

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

QUANTUM MARYLAND, LLC, et al.

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Petitioners,

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v.

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Case No. C-10-CV-26-000309

FREDERICK COUNTY BOARD OF
ELECTIONS, et al.

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Respondents.

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RESPONDENT’S ANSWERING MEMORANDUM OF LAW

Respondent Frederick County Data Center Referendum Committee (“Referendum Committee”), through undersigned counsel, submits this Answering Memorandum under Maryland Rule 7-207(a).

This Court should affirm the decision of the Frederick County Board of Elections (“Board of Elections”) and the Election Director of the Board of Elections, Barbara Wagner (“Election Director”), to certify the Referendum Committee’s Referendum Petition regarding Ordinance 26-01-001 (hereinafter “Referendum Petition”). Neither the Board of Elections nor the Election Director made any reversible error in deciding to certify the referendum petition.

STATEMENT OF THE CASE

Petitioners-Plaintiffs, Quantum Maryland, LLC and Joan Aquilino, Windridge Properties L.C. and Theodore H. Butz, NDR Properties, LLC and David S. Pleasants, Frederick Data Owner, LLC and Justin Cassity, and Rowan Frederick LLC, Rowan Frederick II LLC, and Rowan Frederick III LLC (collectively, “Petitioners”), are seeking judicial review of the decision

of the Board of Elections and Election Director to certify the Referendum Committee's Referendum Petition regarding Ordinance 26-01-001.

This case involves the ability of the citizens of Frederick County to place a local ordinance on the November 3, 2026, ballot for voter referendum. Such an issue drives at the heart of the People's right to vote set forth in Article I of the Maryland Constitution and Articles 7 and 24 of the Maryland Declaration of Rights. *See Maryland Green Party v. Maryland Bd. of Elections*, 377 Md. 127, 140, 832 A.2d 214, 222 (2003). Petitioners ask this court to invalidate the Referendum Petition based on an overly restrictive reading of the referendum power conferred under the Frederick County Charter (hereinafter "Frederick County Charter" or "Charter"), and based on immaterial formatting technicalities that are neither found in the Charter nor the Maryland Election Law. Petitioners seek an outcome that would invalidate the will of 21,029 voters in Frederick County who affixed their signatures to the Referendum Petition.

For the reasons below, this Court should affirm the decision of the Board of Elections and Election Director and allow the Referendum Petition to proceed to the ballot.

QUESTIONS PRESENTED

- (1) Is Ordinance 26-01-001 a law enacted pursuant to the Frederick County Charter, such that it is subject to referendum under Charter § 308?
- (2) Was the Election Director's finding that the format of the Referendum Petition was sufficient supported by substantial evidence?
- (3) Should a writ of mandamus issue to the Election Director?

STATEMENT OF FACTS

A. The Frederick County Charter

On November 6, 2012, the voters of Frederick County adopted the Frederick County Charter, which transitioned the county from the County Commissioner form of government to the County Charter form of government. The change ushered in a new, more responsive, and autonomous form of government for the county:

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.

Charter, Preamble. The Charter confers upon the county “all the rights and powers of local self-government and home rule as are now or may be provided or necessarily implied by this Charter, the Maryland Constitution and laws of the State of Maryland.” Charter § 101. The Charter rests the legislative powers in the County Council, “which the County may exercise under the Maryland Constitution and laws of the State..., subject to those powers retained by the people of the County as set forth in Section 308 of this Charter.” Charter § 202. Charter § 308, in turn allows “a law, or part of a law, enacted pursuant to this Charter” to be referred to the voters for approval upon the filing of a petition signed by seven percent of registered voters of the county, subject to certain limited exceptions. Charter § 308(a).

B. Land Use and Zoning Laws Enacted by the County Council

The Charter explicitly adopts the provisions of the Land Use Article of the Annotated Code of Maryland, which are incorporated pursuant to the Charter under the Code of Public Local Laws of Frederick County. Charter § 601(a)-(b). These provisions confer upon the County Council the ability to adopt comprehensive plans governing future development in the

county, as well as zoning ordinances designed “to control congestion in the streets; to secure the public safety; to promote health and the general welfare; to provide adequate light and air; to promote the conservation of natural resources, including the preservation of productive agricultural land; to prevent environmental pollution; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, recreation, parks and other public requirements.” Frederick County, Maryland Code of Ordinances § 1-19-1.110. As a manifestation of its “powers of local self-government and home rule,” the county codifies its local land use and zoning laws in the Frederick County, Maryland Code of Ordinances. *See* Frederick County, Maryland Code of Ordinances § 1-19-1.100.

