

FOR JUDICIAL REVIEW OF
THE DECISION OF THE FREDERICK
COUNTY BOARD OF ELECTIONS,

and

BARBARA WAGNER

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

Case No. C-10-CV-26-000321

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WINDRIDGE PROPERTIES, L.C. et al.

Plaintiffs,

v.

FREDERICK COUNTY BOARD OF
ELECTIONS, et al.

Defendants.

Case No. C-10-CV-26-000321

* * * * *

PETITION OF NDR PROPERTIES, LLC et
al.,

Petitioners,

FOR JUDICIAL REVIEW OF
THE DECISION OF THE FREDERICK
COUNTY BOARD OF ELECTIONS,

and

BARBARA WAGNER

IN THE MATTER OF THE PETITION OF

Case No. C-10-CV-26-000325

THE FREDERICK COUNTY DATA
CENTER REFERENDUM COMMITTEE
FOR REFERENDUM OF FREDERICK
COUNTY COUNCIL ORDINANCE
26-01-001

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NDR PROPERTIES, LLC et al.

Plaintiffs,

v.

FREDERICK COUNTY BOARD OF
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Defendants.

Case No. C-10-CV-26-000325

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PETITION OF ROWAN FREDERICK,
LLC et al.,

Petitioners,

FOR JUDICIAL REVIEW OF
THE DECISION OF THE FREDERICK
COUNTY BOARD OF ELECTIONS,

and

BARBARA WAGNER

IN THE MATTER OF THE PETITION OF
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ROWAN FREDERICK, LLC et al.

Plaintiffs,

v.

FREDERICK COUNTY BOARD OF ELECTIONS, et al.

Defendants.

Case No. C-10-CV-26-000326

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PETITION OF FREDERICK DATA CENTER OWNER, LLC, et al.,

Petitioners,

FOR JUDICIAL REVIEW OF THE DECISION OF THE FREDERICK COUNTY BOARD OF ELECTIONS,

and

BARBARA WAGNER

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

Case No. C-10-CV-26-000327

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FREDERICK DATA CENTER OWNER, LLC et al.

Plaintiffs,

v.

Case No. C-10-CV-26-000327

FREDERICK COUNTY BOARD OF *
ELECTIONS, et al. *
*

Defendants.

* * * * *

**PETITIONER-PLAINTIFF’S OPPOSITION TO THE FREDERICK COUNTY DATA
CENTER REFERENDUM COMMITTEE’S MOTION FOR PROTECTIVE ORDER**

Petitioner-Plaintiff Joan Aquilino (“**Plaintiff**”), by and through undersigned counsel, respectfully opposes the Motion for Protective Order filed by Respondent Frederick County Data Center Referendum Committee (the “**Referendum Committee**”). The Motion should be denied.

I. Plaintiff’s Title 2 Claims Entitle Them to Full Discovery.

The Committee’s Motion for Protection goes through great effort to set up strawmen and knock them down in an attempt to avoid discovery into its improper and misleading conduct during the petition campaign. The purpose of discovery is to permit the parties to shine light on the conduct of their adversary and give the Court the evidence necessary to make a reasoned decision. Maryland permits discovery as to any matter that is not privileged and relevant to the subject matter involved in the action. There is no question that the discovery sought is authorized by the right the General Assembly granted registered voters in Section 6-209(b) to seek “declaratory relief as to any petition with respect to the provisions of this title or other provisions of law.” Md. Code Ann., Elec. Law Article (“**Election Law**”) § 6-209(b). Making misleading and false statements in the process of securing petition signatures is improper and illegal and results in the invalidation of signatures so obtained. Discovery authorized by the declaratory judgment claim in § 6-209(b) is the vehicle through which evidence is collected and there is no viable statutory or legal basis for the Committee to avoid participating.

