

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

C-10-CV-26-000309

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

FOR JUDICIAL REVIEW OF THE * Case No. C-10-CV-26-309
DECISION OF THE FREDERICK *
COUNTY BOARD OF ELECTIONS *

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 *

DEFENDANTS' MOTION FOR PROTECTIVE ORDER

Defendants, Frederick County Board of Elections and Barbara Wagner, in her official capacity as Election Director ("Board" "Wagner" or "Defendants") by and through their attorney Daniel B. Loftus, P.C., pursuant to Maryland Rules 2-311, and 2-403 respectfully file this Motion for Protective Order in the above-captioned case (and consolidated cases) and state the following:

I. INTRODUCTION

This is a rather straightforward petition for judicial review of an administrative agency (Frederick County Board of Elections) dealing with a question of law. The Record of the administrative agency has been filed with the Court and

acknowledged by the Clerk on May 1, 2026. See Notice of Record Received (Md. Rule 7-206 (g)) MDEC, E-File, System Envelope 26284448.

Along with this Motion, the Defendants have filed a Motion to Dismiss them as Defendants in the Plaintiffs' Title 2 claims of the Maryland Rules. As mentioned above, this is a very straightforward petition for Judicial Review and Title 7, Chapter 200 of the Maryland Rules control any petition for Judicial Review and the administrative record is the discovery.

This Motion for Protective Order is addressing the Plaintiffs' request for additional discovery to the official administrative record of the Board of Elections. The Plaintiffs seek interrogatories, request for production of documents and a deposition to supplement and add new evidence before the reviewing court.

II. DISCOVERY

On April 27, 2026 the Plaintiffs served Interrogatories and Requests for Production of Documents on Ms. Barbara Wagner, Election Director. The time to respond is June 2, 2026. See Exhibit 1, e-mail from Plaintiffs' attorney to the undersigned counsel.

On May 22, 2026, after the Scheduling Order hearing that day, the Plaintiffs served on the undersigned counsel for the Defendants via e-mail a Notice of Deposition on Frederick County Board of Elections. The scheduled deposition is for June 2, 2026 at 3:00pm. See Exhibit 2, e-mail from Plaintiffs'

attorney to the undersigned counsel re: Notice of Deposition, with Schedule A.

III. LEGAL STANDARD

Maryland Rule 2-403 (a) allows a court, upon motion and for good cause shown, to enter a protective order "that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." See Maryland Rule 2-403(a). (Emphasis added.) A protective order under this rule may include, *inter alia*, one of the following provisions: (1) that the discovery not be had; ..." See Maryland Rule 2-403(a).

IV. DISCUSSION

A Protective Order is needed because this is a Petition for Judicial Review of an administrative agency decision and the discovery is the administrative record submitted by the Frederick Board of Elections to the Clerk of the Court.

The general accepted rule set forth in several United States Supreme Court cases is to deny a request to depose an individual administrative decision maker unless there is a strong showing of bad faith or improper behavior. See *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971); *United States v. Morgan*, 313 U.S. 409 (1941); and *Village of Arlington Hts., v. Metro Housing Dev.*, 429 U.S. 252, 268 n. 18 (1977).

And there has been no showing or allegations of bad faith or improper behavior by anyone at the Board of Elections.

And that general rule from these United States Supreme

Court cases "has consistently been applied by courts to deny a request to scrutinize an agency official with regard to how and why he reached a particular decision." See *Public Service Comm. et al v. Patuxent Valley Conserv. League, et al*, 300 Md. App. 200 214 (1984) citing *Sierra Club v. Costle*, 657 F. 2d 298, 390 n. 450 (D.C. Cir. 1981); *National Nutritional Foods Ass'n v. Matthews*, 557 F.2d 325, 331-333 (2nd Cir. 1977); *City of Des Plaines v. Metropolitan Sanitary Dist.*, 552 F. 2d 736, 739-740 (1977) (other cases intentionally omitted).

