

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 *

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 *

**RESPONDENTS FREDERICK COUNTY BOARD OF ELECTIONS and BARBARA
WAGNER, ELECTION DIRECTOR'S ANSWERING MEMORANDUM OF LAW TO
PETITIONERS' MEMORANDUM OF LAW**

Respondents, Frederick County Board of Elections
("Board") and Barbara Wagner, in her official capacity as
Election Director ("Wagner") and collectively ("Board" or
"Respondents") by and through their attorney, Daniel
B. Loftus, P.C., hereby file this Answering Memorandum to
Petitioners' (collectively "Petitioners") Memoranda pursuant to
Maryland Rule 7-207(a) and state as follows:

PRELIMINARY STATEMENT

Though the cases referenced above are consolidated into Case No. C-10-C-26-309, the Board is addressing all the Petitioners' Memoranda in this single Answering Memorandum.

Furthermore, the Board, as with the Court, is dedicated to ensuring the integrity of the electoral process. To that end, the Board provides the following Answering Memorandum and is incorporated into each Petitioners' Memoranda.

INTRODUCTION

If the Frederick County Charter ("Charter") was clear and on whether an ordinance is a law, then none of the parties/litigants would be here before this Court.

But the Charter is not clear and that is why the County Attorney and Referendum Committee attorney wrote in-depth analysis conflicting memoranda to explain whether or not Ordinance 26-01-001 ("Ordinance") is referable for referendum under the Charter. The County says "No" and the Referendum Committee say "YES." The Board is neutral.

Under these circumstances, the Board, through its Election Director made the appropriate decision.

LEGAL STANDARD

With questions of law, the Courts review *de novo*. When the Courts are reviewing the administrative agency decision,

(Board/Election Director), the Courts apply the substantial evidence test. That test requires the Courts to affirm the agency decision, if after reviewing the evidence in the record and in the *light most favorably to the agency*, "a reasoning mind reasonably could have reached the factual conclusion the agency reached." *Bullock v. Pelham Wood Apts.*, 283 Md. 505, 512 (1978) (quoting *Dickinson-Tidewater v. Supervisor*, 273 Md. 245, 256 (1974); see also *Montgomery County v. Rotwein*, *supra*. (Emphasis added.)

In *Md. State Police v. Warwick Supply & Equip Co., Inc.*, when applying that substantial evidence test, the Courts determine whether the record contains "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." 330 Md. 474, 494 (1993).

And the Courts may not substitute its judgment for that of the agency unless the agency's conclusions were not supported by substantial evidence in the record or were premised on an error of law. *Stansbury v. Jones*, 372 Md. 172, 184 (2002); *Md. Dept of the Environ v. Ives*, 136 Md. App. 581, 585 (2001); *Maryland Comm. on Human Relations v. Mayor of Balt.*, 86 Md. App. 167 (1991).

In determining whether the agency's conclusions were premised on an error of law, the Court will ordinarily give "considerable weight" to an administrative agency's interpretation and application of the statute which the

agency administers. *Bd. of Physician Quality Assurance, supra* 354 Md. 59, at 68-69.

Furthermore, the agency's decision is *prima facie* correct and presumed valid. The expertise of the agency in its own field should be respected. *Board of Physician Quality Assurance, Id.* at 69.

Judicial review of an agency decision is an exercise of the Circuit Court's original jurisdiction. *Kim v. Comptroller of the Treasury*, 350 Md. 527, 533 (1998). And Maryland Rule 7-201, *et seq.*, governs the procedures for judicial review of the agency's decision in the Circuit Court. See *Hensley v. Bethesda Sheet Metal, Co.*, 230 Md. 556 (1963); *People's Counsel v. Public Service Commission*, 52 Md. App. 715 (1982).

Next, the Circuit Court's review is based on the record and not *de novo*. The limited exception where a court may review an agency decision *de novo* exists where the agency's "basic function is so essentially judicial that it can be considered to be supplanting what might have been a court function." *Dept of Nat. Res. V. Linchester Sand & Gravel Corp.*, 274 Md. 211 (1975).

Judicial review of the Board's decision in certifying the petition in this case does not fall within the exception.

As stated in the U.S. Supreme Court, *Camp v. Pitts* 411 U.S. 138, 142 (1973): "[T]he focal point for judicial review should be the administrative record already in existence, not some new

record made initially in the reviewing court."

In other words, for the Board, this matter is reviewed based on the record.

STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

1. Is the Ordinance subject to referendum under the Charter?
2. Was the Election Director's decision finding the Referendum Committee's Petition sufficient erroneous?
3. Was the Referendum Petition Defective?
4. Should a Writ of Mandamus Issue?

STATEMENT OF FACTS MATERIAL TO THOSE QUESTIONS

A. Is the Ordinance subject to referendum under the Charter?

In *Town of Bel Air v. Bodt*, the Maryland Supreme Court zeroed in on the issue: "...All Roads Lead to the ... Charter." 487 Md. 354 (2024).

The Petitioners continue to argue that based on the County Attorney's Memorandum dated January 20, 2026 the Ordinance is not a law and therefore not subject to referendum under the Charter. See Exhibit 1, County Attorney Memorandum and Administrative Record ("AR") at 6b.

However, the Petitioners continue to ignore and forget to mention that there is also a contradicting and differing memorandum from the Referendum Committee's attorney dated March 31, 2026 arguing that the Ordinance is a law and therefore subject to referendum under the Charter. See Exhibit 2,

Referendum Committee attorney, Paul Flynn, Esq., and AR at 6d.

And therein lies the rub.

Both memoranda provided a thorough and in-depth analysis on the subject matter, i.e., the Ordinance.

But they were not binding authority on the Election Director, Ms. Barbara Wagner. See Exhibit 3, Paragraph ("Par.") 22 & 23, Affidavit of Barbara Wagner.

The Board is not an administrative agency of Frederick County, Maryland. It is an independent administrative agency of the executive branch of the Maryland State government. The State Board of Elections ("SBE"), also an independent government agency under the executive branch, supervises the operations of the Board. See Exhibit 3, Par. 3, Affidavit of Barbara Wagner; see also *Maryland State of Elections v. Ambridge*, 489 Md. 404, 443-444 (2025).

There are 24 independent local boards of elections (including the City of Baltimore). Each of these local boards have their own Board, staff, and counsel. Each local Board is subject to the direction and authority of SBE and are accountable to SBE. See Election Law ("EL"), §2-201. In other words, despite the fact the Board does receive some funding from the Frederick County government, it is not an agency of Frederick County government and not held accountable to it. See Exhibit 3, Par. 1-4, Affidavit of Barbara Wagner.

The Election Director's power and responsibilities are outlined in EL, §2-206. And nowhere in the election law or regulations or policies is the Election Director to interpret a law, create a law, enact a law or decide what a law is.

The Election Director has no legal duty, authority, or obligation to agree with the County Attorney's legal opinion. Nor does the Election Director have a legal duty, authority or obligation to agree with the Referendum Committee's legal opinion.

More importantly, the Election Director, chief election official, has no statutory authority, or otherwise to determine what a law is or is not and whether an ordinance is a law or is not subject to referendum. See Exhibit 3, Par 8, Affidavit of Barbara Wagner.

As the Maryland Supreme Court correctly observed stated 17 months ago in *Ambridge*:

"[I]f the Court were to conclude that the State Board's duties with respect to ballot 'content' included determining the underlying legality of the substance of a ballot question, the effect would mean that the State Board - an executive agency - would be entrusted with the authority to review enactments by the State Legislature and **county governments**. Specifically, under [the Appellees'] expansive interpretation, the State Board would have authority, as part of its responsibilities to certify ballot 'content' to nullify a [government] resolution, a **charter board enactment** or a law passed by the Maryland General Assembly. It would also give the State Board the authority to revise questions drafted by the Secretary of State, County Attorney or City Law Department depending on the nature of the ballot question, where no such authority exists." (Emphasis added). *Ambridge, supra* at 443-444.