The Committee’s arguments rests on the baseless premise that its Motion to Dismiss Count II will be granted, leaving behind only the Title 7 record-review claims, on which discovery is

unavailable. That is not the posture before the Court, and it is not the law. Plaintiff has asserted an independent declaratory judgment claim that has not and should not be dismissed. The Section 6-209(b) declaratory judgment claim alone supplies full discovery rights under Maryland Rules 2-401 through 2-434. *See* Md. Rule 2-402(a) (permitting discovery of “any matter, not privileged, that is relevant to the subject matter involved in the action”).

Plaintiff’s declaratory claim challenges the Committee’s series of misrepresentations and misstatements to voters during the petition campaign, the accuracy of the materials it distributed, and the validity of resulting signatures pursuant to Charter § 308(b). Those questions are not answered by the administrative record. They require discovery into the Committee’s own materials, training, and communications—which is exactly what Plaintiff has sought. A party cannot escape discovery by labeling the underlying claim deficient; it must move to dismiss the claim and win that motion. The Court should rule on the Motion to Dismiss on its own merits, and discovery should proceed in the meantime.

The Committee’s invocation of Maryland Rule 7-208(c) is similarly misplaced for a different reason. Rule 7-208(c) governs the *Title 7* judicial-review record; it has no application to the parallel *Title 2* declaratory judgment action. Plaintiff does not seek to supplement the administrative record. The cases the Committee marshals—*Public Service Comm’n v. Patuxent Valley Conservation League*, 300 Md. 200, 477 A.2d 759 (1984); *United Parcel Serv. v. People’s Counsel*, 336 Md. 569, 650 A.2d 226 (1994); *Hurl v. Bd. of Educ. of Howard Cnty.*, 107 Md. App. 286, 667 A.2d 970 (1995)—all address the scope of judicial review of agency action. None addresses the availability of discovery in a freestanding declaratory judgment action joined to that review. They are inapposite.

The Committee's reliance on some misplaced concept of First Amendment protection of the right of association as a basis to avoid discovery fails no better. This strawman is based on the premise that discovery should be denied because the Committee and its agents have the right shield their identities from the public and Plaintiff. This is factually and legally baseless and finds no support in Maryland law concerning discovery in Section 6-209(b) matters. More egregious, however, is that fact the Committee's argument ignores the reality that the association between the Committee and its agents has already been placed in the public record: (1) the Committee had to identify the individuals who created it in its filings with the Board of Elections; (2) every circulator who secured signatures had to provide their name and contact information on the petition forms that were submitted to the Board of Elections and made part of the administrative record; and (3) the Committee is required to disclose information about political donations it receives. To the extent the First Amendment argument had any basis—it doesn't—it has been repeatedly waived by the Committee's own conduct and legal disclosure requirements.

II. The Discovery Requests Are Neither Overbroad Nor Unduly Burdensome, And In Any Event, A Total Bar Is Not The Proper Remedy.

The discovery sought is narrowly tailor to focus on the Committee's core conduct over a brief period of time (July 1, 2025 to the present) related specifically to its efforts to influence and/or undue the recent data center legislation in Frederick County. The bulk of the requests—Committee organizational structure, leadership, finances, campaign materials, scripts and talking points, training given to circulators, and management-level decisions about the petition campaign (RFP Nos. 1, 3, 5, 6, 7, 11, 12, 13, 14; Int. Nos. 1, 2, 3; Schedule A Topics 1-4, 6-10)—target the Committee at the management level, not the content of every signatory conversation. The Committee identifies no particularized burden as to any of these requests, and none exists: the Committee is the keeper of its own organizational records, financial books, and printed and

electronic materials. The Maryland Supreme Court requires “a particular and specific demonstration of fact, as distinguished from general, conclusory statements.” *Tanis v. Crocker*, 110 Md. App. 559, 573-74, 678 A.2d 88 (1996). The Committee’s general and conclusory complaints about scope do not meet that standard.