The Critical Digital Infrastructure Overlay Zone, within which the County Council revised the zoning and land use designation, pursuant to Ordinance 26-01-001, is found at § 1-19-10.1100. The Official County Zoning Map, which Ordinance 26-01-001 amended, is adopted by reference at § 1-19-5.100.

C. Data Center Development in Frederick County

In 2023, the Frederick County Commissioner created a Data Center Workgroup (hereinafter “Workgroup”) “to ensure that growth in data center development in Frederick County occurs responsibly, with benefits to the community maximized and external costs minimized.” *See* Report of the Frederick County Data Centers Workgroup (March 1, 2024), available at <https://frederickcountymd.gov/DocumentCenter/View/350277/Data-Center-Workgroup-Final-Report>. The Workgroup evaluated existing data center uses in Frederick County, as well as data center development in neighboring counties in Virginia, “where data centers have been constructed rapidly and are raising concerns among many residents.” *Id.* at 1. The Workgroup made several findings regarding appropriate siting of data centers and the impact of data centers on water and electricity resources.

With regard to siting, the Workgroup found that rural legacy areas, priority preservation areas, and agricultural preservation areas, among others, were unacceptable for future data center development siting. *Id.* at 7. The Workgroup further found that data centers use hundreds of thousands of gallons of water per day, that data center electricity demand in Virginia consumes more than 20% of the commonwealth’s electricity supply, and that power generation from non-renewable sources at data centers creates greenhouse gas emissions that threaten the attainment of emission reduction goals established under the state Climate Solutions Now Act and the County’s Climate Emergency Resolution. *Id.* at 9. These findings informed the Workgroup’s ultimate recommendation to amend the Frederick County Critical Digital Infrastructure Ordinance to ensure that data centers and similar facilities are constructed only in General Industrial and Limited Industrial zones and “operate in a sustainable manner.” *Id.* at 9, 16.

D. Adoption of the Critical Digital Infrastructure Overlay Zone and Ordinance 26-01-001.

On September 2, 2025, the Frederick County Council passed Bill 25-09, which created the Critical Digital Infrastructure Overlay Zone (“CDI Overlay Zone”). *See* Bill No.25-09 (Md. 2025). Bill 25-09 became effective on November 1, 2025, limiting the area where data centers can be built in Frederick County to the area in the CDI Overlay Zone. *Id.* However, notably, Bill 25-09 did not contain a map of where the CDI Overlay Zone would apply or otherwise identify which parcels fell within the CDI Overlay Zone. *Id.*

On December 16 and 17, 2025, the Frederick County Council held two public hearings regarding Frederick County’s Critical Data Infrastructure Plan and the creation of a map outlining where the CDI Overlay Zone would be applied through Ordinance 26-01-001. The public hearings discussed the Frederick County Planning Commission’s recommended CDI Overlay Zone to be applied through a “zoning text amendment,” which would amend the zoning

map to add the boundaries of the CDI Overlay Zone. *See Critical Digital Infrastructure Overlay Zoning Amendment and Comprehensive Plan Amendment*,¹ presented at the December 16, 2025, Frederick County Council Public Hearing.² Subsequently, on December 19, 2025, the agenda for the December 23, 2025, council meeting was published which included proposed amendments to the CDI Overlay Zone that would include a 1000-acre expansion of the current Eastalco data center complex in Frederick County. *See Amendments to the Critical Digital Infrastructure Overlay Zone*,³ presented at the December 23, 2025, Frederick County Council Public Hearing.⁴ This was the first time these proposed amendments were made public. Just a few days later on December 23, 2025, the Frederick County Council approved the amendments to the CDI Overlay Zone, to be enacted through Ordinance 26-01-001 with no further public input.⁵

E. The Referendum Petition

On January 15, 2026, Frederick County residents who are deeply concerned by the negative environmental, financial, and public health impacts that this data center expansion

¹ <https://frederickcountymd.gov/DocumentCenter/View/358514/CDI-Overlay-Workshop-20251202-FINALCC-Archived?bidId=>.

² <https://www.frederickcountymd.gov/Archive.aspx?AMID=111#docaccess-3e50aba8113ef3cd2169bef70278ab2eab98ecb3382b156f1797895cb67baf0>.

³ https://docaccess.com/docviewer.html?url_hash=04545c6df33516a60064f4081e54eb3b564054673d11e15906744763eed8b1dd&domain=frederickcountymd.gov.

⁴ <https://www.frederickcountymd.gov/Archive.aspx?AMID=111#docaccess-f3cf21ffc9e3c0210522e05cc4b5b786d8f35fe0cb3fd9c3ae172a1a5256b4e2>.