Such an expansive interpretation of election law "would lead to illogical, unsound or untenable results that the General Assembly surely could not have intended." *Ambridge*, *supra* at 443. 1.

Stated differently, the General Assembly would never imagine that 24 independent local boards of elections and their Election Directors, under the supervision of the SBE, would have that power and authority to circumvent, usurp, nullify overrule, assume, overstep the legislative function of the County Council. That would be absurd.

Even under the basic principles of administrative law, as well as the separation of powers requirement set forth in Article 8 of the Maryland Declaration of rights, it is not the proper function of an administrative official (like the Election Director) in the executive branch of the government to decide a question, or a word, or a term or a function of the legislative

1. While the *Ambridge* case involved judicial review under EL, §9-209(a), the same analysis and principles can be applied and used in the present case for judicial review under EL, §6-206.

branch (i.e., County Council) with respect to a County Charter.
2.

The Election Director is not empowered or authorized to substitute her opinion as to what a law is under the County Charter if the County Charter is unclear.

To be sure, from the Board's perspective, the Charter could have been drafted or written more clearly! If the Charter was clear, then why have two conflicting and differing legal opinions? And even the County Attorney acknowledges in his legal opinion that this issue is a novel one and twice states that the term "law" is not defined in the Charter. See AR at 6b, Exhibit 1, Pages ("P") 1,2 and 3.

And on January 23, 2026, the Election Director put the whole world on notice (in this case, the County and Referendum Committee) in her Advanced Determination Memorandum that "Furthermore, neither the election director nor the Board have the authority to determine whether an ordinance is a local law

2. Article 8 of the Declaration of Rights states as follows:

"Article 8. Separation of Powers.

"That the Legislative, Executive and Judiciary powers of Government ought to be forever separate and distinct from each other; and no person exercising the functions of one of said Departments shall assume or discharge the duties of any other."

True, there are incidents or situations where there are shared powers or shared authority among the branches of government and they are not kept "wholly separate and unmixed." See *Crane v. Meginnis*, 1 G & J. 463, 476 (1829). But, this is not the case where there is shared authority or shared power.

at this time." See Exhibit 4, Advance Determination of Petition, AR at 4a.

In short, there is a dilemma on the question of whether the Ordinance is a law subject to referendum under the County Charter. It is an open question for the Court to decide - not for the Election Director to decide. The Petitioners even acknowledge that: "the Election Director's responsibility is limited to administrating the election law. She [Barbara Wagner] has no expertise in interpreting the County Charter..." See Plaintiffs-Petitioners Reply in Support of Motion to Stay at P.10. See MDEC E-File, System Envelope 265671992.

Finally, in an important footnote in *Ambridge*, the Court said, "The circuit court has no authority to order the State Board [and by extension, the local board of elections] to take action that the State Board has no legal duty or authority to take." *Ambridge, supra* at 441 fn. 24.

B. Was the Election Director's decision to find the Referendum Committee's Petition sufficient erroneous?

The short answer is no. Under the circumstances at that time, the Election Director, as the chief election official, made the correct decision. Because the Election Director was unable to find a deficiency under the law, i.e., EL, §6-206 (c), she declared that the Referendum Petition was sufficient. See Exhibit 3, Par. 27-28, Affidavit of Barbara Wagner.

To understand the Election Director's affirmative decision to find the Referendum Committee's Petition sufficient and to certify it, it is important to understand the Board's approach on all matters dealing with elections, petitions, ballots, candidates, voters, etc. **3.**

To ensure and maintain the integrity of the electoral process with an open and impartial manner, anything brought before the Board is presumed valid, good, truthful, correct, sufficient or accurate until it is uncovered or discovered later to the contrary. This approach is applied to not only petitions but also to voter registrations, voter authority cards, provisional ballots, residency, citizenship, party affiliation or non-party affiliation, candidate filings, qualifications of candidates, age, etc. In other words, the Board's practice is that everything is truthful, sufficient, accurate or correct unless found otherwise. The Board does not check a voter's ID when he/she goes to vote, the Board does not check the candidate's qualifications, the Board does not check up on your residency to see if one is telling the truth, etc., because the Board presumes one is telling the truth or in this case a petition is sufficient.

3 Understandably, the Petitioners do not like it, but a decision was made and acknowledged by the Petitioners in their complaint (Civil Case No. C-10-CV-26-309) at P. 28, Par. 79. See MDEC, E-Filed System Envelope 25964679.

The Election Director is faithful in maintaining and ensuring the integrity of the electoral process and the Respondents are neutral. See Exhibit 3, Par. 5, Affidavit of Barbara Wagner.

And one doesn't need a statute to create or have a presumption. Presumptions occur in everyday life without a statute! And it's a long-standing axiom that the party against whom a presumption is directed has the burden of producing evidence to rebut it. Petitioners have not produced any credible evidence to rebut the presumption. All that Petitioners state is that the presumption "appears nowhere in the Code" (i.e., Election Law). See Petitioners' Memorandum at P. 22. (Civil Case No. C-10-CV-26-309). That's not credible evidence to rebut the presumption.

And that is how the Board received the Referendum Committee's Petition -- with an initial presumption of sufficiency until it is examined under EL, §6-206 (c). See Exhibit 3, Par. 18, 24 & 27 Affidavit of Barbara Wagner.

It is important to examine, parse through, deconstruct and analyze EL, 6-§206 carefully. EL, 6-§206 reads, in relevant part to this case:

"(a) Promptly upon the filing of a petition with an election authority, the chief election official of the election authority shall review the petition."

The "election authority" means as to local petitions (and

that is what this is), the local board for that county. See EL, §6-101 (e)(2). And "chief election official" means as to a local board, the election director (i.e., Barbara Wagner). See EL, §6-101 (c)(2).

Next, it says:

"(b) Unless a determination of deficiency is made under subsection (c) of this section, the chief election official shall: ..." (Emphasis added).

With that statement, there is a presumption that the petition is sufficient when it is first presented to the Board lest the Board finds a deficiency. Petitioners would have EL, §6-206 (b) read differently, i.e., the petition is already deficient when it is presented to the Board. Such a reading would be preposterous! Therefore, no other interpretation can be reached with that sentence in EL, §6-206 (b).

Next, EL, §6-206 states:

"(c) The chief election official shall declare that the petition is deficient IF the chief election determines that: ..." and lists six reasons to find a deficiency (Emphasis added).

So, with that sentence, the Board must go to subsection (c) to analyze each number listed to search for a deficiency. Or, stated differently, IF the Election Director cannot find a deficiency for whatever reason, then the petition is sufficient.

Once the Election Director, chief election official, has

reviewed those specific six reasons to determine if the petition is deficient, and is unable to find a deficiency, then the Election Director shall refer back to subsection (b) (1) or (2) and:

"(1) make a determination that the petition, as to matters other than the validity of signatures, is sufficient; or

"(2) defer a determination of sufficiency pending further review."

The words "Unless" and "if" have significant conditional meanings. This makes EL, §6-206 conditional and Petitioners acknowledge that but for the opposite and incorrect reasons.

In the present case, the Election Director was unable to find a deficiency under subsection (c). Therefore, the petition was deemed sufficient as when it initially came before the Board.

The Election Director did not fail in her duty. Her decision was not erroneous under the given circumstances. She did not refuse to decide on the EL, §6-206 (c) (5) (i) question. Rather, because the Charter is not clear to the Board and the Election Director was presented with two non-binding divergent and opposite legal opinions, and she has no authority or power to decide the legal issue, she could not and was unable to find a deficiency in the petition.

