baltimore legal scholar, Prof. Gilda Daniels, later confirmed this confidence and gave a bill of health to the map adopted.

One submission, unlike the other three, would have kept Germantown together with the more urban Eighth District and to compensate would have extended the Sixth District deeper into suburban areas on each side of I-270. It was judged inferior in compactness and it also had the disadvantage of dividing communities such as greater Potomac. A second, based on plaintiff’s submissions in the Benisek lawsuit, was an improvement in compactness over the first, but still fell short at keeping communities together as well as might have been done.

Of the final two, one submitted by Stephen Wolf of Oregon, and eventually adopted as the proposed map, won praise for its skills both at achieving compactness and at keeping communities together. It followed natural boundary divisions between Germantown to the north and Gaithersburg/Montgomery Village to the south, and not only avoided splitting any incorporated municipalities such as Laytonsville, Poolesville, Damascus or Gaithersburg, but even managed almost entirely to avoid splits of what are known as census-designated communities.

The commission also considered a fourth map drawn by Co-Chair Olson as a variant of Wolf’s, which would have altered its lines slightly so as to assign the Laytonsville area to the Sixth and more of Darnestown to the Eighth. After discussion, the commission reached consensus that this plan did not offer a clear advantage over the Wolf map in principle and was likely to fall below it in technical proficiency. That left the Wolf map to stand as the best of the four, and it was the one the commission unanimously proposed on March 1, 2019 and later approved on March 27, 2019 to send to Governor Hogan.