⁵ Frederick County Planning & Permitting, Frederick County, MD-Official Website, Critical Digital Infrastructure Overlay Zone, <https://www.frederickcountymd.gov/9128/Critical-Digital-Infrastructure-Overlay->.

would have on the community, created the Referendum Committee with the sole purpose of obtaining a Referendum on Ordinance 26-01-001. On January 20, 2026, Ordinance 26-01-001 was published. On January 21, 2026, the Referendum Committee submitted its Referendum Petition to the Board of Elections for an advance determination of sufficiency, in accordance with Maryland Code, Election Law (“Election Law”) § 6-202. *See* A.R. Item 4a.⁶ The Board of Elections determined that the format of the Referendum Petition was acceptable. *Id.*

On March 19, 2026, the Referendum Committee submitted its Referendum Petition. *See* A.R. Item 1a. On April 3, 2026, the Board of Elections determined that the Referendum Committee provided 21,029 valid signatures, which was well above the minimum threshold of seven percent of all registered Frederick County voters required for a referendum petition. *See* A.R. at Item 8a.

On April 10, 2026, Petitioners filed their Petitions and Complaints in this matter.⁷

STANDARD OF REVIEW

The standards applicable to judicial review of agency decisions are well established in Maryland. Generally, “[j]udicial review of administrative agency action is narrow” and “[t]he court’s task on review is not to substitute its judgment for the expertise of those persons who constitute the administrative agency.” *People’s Couns. for Baltimore Cnty. v. Loyola Coll. in Maryland*, 406 Md. 54, 66, 956 A.2d 166, 173 (2008) (internal citation omitted). Factual findings by administrative agencies are upheld so long as they are supported by “substantial evidence,” which turns on “whether a reasoning mind reasonably could have reached the factual

⁶ Citations to the Administrative Record are denoted as “A.R.” followed by the Item Number assigned by the Board of Elections to the document in the record.

⁷ On May 13, 2026, this Court issued an Order consolidating the five cases into Case No. C-10-CV-26-000309.

conclusion the agency reached.” *Gore Enter. Holdings, Inc. v. Comptroller of Treasury*, 437 Md. 492, 504, 87 A.3d 1263, 1269 (2014) (internal quotations omitted). As the Supreme Court of Maryland reiterated in *Gore*, it is not the Court’s place to “make an independent original estimate of or decision on the evidence... or determine for ourselves, as a matter of first instance, the weight to be accorded to the evidence before the agency.” *Id.* (quoting *Ramsay, Scarlett & Co., Inc. v. Comptroller of the Treasury*, 302 Md. 825, 838, 490 A.2d 1296, 1303 (1985)).

A court’s review is less deferential to legal conclusions of the administrative agency. *Howard Cnty. Citizens for Open Gov’t v. Howard Cnty. Bd. of Elections*, 201 Md. App. 605, 615, 30 A.3d 245, 252 (2011). A court will not uphold an administrative decision that is “premised solely upon an erroneous conclusion of law.” See *E. Outdoor Advert. Co. v. Mayor & City Council of Baltimore*, 146 Md. App. 283, 301, 807 A.2d 49, 59 (2002) (quoting *People’s Couns. for Baltimore Cnty. Maryland Marine Mfg. Co.*, 316 Md. 491, 497, 560 A.2d 32, 35 (1989)). The reviewing court “must determine whether the agency recognized and applied the correct principles of law governing the case.” *HNS Dev., LLC v. People’s Couns. for Baltimore Cnty.*, 200 Md. App. 1, 14, 24 A.3d 167, 175 (2011), *aff’d*, 425 Md. 436, 42 A.3d 12 (2012).

Finally, so-called mixed questions of fact and law are reviewed under “the substantial evidence test, that is, the same standard of review [the Court] would apply to an agency factual finding.” *Gore*, 437 Md. at 504, 87 A.3d at 1270 (quoting *Comptroller of the Treasury v. Science Applications Intern. Corp.*, 405 Md. 185, 193, 950 A.2d 766, 770 (2008)). Such questions are presented where there exist “differing views—not as to the law governing the case—but rather as to its proper application to the established evidence of record.” See *Ramsay*, 302 Md. at 837, 490 A.2d at 1302. Mixed questions of fact and law are afforded such

“deferential review” to allow “the agency to fulfill its mandate and exercise its expertise.”
Charles Cnty. Dep’t Of Soc. Servs. v. Vann, 382 Md. 286, 298, 855 A.2d 313, 320 (2004).

ARGUMENT

A. Ordinance 26-01-001 is a Law Within the Meaning of the Charter § 308.

Charter § 308(a) provides that “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,” subject to four specific, enumerated exceptions. A zoning ordinance is not included among these exceptions. Petitioners ask this Court to add a fifth exception, far broader than the four actually adopted in the Charter, that would render any ordinance adopted pursuant to the County Council’s Land Use authority exempt from referendum. For the reasons below, this argument cannot stand.

