

IN THE CIRCUIT COURT FOR Frederick County (CC)



CIVIL – NON-DOMESTIC CASE INFORMATION REPORT

DIRECTIONS

Plaintiff: This Information Report must be completed and attached to the complaint filed with the Clerk of Court unless your case is exempted from the requirement by the Chief Justice of the Supreme Court of Maryland pursuant to Rule 2-111(a).
Defendant: You must file an Information Report as required by Rule 2-323(h).

THIS INFORMATION REPORT CANNOT BE ACCEPTED AS A PLEADING

FORM FILED BY: PLAINTIFF DEFENDANT

CASE NUMBER C-10-CV-26-000325

CASE NAME: NDR Properties, LLC, et al.

vs. Frederick County Board of Elections, et al.

Plaintiff

Defendant

PARTY'S NAME: NDR Properties, LLC

PHONE:

PARTY'S ADDRESS: 24024 Frederick Road, Suite 200, Clarksburg, MD 20871

PARTY'S E-MAIL:

If represented by an attorney:

PARTY'S ATTORNEY'S NAME: Paul D. Rose, Jr.

PHONE: 301-241-2011

PARTY'S ATTORNEY'S ADDRESS: 8490 Progress Drive, Suite 225, Frederick, MD 21701

PARTY'S ATTORNEY'S E-MAIL: prose@mcneeslaw.com

JURY DEMAND? Yes No

RELATED CASE PENDING? Yes No If yes, Case #(s), if known: C-10-CV-26-000309

ANTICIPATED LENGTH OF TRIAL?: _____ hours 2 days

PLEADING TYPE

New Case: Original Administrative Appeal Appeal

Existing Case: Post-Judgment Amendment

If filing in an existing case, skip Case Category/Subcategory section – go to Relief section.

IF NEW CASE: CASE CATEGORY/SUBCATEGORY (Check one box.)

TORTS

- Asbestos
- Assault and Battery
- Business and Commercial
- Child Victims Act
- Conspiracy
- Conversion
- Defamation
- False Arrest/Imprisonment
- Fraud
- Lead Paint – DOB of Youngest Plt: _____
- Loss of Consortium
- Malicious Prosecution
- Malpractice-Medical
- Malpractice-Professional
- Misrepresentation
- Motor Tort
- Negligence
- Nuisance
- Premises Liability
- Product Liability
- Specific Performance
- Toxic Tort
- Trespass
- Wrongful Death

CONTRACT

- Asbestos
- Breach
- Business and Commercial
- Confessed Judgment (Cont'd)
- Construction
- Debt

- Fraud
- Government
- Insurance
- Product Liability
- PROPERTY**
- Adverse Possession
- Breach of Lease
- Detinue
- Distress/Distrain
- Ejectment
- Forcible Entry/Detainer
- Foreclosure
 - Commercial
 - Residential
- Currency or Vehicle
- Deed of Trust
- Land Installments
- Lien
- Mortgage
- Right of Redemption
- Statement Condo
- Forfeiture of Property/ Personal Item
- Fraudulent Conveyance
- Landlord-Tenant
- Lis Pendens
- Mechanic's Lien
- Ownership
- Partition/Sale in Lieu
- Quiet Title
- Rent Escrow
- Return of Seized Property
- Right of Redemption
- Tenant Holding Over

PUBLIC LAW

- Attorney Grievance
- Bond Forfeiture Remission
- Civil Rights
- County/Mnecpl Code/Ord
- Election Law
- Eminent Domain/Condemn.
- Environment
- Error Coram Nobis
- Habeas Corpus
- Mandamus
- Prisoner Rights
- Public Info. Act Records
- Quarantine/Isolation
- Writ of Certiorari

EMPLOYMENT

- ADA
- Conspiracy
- EEO/HR
- FLSA
- FMLA
- Worker's Compensation
- Wrongful Termination

INDEPENDENT PROCEEDINGS

- Assumption of Jurisdiction
- Authorized Sale
- Attorney Appointment
- Body Attachment Issuance
- Commission Issuance

- Constructive Trust
- Contempt
- Deposition Notice
- Dist Ct Mtn Appeal
- Financial
- Grand Jury/Petit Jury
- Miscellaneous
- Perpetuate
- Testimony/Evidence
- Prod. of Documents Req.
- Receivership
- Sentence Transfer
- Set Aside Deed
- Special Adm. – Atty
- Subpoena Issue/Quash
- Trust Established
- Trustee Substitution/Removal
- Witness Appearance-Compel

PEACE ORDER

- Peace Order

EQUITY

- Declaratory Judgment
- Equitable Relief
- Injunctive Relief
- Mandamus

OTHER

- Accounting
- Friendly Suit
- Grantor in Possession
- Maryland Insurance Administration
- Miscellaneous
- Specific Transaction
- Structured Settlements

**COMPLEX SCIENCE AND/OR TECHNOLOGICAL CASE
MANAGEMENT PROGRAM (ASTAR)**

FOR PURPOSES OF POSSIBLE SPECIAL ASSIGNMENT TO ASTAR RESOURCES JUDGES under Md. Rule 16-302, attach a duplicate copy of complaint and check whether assignment to an ASTAR is requested.

Expedited - Trial within 7 months of Defendant's response

Standard - Trial within 18 months of Defendant's response

IF YOU ARE FILING YOUR COMPLAINT IN BALTIMORE CITY OR BALTIMORE COUNTY, PLEASE FILL OUT THE APPROPRIATE BOX BELOW.

CIRCUIT COURT FOR BALTIMORE CITY (CHECK ONLY ONE)

- Expedited Trial 60 to 120 days from notice. Non-jury matters.
- Civil-Short Trial 210 days from first answer.
- Civil-Standard Trial 360 days from first answer.
- Custom Scheduling order entered by individual judge.
- Asbestos Special scheduling order.
- Lead Paint Fill in: Birth Date of youngest plaintiff _____.
- Tax Sale Foreclosures Special scheduling order.
- Mortgage Foreclosures No scheduling order.


CIRCUIT COURT FOR BALTIMORE COUNTY

- Expedited (Trial Date-90 days) Attachment Before Judgment, Declaratory Judgment (Simple), Administrative Appeals, District Court Appeals and Jury Trial Prayers, Guardianship, Injunction, Mandamus.
- Standard (Trial Date-240 days) Condemnation, Confessed Judgments (Vacated), Contract, Employment Related Cases, Fraud and Misrepresentation, International Tort, Motor Tort, Other Personal Injury, Workers' Compensation Cases.
- Extended Standard (Trial Date-345 days) Asbestos, Lender Liability, Professional Malpractice, Serious Motor Tort or Personal Injury Cases (medical expenses and wage loss of \$100,000, expert and out-of-state witnesses (parties), and trial of five or more days), State Insolvency.
- Complex (Trial Date-450 days) Class Actions, Designated Toxic Tort, Major Construction Contracts, Major Product Liabilities, Other Complex Cases.