A smaller subset of the requests—those touching on individual interactions with voters (RFP No. 9; SDT Req. No. 5; Int. No. 4 to the extent it sweeps in voter-by-voter outreach)—potentially seeking information covering a broader group of the Committee’s agents, but these request go to the heart of the issues concerning the specific statements and misrepresentations the Committee made to induce signatures. However, these requests are justified by central nature of this information and the narrow time period at issue, particularly because the Committee does not actually identify or present any evidence of what the alleged burden is, does not identify any particular custodian or document set, and does not propose any narrowing.

The Committee’s only concrete burden assertion is a rhetorical sleight of hand. It reads Plaintiff’s requests for training materials and communications with the public as a demand for documentation of all “24,000 interactions” with signatories. Comm. Mot. at 11. That is not what Plaintiff has asked for, and the Committee knows it. RFP Nos. 1, 3, and 7 ask for *campaign materials*—scripts, talking points, training, the documents the Committee created to guide circulators. Those are by nature finite, centralized, and easy to produce. The Committee cannot manufacture a burden by misreading the requests and then ask the Court to bar discovery on the strength of the misreading. If the Committee genuinely possesses records of 24,000 individual conversations, the existence of those records is itself relevant to Plaintiff’s claims that circulators made material misrepresentations. If it does not—as is far more likely—then there is no burden, and the argument is empty.

III. The Referendum Committee Has Not Made the Showing Required to Invoke a First Amendment Privilege.

The Referendum Committee invokes *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), and *Lubin v. Agora, Inc.*, 389 Md. 1, 882 A.2d 833 (2005), to argue that all discovery should be barred to protect its members' associational rights. But this argument both overstates the applicable legal standard and ignores the facts of this case.

First, there is no blanket First Amendment privilege to avoid discovery in an action under Section 6-209(b). In fact, the opposite is true. General discovery is permitted and routinely conducted in Section 6-209(b) cases. *See, e.g., Montgomery County Volunteer Fire-Rescue Ass'n v. Montgomery County Board of Elections*, No. 337172V (Mont. Cnty. Cir. Ct. 2010) (*see* Scheduling Order attached at **Exhibit 1**); *Doe v. Montgomery County Board of Elections*, No. 293857V (Mont. Cnty. Cir. Ct. 2008) (*see* Scheduling Order attached at **Exhibit 2**); *FOP Lodge 35 v. Montgomery County*, No. 355887V (Mont. Cnty. Cir. Ct. 2011). Discovery is the central mechanism for determining whether the Referendum Committee's public activities complied with the requirements of Maryland Election Law. Discovery directed at determining whether voters were misled about the legal effect of Ordinance 26-01-001—and whether the petition process complied with the statutory requirements—does not chill protected speech. To the contrary, it vindicates the First Amendment rights of the thousands of Frederick County voters who are entitled to accurate information when deciding whether to sign a referendum petition.

Second, the Committee's reliance on *NAACP v. Alabama* is misplaced. *NAACP v. Alabama* is factually and legally distinguishable. In that case, the Supreme Court credited "uncontroverted" evidence that disclosure of NAACP members had exposed them to "economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." 357 U.S. at 462. Here, the Referendum Committee has not and cannot make a comparable showing. In

