

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: [X] PLAINTIFF [ ] DEFENDANT CASE NUMBER C-10-CV-26-000327

CASE NAME: Frederick Data Owner, LLC, et al vs. Frederick County Board of Elections, et al. (Clerk to insert)

PARTY'S NAME: Frederick Data Center, LLC PHONE: Defendant

PARTY'S ADDRESS: c/o Seizer Gurvitch 4416 East West Highway, Suite 400, Bethesda, MD 20814

PARTY'S E-MAIL:

If represented by an attorney:

PARTY'S ATTORNEY'S NAME: Jesse D. Stein PHONE: 301-986-9600

PARTY'S ATTORNEY'S ADDRESS: 4416 East West Highway, Suite 400. Bethesda, MD 20814

PARTY'S ATTORNEY'S E-MAIL: jstein@sgrwlaw.com

JURY DEMAND? [ ] Yes [X] No

RELATED CASE PENDING? [X] Yes [X] No If yes, Case #(s), if known:

ANTICIPATED LENGTH OF TRIAL?: hours days

PLEADING TYPE

New Case: [X] 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/Munici Code/Ord
[X] 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 Issuc/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)**

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

**CIRCUIT COURT FOR BALTIMORE COUNTY**

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

April 13, 2026 \_\_\_\_\_  
Date

  
Signature of Attorney/Party

0306180246  
Attorney Number

4416 East West Highway, Suite 400 \_\_\_\_\_  
Street Address

Jesse D. Stein  
Printed Name

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
E-mail



IN THE CIRCUIT COURT FOR FREDERICK COUNTY, MARYLAND

IN RE: )

PETITION FOR JUDICIAL REVIEW OF )  
THE FREDERICK COUNTY BOARD OF )  
ELECTIONS' DETERMINATION OF LEGAL )  
AUTHORITY OF A PETITION BY THE )  
DATA CENTER REFERENDUM COMMITTEE )  
FOR REFERENDUM OF FREDERICK COUNTY )  
COUNCIL ORDINANCE 26-01-001 )

FREDERICK DATA OWNER, LLC, )

Address: c/o Selzer Gurvitch Rabin )  
Wertheimer & Polott, PC )  
4416 East West Highway )  
Suite 400 )  
Bethesda, MD 20814 )

And )

JUSTIN CASSITY, )

Address: 4001 Wyndham Way )  
Frederick, MD 21704 )

Petitioners, )

v. )

FREDERICK COUNTY BOARD OF )  
ELECTIONS, )

Address: 8490 Progress Dr, Stc. 300 )  
Frederick, MD 21701 )

And )

BARBARA WAGNER, in her capacity as )  
Election Director of the Board of Elections, )

Address: 8490 Progress Dr., Stc. 300 )  
Frederick, MD 21701 )

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

Respondents.	)
	)
<hr/>	)
FREDERICK DATA OWNER, LLC,	)
	)
Address: c/o Selzer Gurvitch Rabin	)
Wertheimer & Polott, PC	)
4416 East West Highway	)
Suite 400	)
Bethesda, MD 20814	)
	)
And	)
	)
JUSTIN CASSITY,	)
	)
Address: 4001 Wyndham Way	)
Frederick, MD 21704	)
	)
Plaintiffs,	P
	)
v.	)
	)
FREDERICK COUNTY BOARD OF	)
ELECTIONS,	)
	)
Address: 8490 Progress Dr, Ste. 300	)
Frederick, MD 21701	)
	)
And	)
	)
BARBARA WAGNER, in her capacity as	)
Election Director of the Board of Elections.	)
	)
Address: 8490 Progress Dr., Ste. 300	)
Frederick, MD 21701	)
	)
Defendants.	)
<hr/>	)

**PETITION FOR JUDICIAL REVIEW/COMPLAINT FOR WRIT OF MANDAMUS**

Petitioners/Plaintiffs, Frederick Data Owner, LLC (“FDO”) and Justin Cassity (“Cassity” and with FDO “Plaintiffs”), by and through undersigned counsel, and pursuant to MD Code, Elections Law,

§6-209 and MD Rule 15-701, hereby submits this Petition for Judicial Review/Complaint for Declaratory Judgment and for Writ of Mandamus: (1) for judicial review of the determination by Frederick County Board of Elections (“**Board**”) and Barbara Wagner (“**Wagner**”), Director of the Board, April 3, 2026 of underlying legal authority relating to the subject matter of the petition by the Frederick County Data Center Referendum Committee (“**FCDRC**”) for Referendum of Frederick County Council Ordinance 26-01-001 (“**Petition**”) submitted to the Board on March 20, 2026, and (2) declare that the decision of the Board/Wagner to allow the Petition on the Ordinance to proceed to referendum is void; (3) enjoin the Board from placing the referendum at issue on the ballot in the upcoming November 2026 general election due to absence of legal authority to advance the subject matter of the Petition to Referendum; and/or in the alternative (4) to compel, via writ of mandamus, the Board through Wagner, to, consistent with all legal authority, declare the Petition at issue void and “deficient” under Maryland law, and in support thereof states:

**I. Introduction**

1. Central to this dispute are three legislative actions of the Frederick County Council (“**Council**”), one of which (Bill 25-09) is “law” and the other two of which are legislative but not “laws”, as discussed throughout this submission. All three legislative acts concern the development of data centers in Frederick County: Bill 25-09 (“**Bill 25-09**”), enacted by the Council on September 2, 2025 and effective November 1, 2025; Resolution 26-01 (“**Resolution 26-01**”), approved and adopted by the Council on January 20, 2026, and effective immediately, and Frederick County Council Ordinance No.26-01-001 (“**Ordinance 26-01-001**”),<sup>1</sup> enacted and ordained by the Council on January 20, 2026 and effective immediately.

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<sup>1</sup> For efficiency and expediency of judicial review, take particular note of the effective dates of Bill 25-09 (60 days), Resolution 26-01 (immediate), and Ordinance 26-01-001 (immediate),

2. Bill 25-09 created a new “overlay”<sup>2</sup> zoning designation for eligible use of properties in the County for data centers (see §1-19-10.1100 of the Frederick County Maryland Zone Code of Ordinances) known as the “Critical Digital Infrastructure Overlay Zone” (the “**Overlay Zone**”), which was the result of a lengthy, deliberate, and debated process that included public input and that was ultimately enacted as a “law” by the Council. See <https://frederickcountymd.gov/9122/Data-Centers>. As a result of that process, the Council created the Overlay Zone which was intended to be allowed (mapped<sup>3</sup>) only on property within the County that met the specific requirements of the Overlay Zone, as further defined by a necessary and subsequent amendment to the Frederick County Comprehensive Plan (Resolution 26-01). Because Bill 25-09 is a “law”, opponents had sixty (60) days from adoption to submit a petition to subject the new law established through Bill 25-09 to referendum. Bill 25-09 became law on the 61<sup>st</sup> day after adoption, not having been subjected to a veto of the County Executive or a referendum petition.

3. The Council adopted Resolution 26-01 following extensive due process vetting, including public input and the recommendations of the Frederick County Planning Commission (as certified by the Planning Commission). Th Resolution is an amendment to the County’s Comprehensive Plan for development in the County that identifies properties that might be eligible for the Overlay

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which are critically important to the underlying determination as to whether the subject matter of the Petition is a “law” and/or a subject matter that can lawfully be petitioned to Referendum pursuant to the County Charter.