April 13, 2026 _____
Date

8490 Progress Drive, Suite 225 _____
Street Address

Frederick MD 21701 _____
City State Zip Code



0112120254 _____
Attorney Number

Paul D. Rose, Jr. _____
Printed Name

prose@mcneelaw.com _____
E-mail

IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

NDR PROPERTIES, LLC *
24024 Frederick Road, Suite 200 *
Clarksburg, Maryland 20871 *

and *

CASE No.: C-10-CV-26-000325

DAVID S. PLEASANTS *
9611 Reichs Ford Road *
Ijamsville, Maryland 21754 *

Plaintiffs/Petitioners, *

v. *

FREDERICK COUNTY BOARD OF *
ELECTIONS *
8490 Progress Drive, Suite 300 *
Frederick, Maryland 21701 *

and *

BARBARA WAGNER, in her official *
capacity as Election Director of the *
Board of Elections *
8490 Progress Drive, Suite 300 *
Frederick, Maryland 21701 *

and *

FREDERICK COUNTY DATA CENTER *
REFERENDUM COMMITTEE *
2313 New Design Road *
Adamstown, Maryland 21710 *

Defendants/Respondents. *

* * * * *

**PETITION FOR JUDICIAL REVIEW, COMPLAINT FOR DECLARATORY
JUDGMENT, AND PETITION FOR WRIT OF MANDAMUS**

Petitioners-Plaintiffs, NDR Properties, LLC (“NDR”) and David S. Pleasants (“Pleasants”) (collectively “Petitioners”), seek: (1) judicial review of the decision of the Frederick County Board of Elections (the “Board of Elections”) and the Election Director of the Board of Elections, Barbara Wagner (“Wagner”), dated April 3, 2026; (2) a declaratory judgment against the Board of Elections, the Election Director, and the Frederick County Data Center Referendum Committee (the “Referendum Committee”) that the Petition for Referendum submitted by the Referendum Committee on March 19, 2026 (the “Referendum Petition”) is legally deficient; and (3) in the alternative, a writ of mandamus ordering the Election Director to make a determination that the Referendum Petition is not authorized by law under Md. Code Ann, Election Law, § 6-206.

PARTIES

1. Plaintiff-Petitioner NDR is a Maryland limited liability company with a principal place of business at 24024 Frederick Road, Suite 200, Clarksburg, Maryland 20871. NDR is an owner of 398.55 acres of real property, which is part of the CDI Overlay Zone established by Ordinance 26-01-001.

2. Plaintiff-Petitioner Pleasants is a resident of and registered voter in Frederick County who disagrees that Ordinance 26-01-001 is subject to referendum and believes the determination by the Frederick County Board of Elections and the Election Director concerning the Referendum Petition is in error.

3. Respondent and Defendant, Frederick County Board of Elections, is an administrative agency of Frederick County, Maryland. The Board of Elections is 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.

4. Respondent and Defendant Barbara Wagner is the Election Director of the Board of Elections. As Election Director, Ms. Wagner has been designated by the Board of Elections as the chief election official for Frederick County under Md. Code Ann., election Law, §§ 6-206 and 6-208. Ms. Wagner is tasked with making a final determination as to whether a petition for referendum is sufficient and complies with all applicable laws.

5. Upon information and belief, Defendant Frederick County Data Center Referendum Committee is a non-profit organization headquartered in Adamstown, Maryland. The Referendum Committee was organized to gather signatures for and submit the Referendum Petition at issue in this case.

JURISDICTION AND VENUE

6. Jurisdiction is proper pursuant to Md. Code Ann., Cts. & Jud. Proc., §§ 1-501 and 3-403, as well as Md. Code Ann., Election Law, §§ 6-209(a)(1)(ii) and (b).

7. Venue is proper in the Circuit Court for Frederick County pursuant to Md. Code Ann., Cts. & Jud. Proc., § 6-201 because Respondents/Defendants carry on a regular business and/or reside in or are employed in Frederick County, and pursuant to Md. Code Ann., Election Law, §§ 6-209(a)(1)(ii) and (b), because this is the Circuit Court in the County in which the Referendum Petition was filed.

FACTUAL BACKGROUND

A. The Petitioners

8. NDR is the owner of two adjoining parcels of real property totaling 398.55 acres known as 4020 New Design Road and 4206 New Design Road (the "Property"). The Property

is located within the Critical Digital Infrastructure (“CDI”) Overlay Zone.

9. Petitioner Pleasants is a registered voter in Frederick County. Mr. Pleasants contends that the subject of the Referendum Petition is not authorized by law and that the Board of Elections’ decision concerning the validity of the Referendum Petition was wrong. Mr. Pleasants therefore brings this action to protect the integrity of the County’s zoning, referendum, and democratic processes.

B. Zoning Regulation in Frederick County

10. Before its Charter took effect in 2014, Frederick County operated as a commission county governed by a board of county commissioners. Commission counties are subject to two categories of laws enacted by the Maryland General Assembly: public local laws, which apply only to a specific county, and public general laws, which apply more broadly. Prior to the adoption of the Charter, the Board of County Commissioners had no authority to enact public local laws. Those laws were enacted exclusively by the Maryland General Assembly and collected in the Code of Public Local Laws of Frederick County (Part II of the Frederick County Code). That code was limited, reflecting only what the General Assembly chose to enact for the County.

11. The County Commissioners did, however, possess the authority to regulate land use under the Land Use Article (then Article 66B), a public general law that governs zoning statewide. Under that Article, the County Commissioners enacted ordinances establishing zone types, use tables, design standards, bulk regulations, and land use maps. They also conducted parcel-specific zoning reclassification pursuant to Md. Code Ann., Land Use, §§ 4-203 and 4-204. These actions by the Commissioners were accomplished by ordinance, not by law, and none were subject to referendum.

12. When Frederick County adopted its Charter in 2014, the authority to enact public local laws shifted to the County Council. Under Maryland Constitution Article XI-A § 3, the County Council acquired the power previously held by the General Assembly. Charter § 301 of the Frederick County Charter provides that “[t]he Council may enact public local laws for the peace, good government, health, safety or welfare of the County.” Pursuant to Article XI-A § 4 of the State Constitution, upon the adoption of the Charter, the General Assembly is prohibited from enacting public local laws for Frederick County on matters within Frederick County’s express powers.

13. The Charter imposed important procedural safeguards on this new lawmaking authority. Among other things, Charter § 305 specifies that “[t]he Council may enact no law except by written Bill.” Charter § 308 further subjects the Council’s laws, with limited exception, to referendum “upon the filing of a petition signed by seven percent of the registered voters of the County.”

14. Crucially, the Charter left the County’s longstanding zoning authority under the Land Use Article intact. Charter § 601, titled “Adoption of Land Use Article of the Annotated Code of Maryland,” makes clear in subsection (a) that “the provisions of the Land Use Article of the Annotated Code of Maryland that governed land use in the County prior to the Effective Date of this Charter shall continue to apply as if they have been codified in the Code of Public Local Laws of Frederick County.”