"The reasoning underlying the above-cited cases is that judicial review is generally confined to an objective examination of the record before the court. Absent exceptional circumstances, which preclude effective review of an agency's action on the record, an administrative official cannot be compelled to give testimony explaining the agency's decision." See *Patuxent Valley, supra* 300 Md. at 215.

In the present case, there has been no showing of "exceptional circumstances" to warrant the taking of a deposition of anyone at the Board of Elections, including the Election Director.

As stated in *Patuxent Vally, supra*, 300 Md. at 214 "a fundamental principle of administrative law: that a party challenging agency action is ordinarily forbidden from inquiring

into the mental processes of an administrative official." 1.

Basically, "[a] court's role is limited to determining if there is substantial evidence" in the administrative record as a whole "to support the agency's findings and conclusions and to determine if the administrative decision is premised upon an erroneous conclusion of law." *United Parcel v. People's Counsel*, 336 Md. 569, 577 (1994); See also *Montgomery Co., Maryland*, *supra* at 337 Md. 471, 482.

As stated in in the U.S. Supreme Court, *Camp v. Pitts* 411 U.S. 138, 142 "[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."

A. NO NEW EVIDENCE

This is petition for Judicial Review governed by Title 7 (Chapter 200) of the Maryland Rules.

Under Maryland Rule 7-208(c) no additional evidence in support of or against the agency's decision is allowed unless permitted by law. That rule cannot be any clearer.

¹ As pointed out in *United State v. Morgan*, 313 U.S. 409, 422 (1941): in an action for judicial review of a decision of an administrative official, the court erred in permitting the plaintiffs to take the deposition of that administrative official because the "proceeding before the [administrative official] has a quality of resembling that of a judicial proceeding..." such an examination of a judge would be destructive of judicial responsibility ... Just as a judge cannot be subjected to such scrutiny ... so the integrity of the administrative process must be equally respected." *Overton Park*, *supra* 401 U.S. 402, 420; *Montgomery Co., Maryland v. Stevens* 337 Md 471, 481 (1995).

However, the Plaintiffs wish to overlook that rule and create a new record and introduce new evidence with their discovery requests. Plaintiffs want to inquire into the mental process of the Election Director, Ms. Barbara Wagener, the chief election official with their discovery.

In their Notice of Deposition, Schedule A, the Plaintiffs wish to examine Ms. Wagner on the following matters:

"MATTERS UPON WHICH EXAMINATION IS REQUESTED"

1. Communications regarding the Petition Campaign and/or Referendum, including with Frederick County (or any agency, division, elected official, or employee thereof); the Frederick County Data Center Referendum Committee (or any member thereof); or any other entity or individual.
2. The verification process concerning the Referendum Petition.
3. The advanced determination concerning the Referendum Petition.
4. The Election Director's determination concerning the Referendum Petition. See Exhibit 2, Notice of Deposition, Schedule A.

First, all this information requested by the Plaintiffs is already in the administrative record. Furthermore, as Ms. Wagner stated in her affidavit, everything she needed to make a decision is in the Record filed with the Clerk. See Exhibit 3, Affidavit of Barbara Wagner, Election Director. Second, the Plaintiffs are seeking to inquire into the mental process of the Election Director in her determinations. This is clearly prohibited under the cases cited. And third, these inquiries are blanketed with attorney-client privilege. Ms. Wagner, the chief election official, in making her determinations had many communications and meetings with the undersigned counsel as

Board attorney seeking legal advice as provided for in Election Law §6-206 and these were not only protected by attorney-client privilege but also work product. See Exhibit 3, Affidavit of Barbara Wagner, Election Director.

B. PRIMARY ELECTION and UNDUE BURDEN

The Plaintiffs are seeking unnecessary discovery right in the middle of a Gubernatorial Primary election to be held on June 23, 2026 and this matter is on a tight schedule and on a fast track for Judicial Review under Title 7, Chapter 200 of the Maryland Rules (the appropriate procedure and rule for review of an administrative agency decision). And Plaintiffs were fully aware of this Gubernatorial Primary and all the work to be done by the Board of Elections and Ms. Wagner, Election Director not only in conversations with all counsel, but also, in Defendants' Responses to Plaintiffs' Motions to Shorten Schedule and to Stay Board of Elections' determination. **2.** See Responses filed in MDEC E-File, System Envelopes 26314251 and 26314478 respectively.