In other words, her finding or affirmative decision of sufficiency was based on 1) the petition came to the Board with

a presumption of sufficiency and 2) after receiving it and reviewing it under EL, §6-206 (c) there was no finding of deficiency. See Exhibit 3, Par. 27, Affidavit of Barbara Wagner.

The Election Director explained her decision in her April 3, 2026 letter to the Referendum Committee. See Exhibit 5, April 3, 2026 letter, AR at 8a.

Specifically, in her letter, the Election Director explained in relevant part to this petition:

"There is a presumption that a petition is sufficient **unless** there is a finding or determination of a deficiency.

Under EL 6-2026 (b) --- Unless a determination of deficiency is made under subsection (c) ... the chief election official shall (1) make a determination that the petition a, as to matters other than the validity of signatures, is sufficient.

I have reviewed each number under EL 6-206 subsection (c) and there is no deficiency under 1,2,3, 4 and 6. However, as the chief election official, based on the advice of legal authority (Board Counsel) I am unable to make a determination that the petition is not authorized by law under EL 6-206(c). In short, since there is a presumption of sufficiency, unless a determination of a deficiency is made, and I am unable to make a determination of a deficiency, the petition is sufficient for purposes of EL 6-206 ..."

The Petitioners have misinterpreted the Election Director's letter. Stated differently, the Election Director stated - she cannot make a determination on whether the subject matter (i.e., the Ordinance) is authorized by the Charter for referendum. And because of that she cannot find a deficiency.

And if she cannot find a deficiency, then the petition is sufficient. The Election Director made a final decision with the facts before her that the petition was sufficient because she could not find a deficiency.

The Election Director's decision was not erroneous or unlawful and her decision is entitled to weight and deference. The Courts ordinarily give 'considerable weight' to 'an administrative agency's interpretation and application of the statute which the agency administers.'" *Montgomery County v. Rotwein*, 169 Md. App. 716, 727 (2006) (quoting *Bd. of Physician Quality Assurance v. Banks* 354 Md. 59, 68-69 (1999)).

c. Was the Referendum Petition Defective?

When the Referendum Committee presented their petition to the Board for an advanced determination, the Election Director reviewed it and stated in her January 23, 2026 Memorandum:

"As the Election Director for the Frederick County Board of Elections ("Board"), I reviewed the Petition pursuant to Maryland Election Law §6-202 in consultation with counsel for the Board, and the Petition is sufficient as to format only."

See Exhibit 4, Advanced Determination Memorandum, AR at 4a.

The Referendum Committee's petition satisfied the requirements of EL, §6-202. The petition did not provide a summary of the local ordinance, rather it provided the entire local ordinance on the back of the petition. It also satisfied

the Procedures for Filing a Statewide or a Public Local Law Referendum Petition ("SBE Referendum Procedures") (as referenced in Petitioners' Memorandum (Civil Case No. C-10-CV-26-309), P. 25, fn 14,) and at AR at 7a.

Nowhere in the election law or in SBE Referendum Procedures does it require a certain font size for the petition. SBE Referendum Procedures states, in relevant, that each signature page must contain either the full text of the act (i.e., Ordinance) or a fair and accurate summary of the substance provisions of the act and it MUST BE printed or copied onto the back of each signature page. See SBE Referendum Procedures AR at 7a, P.3

The Election Director, along with the Election Program Manager II and staff read the petition for the advanced determination. Those persons listed found they could read the text of the ordinance. See Exhibit 3, Par. 11 Affidavit of Barbara Wagner. 4.

No registered voter or citizen or signer of the petition ever filed a complaint with the Board regarding the Referendum Committee's Petition being illegible or individuals

4. It should be noted in Petitioners' Memorandum (Civil Case No. C-10-CV-26-309) at P. 25, fn 17, uses the font size in single space but the petition is double spaced.

or circulators making alleged misleading statements or alleged false narratives, or alleged fraud, or alleged misleading statements or couldn't read the petition during the petition drive or afterwards. No signer asked to have his/her signature removed. And they could have had their names removed under EL, §6-203. See Exhibit 3, Par. 30, Affidavit of Barbara Wagner.

The Board did receive an informal letter on March 25, 2026 -- after the Referendum Committee's petition drive ended and after the Board voted to count and verify the petition signatures -- from attorney Keith Forst representing Quantum Maryland, LLC. See AR 6c. See also Exhibit 3, Par. 14 Affidavit of Barbara Wagner.

In that letter, Mr. Forst stated that his firm supported the County Attorney position that the Ordinance was not a law subject to the referendum and also made allegations that the petition was independently defective. But Mr. Forst provided no evidence or affidavits to support his allegations. See Exhibit 3, Par. 14, Affidavit of Barbara Wagner. 5.

5. It should be noted that while the Board is not an investigatory body, it will receive complaints and forward them on to the appropriate party. Any complaints filed with the Board are, depending on the type of complaint, forwarded to SBE and one can file a complaint on-line with SBE on its Campaign Finance Complaint Form, a complaint can also be forwarded to the County Attorney, State's Attorney Office, Sheriff's Office, City Police, the candidate campaign headquarters, etc. Again, depending on the type of complaint. See Exhibit 3, Par 15, Affidavit of Barbara Wagner.

For the question presented - was the Referendum Petition Defective --- the answer is no. For the Election Director, the Referendum Petition was neither defective at the time of the advanced determination, nor during the petition drive (since no one came forward during that time with a complaint).

d. Should a Writ of Mandamus Issue?

A Writ of Mandamus, "an extraordinary remedy", is not necessary and should not be granted because the Election Director, as the chief election official, performed her function. See *Dept. of Human Res. V. Hayward*, 426 Md. 638, 646 (2012). The "power to issue an extraordinary writ of mandamus is one which ought to be exercised with great caution." *Doering v. Fader*, 316 Md. 351, 361 (1989). And as stated in *Goodwich v. Nolan*, "Ordinarily, mandamus does not lie where the action to be reviewed is discretionary or depends on personal judgment." 343 Md. 130 at 145 (1996). The Election Director made an affirmative decision that was not wrong or erroneous and her decision was within her sound discretion and personal judgment as the decision maker. Therefore, a Writ of Mandamus should not be granted.

CONCLUSION

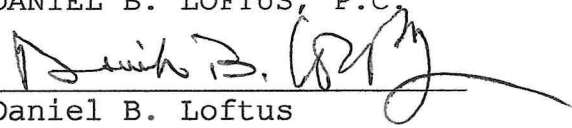
Based on the material facts in the Record, the Election Director's decision in finding that the Referendum Committee's Petition sufficient was not wrong or erroneous.

WHEREFORE, the Respondents, Frederick County Board of Elections and Barbara Wagner, in her official capacity as Election Director respectfully request that this Court:

- A. Affirm the Election Director's decision;
- B. Deny each and every claim and relief requested by Petitioners;
- C. Award Respondents all costs, expenses, fees and including all reasonable attorney fees incurred; and
- D. Grant Respondents such other relief as this Court may deem just and proper.

Respectfully submitted,

DANIEL B. LOFTUS, P.C.


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Attorney for Defendants
Frederick County Board of
Elections and Barabra Wagner,
in her official capacity as
Election Director

CERTIFICATE REGARDING RESTRICTED INFORMATION

I, HEREBY CERTIFY that this submission does not contain any restricted information.


Daniel B. Loftus

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9TH day of June, 2026, a copy of the foregoing Answering Memorandum Exhibits and Order were served by the MDEC system and served upon all parties and counsel as registered in MDEC system for this matter and all consolidated matters.

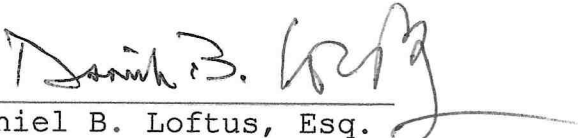

Daniel B. Loftus, Esq.