15. The Charter thus draws a deliberate and clear line between two distinct tracks. Public local laws, which are general rules of governance, must follow and be enacted by bill under a mandatory procedural track: introduction; publication; public hearing; enactment by vote; executive review; and a sixty-day effective date. Charter §§ 305-307. Those laws are subject to referendum. Charter § 308. The Land Use Article’s zoning regulations and maps, by contrast,

remained unchanged, and continue to follow a separate procedural track: Planning Commission recommendation; County Council hearings; and adoption by ordinance, with map amendment taking effect ten days after the final hearing. Md. Code Ann., Land Use, §§ 3-202, 3-203, 3-204, 4-202, 4-203, and 4-204. These implementing ordinances have never been treated as “laws” subject to referendum, neither before the Charter nor after it.

16. After the Charter’s adoption, therefore, the County Council enacts the zoning framework through laws passed by bill. Once those laws are passed, the County Council implements them through ordinances adopted under the Land Use Article. Bill 25-09 was the former. Ordinance 26-01-001 was the latter.

C. The Critical Digital Infrastructure Overlay Zone

17. The CDI Overlay Zone, which is the subject of Ordinance 26-01-001, emerged from the deliberate two-step process that employed both the Council’s lawmaking authority under Charter § 301, and its separate regulatory authority under the Land Use Article.

i. Frederick County Reaches A Compromise Over Data Center Development

18. The CDI Overlay Zone was the product of a protracted negotiation that resulted in a compromise on data center development in Frederick County: one that considered the interests of all stakeholders. Previously, such development was allowed on land zoned Light Industrial or General Industrial in the County. But in recent years, a public debate arose over the appropriate locations for such facilities.

19. In 2025, the County Council and County Executive reached a bipartisan solution. On May 6, 2025, County Executive Jessica Fitzwater and all members of the County Council “announced a compromise to limit where data centers can be built to the area around the old East Alcoa property north of Adamstown.” The announced “compromise” promised to “limit the

development to less than 1% of the County's total land mass, in an area with the infrastructure to support it, and ensure the County Council retains the tools to prevent future sprawl."

20. The announcement made clear that the CDI Overlay Zone would be created in two distinct phases. First, the Council would introduce a bill containing "a text amendment to the zoning code to create a tool called an overlay, which will be used to limit data center development." "All seven Council members will co-sponsor the measure," and the "Council will review and vote on the bill through its ordinary public legislative process." "After that," the announcement continued, "the Division of Planning and Permitting will develop a map through an open and transparent public process, which will be presented to the Planning Commission for review and the County Council for approval," consistent with Councilman McKay's desire that it would ultimately be "the Council [that] maintains a firm hand on where [the County] allows data centers."

21. These two phases correspond directly to the Council's lawmaking procedures under Article 3 of the Charter and its separate power to implement zoning regulations under the adopted provisions of the Land Use Article. First, the CDI Overlay Zone would be introduced by bill using the Council's lawmaking power under Charter § 305, presented to the County Executive, and then be potentially subject to referendum. Second, the Planning Commission and County Council would exercise their regulatory authority to implement the CDI Overlay Zone under Md. Code Ann, Land Use, §§ 3-202, 3-203, and 4-202 to 4-204, which would not be subject to referendum.

ii. Bill 25-09

22. On June 17, 2025, consistent with the County's announcement, the CDI Overlay Zone was introduced via Bill 25-09. The bill amended the Frederick County Code to create the CDI Overlay Zone.

23. From the beginning, it was clear where the County would likely place the CDI Overlay Zone, and which land would likely be affected. One month after Bill 25-09 was introduced, in July 2025, the Frederick County Division of Planning and Permitting published a draft Comprehensive Plan Amendment and proposed zoning map amendment, which is a detailed public document that identified the precise boundaries, acreage, and parcel-by-parcel composition of the proposed CDI Overlay Zone (2,566.4 acres, or just 0.60% of the County's total land mass) and included twelve maps depicting the exact geographic extent of the proposed overlay and associated changes.

24. All the issues the Referendum Committee later raised in its campaign were present in July 2025. The proposed map covered virtually all the same parcels and totaled almost the same acreage. Indeed, the map was virtually identical to the one later promulgated by Ordinance 26-01-001:



Proposed Map: CID-OZ (July 2025)



Ordinance 26-01-001: CDI-OZ Map (December 2025)

25. The public, including the Referendum Committee, thus had full notice as of July 2025 of the likely size, shape, and parcel composition of the overlay zone that would ultimately be implemented by Ordinance 26-01-001. This included signage posted on properties within the proposed CDI Overlay Zone.

26. Following its introduction, Bill 25-09 proceeded through the full public legislative process contemplated in the Charter. Introduced at the County Council's June 17, 2025 meeting, the bill remained an active agenda item across four subsequent sessions: July 15, 2025; August 19, 2025; August 26, 2025, which included a dedicated public hearing workshop; and September 2, 2025, the date on which the Council adopted Bill 25-09. Opposition figures, including Referendum Committee member Steve Black, appeared and spoke at the June 17, July 15, and August 26, 2025 meetings. The legislative process afforded more than two months of open debate and gave every interested party ample opportunity to advocate for changes to or restrictions on the bill's implementing authority.

27. After full and open presentation of the facts and issues related to the bill, and with significant community participation, including by members of the Referendum Committee, the County Council voted to enact Bill 25-09 on September 2, 2025. The County Council found the legislation "necessary and appropriate" to "establish a Critical Digital Infrastructure Overlay Zone for the purpose of directing Critical Digital Infrastructure Facilities and Critical Digital Infrastructure Electric Substations to industrial lands in proximity to data conveyance infrastructure and other industrial uses," while at the same time "minimizing impacts to non-compatible uses and allowing for development of industrial lands not included in the Critical Digital Infrastructure Overlay Zone for other industrial uses." Bill No. 25-09, Frederick County Council (enacted Sept. 2, 2025).

28. Bill 25-09 amended the Frederick County Code to provide that Critical Digital Infrastructure Facilities, *i.e.*, data centers, and related electric substations may be developed “only” on land “within the Critical Digital Infrastructure Overlay Zone.” *See* Bill No. 25-09 § 1-19-8.402(B)(1)(b); § 1-19-8.403(A)(1)(b).

29. As a direct result, new data centers could only be developed within the newly created CDI Overlay Zone, a zone that existed in the Code but had not yet been mapped to any specific parcels. *See id.* § 1-19-8.403(A)(1)(b).

30. Following the lawmaking procedures of Charter § 305, the County Council enacted Bill 25-09 on September 2, 2025. The County Executive received the bill on September 3, 2025, and approved it on September 12, 2025, pursuant to Charter § 306(b). The bill took effect November 1, 2025. *See* Bill No. 25-09.