<sup>2</sup> Overlaying the underlying base zoning of properties with the Overlay Zone.

<sup>3</sup> [M]apping of the Overlay Zone that was established by a law – Bill 25-09 by the Council was done through comprehensive planning and zoning as discussed more fully, supra.

Zone, and thus the use of data centers – the “Critical Digital Infrastructure Comprehensive Plan Amendment”, or the “Comprehensive Plan Amendment”).

4. Through Ordinance 26-01-001, processed and approved pursuant to the Maryland Code, Land Use Article and County law, the Council enacted and ordained the implementation of the Comprehensive Plan Amendment by applying (mapping) the Overlay Zone to specific properties consistent with the Comprehensive Plan Amendment.

5. As a result of Bill 25-09, Resolution 26-01 and Ordinance 26-01-001, the County comprehensively legislated the appropriate location of data centers within the County based upon available public infrastructure and other expressed public concerns (gathered through extensive due process opportunities) in a responsible, orderly, and systematic manner.

6. While all three acts of the Council were legislatively approved, **only Bill 25-09 is a “law”** that may have been (but this answer is not necessary for this matter) subject to a petition of referendum if determined to have been enacted pursuant to the Frederick Charter as set forth in Section 308 of the Charter, as discussed below. The net effect of the three Council actions was that Frederick County confined the development of data centers in Frederick County to a small portion of Frederick County – 2,500 acres total, less than 1% of Frederick County’s total land mass.

7. On January 20, 2026, the Frederick County Attorney, in anticipation of and in reaction to public threats (through the extensive due process afforded the public by the County) of a challenge to proposed Ordinance 26-01-001, which again was the implementation tool for mapping the Overlay Zone consistent with the previously adopted Comprehensive Plan Amendment, opined to the Council and the Frederick County Executive that “[s]hould citizens attempt to file a referendum petition for either action [Ordinance 26-01-001 and Resolution 26-01], the County would likely

reject the petition as inapplicable[.]” Ex. 1 (January 20, 2026 Memorandum from Black to County Council, et al.) The County Attorney noted that neither was a “law” subject to referendum as provided for in Section 308 of the Frederick County Maryland Charter (the “**Charter**”), initially adopted on September 12, 2012, and since amended by County voters in 2024 and 2025. Id.

8. FCDRC, upon information and belief, is a non-for-profit organization that opposes data centers. On March 20, 2026, FCDRC submitted the Petition to the Board in hopes of having a referendum in the specially set election or the upcoming November 2026 general election (as determined by the County Council) to reject and reverse Ordinance 26-01-001.

9. On April 3, 2026, the Board, through Wagner, purportedly pursuant to MD Code, Election Law, §§6-201 *et seq.* and contrary to the Frederick County Attorney’s legal opinion that the Ordinance was not lawfully subject to a Referendum under the Charter, determined that the Petition was not unauthorized. As a result, unless the referendum is kept off the upcoming election ballot through this judicial review, the Petition will unlawfully be on the ballot and subjected to a vote of registered voters in Frederick County.

10. In addition to the clear distinction between a “law” that may be subject to referendum per the Charter (i.e., per Section 308 of the Charter a law enacted pursuant to the Charter) and other legislative acts that merely implement existing law that may not be subject to referendum – here the distinction between Bill 25-09 on one hand and Resolution 26-01 and the Ordinance on the other – the referendum at issue could produce legally impermissible results. If approved by a majority vote, the referendum would undo the County’s comprehensive planning and zoning process by vacating the mapping of the Overlay Zone that the County adopted in accordance with the recommendations of the Comprehensive Plan Amendment. Such a result would violate long-established Maryland law governing comprehensive zoning, run afoul of the process for adopting

zoning changes as prescribed by the Land Use Article of the Maryland Code, and would contravene state and federal guarantees of substantive and procedural due process.

11. Plaintiffs, per MD Code Election Law, §6-209, hereby challenge the Board's (including Wagner's) April 3, 2026, decision that the Petition is a legally valid question for a referendum vote, for four (4) reasons:

- a. Ordinance 26-01-001 is not legally and properly subject to a referendum vote under the Frederick County Charter as it is not a "law" enacted pursuant to the Charter;
- b. The potential result of the referendum, i.e., cancelling, by majority vote of voters, the mapping by the County Council of specific properties with the Overlay Zone consistent with the Comprehensive Plan Amendment, would obliterate the comprehensive planning and zoning processes that have long been the law in Maryland (resulting in underlying zoning that is inconsistent with the Comprehensive Plan Amendment);
- c. The Board/Wagner did not review the Petition properly in accordance with Maryland election Law; and
- d. The Petition for referendum is legally and facially deficient. Signatories were materially misled to believe that only part of Ordinance 26-01-001 was being referred – the zoning of approximately 1,000 acres lying outside of the original East Alcoa campus to CDI – when the entire Ordinance was being referred.

12. Plaintiffs respectfully request that this Court expeditiously:

- a. Review the Board's April 3, 2026, determination that the Referendum Petition was legally sufficient under all applicable provisions of Maryland and Frederick County law relating to referendum, elections, land use planning and zoning, and rule that that the April 3, 2026 determination as to the Petition is, in fact, legally deficient for the reasons stated herein;
- b. Declare, per MD Code, Election Law, §6-209(b) and the Maryland Uniform Declaratory Judgment Act (MD Code, C&J §§ 3-401, *et seq.*) that the Board's determination as to the Petition was void ab initio, ultra vires, and of no effect, that the Petition was not sufficient and that the Petition will not lead to the placement of a referendum on the Ordinance in either a special election called by the Board or the general election in November 2026; and
- c. Issue a writ of mandamus compelling the Defendants Board and Wagner to make a proper determination as to the legal **insufficiency** of the Referendum Petition

consistent with the relief sought herein and to otherwise enjoin the Board from placing the referendum question at hand on the ballot for a specially set election or the upcoming November 2026 General Election (as determined by the Council).

## II. Parties

13. FDC is a Delaware Limited Liability Company authorized to transact business in the State of Maryland as a Foreign Limited Liability Company. Its status is in good standing. Its principal place of business is as set forth above. As described herein in greater detail, FDC owns 64.38 acres of land (“FDC’s Property”) situated in Frederick County along Cap Stine Road, which is a property that was zoned for data center develop prior to the adoption of Bill 25-09, and was mapped with the Overlay Zone approved by the Council with Ordinance 26-01-001, which zoning is suspended pending the outcome of this Referendum question per Section 308 of the Charter, and thus its interest is directly and materially impacted by the Referendum at issue in this dispute.

14. Cassity is a resident of and registered voter in Frederick County Maryland. Cassity disagrees with the Board’s/Wagner’s decision vis a vis the Petition and believes that the decision to approve of the Petition and place a referendum on the ballot concerning the Ordinance was in error.

15. The Board is an administrative agency of Frederick County Maryland, tasked with, *inter alia*, verifying and counting signatures submitted with any petition for referendum in Frederick County, as well as determining the legal sufficiency and compliance of any petition for referendum.

16. Wagner is the Election Director of the Board of Elections. As Election Director, she has been designated by the Board of Elections as the chief election official for the County under MD Code, Elections Law, §§ 6-206 and 6-208, and tasked with making a final determination as to whether a petition for referendum complies with all applicable laws.