Comparative Maps of Current and Proposed District Six

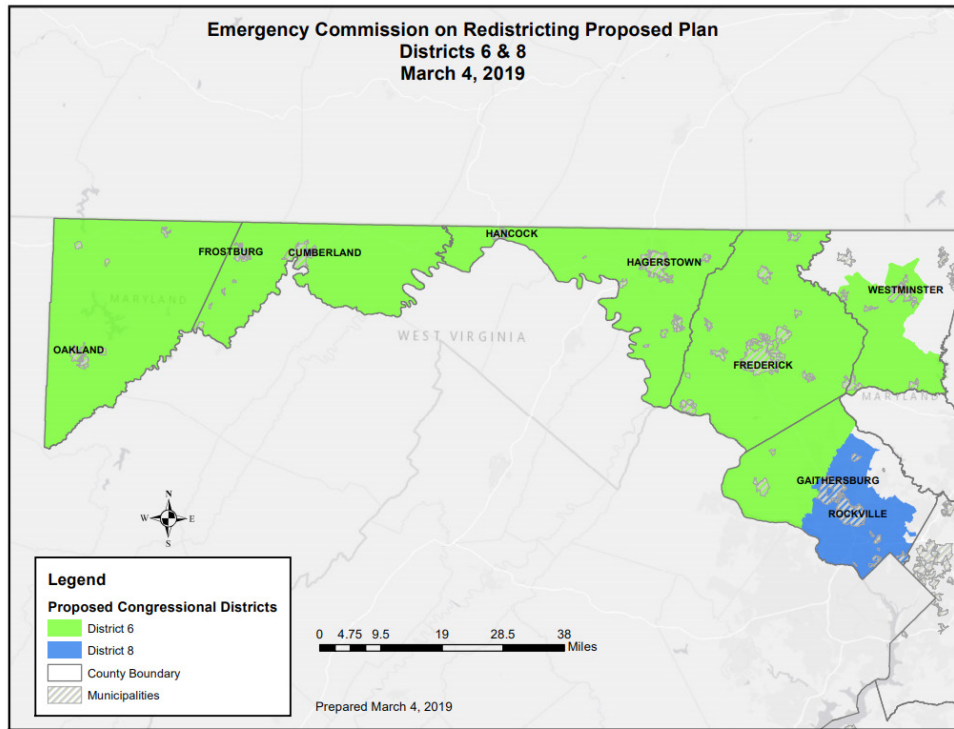


Figure 6 – Proposed 2019 Congressional Districts

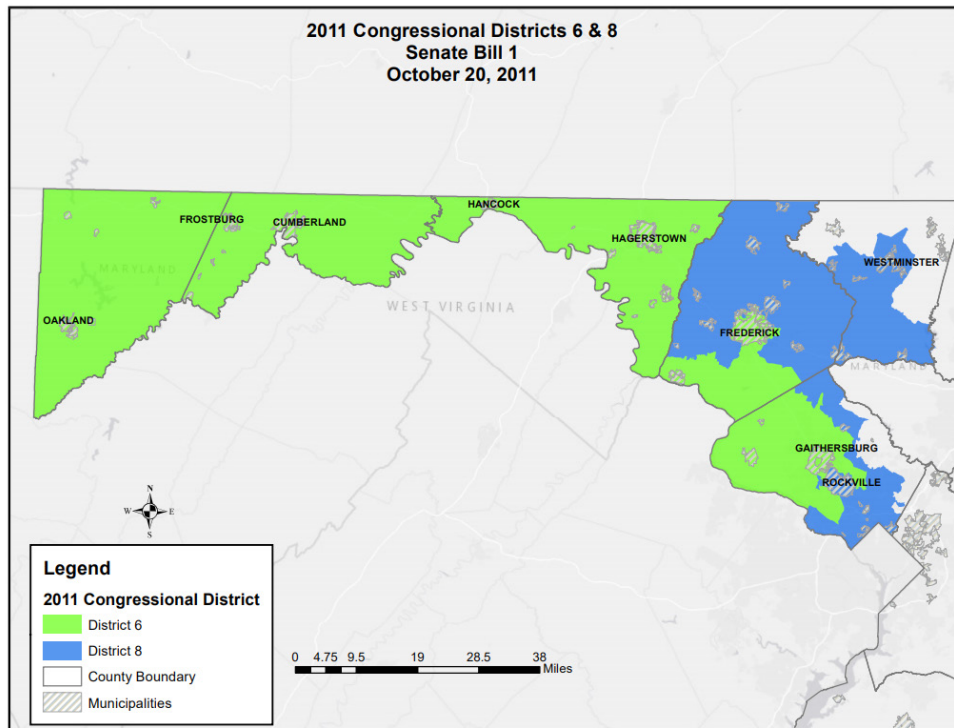


Figure 7 – 2011 Congressional Districts

Public Hearings and Submissions After Map Proposal

The commission held two additional public hearings to allow the public to offer comments and suggestions on the commission's proposed map. At times commission members interacted with speakers to discuss why the commission chose one direction rather than another.

What follows is a sampling of themes of testimony offered at each public hearing. For complete minutes and to watch video of any hearing, please visit the commission's website.

Public Hearing #4, Germantown

The commission held its fourth public hearing on March 12, 2019 at BlackRock Center for the Arts in Germantown.

Testimony, suggestions and discussion:

- Damascus belongs in the Sixth District and this map does that.
- The commission should have redrawn the entire state.
- One view: should have brought all of Carroll County into Sixth District. Another view: Carroll County belongs more with the Baltimore area, put it there and use the population difference to put Montgomery Village with the Sixth.
- Where possible congressional districts should match up with rather than split Maryland legislative districts.
- This commission and its work has been a model on how to address the issue of gerrymandering.
- Timeframe too rushed, public should have longer to submit maps and comments. Hearings were not well enough publicized, advertising could help.
- Query whether each district needs to target a specific population number. (Yes)
- Impressed with the commission's objectivity.

"This is the way we have to address it... I look forward to the day we can do this statewide."

Janice Ford, West Friendship

Public Hearing #5, Hagerstown

The commission held its fifth public hearing on March 20, 2019 at the Kepler Theater at Hagerstown Community College.

