

**IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND**

**PETITION OF** \*  
**QUANTUM MARYLAND, LLC, et al.,** \*  
**Petitioners**

**FOR JUDICIAL REVIEW OF THE** \*  
**DECISION OF THE** \*  
**FREDERICK COUNTY BOARD OF** \*  
**ELECTIONS** \*

**Lead Case No. C-10-CV-26-309**

**IN THE CASE OF** \*  
**THE PETITION OF THE** \*  
**FREDERICK COUNTY DATA CENTER** \*  
**REFERENDUM COMMITTEE** \*  
**FOR REFERENDUM OF** \*  
**FREDERICK COUNTY COUNCIL** \*  
**ORDINANCE 26-01-001** \*

\* \* \* \* \*

Consolidated with: \*  
Case No. C-10-CV-26-321 \*  
Case No. C-10-CV-26-325 \*  
Case No. C-10-CV-26-326 \*  
Case No. C-10-CV-26-327 \*

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THIS FILING PERTAINS ONLY TO: \*  
Windridge Properties, L.C., et al, \*  
Case No. C-10-CV-26-321 \*

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**PETITIONERS' RESPONSE IN OPPOSITION TO**  
**RESPONDENT FREDERICK COUNTY DATA CENTER REFERENDUM**  
**COMMITTEE'S MOTION FOR PROCTETIVE ORDER**

Petitioners Windridge Properties, L.C. and Theodore H. Butz (“Petitioners”), by undersigned counsel, respectfully submit this Response in Opposition to the Motion for Protective Order filed by Respondent Frederick County Data Center Referendum Committee (the “Referendum Committee”). The motion should be denied because it seeks blanket preclusion of discovery without the particularized showing of good cause required by Maryland Rule 2-403,

ignores that this action includes a claim for declaratory relief under Election Law § 6-209(b), and improperly attempts to shield from discovery nonprivileged facts directly relevant to Petitioners' pleaded allegations that the petition was circulated and certified through materially misleading representations and omissions. If the Court determines that some limits are warranted, any relief should be narrowly tailored to discrete requests or topics rather than foreclosing discovery entirely.

## **I. BACKGROUND**

This case challenges the April 3, 2026 certification of a referendum petition directed at Frederick County Ordinance 26-01-001. As alleged in the Petition for Judicial Review, Complaint for Declaratory Relief, and Petition for Writ of Mandamus, the Election Director expressly stated that she was “unable to make a determination” whether the petition was authorized by law under Election Law § 6-206(c)(5)(i), yet nevertheless deemed the petition sufficient based on a supposed presumption of sufficiency. The Petition alleges defects that are not confined to signature counting or a closed agency record, including whether the ordinance was legally referable at all, whether the Election Authority performed the determination required by statute before certification, whether the petition materials contained the ordinance in a legally sufficient and legible manner, and whether the petition was circulated through materially misleading representations and omissions regarding the effect of Ordinance 26-01-001 on preservation-area designations, agricultural lands, and environmental consequences.

The Referendum Committee's own motion confirms that the discovery at issue seeks campaign materials, communications with voters and county officials, training or instructions to circulators, and testimony concerning the Committee's representations about the acreage and scope of Ordinance 26-01-001, Rural Legacy and Priority Preservation Areas, environmental impacts, and the basis for the Committee's assertions concerning referability. Those subjects align directly with the allegations pleaded by Petitioners. The Petition specifically alleges, among other things, that the Committee's public materials told prospective signers that the ordinance would “rezone agricultural lands to industrial that are currently designated Priority Preservation and in the Rural Legacy Area,” even though the Petition alleges the preservation-area boundary changes were effectuated through the comprehensive plan amendment adopted by Resolution 26-01 rather than by Ordinance 26-01-001 alone. The Petition further alleges

omission of Bill 25-09's stated 5:1 agricultural preservation requirement and mischaracterization of future environmental harms as automatic consequences of a zoning map ordinance that does not itself authorize site disturbance or development.

## **II. ARGUMENT**

### ***A. The Referendum Committee Has Not Shown Good Cause for a Blanket Protective Order.***

Maryland Rule 2-403 authorizes protective relief only for good cause shown and permits the court to enter only such order as justice requires to protect against annoyance, embarrassment, oppression, or undue burden or expense. The rule is inherently request-specific and tailored; it does not support the extraordinary remedy of forbidding all discovery based on abstract objections untethered to particular requests. Here, the Referendum Committee does not make the required particularized showing. Instead, it asks the Court to prohibit every form of discovery directed to the Committee, its chairperson, and a witness, even though the requests address multiple distinct subject matters and include plainly factual, nonprivileged issues that bear directly on pleaded claims. The motion is therefore overbroad on its face and should be denied, or at minimum pared back to specific topics the Committee can actually show are privileged or unduly burdensome.

### ***B. Discovery Is Proper Because Petitioners' Claims Are Not Confined to a Closed Administrative Record.***

The Committee's premise that this case must proceed as a pure record review action under Maryland Rule 7-208(c) misstates the posture of the pleadings. Count II seeks declaratory relief under Election Law § 6-209(b), which expressly authorizes the circuit court, upon the complaint of any registered voter, to grant declaratory relief "as to any petition with respect to the provisions of this title or other provisions of law." Petitioners' declaratory-judgment count places at issue whether the petition was circulated and certified based on materially misleading representations and omissions and whether the petition is legally deficient for reasons that do not reside solely within a compiled administrative record. Evidence bearing on what campaign materials were created, what circulators were told to say, what representations were made to prospective signers, and what the Committee understood or intended those representations to

convey necessarily exist outside the Board of Elections' file. Discovery directed to those issues is therefore proper.