Throughout the course of the petition review process, several parties offered legal arguments explaining why they thought Ordinance 26-01-001 was or was not properly subject to referendum under Charter § 308. *See generally* A.R. Item 6b (March 18, 2026 letter from Timothy F. Maloney to Director of the Frederick County Board of Elections); Exhibit to A.R. Item 6b (January 20, 2026 Memorandum from Byron C. Black to County Council Members and County Executive); A.R. Item 6c (March 25, 2026 letter from Keith Forst to Frederick County Board of Elections); A.R. Item 6d (March 31, 2026 letter from Paul D. Flynn to Director of the Frederick County Board of Elections). These arguments have no bearing on this Court’s standard of review. Deciphering the meaning of a county charter and its referendum provisions “is a legal question” that is “review[ed] without deference.” *Bennett v. Harford Cnty.*, 485 Md. 461, 473, 301 A.3d 117, 124 (2023) (quoting *Prince George’s County v. Thurston*, 479 Md. 575, 585, 278 A.3d 1251 (2022)).

In interpreting the provisions of local charters, Maryland courts use the same interpretive tools applied to any other authoritative statute. *See Bennett*, 485 Md. at 484, 301 A.3d at 130 (noting that the “cannons of statutory construction ... apply with equal force to the interpretation of a charter provision”) (internal quotations omitted). In *Wheeling v. Selene Fin LP*, the Supreme Court of Maryland reiterated these cannons of construction, as follows:

We ... do not read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute's plain language to the isolated section alone. Rather, the plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute. We presume that the Legislature intends its enactments to operate together as a consistent and harmonious body of law, and, thus, we seek to reconcile and harmonize the parts of a statute, to the extent possible consistent with the statute's object and scope.

Where the words of a statute are ambiguous and subject to more than one reasonable interpretation, or where the words are clear and unambiguous when viewed in isolation, but become ambiguous when read as part of a larger statutory scheme, a court must resolve the ambiguity by searching for legislative intent in other indicia, including the history of the legislation or other relevant sources intrinsic and extrinsic to the legislative process. In resolving ambiguities, a court considers the structure of the statute, how it relates to other laws, its general purpose, and the relative rationality and legal effect of various competing constructions.

In every case, the statute must be given a reasonable interpretation, not one that is absurd, illogical, or incompatible with common sense.

473 Md. 356, 377, 250 A.3d 197, 209 (2021).

We next apply these cannons of statutory construction to the Charter to demonstrate that Ordinance 26-01-001 is properly subject to referendum under Charter § 308.

1. The Purpose and Overall Structure of the Charter Necessitate a Broad Reading of the Right to Referendum.

The Charter was adopted in 2012 with the express purpose of making local government decisions more responsive to the citizens of the county. The preamble to the Charter states:

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.

Charter, Preamble (emphasis added).

Section 202 of the Charter effectuates this purpose by granting the County Council with “legislative powers”⁸ that are limited by “those powers **retained by the people** of the County,” including the right to referendum. Charter § 202 (emphasis added). Thus, Section 202 of the Charter empowers “the people of the County” to serve as the ultimate decision-makers over all “legislative powers” of the County Council, pursuant to Referendum section 308 of the Charter, giving Frederick County voters the final say.

The Charter consists of eight Articles: (1) General Provisions; (2) County Council; (3) Legislative Process; (4) Executive; (5) Budget and Finance; (6) Land Use; (7) Miscellaneous; and (8) Transitional Provisions. The right to referendum is found in Article 3, § 308(a), which states:

(a) 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.

Petitioners do not dispute that Ordinance 26-01-001 has the force and effect of law. See Pet’r. Quantum Maryland, LLC Mem., at 17 (observing that an ordinance “carries legal force”);

⁸ This authority flows from the Maryland Constitution: “Every charter so formed shall provide for an elective legislative body in which shall be vested the law-making power of said City or County.” Md. Const. art. XI-A, § 3.

id. at 19 (“comprehensive rezonings are legislative acts”). Moreover, Ordinance 26-01-001 was enacted “pursuant to th[e] Charter” – specifically Article 6 of the Charter – which expressly adopts the Land Use Article of the Annotated Code of Maryland, including the provisions granting the County Council the authority to adopt zoning ordinances. Ordinance 26-01-001 does not fall within one of the exceptions from referendum enumerated in Charter § 308(a)(1)-(4). Thus, by the plain language of Section 308(a), the Ordinance is necessarily subject to referendum.