Testimony, suggestions and discussion:

- Thanks to commission and to Governor Larry Hogan for these efforts. If possible when the issue comes back, include more Carroll County and less Montgomery County in the Sixth District.
- Disappointed the proposal was not to go back to the old 2001 map and disappointed that the proposed map was from an out-of-state person.
- Query: why didn't the commission propose the map offered by plaintiffs in the Benisek case? (The one adopted instead was felt to do a better job of keeping communities together.)
- This controversy started in 2011. That it is still going on as we near the next census is another sign of how wrong things have gone.
- Speaker quotes Chief Justice John Roberts of the U.S. Supreme Court from March 2018 oral argument on lack of commonality of interest between Potomac, near D.C. and far western Maryland: "I mean, they both have farms. But the former, hobby farms. And the others are real farms."
- Query: why wasn't all of Carroll County put in the Sixth? (Doing so would have required extensive changes to several other districts affecting distant areas of the state and most likely causing the gerrymander to become worse for some communities. "There is no perfect answer;" courts have favored minimally invasive line fixes where only one district is under challenge and upcoming census will open up opportunity for more thorough reform).
- From citizen Howard Gorrell: before 2011 redistricting, 82 percent of the statewide Maryland membership of Future Farmers of America were in clubs in the old Sixth District, while zero percent was in the old Eighth District. After the gerrymander, only 26 percent of Future Farmers lived in the Sixth District while the number in the Eighth jumped from zero to 39 percent of statewide membership. With this new proposed map, the number in the Eighth would once again return to zero.

"I love this map, I hope this is what you end up with because right now I have felt like I have absolutely no representation."

Sue Payne, Damascus

Public Comments After Map Proposal

The commission accepted and reviewed public comments about the proposed plan and map until March 26, 2019.

Conclusion and Recommendations for the Future

Public comments on the proposed map included many expressions of gratitude for drawing boundaries that better reflected the community and kept neighbors together. Very few commenters argued for keeping the current 2011 boundaries, and none, so far as we can recall, ventured to defend the process used to set the present map. Many commenters also expressed a hope that the next redistricting, in which the boundaries of all of Maryland's congressional districts will be redrawn following the 2020 census, would follow impartial and transparent procedures similar to those that the emergency commission used.

While a number of commenters saw the proposed map as not perfect, most appeared to appreciate that it would be hard to cure the imperfections without risking greater problems. The commission itself regretted that given the terms of its mandate it could find no practicable way to reunite all of Carroll County with the Sixth District. The commission agrees that all eight of Maryland's present congressional districts fall short of good districting standards and that the process used to create them in 2011 was undemocratic and in dire need of reform.

During the comment period following the proposal of the map, the Montgomery County election director wrote to urge several technical line adjustments meant to better conform the district lines with the lines of precincts and election districts. Following discussions among the director, the Maryland Department of Planning and the commission, the commission agreed that several of these requests were reasonable. The commission accordingly recommends that technical amendments be adopted before final enactment of a new map if it is possible to accommodate the director's request. It is expected that this will involve relatively small population changes (fewer than 135 persons in each direction) from the map as published.

The commission was under constraint to conduct its work speedily given the emergency nature of its duties and the legislature's timeline. While necessary under the circumstances, the haste did lead to several difficulties that may hold lessons for future efforts of this kind.

The convening of a citizen redistricting panel, whose members are primarily drawn from many walks of life rather than consisting of persons with a long public track record or many connections inside government, requires a combination of clear procedures and adequate time for rigorous scrutiny. The 2015 report of the Maryland Redistricting Reform Commission recommended a multi-stage selection and vetting process like that used in other states with citizen commissions, which time did not permit in our case. Strong staff support is also important if key points of qualification are to be subjected to independent verification, and to develop intake questionnaires well suited to identifying possible points of disqualification.

A lengthier process would also allow for more public outreach on the substance of the work. While our three-month process allowed for five hearings across the affected area, which drew turnout of respectable size, several members of the public pointed out that advance notice of the meetings and venues was short and publicity often lacking, especially when competing in the crowded Washington, D.C. media market. The inability to hold hearings across the state was also a factor (among several others) in not pursuing solutions with broader geographic sweep. A future reformed process intended to draw a statewide map, especially if it involves both congressional and legislative districts, will call for a considerably longer timeline, more hearings across a wider area and more outreach. While we believe we made a strong start, much more visibility and public access is important if we hope to restore the faith of citizens in the process.