17. On information and belief, FCDRC is a non-profit organization headquartered in Adamstown, Maryland that was organized to gather signatures for and submit the Referendum Petition at issue in this case. <https://fcdcreferendum.org/info/> FCDRC is identified but presently not a party to this Petition for Judicial Review or Complaint for Writ of Mandamus.

### **III. Jurisdiction and Venue**

18. Jurisdiction is proper pursuant to MD Code, C&J §§ 1-501 and 3-403, as well as MD Code, Election Law, §6-209(a)(1)(ii) and (b).

19. Venue is proper in the Circuit Court for Frederick County pursuant to MD Code, C&J, §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, C&J §§ 6-209(a)(1)(ii) and (b), because this is the Circuit Court in the County in which the Referendum Petition was filed.

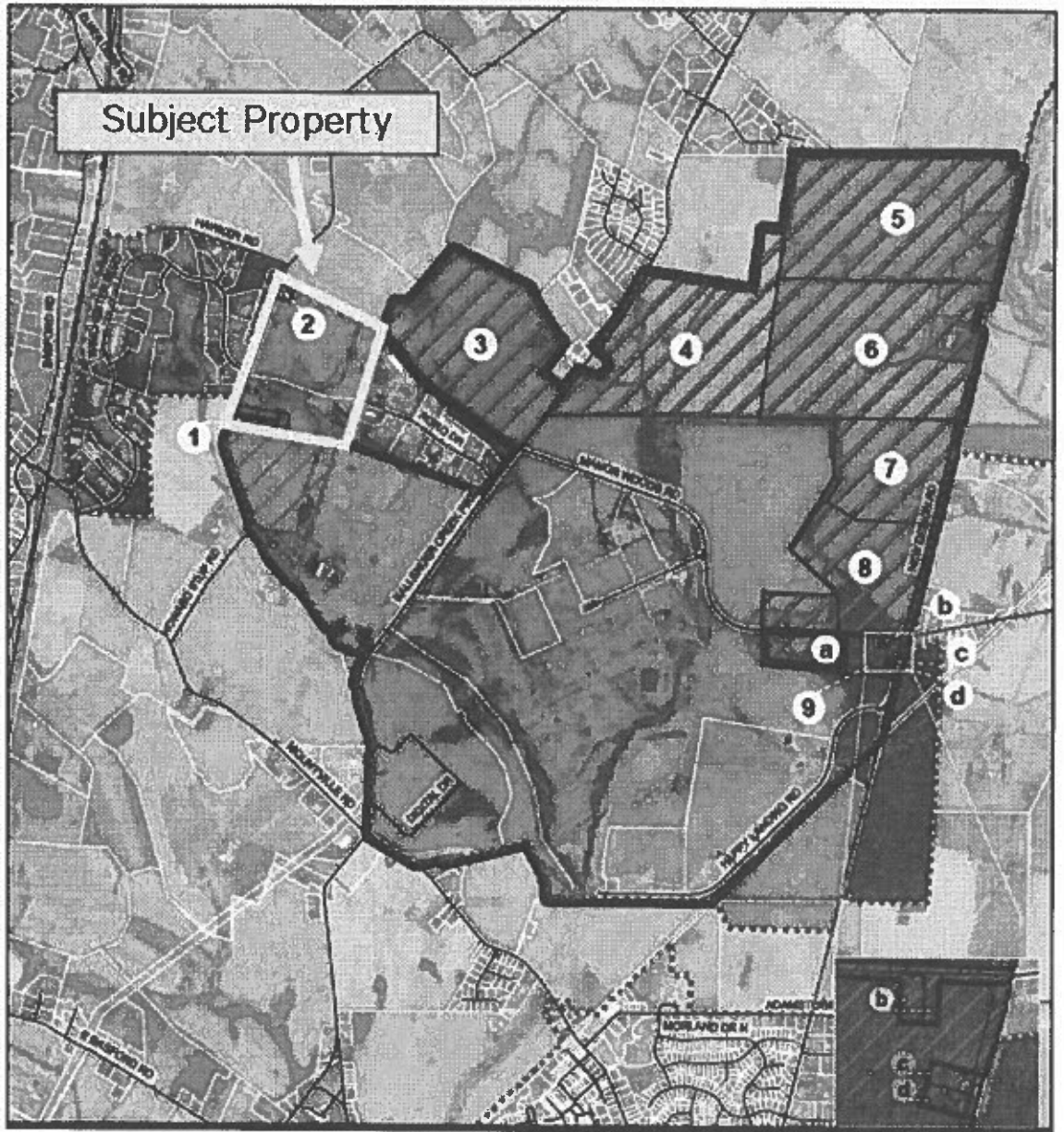
### **IV. Facts Common to All Counts**

20. Plaintiffs incorporate by reference herein the facts set forth in the foregoing paragraphs as if fully set forth.


#### **A. The Plaintiffs.**

21. FDC owns 64.38 acres of land situated in Frederick County along Cap Stine Road. Like other owners of property specifically recommended for the Overlay Zone by the Comprehensive Plan Amendment and that were intended to be mapped with the CDI Overlay Zone approved with Ordinance 26-01-001 that were all intended to be designated with the CDI Overlay Zone by Ordinance 26-01-001, FDC is developing a data center, and it secured title to the FDC's Property at a time when the issues raised herein were believed to be resolved – that is, after the time for challenging Bill 25-09 lapsed, but before FCDRC's improper effort to overturn the Ordinance


through the referendum process. FDC's property is the 64.38 acre northern portion of the land (above Agro Drive) detailed in this below map identified as "Subject Property":



Map 2 - Proposed CDI Overlay Zone, Properties

 Priority Preservation Areas in Proposed CGA (eligible, not preserved)

 Proposed CDI Overlay Zone

 Rural Legacy Areas in Proposed CGA (eligible, not preserved)

CDI Acres	% of County
2,566.4	0.60

PPA Acres	RLA Acres
933.6	1,012.1

0 0.2 0.4 0.8 Miles

 PROPOSED MAP USES STATE PLANNED PPA AND RLA DESIGNATIONS AS A GUIDE ONLY. THE STATE OF MICHIGAN HAS BEEN GRANTED THE SOLE RIGHT TO DEVELOP AND MAINTAIN THE PPA AND RLA DESIGNATIONS. THE STATE OF MICHIGAN IS NOT RESPONSIBLE FOR ANY ERRORS, OMISSIONS, OR PROFESSIONAL NEGLIGENCE IN THE PREPARATION OF THIS MAP. PLEASE CONTACT THE STATE OF MICHIGAN FOR MORE INFORMATION. THIS MAP IS FOR INFORMATIONAL PURPOSES ONLY AND SHOULD NOT BE USED FOR SCREENING, ENGINEERING, OR SITE-SPECIFIC ANALYSIS. PRINTED 11/16/2023

22. Cassity is a resident of Frederick County and a registered voter of Frederick County. He owns property in Frederick County and has resided in the County for 25 years. For the reasons set forth herein and as explained herein in greater detail, Cassity believes the Board's/Wagner's decision to not reject the Petition was erroneous and should not stand as it is contrary to the law of the State of Maryland.