31. The Referendum Committee did not seek to refer Bill 25-09 to referendum. As such, Bill 25-09 took effect, and the Council was given “a firm hand on where [the County would] allow data centers” through its regulatory power under the Land Use Article.

iii. Ordinance 26-01-001

32. After Bill 25-09 took effect on November 1, 2025, the only remaining step was to implement the CDI Overlay Zone following the routine procedures for zoning regulation in the Land Use Article.

33. Under the Land Use Article, the Planning Commission must prepare and approve a plan amendment and certify an attested copy to the County Council before it can act. Md. Code Ann, Land Use, §§ 3202(a) and 3-203(f). The Planning Commission must also hold at least one public hearing before recommending adoption of a plan amendment, with notice published in a newspaper of general circulation. *Id.* §§ 3-203(b)(1)-(2).

34. The Planning Commission followed these procedures in implementing the CDI Overlay Zone. It developed the CDI Overlay Zone Comprehensive Plan Amendment, held its required public hearing (two, for that matter), and certified the amendment to the County Council on November 4, 2025. *See* Resolution No. 26-01, Frederick County Council (Jan. 20, 2026). The Plan amendment incorporated the CDI Overlay Zone into the Livable Frederick Comprehensive Plan and made conforming land use designation changes throughout the Planning Area, including modifications to Rural Legacy Area and Priority Preservation Area boundaries.

35. After required public notice, the County Council held a two-day public hearing on both the Plan amendment and the proposed rezoning on December 16 and 17, 2025. *See* Ordinance No. 26-01-001 (Jan. 20, 2026).

36. On December 23, 2025, the Council approved the amendments to the Planning Commission's recommended Plan, including the CDI Overlay Zone boundary, and directed staff to prepare a rezoning ordinance to implement those changes.

37. On January 20, 2026, the Council acted on both instruments. It first enacted Resolution No. 26-01, formally adopting the Comprehensive Plan amendment. County Council Meeting Minutes at 4 (Jan. 20, 2026). It then enacted Ordinance No. 26-01-001, amending the zoning boundary map to designate specific parcels as within the CDI Overlay Zone, implementing the Plan. *Id.* Both instruments took effect that day. *See* Resolution No. 26-01 (“[T]his ... shall take effect January 20, 2026.”); Ordinance No. 26-01-001 (same).

38. In sum, the Ordinance is not a new law and is not subject to referendum. It is simply the administrative step that implements Bill 25-09. As a zoning map amendment, the Ordinance merely designated specific parcels, as previewed, on the County's boundary map as lying within the CDI Overlay Zone. It approves no development, grants no permit, and commits no

infrastructure. It makes no changes to any Rural Legacy Area boundary or Priority Preservation Area. Instead, it executes the map identified and previously approved in the Comprehensive Plan.

D. The Referendum Campaign

39. In light of this history, any assertion that the Referendum Committee was surprised by Ordinance 26-01-001 is not credible. Two months before Bill 25-09 was enacted, the July 2025 plan publicly proposed a CDI Overlay of 2,566.4 acres, with every parcel identified. Physical signs were also posted on all affected properties to notify the public. The Referendum Committee therefore knew the anticipated geographic scope of the overlay well before the bill passed. Minor map adjustments between legislation and implementing ordinance are routine but were nonetheless fully addressed through the standard public hearing and debate process (which occurred), leading to a reasoned final boundary. If the Referendum Committee believed the proposed map to be too expansive, the time to seek legal intervention would have been immediately after Bill 25-09 passed. Moreover, the Referendum Committee could have advocated for tighter geographic restrictions in the Bill itself (a hard cap at 0.3% of the County's land mass, for example) or, in the event the Council ignored those hypothetical efforts, could have submitted a petition for referendum. The Referendum Committee chose to do neither. Bill 25-09 had its own referendum period, and the Referendum Committee let it expire.

40. To be sure, the Planning Commission proposed a more limited overlay zone in November 2025. Through amendments adopted at its December 23, 2025 session, the County Council adjusted the CDI Overlay Zone to bring the final overlay into close alignment with the July 2025 proposal. That adjustment relative to the July proposal was modest, adding only a very small percentage of total acreage, across which Quantum Maryland had already installed substantial infrastructure, including fiber optics. These facts persuaded the Council that a slightly

larger boundary was appropriate, but the potential geographic scope of the overlay had been publicly known and open to debate since July 2025. Having declined to use the leverage it possessed at the lawmaking stage, the Referendum Committee cannot now credibly claim that the January 2026 map, which is substantially similar to the July 2025 proposed map, came as a surprise.

41. Moreover, the Referendum Committee was formed by members of the Sugarloaf Alliance and Envision Frederick County, organizations with extensive experience in the zoning process. Formed in 2014 “to coordinate citizen efforts” to defeat a local “gun range zoning application,” the Sugarloaf Alliance now focuses on efforts to “watch-dog powerline proposals and data center development in Frederick County.” It knew about, and even actively “watch-dog[ged],” the CDI Overlay Zone proposals from the very beginning (even presenting at the first open meeting of the Data Center Working Group in August 2023). Envision Frederick County likewise highlights its efforts in “[t]rack[ing] local legislation, proposed zoning changes, and county-wide plans” in Frederick County.

42. The Referendum Committee and its supporters also recognized that serious legal questions were raised by the Referendum Petition. Councilman McKay acknowledged that the CDI Overlay Zone was enacted through two instruments: a comprehensive plan amendment by resolution and a zoning map amendment by ordinance. He admitted he did not know whether the plan amendment was subject to referendum precisely because plan amendments are enacted by resolution. Nevertheless, he predicted that a successful referendum of the ordinance would effectively impose, in Councilman McKay’s words, “a moratorium on any new [critical digital infrastructure] in the county.”

43. In reality, the Referendum Committee's true objective was a moratorium. Despite participating in the legislative process with full awareness of the likely scope of the CDI Overlay Zone, the Referendum Committee deliberately waited to challenge the one implementing step that is clearly not subject to referendum. This tactic is inconsistent with how the referendum right is intended to operate under the Charter.

44. Nevertheless, even though its leadership had been directly involved in the process leading to the passage of Bill 25-09, the Sugarloaf Alliance's president, Steve Black, helped organize the Referendum Committee and seek a referendum on Ordinance 26-01-001. The Referendum Committee's decision to target the Ordinance, rather than Bill 25-09, was deliberate. The referendum window for Bill 25-09, the law that created the CDI Overlay Zone, established its permitted uses, and restricted data center development County-wide, opened and closed without any action by the Referendum Committee. Having chosen not to challenge the framework legislation, the Referendum Committee pivoted to the implementing ordinance, targeting the map-amendment step that applied the zone to specific parcels.

45. In or around January 20, 2026, the County Council's attorney, Bryon Black, in conjunction with Tim Maloney of Joseph, Greenwald & Laake, concluded that Ordinance 2601-001 is not a "law" subject to referendum under Charter § 308. Specifically, they concluded that the Charter's definition of "law" does not encompass a zoning map amendment not enacted as a Bill under Charter §§ 301-310.