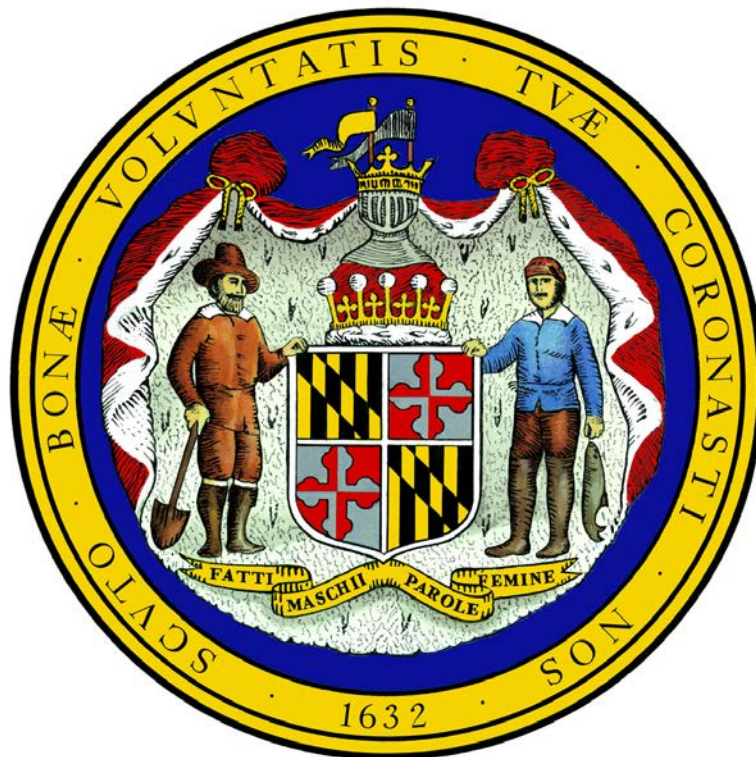
All that said, the commission hopes that our general plan and its successful completion will serve as a model for the future. We are proud of having met our assignment not only in its details but also in its spirit of an impartial process in which the goal was not to advance any political faction, candidate or party. The parameters laid out in Governor Hogan's executive order, and in particular those in Section C.1. c) i through vii, provided an excellent basis for maintaining this impartiality. Among other requirements, these provisions required the commission to seek district lines that observed compactness and respected the bounds of political subdivisions such as counties and municipalities and instructed the commission

to disregard information about how citizens may be registered to vote or may have voted in the past, to what political party they may belong and the domicile of any individual, including incumbents or potential challengers. These provisions would make a good starting point for future nonpartisan redistricting for all of Maryland's eight congressional districts.

Our process also vindicated the value of inviting and facilitating public map submission. Not only was a publicly submitted map the one chosen, but having multiple maps to compare was helpful in analyzing the pros and cons of particular map ideas, and will also assist outside observers in checking our work. For that reason, and because maps not adopted may nonetheless serve as useful jumping-off points for future districting ideas, it is valuable to keep them available as an online archive, along with the streamed records of our commission itself.

We also believe that the transparency and multiple points of public input in our commission process would work well as a model for wider redistricting reform in the future. Public streaming and archiving of both hearings and deliberative workshops and decision sessions worked well, and should be considered as a standard practice in the future.

Finally, we believe that Maryland should lead as an example of representative democracy, rather than, as too often in recent years, requiring judicial correction and opening the state to criticism for processes run by political incumbents for insider benefit. It has often been observed that the voters should choose their representatives, rather than the representatives choose their voters. Effective reform will benefit not only the mistreated voters of the Sixth Congressional District, but all voters in Maryland.