**B. The Board and Wagner's mishandling of the Petition and improper certification of the referendum for the upcoming election.**

23. The process the County Council used in creating the Zone and enacting the Ordinance as well as the actions of FCDRC in collecting signatures for the petition, submitting the petition at issue, and the Board and Wagner approval of the legal sufficiency of the Petition seeking a referendum challenging the Ordinance are set forth in greater detail in the Petition for Judicial Review/Complaint filed by Quantum Maryland, LLC and Joan Aquilino filed against Wagner, the Board and FCDRC in Petition of Quantum Maryland, LLC, et al. v. Frederick County Board of Elections, et al., Case No. C-10-CV-26-000309, Frederick County Circuit Court, pp. 10-27, ¶¶26-76 ("Quantum Petition"). Accordingly, for additional facts upon which this Petition rests concerning Bill 25-09, the Ordinance, the petition, the Board's and Wagner's review of the petition, and the referendum, the Court is respectfully referred to the Quantum Petition attached and incorporated herein as Exhibit 2.

**V. Causes of Action**

**COUNT 1**

**PETITION FOR JUDICIAL REVIEW PER MD CODE, ELECTION LAW, §6-209(A)**

24. Plaintiffs incorporate herein the factual allegations and references contained in the foregoing paragraphs as if fully set forth.<sup>4</sup>

25. As set forth herein, Plaintiffs requests that this Court initially and expeditiously review and remedy the Board's, through Wagner, April 3, 2026 wrongful determination that FCDRC's Petition for a referendum as to the Overlay Ordinance is substantively "sufficient" and otherwise lawfully authorized, per MD Code, Election Law, §6-206, as (i) Ordinance 26-01-001 is not a "law" enacted through the Charter that is properly subject to referendum under the County Charter, and (ii) the legal insufficiencies of potentially undoing the mapping of the Overlay Zone in a manner that is inconsistent with State and local legislative mandates for mapping zoning consistent with comprehensive planning.

26. Plaintiffs each are a "person aggrieved by a determination made under §6-202, §6-206 and/or §6-208(a)(2)" of the Maryland Code Ann., Election Law, and thus has standing to pursue the judicial relief requested herein. MD Code, Ann, Election Law, §6-209; see also Sugarloaf Citizens' Ass'n v. Department of Env't, 344 Md. 271, 297, 686 A.2d 605, 618-19 (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, 29 A.3d 584, 586 (2011); see also Long Green Valley Ass'n v. Bellevale Farms, Inc., 205 Md. App. 636, 685,

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<sup>4</sup> Plaintiffs further incorporate by reference herein the legal arguments asserted by Quantum Maryland, LLC and co-Petitioner Joan Aquilino in the Quantum Petition, Ex. 1, pp. 29-33, ¶¶83-100.

46 A.3d 473, 503 (2012) (same). Plaintiffs own property affected by the Ordinance challenged by the Petition seeking the referendum that the Board approved.

**A. The Ordinance is not “a law” under the Charter subject to referendum.**

27. In Maryland:

"[A] charter or form of government" (the terms being equivalent), which the voters of Baltimore City or any county may adopt under Art. XI-A, § 1 is, in effect, a local constitution which forms the framework for the organization of the local government; it is "the instrument which establishes the agencies of local government and provides for the allocation of powers among them." *Ritchmount Partnership v. Board, supra*, 283 Md. at 58. A charter, in essence

"creates the body politic and corporate, contains the municipal powers and gives the form of municipal organization, locates the corporate boundaries and wards or other subdivisions, classifies and distributes the powers and duties of the various departments, boards and officers, and provides the manner in which the several powers shall be exercised." 2 E. McQuillan, *Municipal Corporations* § 9.03 (3rd ed. 1979).

A charter is thus a permanent document intended to provide a broad organizational framework establishing the form and structure of government in pursuance of which the political subdivision is to be governed and local laws enacted. It is the organic, the fundamental law, establishing basic principles governing relationships between the government and the people, and among the various governmental branches and bodies.

Checks v. Cedlair Corp., 287 Md. 595, 606-607 (1980).

28. The Frederick County Charter in Article 3 delineates that referendum is an available remedy for registered voters to petition that a “law” enacted through the Charter be subject to a vote of County registered voters, without defining “law” within the Charter. Thus, to determine whether the Ordinance is subject to referendum vote via petition, the Court must differentiate not what is legislative (as all official actions of the County Council, Frederick County’s legislative body per State law and the Charter, in enacting laws, resolutions, proclamations, or ordinances is legislative) but which of the legislative actions is potentially subject to a referendum petition as it is a “law” enacted through the Charter within the undefined meaning of the Charter. As thoroughly

discussed in the County Attorney's analyses (Ex. 1 and ¶¶25-28, *infra*) relating to the potential of a Petition for referendum and in the Quantum Petition (Ex. 2) previously incorporated herein, Ordinance 26-01-001 is not a "law" that is subject to referendum. See Frederick County Charter, Art. 3, Sect. 308. Even if, *arguendo*, the Ordinance was a "law", it was enacted through the provisions of the Land Use Article of the Maryland Code, not through the Charter as is the prerequisite of a law being legally petitioned to referendum per §308.

29. Resolution 26-01, the Comprehensive Plan Amendment foundation for applying the Overlay Zone to those properties that were the subject of the application of the Overlay Zone through Ordinance 26-01-001<sup>5</sup>, recites the Maryland Code, Land Use Article, not the **Frederick County Charter**. Bill 25-09, on the other hand, required an amendment to the **Frederick County**

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<sup>5</sup> See Comprehensive Plan Amendment Page 2, which states:

Seeking to prevent data center sprawl, best utilize existing and planned infrastructure, and ensure that industrial land elsewhere in the County is available for target industries such as life sciences, County Executive Fitzwater and the County Council announced in May of 2025 that data centers will be limited to the Eastalco area. This will be accomplished via the creation of a Critical Digital Infrastructure Overlay Zone. (CDI-OZ). Development will be phased as requests for industrial zoning in the CDI-OZ where it does not currently exist are considered by the County Council. Creation of the CDI-OZ to create predictability for the community and the data center industry, and to support other industries with industrial land needs, is supported by several Plan goals and initiatives. These include: Attract, retain, and grow opportunities to create a business climate in Frederick County that is attractive to firms and supportive of the many diverse groups of people, with diverse expertise and experiences, who wish to live and work in Frederick County. (Livable Frederick Master Plan, p. 160) Ensure the availability of a diverse inventory of appropriate potential business locations to meet the demands of a growing and diverse business community. (Livable Frederick Master Plan, p. 163) Work to expand opportunities in knowledge-based industries – those industries where production and services are based on a vast knowledge of technical and scientific skills, with workers highly skilled in those areas – such as information technology, life and natural sciences, and other new and emerging technical business opportunities. (Livable Frederick Master Plan, p. 165)

**Code** which adhered to the County Code at §305. Per §307 of the Frederick County Code, the Bill was effective sixty (60) days later as there was no protest to Bill 25-09.

30. Second, the Board/Wagner decision to not reject (accept) the Petition is not legally sound or supported by a plain reading of the Frederick County Charter. The Frederick County Attorney, with the help of outside counsel, confirmed this point in his January 20, 2026 Memorandum to the Council and County Executive stating that the referendum provisions of the Frederick County Charter, specifically §308 of the County Charter, referenced above, did not apply to either the Resolution adopting the Critical Digital Infrastructure Plan Amendment or the related Ordinance implementing the Comprehensive Zoning for the Critical Digital Infrastructure Overlay Zone. Ex. 1. Plaintiffs agree with the view of the County Attorney, and for good reason – he is correct – as evidenced by his review.