EXHIBIT 1



FREDERICK COUNTY GOVERNMENT

Jessica Fitzwater
County Executive

OFFICE OF THE COUNTY ATTORNEY

Bryon C. Black, County Attorney
Jennifer M. Keefer, Deputy County Attorney
Kathy L. Mitchell, Senior Assistant County Attorney
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Joshua S. Brewster, Senior Assistant County Attorney
Kendall A. Desaulniers, Senior Assistant County Attorney
Catherine S. Keller, Senior Assistant County Attorney
Thomas P. Sinton, Senior Assistant County Attorney

MEMORANDUM

TO: County Council Members and County Executive

FROM: Bryon C. Black, County Attorney 

DATE: January 20, 2026

RE: Applicability of Referendum under Frederick County Charter § 308 to (1) the Resolution Adopting the Critical Digital Infrastructure Comprehensive Plan Amendment and (2) the Ordinance Implementing the Comprehensive Zoning for the Critical Digital Infrastructure Overlay Zone

Following the Council's December 23, 2025 vote on the Resolution adopting the Critical Digital Infrastructure Comprehensive Plan Amendment and the related Ordinance implementing the Comprehensive Zoning for the Critical Digital Infrastructure Overlay Zone, the Office of the County Attorney received requests from members of the Governing Body, as well as from others, regarding the applicability of the referendum process under Frederick County Charter Section 308 to the Council's actions.

Since Frederick County became a charter county in 2015, this represents the first instance in which the applicability of a referendum to a resolution or an ordinance has arisen. Given the novelty of the issue, extensive research was conducted into the Charter's text, structure, legislative history, comparative provisions in other Maryland charter counties, relevant case law, and applicable state statutes to provide a thorough analysis and legal conclusion.

Given the sensitive nature of this issue, its potential implications for future land use and development decisions in the County, and the precedent any decision will set, the Office of the County Attorney consulted with outside counsel. Timothy Maloney, a highly regarded Maryland attorney with extensive experience in election law, charter interpretation, and referendum matters, reviewed the relevant Charter provisions, legislative framework, and supporting authorities. Mr. Maloney concurred with the Office's conclusion that neither the Resolution nor the Ordinance is subject to the referendum process under Section 308 of the Frederick County Charter.

Question Presented

Are either the Resolution Adopting the Critical Digital Infrastructure Comprehensive Plan Amendment or the Ordinance implementing the Comprehensive Zoning for the Critical Digital Infrastructure Overlay Zone (an element of the Livable Frederick Comprehensive Plan) subject to referendum as provided in Frederick County Charter § 308?

Short Answer

No. The Office of the County Attorney is of the opinion that neither the Resolution nor the Ordinance constitutes a "law" within the meaning of Charter § 308 and therefore neither is subject to referendum.

Background and Analysis

1. Maryland General Assembly authority grant

Maryland Annotated Code, Local Government Article § 9-205 authorizes the voters of a charter county to reserve in the charter the power of referendum over "a local law enacted by the county council," while requiring the charter itself to specify "(i) what types of local laws may be petitioned to referendum; and (ii) whether a part of a local law may be petitioned to referendum." This provision delegates to the charter the responsibility for defining the scope and applicability of referendum, including the precise meaning of "local law" in this context.

In Frederick County's Charter, Section 308 limits referendum to "a law, or part of a law, enacted pursuant to this Charter," and situates that power within the legislative process provisions of Sections 301–310, which govern the enactment of laws exclusively through written bills. The Charter's failure to broadly define "law" (unlike several other charter counties, noted below) and its integration of the referendum power within the formal legislative enactment framework reflect a deliberate choice to restrict referendum to those enactments processed as bills under the Charter's legislative procedures.

This interpretation aligns with the statutory directive in § 9-205 that the charter—not state law—controls the types of local laws subject to referendum, thereby affirming the County's authority to interpret "law" narrowly as excluding resolutions and ordinances not enacted via the bill process.

2. Text of the Charter Referendum Provision

Frederick County Charter § 308 provides that "a law, or part of a law, enacted pursuant to this Charter" may be referred to the voters upon the filing of a valid petition. The term "law" is not defined in the Charter.

3. Contrast with Other Charter Counties

The term "law" is not defined in the Frederick County Charter, but it is defined in many other Maryland charter counties.

The attached document provides a comparative overview of referendum provisions in the charters of the other Maryland charter counties, focusing on the scope of laws or ordinances subject to voter referendum, key definitions, and notable exceptions.

Most counties reserve to the voters the power of referendum over laws, ordinances, or legislative acts enacted by the county council, typically requiring a petition signed by a percentage of registered voters. The term "law" is frequently defined broadly in many charters (e.g., Anne Arundel, Baltimore, Harford, Howard, Prince George's, Talbot, and Wicomico) to include acts, public local laws, ordinances, resolutions, and other legislative actions of the council, often extending to prior county commissioner actions and applicable state laws where reasonable.

In contrast, Cecil, Dorchester, Montgomery, and Frederick counties do not define "law," or "legislation."

In Cecil, Dorchester, Frederick, and Montgomery Counties, the referendum provisions are narrower than in the other charter counties, primarily because the key terms are either undefined or more restrictively phrased in the charter.

- **Cecil, Dorchester, and Frederick Counties** (Secs. 308/307/308) apply referendum to "a law, or part of a law, enacted pursuant to this Charter," with "law" undefined. This contrasts with the other counties, where "law" is explicitly defined broadly to include resolutions, and ordinances (and often acts, public local laws, etc.). Without such a definition, the scope is narrower.
- **Montgomery County** (Sec. 114) applies referendum to "any **legislation** enacted by the Council," with "legislation" undefined. This term generally refers to formal legislative acts enacted pursuant to the charter provisions.

By comparison, the other counties' explicit broad definitions of "law" (often including resolutions alongside ordinances and other acts) make resolutions more clearly subject to referendum where they qualify as legislative acts. The absence of such inclusive definitions in the four counties suggests a more limited scope, where only true legislative acts (not resolutions or ordinances) are referable. No court cases directly interpret this distinction in these counties, but the textual differences and standard Maryland local government practice support this narrower application.

Unlike several other Maryland charter counties, the Frederick County Charter does not contain a broad definition of "law" that expressly includes resolutions, ordinances, or other

legislative acts. The absence of such a definition suggests a narrower scope limited to enactments that follow the formal legislative process outlined in Charter §§ 301–310.

4. Legislative Process in the Charter

Charter §§ 301–310 establishes the exclusive process for enacting “legislation” or “laws.”

- Section 305 requires that no law may be enacted except by written Bill.
- Bills must be introduced, read, and formatted in the manner they will appear when they become law.
- Bills, after enactment by the Council, are subject to veto by the County Executive, and if not vetoed, are codified in the Code..

Neither the Resolution approving the Comprehensive Plan Amendment nor the zoning Ordinance was introduced or enacted as a Bill under this process. Instead, both were adopted through separate procedures established by the County Council.

5. Effective Date and Codification

- Charter § 307 provides that laws take effect 60 calendar days after enactment, unless referred to referendum (which requires a petition filed within 59 days).
- The Resolution and Ordinance at issue become effective upon signature by the Council President (anticipated to be January 20, 2026), consistent with the Council’s standard practice for such actions.
- Charter § 310 requires the County to codify all local laws of general application and continuing force in the Code of Frederick County. Only laws that have become effective, and remain effective, through the legislative process outlined in Charter 301-310 are codified, Resolutions and Ordinances (after becoming a charter county in 2015) are not.

6. Nature of the Actions

- The Resolution approves an amendment to the Livable Frederick Comprehensive Plan. A comprehensive plan is a policy document and guidance tool, not a regulatory “law.”
- The Ordinance implements zoning changes for the Critical Digital Infrastructure Overlay Zone. While it amends the zoning text/map, it was not enacted as a Bill under Charter §§ 301–310.