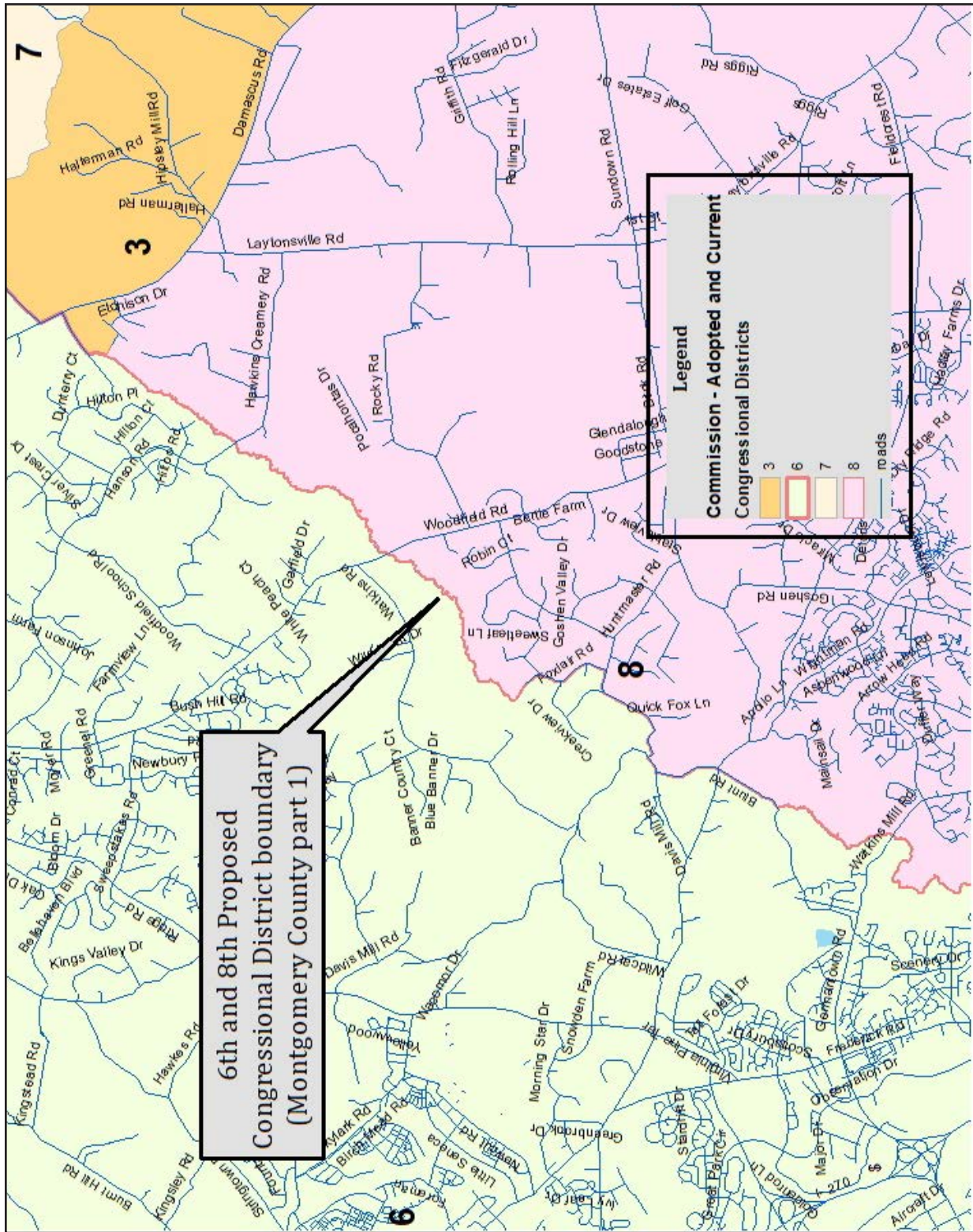


Figure 9 – Proposed 6th and 8th Congressional District Boundary (Montgomery County Part 1)