To be sure, Ms. Wagner, the Election Director, the chief election official has her hands full with this Primary election. As of this filing there are 16 days until Early Voting and 28 fast-approaching days before the Primary on June 23, 2026. And there is so much work to do now for the Board, staff and the

2. Defendants wish to note that throughout this entire process, counsels for all parties have conducted themselves professionally, courteously, and in a non-adversarial manner.

Election Director to fulfill and accomplish their statutory duties and responsibilities for a successful Primary.

See Exhibit 4, Affidavit of Anthony Gutierrez, Deputy Election Director of the Board. This is also attached to Defendants' Response to Motion to Shorten Schedule at MDEC E-file system, Envelope 263314251.

For example, logic and accuracy testing on the voting equipment began on May 12, 2026 with a June 15, 2026 deadline; voter registration applications are on-going and are expected to increase starting May 1, 2026 with a June 2, 2026 deadline to update voter records; and pre-canvassing of mail-in ballots starting June 1, 2026! See Election Law, §11-302 (b)(1)(i). **3.** The Election Director and undersigned counsel, as the Board attorney are required to be in attendance during each canvass. See COMAR, 33.08.01.02-1B and EL §2-206 (8).

At the risk of sounding disrespectful (and to stress this, it is not the intention of being disrespectful) it is an undue burden on the Election Director at this time for discovery during a Gubernatorial Primary especially when the administrative record is complete and that is all that is required in an administrative appeal. See Exhibit 3, Affidavit of Barbara Wagner, Election Director.

Besides, if it is necessary to obtain the testimony of the administrative decision maker (i.e., Ms. Wagner, Election

3. Early voting begins June 11 through June 18, 2026 and the pre-canvassing processing of mail-in ballots by the Board shall begin on the day that is 8 business days before the first day of early voting, i.e., June 1, 2026. See Exhibit 4, Affidavit of Anthony Gutierrez, Deputy Election Director.

Director, chief election official) in order to provide a more meaningful judicial review, the Court could either perform such review itself or, remand to the agency (Board of Elections) for further consideration. See *Overton Park*, *supra* at 401 U.S. at 419-420. Following *Overton Park*, the U.S. Supreme Court, in *Harrison v. PPG Industries, Inc.*, 446 U.S. 578, 594 explained that a reviewing court "is not without recourse in the event it finds itself unable to exercise informed judicial review because of an inadequate administrative record. In such a situation, [the] court may remand a case to the agency for further consideration."

In the present case, the administrative record is complete and definitely not inadequate and there is ample evidence in the record for this question of law. See Exhibit 3, Affidavit of Barbara Wagner, Election Director.

There is no need for new or additional information. There is no sufficient basis presented for further discovery. Again, "[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." *Camp*, *supra* at 411 U.S. 138, 142.

And to be clear, on April 16, 2026 the undersigned counsel asked the Plaintiffs for a list of documents that they wanted to form part of the administrative record. Upon receiving that list from the Plaintiffs, the Defendants complied and provided

those documents to be part of the administrative record. 4. In addition to the requested documents by the Plaintiffs, the administrative record contains over 11 thousand pages of signatures for the Referendum Petition.

V. CONCLUSION

Notwithstanding that this discovery request is an undue burden on the Defendants, it is also unnecessary and not allowed under Maryland Rule 7-208 (c) case law. The administrative Record is complete. And judicial review is confined to an objective examination of the administrative record before the court - not on a new record. Everything that is needed to decide this question of law is in the administrative record.

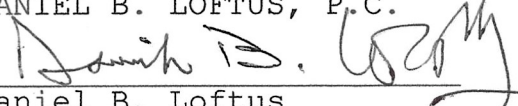
Accordingly, entry of a Protective Order by this Court is proper in these specific circumstances and serves to protect the Defendants from an undue burden, at this time. And, Defendants have shown good cause for such an entry. In short, this is exactly where justice requires a Protective Order.