31. Indeed, the County Attorney addressed the specific issue raised herein “Are either the Resolution Adopting the Critical Digital Infrastructure Comprehensive Plan Amendment or the Ordinance implementing the Comprehensive Zoning for the Critical Digital Infrastructure Overlay Zone (an element of the Livable Frederick Comprehensive Plan) subject to referendum as provided in Frederick County Charter §308?” *Id.*, p. 2. The Short Answer was “**No.**” Ex. 1, (**emphasis added**). The reasoning: “[N]either the Resolution nor the Ordinance constitutes a ‘law’ within the meaning of Charter §308 and therefore neither is subject to referendum.” *Id.* (**emphasis added**). The County Attorney expressed that the referendum petition seeking to refer the Resolution Adopting the Critical Digital Infrastructure Comprehensive Plan Amendment or the Ordinance implementing the Comprehensive Zoning for the Critical Digital Infrastructure Overlay Zone would likely be rejected. *Id.*, p. 6.

32. The County Attorney thoroughly assessed nine (9) sources of information: (1) Maryland General Assembly authority grant; (2) Text of the Charter Referendum Provision; (3) Contrast with Other Charter Counties; (4) Legislative Process on the Charter; (5) Effective Date and Codification; (6) Nature of the Actions; (7) Judicial Guidance on Charter interpretation; (8) Historical Practical Context; and (9) State Law Distinction.

33. In so doing, the County Attorney laid out a reasoned basis for its opinion which aligns with the basis of Plaintiffs' request herein and which should guide this Court in reviewing the appropriateness of the referendum at issue, to wit, the Ordinance is not a "law" subject to referendum within the Frederick County Charter. For example:

1. **Maryland General Assembly authority grant:** The County Attorney observed the Maryland Assembly's grant of authority as reflected in MD Code, Local Government §9-205 specifically authorized local voters to reserve in the charter the power of referendum over "a local law enacted by the county council" and that the charter "specify '(i) what types of local laws may be petitioned to a referendum; and (ii) whether a part of a local law may be petitioned to referendum.'" Id. The Frederick County Charter, as expressed above in § 308, limited referendum to "'a law, or part of a law, enacted pursuant to this Charter,' and situates that power within the legislative provisions of Sections 301-310 which govern the enactment of laws exclusively through written bills." Id. The fact that "law" was narrowly defined, the County Attorney stated, was the result of a "deliberate choice to restrict referendum to those enactments processed as bills under the Charter's legislative procedures." Id.;
2. **Text of the Charter Referendum Provision:** The County Attorney reviewed §308 of the County Charter and noted that the term "law" was not defined;
3. **Contrast with Other County Charters:** After noting that the term "law" was not defined in the Frederick County Charter, the County Attorney compared the content of the Frederick County Charter to other county charters, noting that where the term "law" was defined, referendum authority was broader, because "most counties reserve to the voters the power of referendum over laws, ordinances or legislative acts enacted by the county council[.]" Id., p. 3. In counties with charters that do not define "law" to include ordinances and other legislative acts, the County Attorney concluded, "The absence of such inclusive definition in the four counties [Cecil, Dorchester, Frederick and Montgomery] suggests a more limited scope, where only true legislative acts (not resolutions or ordinances) are referable." Id.;

4. **Legislative Process in the Charter:** The County Attorney traced how the Charter allows for enacting “legislation” and “laws.” The County Attorney noted, as Quantum lays out in its Complaint, incorporated herein as Exhibit 1, that per §305 of the Charter, laws may only be enacted by written Bill and” Bills must be read, and formatted in the manner they will appear when become law.” *Id.*, p. 4. After enactment, a Bill is subject to veto, and if not vetoed, become codified in the County Code. *Id.* The County Attorney stated that neither the Ordinance nor the Comprehensive Plan Amendment was introduced or enacted as a Bill, but rather, each was “adopted through separate procedures established by the County Council.” *Id.*;
5. **Effective Date and Codification:** The Charter at §307 provides that laws take effect 60 calendar dates after enactment unless referred to a referendum. The Resolution and Ordinance “became effective upon signature by the County Council” on January 20, 2026 “consistent with the Council’s standard practice.” *Id.* §310 of the Charter requires “local laws of general application” to be codified in the Code of Frederick County. Ordinances and Resolutions are not codified. *Id.*;
6. **Nature of the Actions:** The County Attorney observed that the Resolution “approves an amendment to the Livable Frederick Comprehensive Plan” and that a comprehensive plan is a “policy document” not a regulatory law and that the Ordinance implements zoning changes to the Zone, but the Ordinance was not enacted as a Bill per the Charter at §§301-310. *Id.*, p. 4;
7. **Judicial Guidance on Charter Interpretation:** Appropriately, the County Attorney also looked to the Maryland courts to see how it would address the issue it analyzed in the memorandum. The County Attorney’s Memorandum relied on two (2) key cases: (1) Town of Bel Air v. Boldt, 487 Md. 354 (2024) and Prince George’s County v. Thurston, 479 Md 575 (2022). In Town of Bel Air, *supra* , the Maryland Supreme Court declared the process used to interpret municipal charters, noting that the process is identical to that used to interpret statutes: The Court will not “divine legislative intention contrary to the plain language of the charter provision or judicially inset language to impose exceptions, limitations, or restrictions not evident from the plain language” and if the language of the charter is unambiguous and clearly consistent with the charter purpose the Court’s inquiry ends and the provision at issue will be applied as written. In Prince George’s County, *supra*, the Court applied the Town of Bel Air analysis to determine that a resolution was not a law, as is the case here. *Id.* p. 5;<sup>6</sup>

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<sup>6</sup> The notion that certain actions of a governing body not being subject to referendum is not new or novel. Other cases not referenced by the County Attorney in his January 20, 2026 Memorandum similarly recognize that not every action by a local authority is subject to referendum. In Kent Island Def. League, LLC v. Queen Anne’s County Bd. of Elections, 145 Md. App. 684 (2002), the then Maryland Court of Special Appeals reviewed whether two actions by

8. **Historical and Practical Context:** The County, since adoption of the County Charter in 2015, has never treated resolutions or ordinances as “laws” subject to the referendum process. The Charter Commission discussions “contain no indication that the drafters intended resolutions or ordinances to be considered ‘laws’ for referendum purposes[;]” *Id.*, p. 5;
9. **State Law Distinction:** Per the Maryland Code, Land Use Article at § 1-101(t), “zoning law” “means the legislative *implementation of regulations* for zoning by a local jurisdiction”; and “includes a zoning ordinance, zoning regulation, zoning code and any similar legislative action to *implement zoning controls* in a local jurisdiction.” *Id.*, p. 6 (*emphasis in original*). The County Attorney stated “Zoning law” as used in the provision refers to the county zoning code and “applies to state statutory references and does not control or override the Frederick County Charter’s narrower usage of ‘law’ within its own legislation.”

Ex. 1, pp. 1-6.