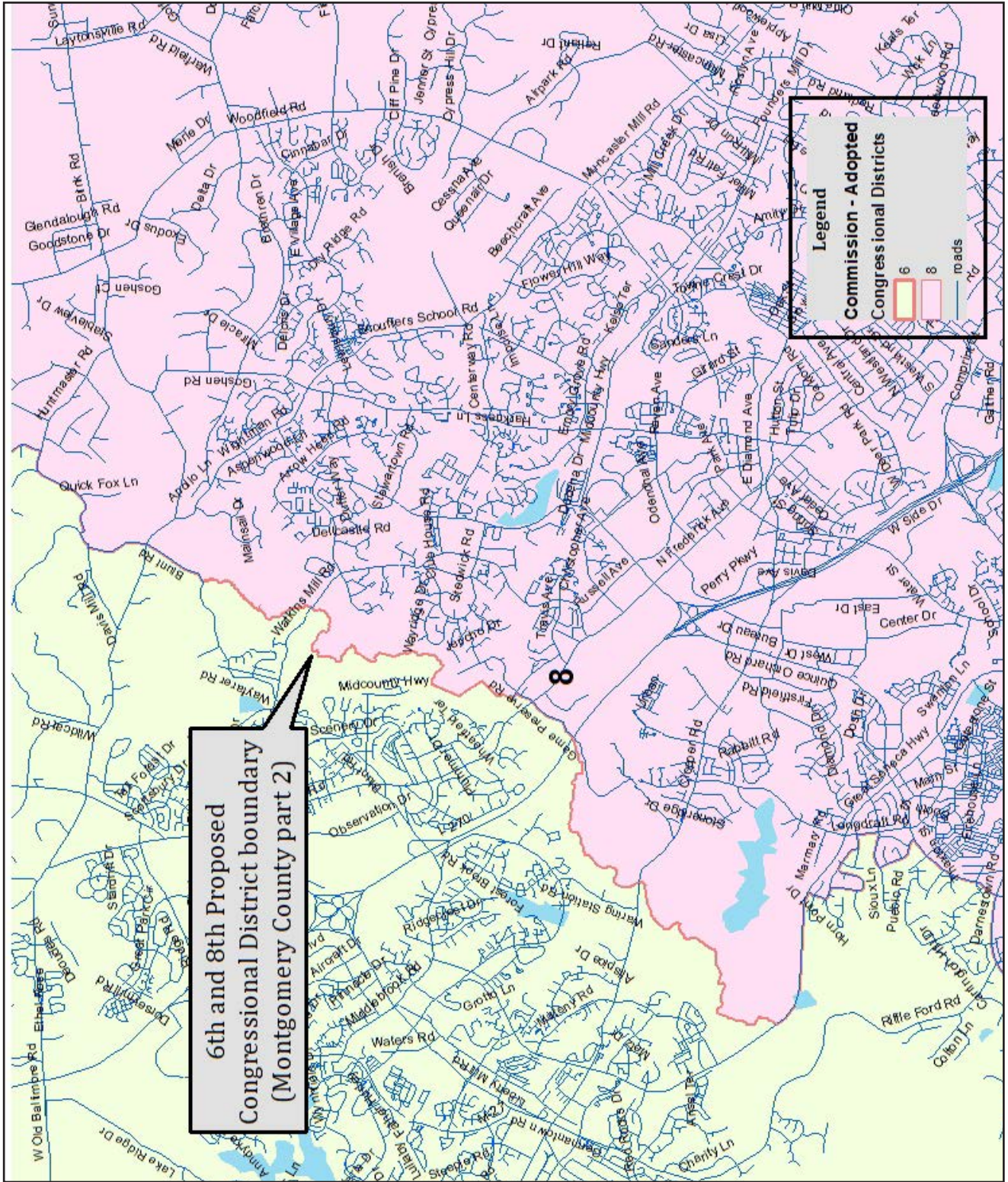


Figure 10 – Proposed 6th and 8th Congressional District Boundary (Montgomery County Part 2)