4. In an e-mail dated April 16, 2026 to the Defendants, the Plaintiffs' attorney noted in their list that it was non-exhaustive and may supplement the list at a later time. The Plaintiffs did not supplement that list when the administrative record was finally filed with the Court. So, the Plaintiffs have all they requested in the administrative record. See Exhibit 5, e-mail from Plaintiffs' attorney to the undersigned counsel.

WHEREFORE, Defendants Frederick County Board of Elections and Barbara Wagner, in her official capacity as Election Director respectfully request this Court to Grant its Motion for Protective Order that discovery not be had.


Respectfully submitted,

DANIEL B. LOFTUS, P.C.


Daniel B. Loftus
10 N. Jefferson St., Ste 400
Frederick, Maryland 21701
Tel: (301) 662-4493
Fax: (301) 662-0583
E-mail: DanLoftus@verizon.net
CPF #: 9006280149
Attorney for Defendants
Frederick County Board of
Elections and Barbara Wagner,
in her official capacity as
Election Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of May, 2026, a copy of the foregoing Motion, 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.

C-10-CV-26-000309

EXHIBIT 1

Dan Loftus

From: Theodore B. Kiviat, Esq. <Tkiviat@lvglawfirm.com>
Sent: Monday, April 27, 2026 11:15 PM
To: danloftus@verizon.net; steveblack2313@gmail.com; Adam Van Grack; Paul Henderson; Jose Pereyo; Keith Forst; Asher Griffin
Subject: Quantum Maryland, LLC et al v. Frederick County Board of Elections et al - Case No. C-10-CV-26-000309
Attachments: Joan Aquilino's Interrogatories to Frederick County Data Center Referendum Committee 042726.pdf; Joan Aquilino's Document Requests to Frederick County Data Center Referendum Committee 042726.pdf; Joan Aquilino's Interrogatories to Barbara Wagner 042627.pdf; Joan Aquilino's Document Requests to Barbara Wagner 042726.pdf

Mr. Loftus and Mr. Black:

Attached, please electronic mail courtesy copies of the following discovery:

1. Plaintiff Joan Aquilino's First Set of Interrogatories Directed to Defendant Frederick County Data Center Referendum Committee.
2. Plaintiff Joan Aquilino's First Set of Requests for Production of Documents Directed to Defendant Frederick County Data Center Referendum Committee.
3. Plaintiff Joan Aquilino's First Set of Interrogatories Directed to Defendant Barbara Wagner
4. Plaintiff Joan Aquilino's First Set of Requests for Production Directed to Defendant Barbara Wagner

In addition, courtesy hard copies have been sent today via U.S. Mail.

Tomorrow, these documents will be served via hand delivery.

If you are unable to open these attachments, kindly advise.

—

Best Regards,



Theodore B. Kiviat, Esq.

Member

Longman & Van Grack, LLC

240.772.5933 | tkiviat@lvglawfirm.com

10411 Motor City Drive, Suite 750

Bethesda, Maryland 20817



www.lvglawfirm.com

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C-10-CV-26-000309

EXHIBIT 2

Dan Loftus

From: Adam Van Grack <avangrack@lvglawfirm.com>
Sent: Friday, May 22, 2026 10:36 PM
To: Erskine William; Dan Loftus; 'fischer@khlaw.com'; 'C. Robert (Bob) Dalrymple'; Jose Pereyo; Schaller, Charles; 'Dahl, Christopher'; Roussillon, Derek; 'Brown, Mike'; 'Graham, Matthew'; 'Elizabeth McInturff'; 'Manalo, Noel'; Wolf, Anne; Rose Paul D JR; 'Jesse Stein'; 'tinker@khlaw.com'; 'rende@khlaw.com'
Cc: Justin Griffin; Keith Forst; Paul Henderson; Theodore B. Kiviat, Esq.; 'Griffin Asher'
Subject: Case No. C-10-CV-26-000309 - Discovery
Attachments: Notice of Deposition of Frederick County Data Center Referendum Committee.Served.pdf; Notice of Deposition of Frederick County Board of Elections.Served.pdf; Notice of Deposition of Theresa Furnari.Served.pdf