46. The Referendum Committee nevertheless launched a signature gathering campaign across Frederick County, deploying circulators to dozens of locations (coffee shops, libraries, grocery stores, breweries, and houses of worship) over a period of several weeks.

47. Referendum Committee members communicated a clear but false narrative to prospective signers. Upon information and belief, circulators told prospective signatories that the referendum targeted only a 1,000-acre expansion and would leave ongoing construction at the Eastalco site undisturbed. That framing omits the critical legal reality: after Bill 25-09 amended the Frederick County Zoning Ordinance, CDI facilities may only be established within a designated CDI Overlay Zone. Suspending or voiding Ordinance 26-01-001 would leave Frederick County with no such zone on the map. Signatures procured based on that incomplete and misleading picture are not “genuine and bona fide” within the meaning of Charter § 308(b).

48. That was not the only misrepresentation made to potential signatories. Upon information and belief, the Referendum Committee repeatedly claimed that the Ordinance would cause permanent environmental damage and impose severe burdens on transmission lines, utilities, and water supplies. The Ordinance does none of those things. It is a zoning map amendment that changes the map and nothing more. It approves no development project, grants no permit, authorizes no destruction of any wetland or forest, triggers no transmission infrastructure project, and commits no electrical or water resources. Any future development must still navigate a full gauntlet of independent reviews, including Preliminary Plan review, APFO compliance, Maryland Department of the Environment wetlands and waterways permits, Army Corps Section 404 permits, Forest Conservation Act compliance, and utility capacity review, each governed by its own substantive standards. A zoning map amendment does not cause harm that those regulatory regimes exist to prevent.

49. Similarly, circulators told signers that the referendum would protect agricultural land designated as Priority Preservation Area or within the Rural Legacy Area. That claim is also false. The land use designation changes at issue were made by the Plan amendment enacted

through Resolution. Those changes reside in the Plan, *not in the Ordinance*. Voiding the Ordinance would not restore a single Rural Legacy Area boundary or Priority Preservation Area designation. Under the Land Use Article, all future zoning decisions for these parcels must be consistent with the Plan as amended. LUA § 4-202(a)(1). A referendum against the Ordinance therefore cannot restore the agricultural designations opponents claim to be defending. Those proposed changes were publicly disseminated well before Bill 25-09 was enacted and were incorporated into the amended Plan - yet the Referendum Committee chose not to challenge that either.

50. Many circulators were poorly informed about the very petition they were promoting. Upon information and belief, several had not read the ordinance and provided conflicting information about witness requirements and signature thresholds, bringing into question the validity of the signatures secured.

E. The Referendum Petition's Validity Is Challenged.

51. While the Referendum Committee gathered signatures, County Executive Jessica Fitzwater and County Council President Brad Young sent a letter to the Election Director. The letter from two of the County's highest elected officials recognized that there was a live and unresolved question whether the Referendum Petition was valid, but urged the Election Director to count and verify petition signatures before addressing the Referendum Petition's legal sufficiency.

52. On March 19, 2026, the Referendum Committee submitted the Referendum Petition to the Board of Elections for verification of approximately 24,000 signatures. Letter from Barbara Wagner, Election Dir., Frederick Cty. Bd. of Elections, to Frederick Cty. Data Ctr. Referendum Comm. (Apr. 3, 2026) ("BOE Letter"). On Sunday, March 22, 2026, the Board of Elections held an emergency open session to discuss specifically the Referendum Petition. At that

session, Dan Loftus, attorney for the Board of Elections, gave a presentation, explaining that he had spoken to counsel for the Referendum Committee as well as the County and that he was aware of diverging legal opinions regarding the validity of the Referendum Petition. Mr. Loftus then suggested, and the Board of Elections approved by vote, that the Board of Elections would first count and validate all signatures and then make a determination regarding Referendum Petition's legal sufficiency.

F. The Board's Decision

53. On April 3, 2026, the Election Director sent a letter to the Referendum Committee with her final decision. BOE Letter. In the letter, the Election Director determined that, after counting and validating all signatures, the Referendum Petition is sufficient under Maryland Elections Law Section 6-206. *Id.* Specifically, she wrote:

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 Frederick County Office of Law of the final disposition of the petition.

Id.

54. Based on this letter, it appears that the Election Director: (1) invoked a purported "presumption of sufficiency"; (2) concluded she was "unable" make a determination of whether the Referendum Petition was authorized by law, and (3) on that basis, declared the presumption controlling. The Director accordingly certified the Referendum Petition was sufficient without ever resolving whether it is authorized by law. *See id.*

55. The Election Director later confirmed with the Frederick News-Post that “[m]y office has said this is sufficient and can go on the ballot” and that any party has the ability to challenge the referendum’s legality in circuit court.

56. Following the Election Director’s letter, Councilman Steve McKay issued a public statement addressing the Board of Elections’ determination. McKay acknowledged that, as a result of the petition, “the zoning decisions, including the Overlay Zone and the upzonings from AG to LI/GI, are now on pause,” and that they “are no longer in effect.” Steve McKay, Facebook (Apr. 3, 2026, at 8:09 pm ET).

57. Councilman McKay issued further public comments at the County Council’s April 7, 2026 meeting. Councilman McKay described the Board’s decision, resting on “the principle of the assumed sufficiency,” as a “very momentous occasion.” Statement of Council Member Steve McKay, *Frederick County Council Meeting*, Frederick County Government, 46:33-48:23 (Apr. 7, 2026). Councilman McKay then called on Frederick County to issue a “public and affirmative statement” that it “will not accept new data center applications until it is voted upon, presumably in November.” *Id.* at 50:3251:02.

58. These statements not only contradict Councilman McKay’s earlier support for the Council’s proper role in implementation but also perpetuate a fundamental misunderstanding and misapplication of the law.

COUNT I **PETITION FOR JUDICIAL REVIEW**

59. Petitioners restate and incorporate by reference the allegations set forth in the preceding paragraphs as if set forth fully herein.

60. Petitioners, pursuant to Md. Code Ann., Election Law, § 6--209 and Maryland Rule 7-202, request judicial review of the Frederick County Board of Elections’ determination dated

April 3, 2026, that the Referendum Petition is “sufficient” under Md. Code Ann., Election Law, § 6-206(b)(1) and has satisfied all requirements of law under Md. Code Ann., Election Law, § 6-208(a)(2).

A. Standing.

61. Petitioners have standing to challenge the Board of Elections’ determination. Under Maryland law, a party has standing to seek judicial review if it is “aggrieved” by the agency’s decision. *See* Md. Code Ann., Election Law § 6-209(a)(1) & (3); *see also* Md. Code Ann., State Gov’t, § 10-222.