Nor does Petitioners' alternative request for judicial review and mandamus justify a blanket prohibition. Even if some claims ultimately are resolved by reference to the agency record, that does not extinguish discovery relevant to the separately pleaded declaratory claims or to factual issues concerning the legality and manner of circulation. At most, the Court might sequence production of the administrative record first and then confine any additional discovery to non-record allegations. What the Court should not do is adopt the Committee's all-or-nothing approach, which would effectively prevent Petitioners from developing proof on claims expressly recognized by Election Law § 6-209(b).

***C. The Discovery Sought Is Relevant to Petitioners' Allegations Concerning Misleading Petition Materials and Circulator Statements.***

Petitioners allege that the referendum campaign conveyed misleading impressions about the legal and practical effect of Ordinance 26-01-001. The Petition alleges, among other things, that the signature sheets did not provide the ordinance in a legally sufficient manner because the reverse-side text was functionally illegible and the operative incorporated maps were not reproduced in color, obscuring the ordinance's actual effect. It further alleges that the Committee's public materials told voters that signing would preserve agricultural lands in Priority Preservation and Rural Legacy areas, even though the pleaded facts identify Resolution 26-01 and the comprehensive plan amendment not Ordinance 26-01-001 as the source of those preservation-area boundary changes. It also alleges omission of Bill 25-09's express 5:1 preservation requirement and misstatements that the zoning ordinance itself would automatically cause forest, wetland, and wildlife destruction. Discovery concerning campaign materials, scripts, training, public statements, and internal or external communications about those subjects is not collateral; it goes to the heart of whether the petition was circulated through material misrepresentations or omissions.

Limited factual discovery is also relevant to the certification decision itself. The April 3, 2026 certification letter states that the Election Director concluded there was no deficiency under Election Law § 6-206(c)(1), (2), (3), (4), and (6), but was unable to determine whether the petition was authorized by law under § 6-206(c)(5)(i). To the extent the Committee communicated with county officials or the Election Authority concerning referability, petition

form, the scope of the ordinance, or the content of materials used in circulation, those communications may bear on what information was before the certifying authority and on the factual context of the challenged determination. Nonprivileged communications on those subjects are discoverable, subject to ordinary privilege objections if properly asserted on a document-by-document basis.

***D. The Committee's First Amendment Objections Do Not Justify Across-the-Board Suppression of Discovery.***

Petitioners do not dispute that compelled disclosure of membership identities, internal association lists, or core strategic deliberations may implicate associational interests in appropriate circumstances. But that principle does not convert all facts touching a political campaign into privileged matter, and it certainly does not warrant a categorical order barring every deposition and every document request. The authorities relied upon by the Committee address compelled disclosure of member identities or disclosure regimes of general applicability; they do not establish an evidentiary immunity for nonprivileged facts about allegedly misleading public representations used to secure signatures for a referendum petition. Any legitimate associational concern can be addressed through narrower means such as limiting disclosure of rank-and-file volunteer identities, permitting redactions of purely identifying information, or confining inquiry to campaign materials and communications actually used to communicate with the public without extinguishing discovery altogether.

The materials and testimony most directly relevant here are not private membership rosters or confidential supporter lists, but public-facing statements, training or instructions given to circulators, and communications about the content and factual basis of claims made to prospective signers. Where a party has affirmatively placed the truth or falsity of those representations at issue, it cannot invoke a generalized First Amendment privilege to shield the very facts needed to test those representations. The proper course is to resolve any targeted privilege objections in the ordinary way, not to issue a prophylactic order insulating the entire campaign from discovery.

***E. The Committee's Burden and Timing Complaints, at Most, Support Tailored Case Management Rather Than Elimination of Discovery.***

To the extent some individual requests sweep too broadly for example, requests seeking “any and all” communications without reasonable subject matter limits the answer is not a

blanket protective order. Maryland Rule 2-403 expressly authorizes narrower solutions, including limiting the scope of inquiry, sequencing discovery, or prescribing terms and conditions. The Court may, if it wishes, restrict initial discovery to discrete categories tied to the pleaded allegations: (1) campaign materials and public messaging concerning the legal effect of Ordinance 26-01-001; (2) training, scripts, or instructions provided to circulators regarding what to tell signers; (3) nonprivileged communications with county officials or the Election Authority concerning referability, petition sufficiency, or the ordinance's scope; and (4) documents identifying the factual bases for the Committee's challenged statements about preservation areas, agricultural land, and environmental impacts. That kind of targeted management would protect against undue burden while preserving Petitioners' ability to prove their claims.

The Committee's separate complaint about the timing of Ms. Furnari's deposition likewise does not justify a blanket order against all discovery. If the Court concludes that a particular notice or subpoena did not satisfy the applicable timing requirements, the appropriate remedy is to quash or reschedule that deposition, not to bar all other document discovery and testimony from all witnesses. The same is true of the expedited election schedule. Expedition may warrant narrowing and sequencing; it does not itself establish that no discovery may occur.

## II. CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court deny the Referendum Committee's Motion for Protective Order. In the alternative, if the Court is inclined to impose limits, Petitioners request that the Court narrowly tailor any relief to specific requests or topics, preserve targeted discovery relevant to Petitioners' declaratory relief and non-record allegations, and grant such other and further relief as justice requires

Date: May 28, 2026

Respectfully submitted,

/s/ William E. Erskine, Esq.

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**CERTIFICATE OF SERVICE**

I, William E. Erskine, HEREBY CERTIFY that on this 28<sup>th</sup> day of May, 2026, a copy of the foregoing Petitioner's Response in Opposition to Respondent Frederick County Data Center Referendum Committee's Motion for Protective Order was filed electronically in the Maryland Electronic Court Filing Systems (MDEC) in the above-captioned matter and served on all counsel of record.

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/s/ William E. Erskine, Esq.