7. Judicial Guidance on Charter Interpretation

In Town of Bel Air v. Bodt, 487 Md. 354 (2024), the Maryland Supreme Court held that:

- Interpretation of a municipal charter is a legal question reviewed de novo by appellate courts, which do so without deference.

- Courts apply ordinary principles of statutory construction, beginning with the plain language of the charter.

- Courts will not divine a legislative intention contrary to the plain language of the charter provision or judicially insert language to impose exceptions, limitations, or restrictions not evident in the plain language.

- If the language is unambiguous and clearly consistent with the charter provision's apparent purpose, the Court's inquiry as to legislative intent ends ordinarily and it will apply the charter provision as written, without resorting to other rules of construction.

In Prince George's County v. Thurston, 479 Md. 575 (2022), the same Court applied the identical analysis to the County Charter and held that a resolution is not a law.

Applying these principles, the plain language of § 308 limits referendum to "a law ... enacted pursuant to this Charter." The Charter's detailed legislative process (requiring Bills) and the lack of any definition expanding "law" to include resolutions or ordinances support the conclusion that only enactments following the process in §§ 301–310 are referable.

8. Historical and Practical Context

Since Frederick County began charter government in 2015, the Council has never treated resolutions or ordinances as "laws" subject to the formal Bill process or to referendum. The Charter Commission discussions (available at: [Charter Board - Dec 13th, 2011](#), starting at approximately the 1:30 mark) contain no indication that the drafters intended resolutions or ordinances to be considered "laws" for referendum purposes. This is the first time the issue of referendum or the question of whether resolutions or ordinances are subject to referendum has arisen in Frederick County.

9. State Law Distinction

Maryland Annotated Code, Land Use Article § 1-101(t) defines "zoning law":

(t)(1) "Zoning law" means the legislative *implementation of regulations* for zoning by a local jurisdiction.

(2) "Zoning law" includes a zoning ordinance, zoning regulation, zoning code, and any similar legislative action to *implement zoning controls* in a local jurisdiction.
(Emphasis added)

"Zoning law" is used in this provision in reference to the actual county zoning code. That definition applies to state statutory references and does not control or override the Frederick County Charter's narrower usage of "law" within its own legislative process.

Conclusion

Based on the plain language of the Charter, the structure of the legislative process, the effective-date and codification provisions, historical practice, and applicable judicial guidance, neither the Resolution Adopting the Critical Digital Infrastructure Comprehensive Plan Amendment nor the Ordinance implementing the Comprehensive Zoning for the Critical Digital Infrastructure Overlay Zone constitutes a "law" subject to referendum under Charter § 308.

Should citizens attempt to file a referendum petition for either action, the County would likely reject the petition as inapplicable. Any such rejection could lead to judicial review, and the outcome of such litigation cannot be guaranteed.

If the County believes broader referendum authority over resolutions or ordinances is desirable, it may wish to consider proposing a Charter amendment to expressly define the term "law" for purposes of § 308.

cc: Ragen Cherney, Chef of Staff
John Peterson, Chief Administrative Officer

C-10-CV-26-000309

EXHIBIT 2

FLYNN & CLARKE
LLC

March 31, 2026

Barbara Wagner
Election Director
Frederick County Board of Election Supervisors
8490 Progress Drive, Suite 300
Frederick, Maryland 21701

BY EMAIL AND CERTIFIED MAIL
electionboard@frederickcountymd.gov

RE: Data Center Referendum

Dear Ms. Wagner,

Thank you for this opportunity to present the views of the Frederick County Data Center Referendum Committee concerning the legal sufficiency of its Petition for Referendum. This is about safeguarding the role that was reserved for the citizens of Frederick County when they adopted the Charter, nearly 14 years ago, a point of such importance that it is evident even in the Preamble stating the Charter's purposes,

We the citizens of Frederick County, Maryland, a body corporate and politic, under the Constitution and general laws of the State of Maryland, in order to establish a more dynamic, efficient, and responsive form of county government, which shall be empowered by us to exercise greater local authority to govern and be manifest in its scope to all, do adopt, ordain, and establish as our instrument of government this Charter of Frederick County, Maryland.

It was a local government *responsive* to the citizens that the Charter sought to establish, and it was the power of referendum reserved to the people that was the essential tool. Accordingly, we encourage you to find that the Petition is authorized by law with regard to Ordinance 26-01-001 "Comprehensive Zoning for the Critical Digital Infrastructure Overlay Zone – An Element of the Livable Frederick Comprehensive Plan" (the "Ordinance").

Title 6 of the Election Law Article requires you to determine if the Ordinance is referable to referendum. In the words of the Code – you are tasked with deciding if the use of a petition for the subject matter of the petition is authorized by law. Code §6-206(c)(5)(i). The answer is yes, it is.

The plain language of the Charter demonstrates that "a law" is subject to referendum and this Ordinance is a law. Section 308(a) of the Frederick County's Charter provides:

31 W. Patrick Street, Suite 120
Frederick, Maryland 21701

PHONE: 240-575-9146

flynnandclarke.com

Except for the following, a law, or part of a law, enacted pursuant to this Charter, may be referred to the voters for approval upon the filing of a petition signed by seven percent of the registered voters of the County:

- (1) A law imposing a tax*
- (2) A law appropriating funds for current expenses to maintain the Government*
- (3) A law prescribing Council Districts; and*
- (4) A law adopting a Compensation Review Commission.*

The Ordinance in question is “a law, or part of a law, enacted pursuant to this Charter,” and none of the four exceptions applies, therefore the Ordinance is subject to referendum. While no definition of the word “law” is given in the Charter, the plain language shows that that it must include ordinances.

It is long-established in Maryland law that a Charter, like a statute, must be read “as a whole so that no word, clause, sentence, or phrase is rendered surplusage, superfluous, meaningless, or nugatory.” *Mayor & Town Council of Oakland v. Mayor & Town Council of Mountain Lake Park*, 392 Md. 301, 316 (2006). Ordinances must be included in “a law, or part of a law, enacted pursuant to this Charter” because otherwise, the four explicit §308 exceptions would be extraneous and superfluous.

This concept may be clearer if put in another context. If, for example, we had a rule that only schoolchildren are allowed on school buses, then there would be absolutely no reason to say that an exception will be made to keep guidance counselors, librarians, and janitors off the bus. They are already excluded. Explicit exceptions for them would be meaningless and redundant. Likewise, since the referendum power extends only to “laws, or parts of laws, enacted pursuant to this Charter,” there is no reason to list exceptions for certain ordinances unless ordinances in general are included in the first place.

I can be more specific. A Compensation Review Commission is to be adopted *by ordinance*, as set forth in §207. “The Council shall establish *by ordinance* a Compensation Review Commission every four years to review the Council’s Salary...” §207 (italics added). Section 308(a)(4) uses the word “law” to describe the act of adopting that act while §207 calls that same act an “ordinance.” The word “laws” as used in §308 must include ordinances, because otherwise it would make no sense for §308(a)(4) to explicitly exclude “a law adopting a Compensation Review Commission,” an action that 207 shows is accomplished by ordinance.

Throughout the terms of the Charter, no distinction is made between laws and ordinances for purposes of referendum. Section 214(d) indicates that an “*ordinance* establishing Council Districts shall be exempt from referendum.” (italics added). Yet, §308(a)(3) provides that “a law prescribing Council Districts” are exempt from referendum. The word “law” is substituted freely for the word “ordinance” specifically in the context of discussing referendum. Had ordinances not been included in the term “laws” for this purpose, then there would be no reason at all to list ordinances among the explicit exceptions.

Likewise, the “Annual Budget and Appropriations Ordinance” is referenced throughout the Charter as an ordinance, see e.g., §§ 306(d), 307(a). Yet, §308(a)(2) makes an exception to the referendum power for “a law appropriating funds for current expenses to maintain the Government.” Repeatedly, acts characterized elsewhere in the Charter as ordinances are referenced in the referendum section as laws. The Charter appears to place no importance at all on the distinction at the heart of the County’s argument.