fact, here, unlike in *NAACP v. Alabama*, the Committee had the legal obligation to disclose the identifies of (1) the individuals who created the Committee, (2) the circulators who secured signatures (Election Law § 6-204), and (3) those providing the Committee with financial support. This information is already in the public domain and no associational First Amendment privilege can be asserted to avoid discovery on the basis of any purported secrecy or threat of harassment. Although the information is in the public domain, the Committee has not identified a single instance of threats, harassment, intimidation, or retaliation against any of its members or volunteers. Nor could it. Absent such a showing, the First Amendment associational privilege does not apply. *See id.* The required standard is “a reasonable probability that the compelled disclosure of personal information will subject them to threats, harassment, or reprisals from either Government officials or private parties.” *John Doe No. 1 v. Reed*, 561 U.S. 186, 200 (2010). Courts applying this framework have consistently held that the burden to establish that prima facie showing rests with the party asserting the privilege, not the party seeking discovery, and requires objective, articulable facts—not conclusory assertions—demonstrating a reasonable probability of chill. *See Perry v. Schwarzenegger*, 591 F.3d 1147, 1160 (9th Cir. 2010); *see also Master Printers of America v. Donovan*, 751 F.2d 700, 704 (4th Cir. 1984); *accord In re Motor Fuel Temperature Sales Practices*, 641 F.3d 470, 488 (10th Cir. 2011). The Referendum Committee has submitted no sworn, particularized showing satisfying that standard, and the record contains no evidence of any actual harm to any member or volunteer. A bare invocation of *NAACP v. Alabama* does not discharge that burden. Moreover, to the extent such a privilege could have been credibly asserted—it can’t—is has been waived by the Committee’s prior disclosures.

Third, *Doe v. Reed* directly undermines the Referendum Committee’s position. There, the Supreme Court held 8–1 that the public disclosure of referendum petition signers’ names and

addresses does not violate the First Amendment because the government has a substantial interest in the integrity of the electoral process. 561 U.S. at 197–98. If compelled *public* disclosure of the identities of over 137,000 petition signers passes constitutional muster, then the far narrower litigation discovery sought here—directed at whether the Referendum Committee’s conduct complied with Maryland election law—cannot constitute an impermissible burden on associational rights.

Finally, the remaining categories of information the Referendum Committee seeks to shield—internal communications, deliberative materials, organizational and financial documents—are not protected by any recognized privilege. If any specific document is privileged, the Referendum Committee’s obligation is to assert the privilege on a document-by-document basis with a privilege log, as required by Maryland Rule 2-402. A blanket First Amendment objection is not a substitute for the specificity required by the Maryland Rules.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully request that the Court deny the Referendum Committee’s Motion for Protective Order. Plaintiff is prepared to work with all parties and the Court to establish reasonable limitations on the scope and timing of discovery.

Date: May 28, 2026

Respectfully submitted,

LONGMAN & VAN GRACK, LLC

/s/ Adam L. Van Grack

Adam L. Van Grack, Esq. (CPF# 0212190262)

/s/ Theodore B. Kiviat

Theodore B. Kiviat, Esq. (CPF# 0101110004)

10411 Motor City Drive, Suite 750

Bethesda, Maryland 20817

Telephone: (301) 291-5027

Fax: (301) 291-5028

avangrack@lvglawfirm.com

tkiviat@lvglawfirm.com

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

Keith H. Forst

(Special Admission)

Asher Griffin

(Special Admission)

José R. Pereyó

(Special Admission)

Paul D. Henderson

(Special Admission)

555 13th Street NW, Suite 600

Washington, District of Columbia 20004

Telephone: (202) 538-8000

Fax: (202) 538-8100

keithforst@quinnemanuel.com

ashergriffin@quinnemanuel.com

josepereyo@quinnemanuel.com

paulhenderson@quinnemanuel.com

*Counsel for Petitioners-Plaintiffs Quantum
Maryland, LLC and Joan Aquilino*

CERTIFICATE REGARDING RESTRICTED INFORMATION

I, Adam L. Van Grack, HEREBY CERTIFY that this submission does not contain any restricted information.

/s/ Adam L. Van Grack
Adam L. Van Grack, Esq. (CPF# 0212190262)

CERTIFICATE OF SERVICE

I, Adam L. Van Grack, HEREBY CERTIFY that on this 28th day of May, 2026, a copy of the foregoing *Opposition* was filed electronically in the Maryland Electronic Courts (MDEC) system in the above-captioned matter and served upon all parties and/or their counsel as registered in the Maryland Electronic Courts (MDEC) system for this matter and all consolidated matters.

/s/ Adam L. Van Grack
Adam L. Van Grack, Esq. (CPF# 0212190262)

EXHIBIT 1

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

MONTGOMERY COUNTY
FIRE-RESCUE ASSOCIATION

Plaintiffs

v.