Petitioners argue that the referendum power exists only over a “law, or part of a law” enacted *pursuant to Article 3* of the Charter. Pet’r Quantum Maryland, LLC Mem., at 16. This reading is overly restrictive and ignores that the enumerated exceptions to the referendum power – referred to as “laws” – include County Council actions that take place outside of Article 3, and are, in fact, adopted as ordinances. Thus, where the Charter intends to exempt an ordinance from referendum, it does so explicitly. *See Town of Bel Air v. Bodt*, 487 Md. 354, 370, 318 A.3d 570, 579 (2024) (the court will not “judicially insert language to impose exceptions, limitations, or restrictions not evident in the plain language”) (quoting *Prince George’s Cnty. v. Thurston*, 479 Md. 575, 587, 278 A.3d 1251, 1258 (2022)).

For example, a “law prescribing Council Districts” (exempt from referendum under Charter § 308(a)(3)) must be enacted under Article 2 (“County Council”), pursuant to a different procedure from that described in Article 3. *See* Charter § 214(a)-(b) (requiring the County Council to appoint a Redistricting Commission to develop a plan for Council Districts, which “shall become law” if no other legislation reestablishing the boundaries of the Council Districts has been enacted within 90 days). Charter § 214(d), in turn, refers to such laws as “**ordinance[s]** establishing Council Districts.” (Emphasis added). The use of the term “law” in Section

308(a)(3) and “ordinance” in Section 214(d) to describe the same exact legislative action affirmatively disproves Petitioners’ assertion that “[t]he terms are not interchangeable.” Pet’r. Quantum Maryland, LLC Mem., at 16.

Similarly, a “law adopting a Compensation Review Commission” (exempt from referendum under Charter § 308(a)(4)) must be enacted pursuant to Charter § 207 and cannot be vetoed by the County Executive, unlike laws enacted under Article 3 of the Charter. *See* Charter § 306(a). Charter § 207 provides that laws adopting a Compensation Review Commission must be established “by ordinance.” Here again, the Charter expressly refers to the same legislative action as both a “law” and an “ordinance.”⁹

Petitioners mistakenly view exemptions 3 and 4 in section 308(a) as ordinances that are subject to “the full bill-and-law process.” Pet’r. Quantum Maryland, LLC Mem., at 21. They are not, as described above (*e.g.*, automatic adoption of Redistricting Commission-proposed Council District ordinance in the absence of other legislation; County Executive cannot veto the ordinance establishing the Compensation Review Commission). Accordingly, had the County Council intended to exempt from referendum any law (including any ordinance) enacted outside of Article 3 of the Charter as the Petitioners suggest, the specific exemptions under subsections 308(a)(3) and (4) would be “rendered surplusage, superfluous, meaningless or nugatory.” *Prince George's Cnty. v. Thurston*, 479 Md. 575, 587, 278 A.3d 1251, 1258 (2022) (internal quotations omitted).

⁹ Charter § 506(d) similarly uses the terms “law” and “ordinance” interchangeably, stating that “[t]he adoption of the Budget shall be by the affirmative vote of not less than four members of the Council in a **law** enacted not later than May 31, which shall be known as the ‘Annual Budget and Appropriations **Ordinance** of Frederick County.’” (Emphasis added).

Although courts in Maryland have not had occasion to consider whether an ordinance is a law under a local charter that does not define either term, the Supreme Court of Michigan recently evaluated this exact issue. In *Hackel v. Macomb Cnty. Bd. of Commissioners*, the court was asked to resolve whether an ordinance that restricted the County Executive’s powers was in fact a “law” for purposes of the relevant section of the local charter that allowed the authority of the County Executive to be limited by “law,” but **not** “ordinance.” No. 166363, 2025 WL 1689298, at *7 (Mich. June 16, 2025). Like the Frederick County Charter, the local charter in *Hackel* did not define the term “law” or “ordinance.” *Id.* Of particular relevance, the court in *Hackel*, relying on the canons of statutory construction, interpreted “the plain and ordinary meaning of ‘law’ [as] exceptionally broad” and consistent with the definition of law in Black’s Law Dictionary (12th edition) (“A body of rules of action or conduct prescribed by controlling authority, and having binding legal force. That which must be obeyed and followed by citizens subject to sanctions or legal consequence is a law.”) *Id.* at *8.

The court had little trouble in finding that an ordinance enacted by a county legislative body “represents an analogous form of positive law with binding legal effect within the relevant jurisdiction.” *Id.* at *9. So too is Ordinance 26-01-001. Indeed, the “argument that a validly enacted local ordinance is a subset of law is well supported and hardly novel.” *Id.* at *8. We agree with Petitioners that “Ordinance 26-01-001 ‘ha[s] the effect of law,’” and thus is “a law” as that term is used in Charter § 308(a). Pet’r. Quantum Maryland, LLC Mem., at 17.