The only conclusion that makes sense is that the key phrase from §308 – “*a law, or part of a law, enacted pursuant to this Charter*” includes ordinances and that ordinances, unless within one of the four clearly listed exceptions, are subject to referendum. Undoubtedly, none of four exceptions applies to the Ordinance in question; therefore, this Ordinance must be referable to referendum. In the context of the stated purpose of the Charter, of making government responsive to the people, how could it be otherwise? The Council cannot hold the power to insulate major decisions from executive veto and referendum, excluding the directly expressed will of the people, simply by labeling its actions an “ordinance.”

The County has argued that the Ordinance in question is not subject to referendum. Acknowledging as they must that the Ordinance does not fall within any of the four listed exceptions in 308, the County has argued that only Council actions that follow the Article Three Legislative Process outlined in the Charter can be subject to referendum. They rely on 305(a) of the Charter, which says the Council “may enact no law except by written Bill.” Since the Ordinance was not adopted using the procedure for a written Bill (the “Article Three Procedure”), the County concludes that it is not a “law” and thus it is not subject to referendum.

The County’s argument is not persuasive. First, the County cannot account for the Charter’s definition of the term “Bill,” which is:

“any proposed act of the County Council resulting in a law or ordinance. It may not mean a resolution that is not intended to have the effect of law.”

§104(c). The Council action in question resulting in the Ordinance was, literally, an act of the County Council “resulting in a law or ordinance.” It was a “Bill” by this definition. Accordingly, the Council acted by written bill resulting in the Ordinance and thus it enacted a law subject to referendum. The County’s reliance on §305(a) does the County no good.

Second, the County argument requires that only some of the Council’s legislative powers be subject to referendum, but the Charter makes it abundantly clear that “all” the legislative powers of the County are subject to referendum. Section 202 provides:

“All the legislative powers which the County may exercise under the Maryland Constitution and laws of the State are vested in the Council, subject to those powers retained by the people of the County as set forth in Section 308 of this Charter.”

§202. This too, the County cannot explain. A broad interpretation of the referendum power is consistent with the objectives and purpose of the Charter, as stated in the preamble quoted in its entirety above. There, it is emphasized that the citizens of Frederick County established this

Charter form of government for the purpose of making their local government more responsive to the citizens. The County's extremely narrow reading of the referendum provision would require ignoring various aspects of the Charter itself and would make government *less* responsive to its citizens, an unusual result given the stated purpose of the Charter in the first place.

The itemized exceptions to the referendum power in 308 demonstrate the inadequacy of the County's position. Council Districts are established by "resolution," under §214, *without* following the §305 procedure that the County argues must be followed for an act to be considered a "law" subject to referendum. Yet, the third exception listed to the general referendum power is for "a law prescribing Council Districts." *See* §308. Likewise, §207 requires the Council to pass ordinances establishing a Compensation Review Commission, and §506 requires the Council to enact a "law" titled "the Annual Budget and Appropriations Ordinance of Frederick County." Importantly, these acts follow different procedures – not the Article 3 Procedure. Yet, §308(a) refers to all of them as "laws," and takes the step of explicitly carving-out exceptions for them from the referendum power.

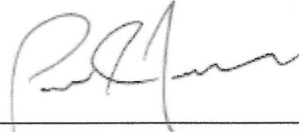
These provisions make no sense under the County's narrow interpretation. If "a law, or part of a law, enacted pursuant to this Charter," as used in §308, was intended to refer only to actions taken using the Article Three Procedures, then these exceptions would be redundant. The different procedures by which these acts are taken would by themselves exclude those actions from referendum.

If it was intended that the referendum power should be narrowly limited to actions that follow Article Three Procedures, as the County argues, then §308(a) could have simply referred to Article Three. It does not. Instead, it refers to the entire Charter -- *a law, or part of a law, enacted pursuant to this Charter*. The Charter describes numerous actions to be taken by the Council that do not follow Article Three Procedures, such as adopting the Compensation Review Commission and prescribing Council Districts. The County's argument would impose a narrow restriction where the Charter chooses instead the broadest terminology.

The County's argument would add to the Charter an enormous loophole through which actions of the Council could slip past the referendum power. The Charter carefully lists in plain English four specific exceptions to the referendum power, it does not make sense to read it in a manner that would infer the existence of a fifth, much larger exception that (for some inexplicable reason) was not spelled out. Why list four specific exceptions if five were intended? This canon of statutory construction is often referenced in Latin, *expression unius est exclusion alterius*. It means that the Charter's list of four exceptions should be interpreted as exclusive "so that a court will draw the negative inference that no other items may be added." *Fielding v. State*, 238 Md. App. 262, 279 (2018). Yet, the County's argument relies on adding an exceedingly narrow definition of "law" where none exists, and adding a loophole not supported by the text.

On behalf of the Frederick County Data Center Referendum Committee and the more than 22,000 Frederick County citizens who signed the pending Petition, I thank you for your service.

FLYNN & CLARKE, LLC

A handwritten signature in dark ink, appearing to read 'Paul D. Flynn', is written over a horizontal line.

PAUL D. FLYNN, ESQ.

cc. Daniel B. Loftus, Esq.
(danloftus@verizon.net)
Bryon Black, Esq.
(bblack@frederickcountymd.gov)
Timothy Maloney, Esq.
(tmaloney@jgllaw.com)

C-10-CV-26-000309

EXHIBIT 3

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

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

* * * * *

**AFFIDAVIT
OF BARBARA WAGNER**

I, Barbara Wagner, solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.

1. I am over eighteen (18) years of age and am competent to testify to the matters and facts set forth in this affidavit.

2. I am the Election Director, chief election official for the Frederick County Board of Elections ("Board"). I am a State of Maryland employee. I am hired or appointed by the Board to manage the operations and supervise the staff of the local Board of Elections. (See Election Law ("EL") §2-202). I am not a lawyer. I am not a legislator.

3. The Board is not an administrative agency of Frederick County, Maryland. The Board is an independent administrative agency of the executive branch of the Maryland State government and the State Board of Elections ("SBE") supervises the operations of the local board of elections. EL, § 2-103 (b)(4). There are 24 independent local boards of elections (including the City of Baltimore). There is a county board of elections in each county of the State of Maryland (and in the City of Baltimore).

Each local board and its staff is subject to the direction and authority of the SBE and accountable to the SBE for its actions in all matters regarding the implementation of the requirements of the Election Law article and any applicable federal law. See EL §2-201(a)(1)(2). The Board is one of those 24 independent local board of elections. The Board receives some of its funding from Frederick County government and some from the State of Maryland for its operations to pay the reasonable expenses incurred by the Board in exercising its powers and performing its duties prescribed for it by law including personnel expenses, such as compensation, worker's compensation and unemployment insurance, polling places operations expenses, supplies and equipment necessary for the proper and efficient conduct of voter registration and elections. See EL, § Sec. 2-202 (b)(4) and EL, § 2-203. The Board members, some staff and Board Counsel receive funding from the local county. See EL, §§ Sec. 2-204 and 2-205. Frederick County government does not supervise or conduct the elections.

4. The Election Director and her staff are tasked with verifying and counting signatures submitted with any petition for referendum in Frederick County, as well as determining the sufficiency of any petition for referendum and/or whether it complies with all applicable laws.

5. I, maintain and preserve the integrity of the electoral process. I am dedicated to ensuring the integrity of the electoral process. The Board and I are neutral regarding data centers. I do not comment or take positions on candidates, ballot questions, party platforms or issues, economic issues, etc. We maintain a strict neutral policy.