Good evening counsel,

Attached please find courtesy copies of the following three notices which were served this evening on all parties via MDEC:

- (1) Notice of Maryland Rule 2-412(d) Deposition for the Frederick County Data Center Referendum Committee.
- (2) Notice of Maryland Rule 2-412(d) Deposition for the Frederick County Board of Elections.
- (3) Notice of Maryland Rule 2-412(a) Deposition for Theresa Furnari.

In light of Judge Bonifant's statements at this morning's hearing, we understand that, subject to the Court's decisions next week, any depositions will likely need to occur between May 29 and June 4. Accordingly, while we have noticed these depositions for June 2nd and June 3rd, we will certainly work with counsel on the precise dates and/or times to accommodate schedules if needed. We simply want to provide formal notice on all parties so everyone is clear regarding what we intend to do presuming discovery proceeds.

Best regards,
Adam

Adam L. Van Grack, Esq.
Member, Longman & Van Grack LLC
301.291.7156 | avangrack@lvglawfirm.com
10411 Motor City Drive, Suite 750, Bethesda, MD 20817



The information contained in this electronic message and any attached documents is privileged, confidential, and protected from disclosure. It may be an attorney-client communication and, as such, is privileged and confidential. If you are not the intended recipient, note that any review, disclosure, copying, distribution, or use of the contents of this electronic message or any attached documents is prohibited. If you have received this communication in error, please destroy it and notify us immediately by telephone (301-291-5027) or by electronic mail (avangrack@lvglawfirm.com). Thank you.

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

* * * * *

**NOTICE OF DEPOSITION OF
FREDERICK COUNTY BOARD OF ELECTIONS**

c/o Daniel B. Loftus
220 N. Market St.
Frederick, MD 21701
*Attorney for Defendant
Frederick County Board of Elections*

PLEASE TAKE NOTICE that pursuant to Maryland Rules 2-412(a), (b) and (d), on **June 2, 2026 at 3:00 pm** at 5100 Buckeystown Pike, Suite 250, Frederick, Maryland 21704, Plaintiff Joan Aquilino will take the deposition upon oral examination before a notary public or duly qualified officer authorized to administer oaths of **Defendant Frederick County Board of Elections** on the topics set forth on the attached “Schedule A”.

Pursuant to Maryland Rule 2-412(d), the Frederick County Board of Elections “shall designate one or more officers, directors, managing agents, or other persons who will testify on its behalf regarding the matters described” in “Schedule A” attached hereto.

The deposition is to commence at the above-stated date and time. This deposition will be taken for use in discovery, at trial, and for any other use as permitted by the Maryland Rules and will be recorded by stenographic means. This deposition will also be recorded by electronic audio/video recording. *See* Maryland Rule 2-412(b).

You are invited to attend and cross-examine. The deposition will continue from day to day until completed, subjected to such adjournment as may be agreed upon.

LONGMAN & VAN GRACK, LLC

By: /s/ Adam L. Van Grack

SCHEDULE A

DEFINITIONS FOR MATTERS UPON WHICH EXAMINATION IS REQUESTED

1. “**Campaign Materials**” means any flyer, pamphlet, poster, handout, script, talking points, social media post or advertisement, video, audio recording, website content, or other written, electronic, or printed material created, distributed, displayed, or published in connection with the Petition Campaign, including any draft thereof.

2. “**Committee**” means the Frederick County Data Center Referendum Committee.

3. “**Circulator**” means a Person who collected or attempted to collect Petition signatures in support of or to otherwise advance the Referendum.