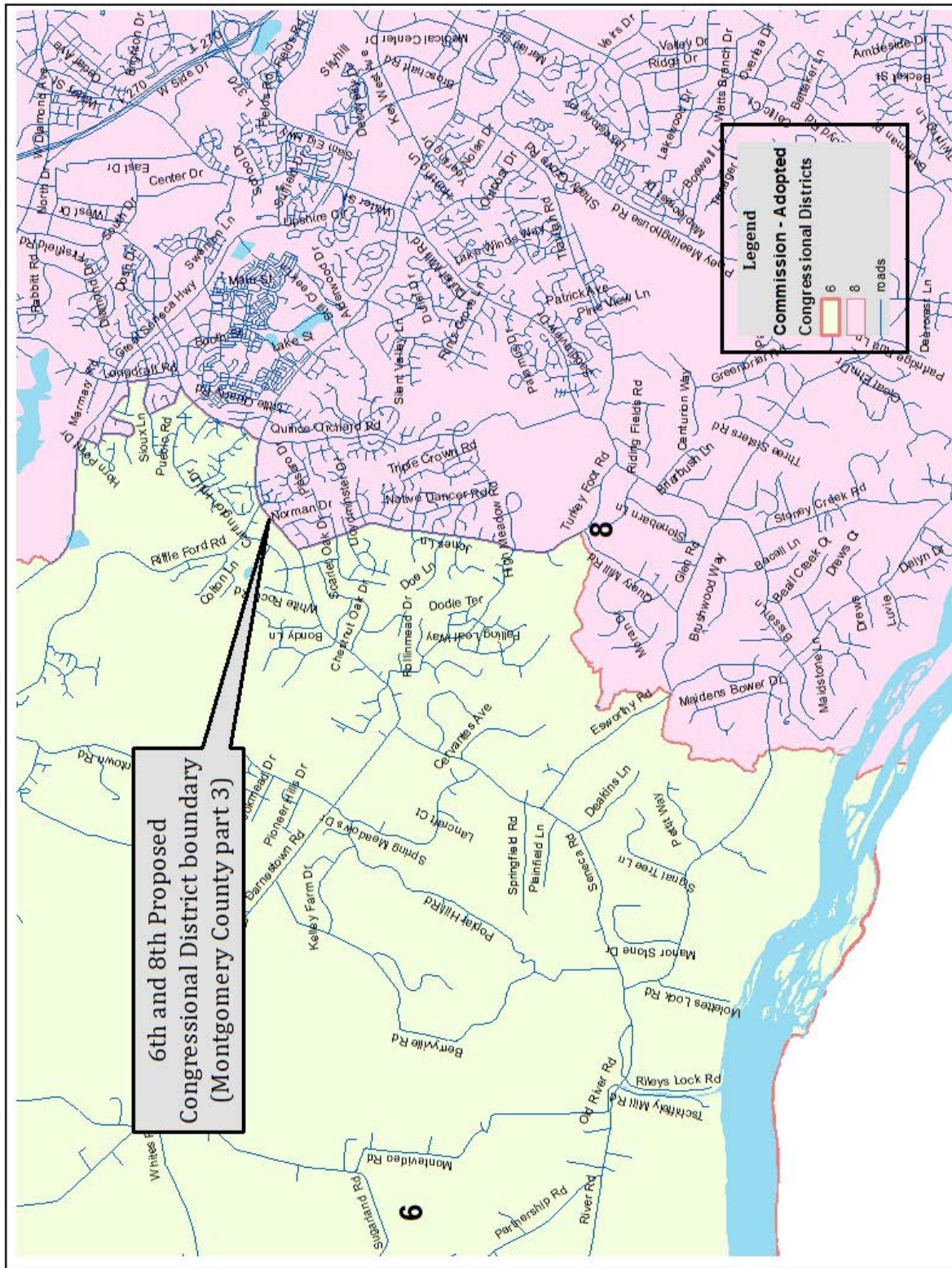


Figure 11 – Proposed 6th and 8th Congressional District Boundary (Montgomery County Part 3)

Maryland's Emergency Commission on Sixth Congressional District Gerrymandering

Walter Olson
Alexander Williams, Jr.
Co-Chairs



State of Maryland
Larry Hogan, Governor
Boyd Rutherford, Lt. Governor

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