6. The local Board of Elections, in accordance with the provisions of the Election Law and regulations adopted by SBE, oversee the conduct of all elections held in Frederick County and ensure that the elections process is conducted in an open, convenient and impartial manner. (See EL §2-202). I am dedicated to ensuring the integrity of the electoral process. The Board, including the Election Director are neutral regarding data centers. It is the policy of the Board and Election Director to not comment or take positions on candidates, campaigns, ballot questions, party platforms, petitions, economic issues, etc. In other words, it is the policy of the Board, including the Election Director to be and remain neutral.

7. Each local board of elections in the State of Maryland and their staff are subject to the direction and authority of the State Board of Elections and accountable to the State Board of Elections (See EL§ 2-201). The State Board of Elections and local boards are independent agencies of the Executive Branch of the State of Maryland government.

8. My powers, duties and responsibilities are outlined in EL§ 2-206. Nowhere in the election law or regulations or policies and guidance's adopted by SBE am I to interpret a law, create a law, enact a law or decide what a law is. I have no legal duty, authority, obligation or power to draft legislation or decide the substance of a proposed law. I do not have the power or responsibility to draft a ballot question or reviewing its language for understandability or clarity. My statutory duties do not include determining what a law is or is not and whether an ordinance is a law or is not subject for a referendum. I do not have the power or authority to determine whether the Ordinance

26-01-001, the subject matter of the petition, is not authorized by law. I cannot circumvent, usurp, overrule or overstep the legislative body's (i.e., County Council) functions, powers, duties and responsibilities.

9. There was no administrative error in my decision that the petition submitted by the Frederick County Data Center Referendum Committee ("Committee") was sufficient.

10. On January 21, 2026, the Committee submitted a Petition for Referendum for an advanced determination pursuant to EL §6-202 for a determination of its sufficiency as to format only.

11. On January 23, 2026 I sent a Memorandum to the Committee stating that I reviewed the petition and pursuant to EL§ 6-202, in consultation with Anthony Gutierrez Deputy Director, Jeremy Levin, Election Program Manager II and with the board counsel, legal authority, I found the petition sufficient as to format only and that approval of the format did not constitute a binding determination that the use of the petition for the subject matter (Ordinance 26-01-001) was authorized by EL§ 6-206 (c)(5)(i). I further stated I was not permitted to decide the legal sufficiency of the petition's subject matter ("Ordinance 26-01-001") until the filing of the petition with its signatures. And I put the Committee on notice that the Frederick County Attorney advised the Frederick County Council and County Executive that the subject matter of the petition (Ordinance 26-01-001) was not a law subject to referendum under the County Charter. And lastly, I informed the Committee that neither I, as the Election Director, nor the Board of Election have the authority to determine whether an ordinance is a local law at that time. See January 23, 2026 Memorandum to Committee, Administrative Record ("AR") at 4a.

I mentioned that neither I nor the Board have authority at that time because I was still consulting with our Board attorney and I also knew from reading the newspaper that the Committee kept saying that their attorneys disagreed with the County Attorney's opinion but had not submitted their own legal opinion at that time. See AR at 4a. In making my determination of sufficiency regarding the advanced determination, there is nothing under EL, §6-202 regarding font size or color requirements. I read the Ordinance and map of the petition page. Mr. Levin, our Program Manager, II and other staff members also read the Ordinance and map and we could all read it. It was not illegible. It was readable. And no one complained to me or to the Board that the Referendum Petition was illegible or inaccurate.

12. On March 19, 2026, Committee members came to the Board with 3 boxes of signatures for their Petition for Referendum to be counted and verified. See EL§§ 6-206 and 6-207.

13. On March 22, 2026, the Board held an emergency meeting to determine whether to count and verify the signatures first and then determine afterwards whether there were any deficiencies in the petition. After consultation with the Board, my Deputy Director Anthony Gutierrez, the Board's attorney, and reviewing the SBE's Petition Acceptance and Verification Procedures and having received no objections from any citizen, registered voter, the County and Committee, or from the Petitioners (Jose

Peyero, Esq., an attorney representing Quantum Maryland, LLC was in attendance at the emergency meeting) the Board, in the interest of an orderly management of the election because of our upcoming Primary election on June 23, 2026 voted to count and verify the signatures first and then make a determination of whether there were any deficiency afterwards. See State Board of Elections Petition Acceptance and Verification Procedures (revised 11/06/2019) AR at 7b; County Executive Jessica Fitzwater and County Council President Brad Young letter to me dated March 18, 2026 at AR 6a; and attorney Timothy F. Maloney's letter to Board attorney dated March 22, 2026 (Mr. Maloney was representing the County) at AR 6b.

14. On or about March 25, 2026, after the Board voted to count and verify the petition signatures first and then make any determination afterwards, I received a letter from attorney Keith Forst with the law firm Quinn Emmanuel at AR 6c. Mr. Forst's firm represented Quantum Maryland, LLC – one of the Petitioners in the above-captioned lawsuit. Mr. Forst's letter was addressed to the Board but, I received it at the Board of Election's office. Mr. Forst's letter said that his firm supported the County attorney's position that Ordinance 26-01-001 was not a law subject to a referendum. Mr. Forst also made allegations that the Committee's petition was independently defective. Mr. Forst's informal letter did not provide any evidence or affidavits to support his allegations that the Committee's petition was independently defective. The Petitioners even admitted that their letter was an informal letter. See Petitioners' Opposition to the Frederick County Board of Elections and Barbara Wagner's Motion to Dismiss at Page ("P") 12. And Mr. Forst, representing Quantum Maryland, LLC made no objection to the Board counting and verifying the Committee's petition signatures first and deferring to any deficiencies afterwards. See Mr. Forst's letter dated March 25, 2026 at AR 6c.

15. The Board and Election Director are not an investigatory body. However, it will receive complaints and forward them on to the appropriate party. Any complaints filed with the Board are, depending on the type of complaint, forwarded to SBE and one can file a complaint on-line with SBE on its Campaign Finance Complaint Form, a complaint can also be forwarded to the County Attorney, State's Attorney Office, Sheriff's Office, City Police, the candidate campaign headquarters, etc.

16. On April 3, 2026, after counting and verifying the signatures on the Committee's petition I made a determination that the petition was sufficient. AR at 8a.

17. In my April 3, 2026 letter to the Committee's Steve Black, I stated that the number of signatures processed was 24,053, the number of valid signatures was 21,029 and the number of invalid signatures was 3,024. I determined that the number of signatures exceeded the threshold number for signatures (signed by 7 percent of the Frederick County qualified voters as set forth in the Frederick County Charter, Section 308). That number calculated to be 15,611. In other words, the valid signatures counted and verified of 21,029 exceeded the required signatures of 15,611 by 5,418. So, the Committee met the signature requirement. See April 3, 2026 letter, AR at 8a. I certified the Referendum's Petition contained the required number of signatures and there were no deficiencies found under election law.

18. Next, I looked at EL §6-206 (c) to see if the Committee's petition was

deficient. As I read that section, I declare that the petition is deficient only IF I determine that:

- 1 That the petition was not timely filed. It was timely filed.
- 2 That, after providing the sponsor of the petition an opportunity to correct any clerical errors, the information provided to the sponsor of the petition indicates that the petition did not satisfy any requirements of law for the number or geographic distribution of signatures. There were no clerical errors.
- 3 That an examination of the unverified signatures did not indicate that the petition did not satisfy any requirements of the law for the number or geographic distribution of signatures.
- 4 The requirements relating to the form of the petition were satisfied. See my Advanced Determination Memorandum dated January 23, 2026. AR at 2b.
- 6 The petition did not fail to satisfy some other requirement established by law.

19. When I reviewed EL§ 6-206 (c) (5), I looked at (i) since (ii) was inapplicable.

20. EL§ 6-206 (c)(5)(i) says that based on the advice of the legal authority the use of the petition for the subject matter of the petition is not authorized by law. EL, § 6-209(a)(2) says that I am required to determine whether the petition has satisfied all other requirements and immediately notify the sponsor of the determination, including any specific deficiencies found. With the advice of my legal authority (Board Counsel) under EL, §6-101(f), I found none.