62. And “[i]n actions for judicial review of administrative land use decisions, ‘[a]n adjoining, confronting or nearby property owner is deemed, prima facie, . . . a person aggrieved.’ The person challenging the fact of aggrievement has the burden of denying such damage . . . and of coming forward with evidence to establish that the petitioner is not, in fact, aggrieved.” *Sugarloaf Citizens’ Ass’n v. Department of Env’t*, 344 Md. 271, 297 (1996), *partially abrogated by statute*, Md. Code (1982, 2013 Repl. Vol.), § 5-204(f) of the Environment Article, *as stated in Patuxent Riverkeeper v. Maryland Department of Env’t*, 422 Md. 294, 298 (2011); *see also Long Green Valley Ass’n v. Bellevale Farms, Inc.*, 205 Md. App. 636, 685 (2012) (same).

63. Petitioner NDR owns property affected by the Ordinance that the Board of Elections approved and that the Referendum Petition challenges. Therefore, NDR is an “aggrieved” party with standing to bring this Petition for Judicial Review. *Sugarloaf Citizens’ Ass’n*, 344 Md. at 297.

64. Petitioner Pleasants also qualifies as an “aggrieved” person because he is a registered Frederick County voter who disputes the validity of the Election Director’s decision to certify the referendum petition. *See Whitley v. Maryland State Bd. of Elections*, 2012 WL 9245964, at

*3 (Md. Cir. Ct. Aug. 10, 2012) (determining that registered voters who challenged a “decision to certify [a] referendum petition” were “aggrieved” and had “standing to pursue th[e] action under Section 6-209(a)”).

B. The Referendum Petition Is Not Authorized By Law.

65. This Court should reverse the Board of Elections’ determination. The Referendum Petition is “deficient” because the “use of [the Referendum Petition] for the subject matter of the petition is not authorized by law.” Md. Code Ann., Election Law, § 6–206(c)(5)(i).

66. Whether the “subject matter” of the Referendum Petition is “authorized by law” is governed by the text of the Frederick County Charter. Maryland’s Constitution authorizes the creation of charter counties, which Frederick County has been for several years, under Article XI–A. *See* Md. Const. art. XI-A, § 1.

67. Importantly, “Article XI–A of the Constitution does not contain an express referendum provision,” but “charter counties can include the right to referendum in their charter.” *Kent Island Defense League, LLC v. Queen Anne’s County Board of Elections*, 145 Md. App. 684, 692 n.2, 806 A.2d 341, 346 n.2 (2002). The Charter is therefore the exclusive source of referendum rights in Frederick County, and the scope of those rights is determined by its own text.

68. The scope of the referendum power in Frederick County is defined in Article 3 of the Charter:

308. Referendum

(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.

(b) A petition to refer a law, or portion of a law, to the voters of the County shall meet the requirements of State law and may consist of several papers, but each paper shall contain the full and accurate text of the law, or part of the law, that is subject to the petition. There shall be attached to each paper of signatures filed with a petition an affidavit of the person procuring those signatures. The affidavit shall state that the signatures were affixed in the person's presence and that, based upon the person's best knowledge and belief, every signature on the paper is genuine and bona fide and that the signers are registered voters of the County at the address set opposite or below their names.

i. **Ordinance 26-01-001 Is Not A "Law" Subject To Referendum**

69. The Frederick County Charter expressly treats "laws" and "ordinances" as distinct instruments. Section 104(c) defines a "Bill" as a proposed act "resulting in a law or ordinance," two separate outputs. Section 305 then states unequivocally that no law may be enacted "except by written Bill." Read together, these provisions are dispositive: while an ordinance may result from a bill, a law must result from a bill. Because Ordinance 26-01-001 did not begin as a bill, it cannot qualify as a "law" under the Charter's plain language and structure.

70. Conversely, Bill 25-09 was enacted by written bill and amended the Frederick County Zoning Code to create the CDI Overlay Zone. Resolution 26-01, adopted simultaneously with the Ordinance, amended the Frederick County Comprehensive Plan to incorporate the CDI Overlay Zone, as required by Md. Code Ann., Land Use, §§ 3-201 and 3-204 before any zoning map amendment could take effect. Ordinance 26-01-001 then implemented the plan, consistent with the Zoning Code, by applying the CDI Zone to specific parcels on the map.

71. In sum, the adoption of Ordinance 26-01-001 was not the making of a "law" authorized by §§ 301-310 of the County Charter. Instead, it was an administrative, quasi-legislative enactment governed by state law, which delegates zoning responsibility to the Planning Commission and the local legislative body. *See* Md. Code Ann., Land Use, § 4-201, *et seq.*

72. More than forty years of consistent County practice reinforces this point. When the Charter was adopted, Section 601 preserved the Land Use Article as the governing framework for

land use in Frederick County, continuing the County's longstanding treatment of zoning map amendments as ordinances, not laws subject to referendum. *See, e.g.*, Ordinance 22-07-007 (Sugarloaf Treasured Landscape). The referendum provision was therefore never intended, and does not, transform these routine zoning instruments into referable "laws."

73. The Ordinance's procedural markers also confirm it is not a law: it took effect immediately upon adoption, without the 60-day delay that attaches to laws. Because Charter § 308(a) subjects only laws, not ordinances, to referendum, the referendum power only reached Bill 25-09 (and that window closed long ago). It does not reach Ordinance 26-01-001. The Petition is accordingly "not authorized by law" and should not have been certified. Md. Code Ann., Election Law, § 6-206(c)(5)(i).

ii. Ordinance 26-01-001 Was Not Enacted "Pursuant To The Charter."

74. Charter § 308 subjects to referendum only "a law, or part of a law, enacted pursuant to this Charter." The Ordinance was not enacted "pursuant to" the Charter. It was enacted "pursuant to" the Land Use Article, a distinct source of authority whose provisions "continue to apply" in Frederick County. Charter § 601(a).

75. The record confirms this distinction. Resolution 26-01 recites Md. Code Ann., Land Use, §§ 3-201 and 3-204 as the authority for every step: Planning Commission certification; public hearing; and Council adoption. Ordinance 26-01-001 implements the plan amendment under Md. Code Ann., Land Use, §§ 4-203 and 4-204. Not one step invoked the Charter or its lawmaking procedures.

76. Bill 25-09 illustrates the contrast. The Council unanimously amended Chapter 119 of the Frederick County Code to create the CDI zone type, a governance-level enactment that followed the requirements of Charter § 305 and became effective sixty days after enactment under

Charter § 307. That was an act “pursuant to” the Charter, and the window to petition it to referendum has long closed. Ordinance 26-01-001 then applied that zone to specific parcels under the Land Use Article’s map-amendment procedures. “Pursuant to” is a phrase of attribution. See *Town of Bel Air v. Bodt*, 487 Md. 354, 370 (2024). The authority attributed to every step of the Ordinance’s enactment is the Land Use Article. Charter § 308’s referendum provision does not reach it.

C. The Board’s Refusal To Make A Determination Under § 6-206(c)(5)(i) Is Independently Defective.

77. Even setting aside the merits of the referability question, the Board of Elections’ determination cannot stand. The Board of Elections did not find that the Referendum Petition is authorized by law, only that it could not determine whether the Referendum Petition was unauthorized. That is not an option permitted by the Maryland Election Law.