MONTGOMERY COUNTY
BOARD OF ELECTIONS

Defendant

Case No.: 337172-V

SCHEDULING ORDER

This case was before the court for a scheduling hearing on September 3, 2010. Upon consideration of the information presented and received, and by agreement of the parties, it is this 3rd day of September, 2010, by the Circuit Court for Montgomery County, Maryland,

ORDERED, that the response to the petition shall be filed on or before **September 7, 2010**; and it is further

ORDERED, that discovery, consisting of interrogatories, requests for production of documents, and depositions, shall be propounded on or before **September 9, 2010**, and it is further

ORDERED, that any opposition to the Motion to Intervene shall be filed on or before **September 10, 2010**, and it is further

ORDERED, that the disclosure of questioned signatures by the Plaintiff, first submission, shall be filed on or before **September 10, 2010**, and it is further

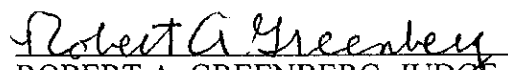
ORDERED, that the disclosure of questioned signatures by the Plaintiff, second submission, shall be filed on or before **September 14, 2010**, and it is further

ENTERED

ORDERED, that discovery shall be completed on or before **September 15, 2010**, and it is further

ORDERED, that the filing of dispositive motions shall be on or before **September 17, 2010**, and it is further

ORDERED, that the hearing on the motions and the trial in this matter shall be heard on **September 21, 2010, at 10:00 A.M.**, for two days.


ROBERT A. GREENBERG, JUDGE
Circuit Court of Montgomery County

ENTERED

SEP 10 2010 *cc*

Clerk of the Circuit Court
Montgomery County, Md.

EXHIBIT 2

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

JANE DOE, et. al. :
 :
 Plaintiffs :
 :
 v. : Case No.: 293857-V
 :
 :
 MONTGOMERY COUNTY :
 BOARD OF ELECTIONS :
 :
 Defendant

SCHEDULING ORDER

This case was before the court for a scheduling hearing on April 11, 2008. Upon consideration of the information presented and received, and by agreement of the parties, it is this 15th day of April, 2008, by the Circuit Court for Montgomery County, Maryland,

ORDERED, that any opposition to the Motion to Intervene shall be filed on or before **April 16, 2008**; and it is further

ORDERED, that discovery shall be propounded to opposing counsel on or before **April 21, 2008**; and it is further

ORDERED, that all responses to discovery shall be delivered to opposing counsel on or before **May 6, 2008**, and all discovery shall be concluded on or before that date; and it is further

ORDERED, that the parties shall disclose any expert witnesses on or before **May 10, 2008**; and it is further

ORDERED, that except as otherwise stated herein, discovery shall be governed by the provisions of Maryland Rules 2-401, et seq., and it is further

ORDERED, that the trial in this matter shall be scheduled for **June 11, 2008, and June 12, 2008, at 9:30 a.m. in Courtroom 20.**

ENTERED

APR 17 2008 *[Signature]*

Clerk of the Circuit Court
Montgomery County, Md.

Robert A. Greenberg
ROBERT A. GREENBERG, JUDGE
Circuit Court of Montgomery County

FOR JUDICIAL REVIEW OF
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and

BARBARA WAGNER

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

Case No. C-10-CV-26-000327

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FREDERICK COUNTY BOARD OF
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Defendants.

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[PROPOSED] ORDER

Upon consideration of Defendants-Respondents’ Frederick County Data Center Referendum Committee’s Motion for Protective Order (“**Motion for Protective Order**”), and any/all oppositions filed thereto, it is this ____ day of _____ 2026,

ORDERED, that the Motion to Dismiss is DENIED.

IT IS SO ORDERED

Dated: _____

The Honorable _____
Circuit Court for Frederick County, Maryland

Civil Clerk to provide copies to all parties via MDEC