34. The last point – the relationship between zoning law and the Frederick County Charter – merits additional explanation as it is significant in that it helps focus issues and explain why the Ordinance is not subject to referendum as FCDRC seeks and the Board has thus far allowed to proceed to the General Election ballot. Frederick County, as a charter County, is delegated its zoning authority through the Maryland Constitution and the Land Use Article of the Maryland Code. See Cnty. Council of Prince George’s Cnty. v. Zimmer Dev. Co., 444 Md 490, 503-04 (2015) (“Maryland, like its sister states, delegates to local political subdivisions the authority to regulate lands use.”) The ultimate authority to change zoning lies with the Council through a systematic planning and zoning process that requires that the mapping of changed zoning must be

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Queen Anne’s County, a code home rule county, under the Maryland State Constitution, are subject to referendum. The ordinances at issue re-designated certain properties subject to the Chesapeake Bay Critical Area Program from one development category to another. In that case, the Court of Special Appeals held that “the ordinances are not subject to referendum.” *Id.*, at 685. In Kent Island Def. League, the action taken by Queen Anne’s County was in response to directives in the State Critical Area law, a general public law and thus implementation of state law, not local governance. The statutes did not contemplate referenda. *Id.*, at 692-93.

consistent with a Comprehensive Plan recommended to the Council by the Frederick County Planning Commission and adopted by the County Council. The Council conducts its own due process (as did the Planning Commission in recommending the Comprehensive Plan Amendment) in receiving public input, and thereafter it adopts the Comprehensive Plan (with any amendments from the version recommended by the Planning Commission), thus creating the planning framework for any future application of zoning changes that are consistent with this adopted Comprehensive Plan.

35. With respect to the Overlay Zone now being petitioned to a referendum vote in an upcoming special election or the November 2026 general election, in Frederick County, the following transpired: (1) **Bill 25-09** [emphasis added], creating the Overlay Zone, is a law that the Council adopted in September 2025 which became effective November 1, 2025; (2) the Council adopted Resolution 26-01, adopting the Comprehensive Critical Digital Infrastructure Comprehensive Plan Amendment (amending the last Comprehensive Plan for Fredrick County), on January 20, 2026, effective immediately; and (3) the Ordinance, mapping the Zone to specific properties consistent with the newly adopted Amendment to the Comprehensive Plan, adopted by the Council on January 20, 2026, effective immediately.

36. While all three of these actions by the Council were adopted legislatively (i.e., legislative acts), they are not all the same. Bill 25-09 is a **law** arguably enacted through the Charter with a 60-day effective period allowing for veto and referendum timeframes to occur. Resolution 26-01, adopting the Comprehensive Critical Digital Infrastructure Comprehensive Plan Amendment (amending the last Comprehensive Plan for Fredrick County), is a resolution, effective immediately, enacted pursuant to the Land Use Article of the Annotated Code. The Ordinance, implementing both Bill 25-09 creating the Overlay Zone and applying the Overlay Zone to only

those properties designated for that zoning treatment by the Comprehensive Plan Amendment is just what it says, also was enacted pursuant to the Land Use Article and effective immediately.

37. Of the three actions, only Bill 25-09 is arguably a “law” in the context of the referendum authority set forth in the Frederick Charter. During the 60 days between adoption and effectiveness, opponents could have submitted a petition for a referendum on Bill 25-09, but no one did. Ex. 3 (Bill No. 25-09). The Ordinance constitutes the implementation of the underlying law (Bill 25-09) by applying the Overlay Zone, in a manner consistent with the Comprehensive Plan Amendment approved and adopted with Resolution 26-01, which ultimate designation to be zoned with the Overlay Zone importantly could only be done upon a finding of consistency with the Comprehensive Plan Amendment adopted by the Resolution. *Id.*, p. 2, lines 3-9.

38. Due process requirements are constitutionally and statutorily required by both State and County law for each step of this planning and zoning process exhibited through the Bill, Resolution, and Ordinance leading to the mapping of the Zone, and all decisions rendered by the County Council must take into consideration public input.

**B. Permitting the referendum would contradict Maryland law on zoning.**

39. Allowing the Petition for a referendum of the Ordinance, as sought by FCDRC, contradicts the orderly and systematic planning and zoning process as it would allow for the final implementation of this process, i.e., the mapping of the CDI Overlay Zone by the County Council, to be cancelled through a referendum vote of County registered voters.

40. Taking this logic to its potential conclusion, if the referendum Petition is allowed to be on the ballot of a specially set election or in November 2026, and the voters, by majority vote, favor of the Petition, the result would be to have zoning of the impacted properties inconsistent with the Comprehensive Plan Amendment. See MD Code, Land Use, §3-204(c) (“[A] legislative body

may adopt, modify, remand or disprove...a plan for one or more geographic sections or divisions of the local jurisdiction[.]”); see also Cnty Council of Prince George’s Cnty. v. Zimmer Dev. Co., 444 Md. 490, 520-21 (2015):

Counties and municipal corporations are required generally to adopt, amend, and execute a "comprehensive plan." LU §§ 1-405, 3-101.28 In the abstract, a comprehensive plan "is 'more than a detailed zoning map and should apply to a substantial area, be the product of long study, and control land use consistent with the public interest.'" *Greater Baden-Aquasco Citizens Ass'n*, 412 Md. at 85, 985 A.2d at 1167 (citing *Yokley*, *supra* § 5-2). This plan must be well thought out and consider the common needs of a particular area. *Greater Baden-Aquasco Citizens Ass'n*, 412 Md. at 85, 985 A.2d at 1167 (citing *Yokley*, *supra* § 5-2) The Land Use Article of the Maryland Code requires certain elements to be contained in comprehensive plans. LU §§ 1-406, 3-102. The preparation of a comprehensive plan is conducted by a planning commission and presented to the local legislature for adoption. *See* LU §§ 1-406(a)(1), 1-415, 3-202.

41. There is absolutely no logic or legal reasoning to support an argument that the Frederick County Charter establishing the right to petition for referendum intended to allow voters to overrule the Council’s comprehensive and systematic planning and zoning authority and processes as established through the State Land Use Article and implemented and applied though the Land Use Article and County law and regulation (not through the Charter). In fact, within this system, the due process requirements for public input are required to be considered by the Council (and Planning Commission) for both the Comprehensive Plan Amendment and the mapping of the Zone consistent with the Comprehensive Plan Amendment. Suggesting that the final implementation act (the Ordinance) in this comprehensive, required scheme to plan and zone could be undone through a referendum process that could potentially result in voters forcing zoning is inconsistent with and indifferent to the Comprehensive Plan and the public input considered by the Council as expressly required for this planning and zoning implementation process. This, in and of itself, would violate all the due process built into the planning and zoning processes.

42. Even where comprehensive zoning comes within the scope of rights of referendum, Court's recognize, as Plaintiffs request herein, that the right comes within the law. See e.g., Anne Arundel County v. McDonough, 277 Md. 271, 283-284 (While rezoning pursuant to a comprehensive plan deemed a legislative function, "that legislation, adopting a comprehensive zoning, generically should come within the scopes of the right of the referendum **to the extent it might be legally invoked.**") (emphasis added) and thus, to be consistent with case law, permitting a referendum in this case must be done as prescribed through Maryland and Frederick County law, which has not happened.

C. **In accepting the Petition, the Board and Wagner did not adhere to MD Code, Election Law §6-206.**

43. In her April 3, 2026, letter to FDCRC, Wagner indicated that FCDRC's petition enjoyed a presumption of sufficiency unless there is a finding of deficiency and she stated that the Board could not determine if the petition was "unauthorized" per MD Code, Election Law, §6-206(c)(5). This was, for lack of better term, a punt as there is no presumption of sufficiency in the Election Law Article for petitions seeking referenda. Wagner, as Director of the Board, was statutorily obligated to make an express finding that the referendum was authorized and to follow the specific parameters of the Election Law. Here, she did not do so.