78. The Election Director interpreted Md. Code Ann., Election Law, § 6-206(b) as a freestanding presumption of sufficiency that applies whenever the chief election official cannot find a deficiency. The text forecloses that reading. Md. Code Ann., Election Law, § 6-206(b) is conditional: unless a determination of deficiency is made under subsection (c), the chief election official shall make a determination of sufficiency. The word “unless” makes subsection (b) entirely dependent on completing subsection (c). There is no freestanding presumption, only a mandatory sufficiency determination that follows after the subsection (c) analysis is complete.

79. The Board of Elections’ reading also renders Md. Code Ann., Election Law, § 6-206(b)(2) superfluous. That provision allows the chief election official to defer a sufficiency determination pending further review. Under the Board’s logic, deferral would never be necessary: the moment she could not find a deficiency, sufficiency would follow automatically. Courts do not read statutes to render provisions meaningless. See *Chesapeake & Potomac Tel. Co. v. Dir. of*

Fin., 343 Md. 567, 579 (1996) (“Moreover, whenever possible, a statute should be read so that no word, clause, sentence or phrase is rendered superfluous or nugatory.”) (citing *Montgomery County v. Buckman*, 333 Md. 516, 523, (1994)).

80. The option to defer only makes sense if an inability to determine sufficiency obligates the Election Director to continue reviewing until a determination can be made, which is the opposite of what the Election Director concluded.

81. Whatever merit this interpretation of Md. Code Ann., Election Law, § 6-206 may have, it does not survive Section 6-208’s requirements for certification. Md. Code Ann., Election Law, §6-208(a)(2) provides: “[a]t the conclusion of the verification and counting processes,” the Election Director “if [she] has not done so previously, [shall] determine whether the petition has satisfied all other requirements established by law for that petition.” Thus, if the chief election official defers a determination under Md. Code Ann., Election Law, § 6-206(b)(2), the determination must follow before certification. That obligation is mandatory and leaves no room for an unresolved legal question carried forward from the Section 6-206 stage.

82. Md. Code Ann., Election Law, § 6-208(c) confirms as much: certification is conditioned on an *affirmative* determination that “a petition has satisfied all requirements established by law relating to that petition,” including whether the subject matter is authorized by law. The Election Director made no such determination. The Election Director rather certified a petition whose authorization she never resolved. Md. Code Ann., Election Law, § 6-208(c) does not permit that. The consequence of the Board of Elections’ approach is that Section 6-206, the provision the General Assembly enacted to screen out unauthorized petitions, is nullified whenever Board Counsel is uncertain about any of the requirements. That reading frustrates the statute’s evident purpose and should be rejected. This Court should reverse the Board of Elections’

determination and declare the Referendum Petition deficient under Md. Code Ann., Election Law, § 6-206(c)(5)(i).

D. Additional Deficiencies In The Administrative Record

83. The Referendum Petition is defective for additional reasons. Charter § 308(b) requires that each petition paper “contain the full and accurate text of the law.” That is a substantive requirement: signatories must be able to read precisely what they are signing. The petition fails this requirement. While gathering signatures, the organizers reproduced the text of Ordinance 26-01-001 at such a reduced scale that it is effectively illegible. An unreadable photographic reproduction does not satisfy the Charter’s requirement and is equivalent to omitting the text of Ordinance 26-01-001 altogether. Every signature page bearing illegible text is therefore facially defective, and all signatures on those pages should be invalidated.

84. These defects were compounded by flyers distributed alongside the petition, which contained false and unsupported assertions of permanent environmental damage and severe impacts on transmission lines, utilities, and water supplies, none of which are supported by the Ordinance. Because the full text of the Ordinance is illegible on the petition pages, these misleading campaign materials effectively substituted for the “full and accurate text” requirement under Charter § 308(b), rendering the petition entirely improper.

85. In addition, the administrative record, including the signature count, may reveal additional grounds to invalidate the Board of Elections’ decision.

86. This Court should accordingly reverse the Board of Elections’ decision.

COUNT II
DECLARATORY JUDGMENT

87. Petitioners restate and incorporate by reference the allegations set forth in the preceding paragraphs as if set forth fully herein.

88. Md. Code Ann., Election Law, § 6-209(b) provides that, “[p]ursuant to the Maryland Uniform Declaratory Judgments Act and upon the complaint of any registered voter, the circuit court of the county in which a petition has been or will be filed may grant declaratory relief as to any petition with respect to the provisions of this title or other provisions of law.”

89. Petitioner Pleasants is a “registered voter” within Frederick County who seeks a declaration from this Court pursuant to the Maryland Uniform Declaratory Judgment Act that the Board of Elections and the Election Director erroneously approved an invalid petition for referendum. Md. Code Ann., Cts. & Jud. Proc., §§ 3-401 to 3-415.

90. There exists a judicable controversy between Petitioner Pleasants on the one hand, and the Board of Elections, the Election Director, and the Referendum Committee on the other. The controversy is ripe for adjudication, and Petitioner Pleasants has standing to assert his claim. *See Whitley v. Maryland State Bd. of Elections*, 429 Md. 132, 146 (2012) (“conclud[ing] that there [wa]s a justiciable controversy” when a registered voter “contend[ed] that the State Board . . . certifi[ed] a petition for referendum that d[id] not, in fact, merit certification,” and that the registered voter “ha[d] standing properly under § 6–209(b)” in light of “the broad grant of authority afforded to registered voters under § 6–209(b) of the Election Law Article”).

91. The Board of Elections and the Election Directors’ decision was erroneous for all the reasons stated in the Petitioners’ petition for judicial review.

92. In addition, the Referendum Petition is deficient for reasons that extend beyond the administrative record. Petition circulators were instructed to, and in fact did, make material misrepresentations to prospective signatories about the Ordinance’s scope and effect.

93. The circulator materials falsely claimed the referendum would affect only the additional 1,000 acres (omitting that Ordinance 26-01-001 implements the CDI Overlay Zone as to

the entire 2,600-acre site) and that it would apply solely to future projects, not existing ones. These misrepresentations concealed the fact that the referendum risks disrupting a long-standing project that employs dozens of companies and hundreds of individuals in Frederick County.

94. Charter § 308(b) requires that every signature on a referendum petition be “genuine and bona fide.” This requirement is substantive and requires more than authenticity, which is already addressed by the affidavits required under the same section. Charter § 308(b) separately requires each circulator to attest that signatures were “affixed in the person’s presence.” The presence requirement confirms that the signature is authentic, meaning that a real person actually signed. If “genuine and bona fide” meant nothing more than authentic, it would be duplicative of the presence attestation, and the Charter would have no need for both. Courts do not read instruments to render words superfluous. *See Chesapeake & Potomac Tel. Co.*, 343 Md. at 578.