4. “**Communication**” shall have the broadest meaning permitted under applicable rules and means any act or instance of transferring, transmitting, passing, delivering, giving, or recording information by oral, written, or electronic means, including but not limited to statements, admissions, denials, inquiries, discussions, conversations, negotiations, agreements, contracts, notes (handwritten, typed, or otherwise), summaries, memoranda, reports, presentations, submissions or filings to any government agency or entity, understandings, meetings, letters, telegrams, facsimiles, electronic mail, voicemail, text message, instant message, iMessage, WhatsApp, Signal, Viber, Slack, or any other ephemeral or electronic messaging service, or any other direct or indirect disclosure in any form, including but not limited to audio, video, digital, electronic, or paper form, and any draft Communication in such form, whether or not the Communication was ever disclosed, sent, or transmitted.

5. “**Document**” has the broadest possible meaning pursuant to Maryland Standard General Definition (a) and includes electronically stored information and any writing, drawing, graph, chart, photograph, sound recording, image, and other data or data compilation stored in any medium from which information can be obtained, translated, if necessary, through detection

devices into reasonably usable form. Any copy of a Document that differs in any respect from the original of a Document constitutes a separate Document. Unless otherwise indicated herein, the term Document or Documents refers to and includes Hard-Copy Documents.

6. **“Person”** has the broadest possible meaning pursuant to Maryland Standard General Definition (c) and includes an individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability partnership, limited liability company, the State, an agency or political subdivision of the State, a court, and any other governmental entity.

7. **“Petition Campaign”** means any and all efforts to promote, or collect signatures from, educate, or inform any Person about, the Referendum.

8. **“Petition Signature”** or **“Petition Signatures”** means signatures to the petition, including on the completed signature page, in support of the Referendum.

9. **“Promoter”** means a Person who distributed information (including verbally) in connection with the Petition Campaign, regardless of whether he or she collected or attempted to collect Petition Signatures.

10. **“Referendum”** means the initiative to submit Ordinance 26-01-001 to popular vote by the electorate of Frederick County.

11. **“Rural Legacy Area”** means land designated as part of Maryland’s Rural Legacy Program.

12. **“Priority Preservation Area”** means land designated as part of Maryland’s Priority Preservation Areas program.

13. The term **“including”** means including but not limited to.

14. The terms “relating to,” “related to,” “reflecting,” and “in connection with” are synonymous and mean analyzing, concerning, containing, dealing with, constituting, defining, describing, embodying, interpreting, evidencing, comprising, commenting on, recording, reflecting, relating to, regarding, responding to, explaining, identifying, discussing, mentioning, referring to, setting forth, showing, having any relationship or connection to, stating, summarizing, supporting, or in any way pertaining to the subject matter of the request, explicitly or implicitly. These terms shall be construed to bring within the scope of the requested matter to be examined on and any information and Document that was reviewed in conjunction with, or was generated as a result of, the subject matter of the matter to be examined on. The use of more than one of these terms in any requested matter for examination shall not alter this definition in any way.

MATTERS UPON WHICH EXAMINATION IS REQUESTED

1. Communications regarding the Petition Campaign and/or Referendum, including with Frederick County (or any agency, division, elected official, or employee thereof); the Frederick County Data Center Referendum Committee (or any member thereof); or any other entity or individual.
2. The verification process concerning the Referendum Petition.
3. The advanced determination concerning the Referendum Petition.
4. The Election Director’s determination concerning the Referendum Petition.

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 * Case No. C-10-CV-26-309
DECISION OF THE FREDERICK *
COUNTY BOARD OF ELECTIONS *

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 for the Frederick County Board of Elections ("Board"). I am a state of Maryland employee but I am paid by Frederick County. I am hired or appointed by the local Board of Elections 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.

3. The local Board of Elections, in accordance with the provisions of the Election Law and regulations adopted by the State Board of Elections, oversee the conduct of all Federal, state and local (County) elections held in Frederick County and ensure that the elections process is conducted in an open, convenient and impartial manner. (See EL 2-202).