Petitioners rely on the Supreme Court of Maryland’s decision in *Thurston* to support their argument that an ordinance adopted with procedures outside of Article 3 of the Charter is not a “law” subject to referendum. *Id.* In *Thurston*, the Court was tasked with interpreting a provision of the Prince George’s County Charter that required a redistricting plan to become effective “[i]f

the Council passes no other law changing the proposal.” 479 Md. at 587, 278 A.3d at 1258. The Court held that a “resolution” changing the proposal was not a “law” because it was not enacted under the charter’s procedures for the enactment of legislation. *Id.* at 591, 278 A.3d at 1261.

Petitioners’ reliance on *Thurston* is wholly misplaced, as the provisions of the Prince George’s County Charter are markedly distinct from those in the Frederick County Charter. Namely, unlike the Frederick County Charter, which does not define “law” or “ordinance,” the Prince George’s County Charter defines both “law” and “resolution” – the two legal instruments at issue in that case. The term “law” was defined, in relevant part, as “all acts, public local laws, ordinances, and other legislative acts of the Council.” *Id.* at 580, 278 A.3d at 1254. The term “resolution” was defined as “a measure adopted by the Council having the force and effect of law *but of a temporary or administrative character.*” *Id.* at 591, 278 A.3d at 1261. The Court relied principally upon these definitions in determining that a “resolution” was not a “law” under the Prince George’s County Charter. *Id.* The Frederick County Code contains no definitions for “law” and “ordinance” that compel a similar outcome.

Contrary to Petitioners’ contention, the reasoning underlying the Court’s decision in *Thurston* supports a conclusion that, under the Charter provisions at issue here, an “ordinance” is a “law” that is properly subject to referendum. Specifically, the Court was alarmed that the use of a resolution in the manner at issue in *Thurston* would result in legislative actions “unchecked by either petition to referendum *or* executive veto.” *Id.* at 599, 278 A.3d at 1265. Petitioners’ view of the Frederick County Charter would garner precisely this unfavorable result, creating a loophole through which legislative actions of the County Council would entirely circumvent executive veto and the Charter’s referendum provision, denying Frederick County voters of their constitutional rights to check legislative power. *See Buckley v. American Constitutional Law*

Foundation, Inc., 525 U.S. 182, 183 (1999) (characterizing petition circulation as “‘core political speech’ for which First Amendment protection is ‘at its zenith’”) (quoting *Meyer v. Grant*, 486 U.S. 414, 422, 425 (1988)). Such a scheme would directly contradict the very purpose of the Charter to create a form of government more “responsive” to “the citizens of Frederick County.” Charter, Preamble; see *Wheeling*, 473 Md. at 377, 250 A.3d at 209 (2021) (In interpreting a statute, the court considers “its general purpose, and the relative rationality and legal effect of various competing constructions”).

2. The Legislative History of the Charter Cuts Against Petitioners’ Desire to Exempt Zoning Ordinances from Referendum.

The legislative history of the Charter further supports the applicability of the referendum procedures to Ordinance 26-01-001. Specifically, during the December 13, 2011, meeting of the Frederick County Charter Board, tasked with drafting the Charter, the Board discussed “exceptions to referendum such as **council decisions on zoning cases**, budget approval and tax rate approval.” See Frederick County Charter Board Meeting Minutes (Dec. 11, 2011), included as Exhibit 1 (emphasis added). The Charter Board also considered “the adoption of Article 66B to govern the County’s zoning process.” *Id.* In the final version of the Charter approved on November 6, 2012, zoning cases, which fall under Article 6 of the Charter, were not included as one of the exceptions from the referendum process. The Charter Board obviously chose to limit the few exceptions to only the four that appear at section 308(a).¹⁰ See *Bodt*, 487 Md. at 376, 318 A.3d at 583 (“[W]e interpret the plain language of the Charter as written, and do not judicially insert language that does not exist.”).

¹⁰ The Prince George’s County Charter, unlike the Frederick County Charter, explicitly includes “amending a zoning map” as one of the four exceptions to a “law” that may be petitioned for referendum. See Prince George’s County Charter § 319.

Ultimately, the plain language, overall statutory scheme, general purpose, and legislative history of the Charter all support a finding that an ordinance enacted pursuant to Article 6 of the Charter is “a law, or part of a law, enacted pursuant to th[e] Charter” in accordance with Charter § 308. Accordingly, this Court should find that Ordinance 26-01-001 is properly subject to referendum and that the Referendum Petition should proceed to the ballot in accordance with the will of the citizens of Frederick County.