44. To understand the significance of this, a brief review of two key statutory provisions implicated in the process is necessary: MD Code, Elections Law, §§ 6-206 and 6-208.

45. MD Code, Election Law, §6-206 states what the Board must do immediately upon receipt of the petition for the referendum:

- (a) Promptly upon the filing of a petition with an election authority, the chief election official of the election authority shall review the petition.
- (b) Unless a determination of deficiency is made under subsection (c) of this section, the chief election official shall:

- (1) make a determination that the petition, as to matters other than the validity of signatures, is sufficient; or
- (2) defer a determination of sufficiency pending further review.
- (c) The chief election official shall declare that the petition is deficient if the chief election official determines that:
  - (1) the petition was not timely filed;
  - (2) after providing the sponsor an opportunity to correct any clerical errors, the information provided by the sponsor indicates that the petition does not satisfy any requirements of law for the number or geographic distribution of signatures;
  - (3) an examination of unverified signatures indicates that the petition does not satisfy any requirements of law for the number or geographic distribution of signatures;
  - (4) the requirements relating to the form of the petition have not been satisfied;
  - (5) based on the advice of the legal authority:
    - (i) the use of a petition for the subject matter of the petition is not authorized by law; or
    - (ii) the petition seeks:
      - 1. the enactment of a law that would be unconstitutional or the election or nomination of an individual to an office for which that individual is not legally qualified to be a candidate; or
      - 2. a result that is otherwise prohibited by law; or
  - (6) the petition has failed to satisfy some other requirement established by law.
- (d) A determination under this section may not be inconsistent with an advance determination made under § 6-202 of this subtitle.
- (e) Notice of a determination under this section shall be provided in accordance with § 6-210 of this subtitle.

46. MD Code, Election Law, §6-208 states what the Board must do after verifying and counting signatures:

- (a) At the conclusion of the verification and counting processes, the chief election official of the election authority shall:
  - (1) determine whether the validated signatures contained in the petition are sufficient to satisfy all requirements established by law relating to the number and geographical distribution of signatures; and
  - (2) if it has not done so previously, determine whether the petition has satisfied all other requirements established by law for that petition and immediately notify the sponsor of that determination, including any specific deficiencies found.
- (b) If a petition sponsor's ballot issue committee fails to provide proof of filing the report required under § 13-309(e) of this article, the chief election official may not certify the petition.

- (c) If the chief election official determines that a petition has satisfied all requirements established by law relating to that petition, the chief election official shall certify that the petition process has been completed and shall:
- (1) with respect to a petition seeking to place the name of an individual or a question on the ballot, certify that the name or question has qualified to be placed on the ballot;
  - (2) with respect to a petition seeking to create a new political party, certify the sufficiency of the petition to the chairman of the governing body of the partisan organization; and
  - (3) with respect to the creation of a charter board under Article XI-A, § 1A of the Maryland Constitution, certify that the petition is sufficient.
- (d) Notice of a determination under this section shall be provided in accordance with § 6-210 of this subtitle.

47. MD Code, Election Law, §6-206 is mandatory and contains no discretionary language to allow Wagner to certify the petition and to move forward with the referendum because she could not determine if it was unauthorized. The Petition must be either authorized or not authorized as the language of the applicable code was mandatory. See Id.; see also Anne Arundel Cnty. v. 808 Bestgate Realty, LLC, 479 Md. 404, 426 (2022) which states:

We have repeatedly held that the word "shall" is mandatory. *See 75-80 Properties*, 470 Md. at 631 (2022)("The term 'shall' connotes that an action is mandatory, not subject to discretion or satisfaction of further conditions."); *In re Najasha B.*, 409 Md. 20, 32-33, 972 A.2d 845 (2009) ("in the absence of a contrary contextual indication, the use of the word 'shall' is presumed to have a mandatory meaning . . . and thus denotes an imperative obligation inconsistent with the exercise of discretion.") (internal quotations and citation omitted); *see also Walzer v. Osborne*, 395 Md. 563, 580, 911 A.2d 427 (2006).

48. Even if the Board or Wagner could move to the certification requirement of MD Code, Election Law, §6-208 without satisfying the sufficiency obligations of MD Code, Election Law, §6-206, that did not happen here.

**D. The Petition is facially invalid.**

49. The Court also should reject the Petition as facially invalid.

50. FCDRC consistently misled potential Referendum Petition signatories by representing to them that the Petition as an effort to overturn the “expansion of] the current Eastalco data center complex by nearly 1000 acres.” Ex. 4 (<https://fcdcreferendum.org/info/>).

51. However, the Petition does not attempt to refer only a “portion of a law” pursuant to §307(e) of the Charter – in this case, the portion of the Ordinance that rezoned this “1,000 acre “expansion” to the CDI Zone – but in fact, referred the entire Ordinance, impacting the entire original East Alcoa campus and the Property, which had been zoned industrial and permitted to develop with data center uses for many years.

52. Maryland courts have recognized that these types of material misrepresentations in the signature-gathering process render the resulting petition for referendum legally deficient. See Gray v. Howard Cnty. Bd. of Elections, 218 Md. App. 654, 665, 98 A.3d 423, 430 (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”).

53. In this case, the signers of the Petition for Referendum were provided with a Petition that contained an illegible map and thought that by signing it, they were referring only a portion of the Ordinance. These signatures are not genuine and bona fide” within the meaning of Charter § 308(b). See Quantum Petition, Ex. 2, ¶ 64, ¶¶83-100, ¶111, and ¶113.

54. Accordingly, good cause exists to grant the relief requested herein.

55. Upon the review requested herein, this Court must find that the Board’s April 3, 2026 determination that the Petition could proceed to ballot in the November 2026 general election is clearly erroneous as the Petition is not authorized by law and deficient for at least the following reasons: (1) the referendum exceeds the authority expressed in the Frederick County Charter to

refer a matter to the voters for approval; (2) the Ordinance was not “law” subject to referendum; and (3) the potential end result of having the Overlay Zone (created by Bill 26-01) applied to the specific properties (through Ordinance 26-01-001) designated as appropriate for data center use through the Comprehensive Plan (Resolution 26-01) cancelled by a referendum vote is a total and complete obliteration of the land use and zoning policies and laws of Maryland and Frederick County.

56. The Ordinance mapping the Overlay Zone is an implementation tool. The law is the zone enactment itself while the mapping of the zone to specific properties is not an act subject to referendum. The Ordinance was enacted pursuant to MD Code, Ann, Land Use Art., not the Frederick County Charter. The Board did not independently find that the Referendum was authorized, but rather that it could not determine whether the referendum was unauthorized. These defects are contrary to the Charter, and the Maryland Code, Election Law, and render the petition deficient such that it should be rejected.

WHEREFORE, for the foregoing reasons, and pursuant to MD Code, Election Law, §6-209, Plaintiffs respectfully request that this Court judicially review the referendum and grant the following relief:

- A. Deem the Board and Wagner’s review of the Petition per MD Code, Election Law, §§6-206 and 6-208 deficient and not in accordance with the law;
- B. Deem that the Board and Wagner’s acceptance of the referendum invalid;
- C. Deem the referendum accepted by the Board that challenges the Ordinance to be legally unauthorized and invalid;
- D. Enjoin the Board from taking any action to place the referendum on the ballot for consideration by registered voters in the November 2026 General Election,

including but not limited to printing ballots with the referendum, advertising the election with the referendum or taking other actions which indicate that the referendum is for consideration in the upcoming General Election ; and

E. Award any and other relief that this Court deems just and proper in this case.

## COUNT II

### DECLARATORY JUDGMENT – MD CODE, ELECTION LAW, 6-209(B)

57. Cassity incorporates the allegations from the foregoing paragraphs as if fully set forth herein.

58. MD Code, Election Law §6-209(b) provides:

Pursuant 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.