21. The subject matter of the petition is Ordinance 26-01-001 enacted by the County Council on or about January 20, 2026.

22. The County Attorney, Bryon Black wrote an in-depth analysis memorandum that said that the term "law" in the County Charter is not defined. He also said, "Given the novelty of the issue, extensive research was conducted ...to provide a thorough analysis and legal conclusion." Mr. Bryon Black argued that the Ordinance was not a law and therefore not subject to a referendum under the County Charter. See County Attorney Memorandum dated January 20, 2026, AR at 6b, Exhibit 1, P 1 and 3. In other words, Mr. Bryon Black's position was that the subject matter (Ordinance 26-01-001) of the petition was not authorized by law. It was very persuasive but not binding authority. Mr. Black is not the Board attorney.

23. The Committee's attorney, Paul Flynn, Esq. (at that time Mr. Fynn was representing the Committee) also wrote an in-depth analysis memorandum that said Ordinance 26-01-001 was a law and therefore subject to a referendum under the County Charter. It was equally persuasive but not binding authority on the Board or on the Election Director. I looked at the County Charter Section 308 for guidance. It too did not provide any clear guidance.

24. As read EL, §6-206 unless a determination of deficiency is made under section (c), I make a determination of sufficiency. Since I could not find a deficiency, I determined that Committee's Petition was sufficient. Based on the information I had and in consultation with my Deputy Director, who was a former Election Director of

Wicomico County, Maryland and with 20 years of election experience, and our Board attorney, I was able to make an affirmative decision that the Petition was sufficient because I could not find a deficiency under EL, §6-206 (c). EL, §6-206 is conditional: **unless** a determination of deficiency is made under subsection (c), I, as the chief election official, shall make a determination of sufficiency. And there is a presumption of sufficiency by inference under EL, §6-206, that a petition submitted is sufficient, accurate, and correct **unless** a deficiency can be found under that statute. I received the petition with an initial presumption of sufficiency until I find a deficiency under the election law. Furthermore, it is the approach of the Board and I that anything presented to us is initially presumed valid, truthful, correct, sufficient, or accurate until discovered later to the contrary. This approach is, and not limited to, for petitions, voter registrations, voter authority cards, provisional ballots, candidate filings, qualifications for candidacy, voting, citizenship, residency, party or non-party affiliations, or age. There can be a presumption without having it written or in a statute. And I found that the Referendum Petition was sufficient because it came to me with a presumption of sufficiency and I was unable to find a deficiency under that law.

28. I had two conflicting and differing memoranda on whether the Ordinance was subject to referendum under the County Charter. I am not empowered or authorized to substitute my opinion as to what a law is under the County if the County Charter is unclear. And those memoranda had no legal binding on the Board or me. Not a function of the Board or me as Election Director, chief election official to decide or determine what a law is under the County Charter if the Charter is unclear. Because I am unable or, in other words, not the one to make that determination on whether the Ordinance is subject to referendum under the County Charter, I could not find a deficiency and therefore the Referendum Petition was sufficient. Based on the information I had, I did my duty and my decision was not wrong or erroneous.

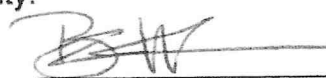
29. Based on all this information, I wrote my April 3, 2026. AR at 8a. And Petitioners have misinterpreted my April 3, 2026, letter.

30. No registered voter or citizen or signer of the petition ever filed a complaint with the Board regarding the Referendum Committee's individuals or circulators making alleged misleading statements or alleged false narratives, or alleged fraud, or alleged they couldn't read the petition during the petition drive or afterwards. No signer asked to have his/her signature removed. And they could have had their names removed under EL, §6-203.

31. I never told the Referendum Committee that the Ordinance counted as a law under the County Charter. Rather, I told the Referendum Committee that our office does not provide legal advice. See AR 3a

32. My certification of the Referendum Petition was not wrong or erroneous. And I never failed to perform my duty.

6/8/2026
DATE


BARBARA WAGNER, ELECTION DIRECTOR

C-10-CV-26-000309

EXHIBIT 4



Frederick County Board of Elections

8490 Progress Drive, Ste 300, Frederick, Maryland 21701
FrederickCountyMD.gov/elections

301-600-VOTE (8683)
ElectionBoard@FrederickCountyMD.gov



MEMORANDUM

To: Mr. Steve Black, Chair of Ballot Committee
and co-chair of the FC-DC Referendum Committee
From: ^{BPW}Barbara Wagner, Election Director, Frederick County Board of Elections
Date: January 23, 2026
Subject: Advance Determination of Petition

On January 21, 2026, you submitted a Petition for Referendum ("Petition") for advance determination pursuant to Maryland Election Law, § 6-202 for a determination of its sufficiency.

As Election Director for the Frederick County Board of Elections ("Board"), I reviewed the Petition pursuant to Maryland Election Law §6-202 in consultation with counsel for the Board, and the Petition is sufficient as to format only. An advance determination relates to format only, and approval of the format of a referendum petition does not constitute a binding determination that "the use of [the] petition for the subject matter of the petition is . . . authorized by law." *See* Maryland Election Law § 6-206(c)(5)(i). Under the pertinent provisions of the Maryland Election Law Article, I am not permitted to decide the legal sufficiency of the petition's subject matter until after the filing of the petition with signatures. *See* Maryland Election Law § 6-206(a). Please note, however, the County Attorney has advised the Frederick County Council and the County Executive that the subject matter of your petition—Ordinance 26-01-001—is not a "law" subject to referendum under the County Charter.

Furthermore, neither the election director nor the Board have the authority to determine whether an ordinance is a local law at this time.

C-10-CV-26-000309

EXHIBIT 5



Frederick County Board of Elections

8490 Progress Drive, Ste 300, Frederick, Maryland 21701
FrederickCountyMD.gov/elections

301-600-VOTE (8683)
ElectionBoard@FrederickCountyMD.gov



April 3, 2026

VIA EMAIL

Frederick County Data Center Referendum Committee
Mr. Steve Black
2313 New Design Road
Adamstown, MD. 21710

Dear Mr. Black,

The Frederick County Board of Elections has verified all signatures on your petition submission from March 19, 2026. In relation to the Petition for Referendum of Frederick County Council Ordinance 26-01-00, the verification process at the Frederick County Board of Elections confirmed the following:

Number of signatures processed: 24,053
Number of valid signatures: 21,029
Number of invalid signatures: 3,024

It has been determined that you have gathered enough valid signatures to exceed the threshold for signatures (signed by 7 percent of the County's qualified voters). That number calculated to be 15,611 as set forth in the Frederick County Charter section 308.

There is a presumption that a petition is sufficient unless there is a finding or determination of a deficiency. Under EL 6-206 (b) --- Unless a determination of deficiency is made under subsection (c) ... the chief election official shall (1) make a determination that the petition, as to matters other than the validity of signatures, is sufficient.

I have reviewed each number under EL 6-206 subsection (c) and there is no deficiency under 1, 2, 3, 4 and 6. However, as the chief election official, based on the advice of legal authority (Board Counsel) I am unable to make a determination that the petition is not authorized by law under EL 6-206 (c) (5) (i). In short, since there is a presumption of sufficiency, unless a determination of a deficiency is made, and I am unable to make a determination of a deficiency, the petition is sufficient for purposes of EL 6-206. The Frederick County Board of Elections will inform the Frederick County Council and the Frederick County Office of Law of the final disposition of the petition.

Sincerely,

Barbara Wagner

Barbara Wagner
Election Director, CERA

CC: Frederick County Board of Elections
Frederick County Office of Law
Frederick County Council