B. The Election Director Correctly Determined that the Format of the Petition was Sufficient.

Petitioners contend that the format of the Referendum Petition was insufficient because it failed to provide the “the full and accurate text of the law, or part of the law, that is subject to the petition,” as required under the Charter § 308(b). Petitioners bring two arguments in this regard. First, Petitioners argue that the font size of the text in Ordinance 26-01-001, which was produced on the back of each signature page, rendered the ordinance illegible. Second, Petitioners argue that because the map portions of the ordinance were reproduced in black and white, rather than in color, the maps obscured critical information. *See* Pet’r. Quantum Maryland, LLC Mem. at 25, 27.

Whether text is legible and whether a map contains an appropriate physical display of information are factual questions that are subject to the “substantial evidence” test,¹¹ under which a court does not “make an independent original estimate of or decision on the evidence [or determine for itself], as a matter of first instance, the weight to be accorded to the evidence before the agency.” *Gore*, 437 Md. at 504, 87 A.3d at 1269 (quoting *Ramsay*, 302 Md. at 838, 490 A.2d at 1303 (1985)). We address both of Petitioners’ arguments, in turn, below.

¹¹ Even if the Court finds that this inquiry involves a mixed question of fact and law, the substantial evidence test equally applies. *See Gore*, 437 Md. at 504, 87 A.3d at 1270.

Petitioners’ contention that the font size rendered the text of the ordinance illegible fails to recognize the requirements of Charter § 308(b) and is otherwise unsupported by evidence in the record. Section 308(b) of the Charter requires “each paper to contain the full and accurate text of the law, or part of the law, that is subject to the petition.” (Emphasis added). Thus, to comply with the Charter and the Election Law, the text of the Ordinance had to be reduced to a size that would allow the full and accurate text of the law to be reproduced on each signature page in the petition, on the form required by COMAR 33.06.01.02 (“Every petition, including the information page and all accompanying signature pages, shall be in the form and contain the information required by applicable State or local law and this subtitle”).¹² The Referendum Committee did just that by reproducing exact copies of Ordinance 26-01-001 at a size that allowed the entirety of the ordinance to be placed on a single page on the required form. The Referendum Committee made a good faith effort to comply with all applicable requirements of the Charter and the Election Law, going so far as to seek and obtain an advance determination of sufficiency from the Board of Elections – an optional step in the petition process – prior to collecting signatures. Elec. Law § 6-202; A.R. Item 4a.

Had the Referendum Committee opted to enlarge the text and reproduce Ordinance 26-01-001 on multiple pages, this would have violated the express requirement under Charter § 308(b) to include the full and accurate text of the law on “each paper.” Indeed, the Maryland State Board of Elections *Petition Acceptance and Verification Procedures* and *Petition Signature Gathering FAQ* direct local Boards of Election to “invalidate each signer’s name” on a petition page if the full text “is not printed on the back of the signature page, but is attached (stapled,

¹² The Form required by the Maryland Board of Elections is available on the agency’s website at https://elections.maryland.gov/forms/documents/local_referendum_form_FINAL.pdf.

taped, etc.)” A.R. Item 7b; *see also* A.R. Item 7c (“If the text or summary¹³ is not printed on the back of the signature page, but is instead printed on a separate piece of paper and then attached or stapled to the signature page, none of the signatures on that petition signature page will be validated or counted.”).

Petitioners claim, without actual evidence, that the size of the text of Ordinance 26-01-001 on the Referendum Petition was so small that no one could read it. Petitioners make much of the electronically scanned versions of the petition that are included in the Administrative Record. Petitioners also purport to provide a “higher-resolution copy of the petition” that “signers may have seen,” which is not in the administrative record and the origin of which is unknown. Pet’r. Quantum Maryland, LLC Mem. at 28-33.

Importantly, none of the images on which Petitioners rely were used by the Board of Elections in its determination of sufficiency. Instead, a physical, hardcopy version of the Referendum Petition was provided to the Board of Elections to inform its determination, as the physical copy was the document that would be presented to petitioners. *See* A.R. Item 2c. It is not appropriate to supplant the physical evidence before the Board by drawing inferences from digital renderings that are not reflective of what Petitioners actually signed.

Based on an examination of the physical copy of the draft petition, the Board of Elections determined that the text of the Ordinance was legible. For this Court to overturn the Board of Election’s decision based on Petitioners’ distorted renderings of the actual documents that led to the agency’s determination would constitute a direct substitution of the Court’s judgment for the

¹³ As noted by Petitioners, the Frederick County Charter does not contemplate the use of a summary in a referendum petition and requires the full and accurate text of the law to be provided on each signature page. *See* Charter § 308(b); *see also* Pet’r. Quantum Maryland, LLC Mem. at footnote 16.

agency's expertise. *See Ramsay*, 302 Md. at 834–35, 490 A.2d at 1301 (cautioning that a court “must review the agency's decision in the light most favorable to it; that the agency's decision is prima facie correct and presumed valid; and that it is the agency's province to resolve conflicting evidence and where inconsistent inferences can be drawn from the same evidence it is for the agency to draw the inferences.”).