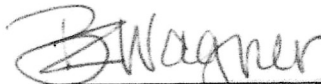
4. Each local board of elections in the State of Maryland and their staff are subject to the direction and authority of the State Board of Elections and accountable to the State Board of Elections (See EL 2-201). The State Board of Elections and local boards are independent agencies of the Executive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

5. Everything I needed to make a decision regarding the Frederick County Data Center Referendum Committee's Petition is in the record submitted to the Clerk of the Court on April 30, 2026 and acknowledged by the Clerk on May 1, 2026. And in making my decision, I also consulted with our Board counsel seeking legal advice through telephone conversations, in-person meetings and through e-mails on numerous occasions.

6. Our staff and I are so focused on the Gubernatorial Primary election for June 23, 2026. There is so much work to be done coordinating, getting ready and preparing for this Primary. We want this to be a successful primary and meet our statutory deadlines. Just as an example of the work we have to do, we have early voting, pre-canvassing mail-in ballots, and canvassing mail-in ballots to do, training judges, etc. And I have to be at the Board for this. It is daunting and overwhelming. Any distraction with depositions and other discovery would be a tremendous and undue burden on me and our staff. It would be too much at this time.

5/26/2026

DATE



BARBARA WAGNER
ELECTION DIRECTOR
FREDERICK COUNTY
BOARD OF ELECTIONS

C-10-CV-26-000309

EXHIBIT 4

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

PETITION OF
QUANTUM MARYLAND, LLC

*
*

and

*

JOAN AQUILINO,

*

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

*

*

and

*

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

BARBARA WAGNER *in her official
capacity as Election Director of the
Board of Elections*

*

*

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

*

*

* * * * *

QUANTUM MARYLAND, LLC, *et al*

*

Plaintiffs,

*

v.

*

Civil Case No: C-10-CV-26-000309

FREDERICK COUNTY BOARD OF
ELECTIONS, *et al*

*

*

Defendants.

* * * * *

**AFFIDAVIT
OF ANTHONY GUTIERREZ**

I, Anthony Gutierrez, 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 currently the Deputy Election Director for the Frederick County Board of Elections ("Board"), Maryland. I previously served as the Election Director for Wicomico County, Maryland. I will have served as a Maryland election official for 20 years as of June 2026. I am very familiar with Maryland election administration and its processes. And the matters set forth in this Affidavit are true to the best of my knowledge.

3. We have a Gubernatorial Primary election on June 23, 2026 in the State of Maryland. There is a tremendous amount of work and time still required in preparing for the June Primary. Any delay in the staff's preparations or the Director's ability to oversee their work could adversely affect the integrity or security of the Primary election results. They should be as rested as possible to successfully and accurately perform the following projects mandated by Maryland Election Law or COMAR:

- Election Judge Training - began the first of March and continues for 3 months through May 30, including some evenings and weekends. (E.L. 10-206).
- Logic and Accuracy Testing of the Voting Equipment - beginning approx. May 12 with a June 15 deadline. (COMAR 33.10.01.14).
- Voter Registration Applications - ongoing daily, including mandated State Board of Election audit tasks, expected to increase starting May 1 as we approach the June 2 deadline to update voter records. (E.L. 3-302a.)
- Mail-In Ballot Applications - ongoing daily, expected to increase from May 1 through the June 19 deadline. (E.L. 9-305d1 and 9-305d2)
- Specimen Ballots and Polling Place Supplies - final scheduled delivery is June 2 with supply preparation ongoing until June 22. (E.L. 9-214).
- Official Ballot Drop Boxes and Ballot Retrieval - security testing and preparations finalized by the week of May 4 with ongoing monitoring through June 24. (COMAR 33.11.01.04).
- Mail-In Ballot Processing - final preparations must be completed by the week of May 11 with daily processing continuing through Primary Election Day, June 23. (COMAR 33.11.03.08).
- Pre-Canvassing of Mail-In Ballots - final preparations must be completed by May 30 with Pre-Canvassing beginning on June 1. (E.L. 11-302)
- Early Voting - final preparations including security measures must be completed by June 10 with daily Early Voting Center support for 8 days from June 11 through June 18, including evenings and weekends. (E.L. 10-301.1)
- Primary Election Day - ongoing daily, with final preparations including security measures completed by June 19 and Election Day Polling Place support on June 22 for setup and June 23 for in-person voting. (E.L. 8-201).
- Post-Election Canvassing of Mail-In Ballots - final preparations must be completed by June 24. Canvassing of the Mail-In and Provisional Ballots resumes June 25 with a completion deadline of July 6. (COMAR 33.11.04.03).