95. “Genuine and bona fide” must therefore mean more than a real signature witnessed by the circulator. It requires a signature given knowingly and voluntarily by a signer who understood what he or she was signing. A signature procured through material misrepresentation (here, false statements about the Ordinance’s acreage, scope, and effect) is not a genuine and bona fide expression of the signer’s assent. It is a signature obtained under false pretenses. The circulator’s attestation of presence cannot transform a deceived signature into a knowing one. COMAR 33.06.03.08(B)(4)(a) reflects this principle, requiring that a petition circulator’s affidavit accurately represents the circumstances of signature collection. Where the representations that induced the signature were false, the affidavit is itself compromised.

96. The Maryland courts have recognized that referendum petitions must be the product of an informed electorate. Misrepresentations that corrupt the signature-gathering process

go to the integrity of the petition itself, not merely to the validity of individual signatures, and render the petition deficient as a whole. *See Gray v. Howard Cnty. Bd. of Elections*, 218 Md. App. 654, 665 (2014) (referendum “language must ‘be free from misleading tendency, amplification, or omission’ to permit voters to exercise ‘intelligent and enlightened judgment’ as to whether to sign the referendum petition”). The Referendum Petition here was built on material falsehoods about Ordinance 26-01-001. Signatures obtained through those misrepresentations are also not “genuine and bona fide” within the meaning of Charter § 308(b). The Referendum Petition should therefore be declared deficient on this independent ground.

97. Signatures obtained through material misrepresentation are also voidable under a theory of fraudulent inducement. A signature on a legal instrument may be voided when it was procured by a false representation of a material fact, made with knowledge of its falsity or reckless disregard for the truth, on which the signer justifiably relied, and which caused the signer’s assent. *See, e.g., Sass v. Andrew*, 152 Md. App. 406, 429 (2003). Each element is satisfied here. Upon information and belief, the Referendum Committee provided circulators with scripts regarding the Ordinance’s acreage and effect. These scripts included representations that were objectively false and go to the core subject matter of the Referendum Petition. Signers who relied on those representations in affixing their signatures did not meaningfully consent to the Petition’s actual subject matter. Their signatures are therefore voidable, and the Board of Elections should have treated them as invalid rather than counting them toward the signature threshold.

98. Accordingly, Petitioners seek a declaration from this Honorable Court that the Referendum Petition is deficient and invalid.

COUNT III
PETITION FOR WRIT OF MANDAMUS

99. Petitioners restate and incorporate by reference the allegations set forth in the preceding paragraphs as if set forth fully herein.

100. In the alternative to Count I, the Election Director failed to make a proper determination on the Referendum Petition's deficiency under Md. Code Ann., Election Law, § 6-206(c). This Court should therefore issue a writ of mandamus, ordering the Election Director to declare that the Referendum Petition is "deficient" under Md. Code Ann., Election Law, § 6-206(c)(5)(i).

101. A writ of mandamus is "appropriate where the relief sought involves the traditional enforcement of a ministerial act (a legal duty) by recalcitrant public officials." *Baltimore Cty. v. Baltimore Cty. Fraternal Order of Police Lodge No. 4*, 439 Md. 547, 570 (2014) (internal quotation omitted).

102. A writ of mandamus is therefore available when "(1) the action sought to be compelled is a ministerial, non-discretionary duty of the defendant and (2) the plaintiff has a clear legal right to that action." *Motor Vehicle Admin. v. Geppert*, 470 Md. 28, 52 (2020).

103. The Election Director has a ministerial, non-discretionary duty to determine whether the Referendum Petition is deficient. Md. Code Ann., Election Law, § 6-206 provides that the Election Director, as the "chief election official" of Frederick County, "*shall* declare that the petition is deficient if the chief election official determines" that any one of six enumerated deficiencies are present. Md. Code Ann., Election Law, § 6-206(c) (emphasis added). That includes the determination that "based on the advice of the legal authority," the "use of a petition for the subject matter of the petition is not authorized by law." Md. Code Ann., Election Law, § 6-206(c)(5)(i).

104. Md. Code Ann., Election Law, § 6-208(a)(2) confirms that “[a]t the conclusion of the verification and counting processes,” the Election Director “if [she] has not done so previously, [shall] determine whether the petition has satisfied all other requirements established by law for that petition.” And Md. Code Ann., Election Law, § 6-208(c) conditions certification itself on an affirmative determination that “a petition has satisfied all requirements established by law relating to that petition.” Taken together, Md. Code Ann., Election Law, §§ 6-206, 6-208(a)(2), and 6-208(c) impose a mandatory obligation: the Election Director must resolve whether the petition’s subject matter is authorized by law before certification issues.

105. The Election Director failed to discharge her non-discretionary duty under Md. Code Ann., Election Law, §§ 6-206(c) and 6-208. While her letter states affirmatively that “*there is no deficiency* under 1, 2, 3, 4 and 6” of § 6-206(c),” it conversely notes she was “*unable to make a determination* that the petition is not authorized by law” under subsection 5. Letter at 1; *see also id.* (“I am unable to make a determination of a deficiency”). By failing to make any affirmative finding, one way or another, under Md. Code Ann., Election Law, § 6-206(c)(5)(i), the Election Director failed to discharge her mandatory duty. That failure is made unambiguous by Section 6-208’s requirement that the Election Director determine, before certification, whether the petition satisfied all requirements established by law. The Election Director certified a petition whose legal authorization she expressly left unresolved. Maryland Election Law does not permit that.

106. This failure is not excused by the letter’s purported “presumption that a petition is sufficient unless there is a finding or determination of a deficiency.” That presumption finds no basis in Maryland law. The word “presumption” appears nowhere in the statutory text. No court in any jurisdiction in Maryland has ever articulated or applied such a presumption. And even if there were a presumption, that would not excuse the Election Director from discharging her non-

discretionary duties to find whether the Referendum Petition is deficient under Md. Code Ann., Election Law, § 6-206(c)(5)(i), which is, at minimum, mandated by Section 6-208.

107. Not only is the action sought to be compelled a ministerial, non-discretionary duty, but Petitioners have “a clear legal right” to a determination that the Referendum Petition is deficient for all the reasons previously stated. *See Geppert*, 470 Md. at 52.

108. Petitioners have no other adequate remedy to ensure that the Election Director discharges her duty to issue a final determination that the Referendum Petition is deficient.

109. Because the Election Director has failed to perform a non-discretionary ministerial duty to which Petitioners are entitled, this Court should issue a writ of mandamus, ordering the Election Director to promptly issue a final determination that the Referendum Petition is deficient.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

- A. Reverse the determination of the Election Director and the Board of Elections that the Referendum Petition is sufficient under the law;
- B. Declare that the Referendum Petition is deficient and legally invalid;
- C. In the alternative, issue a writ of mandamus that orders the Election Director to make a determination that the Referendum Petition is deficient and legally invalid;
- D. Award Petitioners’ costs of litigation, including any reasonable attorneys’ fee authorized by applicable law; and
- E. Grant Petitioners such other relief as the Court may deem just and proper.

Date: April 13, 2026

Respectfully submitted,

/s/ Paul D. Rose, Jr.

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