Petitioners further claim that the maps displaying the Council Adopted CDI Overlay Zone and Council Adopted Zoning were insufficient because they were reproduced in black and white, rather than in color. As an initial matter, this argument is not properly before this Court for review because it was not raised before the Board of Elections. Maryland courts have “consistently ... held that ‘questions ... that could have been but were not presented to the administrative agency may not ordinarily be raised for the first time in any action for judicial review.’” *Finucan v. Maryland State Bd. of Physician Quality Assur.*, 151 Md. App. 399, 423, 827 A.2d 176, 190 (2003) (quoting *Board of Physician Quality Assurance v. Levitsky*, 353 Md. 188, 208, 725 A.2d 1027 (1999)).

Petitioners had every opportunity to bring this complaint to the Board of Elections and chose not to. For example, in its March 25, 2026, letter to the Board of Elections, Petitioner Quantum Maryland LLC presented a litany of arguments regarding alleged defects in the Referendum Petition, but did not raise this issue. *See* A.R. Item 6c. Moreover, Petitioners failed to raise the issue at the Board of Elections Emergency Meeting regarding the verification of the Referendum Petition, which was open to the public and attended by counsel for Petitioner Quantum Maryland, LLC. *Id.* Accordingly, petitioners have waived their right to bring this argument before this Court.

Notwithstanding their waiver of this argument, the use of black and white maps did not violate Charter § 308(b) or any other provisions of law. There is no requirement in the Charter, the Election Law, or its implementing regulations regarding the use of color instead of black and white images. The Board of Elections determined that, based on its review of the physical draft petition provided by the Referendum Committee, the full and accurate text of Ordinance 26-01-001 was included on each signature page.

When faced with similar findings from Boards of Election in Maryland and other jurisdictions, courts have consistently held that the agency’s decision should not be disrupted – and thousands of voters’ signatures invalidated – due to an “irregularity not specified as fatal by statute.” *Fraternal Ord. of Police Lodge 35 v. Montgomery Cnty.*, 436 Md. 1, 19, 80 A.3d 686, 697 (2013) (citing *United Labor Comm. of Missouri v. Kirkpatrick*, 572 S.W.2d 449, 453–54 (Mo.1978)); *see id.* (“The ability of the voters to get before their fellow voters issues they deem significant should not be thwarted in preference for technical formalities.”) (quoting *United Labor Comm. of Missouri*, 572 S.W.2d at 454).

For the foregoing reasons, this Court should uphold the Board of Elections’ finding that the Referendum Petition properly included the full and accurate text of Ordinance 26-01-001.

C. A Writ of Mandamus is Inappropriate and Unnecessary.

The Supreme Court of Maryland has explained that a writ of mandamus is an “extraordinary remedy” the fundamental purpose of which is ‘to compel inferior tribunals, public officials, or administrative agencies to perform their function, or perform some particular duty imposed upon them which in its nature is imperative and to the performance of which duty the party applying for the writ has a clear right.’” *Baltimore Cnty. v. Baltimore Cnty. Fraternal Ord. of Police Lodge No. 4*, 439 Md. 547, 569–70, 96 A.3d 742, 755 (2014) (quoting *Town of La Plata v. Faison–Rosewick, L.L.C.*, 434 Md. 496, 511, 76 A.3d 1001, 1010 (2013)). In this case,

there is no need to compel the Board of Elections or the Election Director to take any action. The Election Director made a determination of sufficiency in accordance with E.L. § 6-206(b) (A.R. Item 8a) and certified the Referendum Petition in accordance with E.L. § 6-208 (A.R. Item 8b). If this Court disagrees with the Election Director's decision, it may reverse the decision without the need for a writ of mandamus.

CONCLUSION

For the foregoing reasons, Respondent respectfully asks this Court to affirm the decision of the Board of Elections and Election Director and allow Ordinance 26-01-001 to be referred to the voters of Frederick County.

Respectfully submitted,

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Data Center Referendum Committee

CERTIFICATE REGARDING RESTRICTED INFORMATION

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

June 9, 2026
Date

/s/ David B. Fischer
David B. Fischer

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June, 2026, the foregoing Answering Memorandum of Law was served electronically via the Maryland Electronic Courts (MDEC) system on all parties registered in the MDEC system in the above-captioned matter.

/s/ David B. Fischer
David B. Fischer