May 1, 2026
DATE


ANTHONY GUTIERREZ
DEPUTY ELECTION DIRECTOR

C-10-CV-26-000309

EXHIBIT 5

Dan Loftus

From: Jose Pereyo <josepereyo@quinnemanuel.com>
Sent: Thursday, April 16, 2026 12:22 PM
To: DanLoftus@verizon.net
Cc: Keith Forst; Asher Griffin; Paul Henderson
Subject: Quantum Maryland Petition

Dear Mr. Loftus,

I hope this email finds you well. My name is José Pereyó, and I work with Keith Forst on the Quantum Maryland case. I understand you have already spoken to Keith about some issues in this case. He has kindly requested that I reach out to you on his behalf.

First, I understand that you've requested a list of documents that should form part of the Board of Elections' administrative record regarding the Referendum Committee's petition. Below we provide a non-exhaustive list of those documents. We are still analyzing this and may supplement the list at a later time. In the meantime, however, we believe this list is a good start.

Second, I also understand that Keith mentioned whether you would be able to accept service of process on behalf of the Board of Elections and Ms. Barbara Wagner. Could you please let us know if you will accept service on their behalf?

We appreciate your attention to this matter, and I remain at your disposal should you wish to discuss.

Best regards,

José

* * *

1. Materials submitted by the Referendum Committee (including their attorney) regarding their creation as an entity (ballot issue committee);
2. All Petition application materials regarding the Maryland Election Law § 6-202 pre-approval process, including but not limited to (1) materials submitted by the Referendum Committee; (2) materials prepared by the Board of Elections (including the Election Director) during the review process; (3) correspondence with the Referendum Committee; and (4) the Board of Elections' (including the Election Director's) pre-approval determination;
3. Any communications or materials exchanged between the Referendum Committee (including their attorney) and the Board Elections (including the Election Director) from January 2026 to March 19, 2026;
4. All petition materials submitted by the Referendum Committee (including their attorney) between January 2026 to April 3, 2026 (in particular all materials, documents, and signatures submitted on March 19, 2026);
5. All materials and documents prepared by the Board of Elections (including the Election Director) regarding the Referendum Committee's compliance with substantive and procedural requirements of Maryland Election Law Section 6-206 as to (i) the validity of the signatures, and (ii) whether the petition was authorized by law;

6. Any transcripts, minutes, notes or evidence of meetings or discussions from the Board of Elections (internal or public) (including the Election Director) regarding the Referendum Committee's compliance with substantive and procedural requirements as to (i) the validity of the signatures, and (ii) whether the petition was authorized by law.
7. Any third-party comments or communications with or documents submitted to the Board of Elections regarding the Referendum Committee and the petition at issue.
8. Any (non-privileged) guidance materials that apply to the referendum verification process, including proposed decisions or findings submitted by the Board of Elections' staff, the Referendum Committee, opponents of the Referendum Committee, or other persons;
9. All materials and documentation prepared by the Board of Elections (including the Election Director) related to the Election Director's determination dated April 3, 2026;
10. All communications or documents exchanged between any member or staff of the Board of Elections and the Election Director regarding the Referendum Committee and/or the petition at issue;
11. Any communications or documentation from the County Council or County Executive (public or internal) related to the Referendum and petition; and
12. Any communications or materials exchanged between the Referendum Committee (including their attorney) and the Board Elections (including the Election Director) from March 19, 2026, to the present (including any guidance materials/instructions).

José R. Pereyó

Of Counsel,

Quinn Emanuel Urquhart & Sullivan, LLP

555 13th Street NW, Suite 600

Washington, D.C. 20004

202-538-8150 Direct

202.538.8000 Main Office Number

202.538.8100 FAX

josepereyo@quinnemanuel.com

www.quinnemanuel.com

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