59. Cassity is a “registered voter” and resident of Frederick County. He is a “person” as defined by MD Code, C&J §3-401. Cassity seeks a declaration from this Court pursuant to MD Code, Election Law, §6-209(b) and the Maryland Uniform Declaratory Judgment Act that the Board and/or Wagner wrongly approved the Petition for referendum and that, as a result, the Court should declare that the acts of the Board and/or Wagner with respect to the approval/non-rejection of the Petition to be null and void, illegal, and ultra vires for the reasons set forth herein. Cassity has standing to assert this claim. See Whitley v. Maryland State Board of Elections, 429 Md. 132 (2012).

60. A justiciable controversy exists between Cassity and the Board and/or Wagner concerning the Petition. Per the foregoing, Cassity believes that the Board’s/Wagner’s actions *vis a vis* the Petition and not rejecting the Petition per MD Code, Election Law, §6-206, et seq. was erroneous.

The Board and/or Wagner apparently believe that its decision vis a vis the Petition and to put the Ordinance to referendum either in a special election or the general election in November 2026 is legally supported and proper. Accordingly, this controversy is ripe for resolution by this Court.

61. MD Code, C&J §3-406 provides standing to “persons” such as Cassity whose interests under a deed, or legal relations affected by statute, municipal ordinance, administrative, rule or regulation to have any question pertaining to statute, ordinance, instrument, rule or regulation determined by the Court.

62. Here, as a property owner and voter in Frederick County, Cassity’s interests have been and will be impacted by the Board’s/Wagner’s decision to not reject and/or authorize the Petition to proceed and to allow a referendum on the Ordinance as contemplated by the Petition. Cassity has an interest in the County, and all its agents, upholding the law, as written, in general and, in particular, that the Board and/or Wagner uphold the Election Law as to referendum petitions such as the Petition. To the extent that the Board’/Wagner’s decision implicates property owners throughout the County, Cassity is impacted by a wrong decision by the Board which could impact property owners and residents. Cassity has standing to present his concerns about the Board’s/Wagner’s action concerning the Petition to the Court.

63. Cassity’s view as to the validity of the Petition on the Ordinance and the actions of the Board/Wagner are antagonistic and litigation is imminent and inevitable.

WHEREFORE, for the foregoing reasons, Cassity respectfully requests that this Court declare:

- A. That in not rejecting the Petition on the Ordinance, the Board and/or Wagner violated Maryland Code, Election Law §6-206 and §6-208;

- B. That in not rejecting the Petition on the Ordinance, the Board and/or Wagner violated the Frederick County Charter as set forth herein;
- C. That the Petition is null and void, ab initio;
- D. That the Board and/or Wagner cannot place on the ballot, in either a special election or the November 2026 general election, any referendum as to the Ordinance; and
- E. That the Petition is not authorized, as a matter of law or otherwise facially invalid as set forth herein.

And it is requested that this Court award Cassity all costs incurred and that it award Cassity any and other relief as this Court deems just and proper in this case.

### COUNT III

#### WRIT OF MANDAMUS – RULE 17-501

64. Plaintiffs incorporate by reference the factual allegations in the foregoing paragraphs as if fully set forth herein.

65. In Count II, herein Plaintiffs seek alternatively, or in further support of Counts I and II, a writ of mandamus ordering the Board and Wagner to fulfill all requirements of the MD Code, Election Law Article and declare the Petition “deficient” under MD Code, Ann, Election Law, §6-206 as set forth hereinabove so that the contemplated referendum cannot proceed to vote.

66. Writs of Mandamus are proper:

...where another adequate remedy does not exist and where "clear and undisputable" rights are at stake. *Walter*, 179 Md. at 668, 22 A.2d at 474. With respect to adequate remedies, "it is well settled in this State that a writ of mandamus will not be granted where the petitioner has a specific and adequate legal remedy to meet the justice of the particular case and where the law affords [another] adequate remedy." *Philip Morris Inc.*, 358 Md. at 712, 752 A.2d at 212; *Hummelshime v. Hirsch*, 114 Md. 39, 46-47, 79 A. 38, 42 (1910). A writ of mandamus, therefore, "will not lie if there be another legal remedy, but that remedy must be specific and adequate to the object in view, 'framed to effect directly the desired end' . .

. [and it] must afford 'complete satisfaction, equivalent to a specific relief.'" *Harwood v. Marshall*, 9 Md. 83, 98 (1856).

Moreover, a writ of mandamus will not lie if the petitioner's right is unclear or issues only at the discretion of a decision maker. "If the right be doubtful, or the duty discretionary, or of a nature to require the exercise of judgment, or if there be any ordinary adequate legal remedy to which the party applying could have recourse, [the] writ will not be granted." *City of Seat Pleasant*, 364 Md. at 673, 774 A.2d at 1172 (quoting *George's Creek Coal & Iron Co.*, 59 Md. at 259). "[A] legal right and a corresponding duty" must therefore exist before a court may grant a writ of mandamus. *Buchholtz v. Hill*, 178 Md. 280, 288, 13 A.2d 348, 352 (1940); see also *Freeman v. Local 1082, American Federation of State, County and Municipal Employees Council 67*, 318 Md. 684, 692, 569 A.2d 1244, 1248 (1990). Further, where the exercise of discretion is permitted, mandamus ordinarily will not lie. *Freeman*, 318 Md. at 692, 569 A.2d at 1248; see also *Goodwich v. Nolan*, 343 Md. 130, 145, 680 A.2d 1040, 1047 (1996); *Board of Educ. v. Secretary of Personnel*, 317 Md. 34, 46, 562 A.2d 700, 706 (1989); *Maryland Action for Foster Children, Inc. v. State*, 279 Md. 133, 138, 367 A.2d 491, 494 (1977); *Tyler v. Baltimore County*, 251 Md. 420, 425, 247 A.2d 704, 707 (1968); *Green v. Purnell*, 12 Md. 329, 336 (1858)(stating that a writ of mandamus "cannot issue in a case where discretion and judgment are to be exercised by the officer; and it can be granted only where the act required to be done is merely ministerial, and the relator without any other adequate remedy

Wilson v. Simms, 380 Md. 206, 223-224 (2004).

67. In Balt. County v. Balt. County FOP Lodge No. 4, 439 Md. 547, 569-572 (2014), the-then Maryland Court of Appeals expressed the following about Writs of Mandamus:

The fundamental purpose of a writ of mandamus is "to compel inferior tribunals, public officials, or administrative agencies to perform their function, or perform some particular duty imposed upon them which in its nature is imperative and to the performance of which duty the party applying for the writ has a clear right." *Town of La Plata v. Faison-Rosewick, L.L.C.*, 434 Md. 496, 511, 76 A.3d 1001, 1010 (2013) (quoting *Goodwich v. Nolan*, 343 Md. 130, 145, 680 A.2d 1040, 1047 (1996) (citation omitted); see also *Dep't of Human Res. v. Hayward*, 426 Md. 638, 646, 45 A.3d 224, 229 (2012); *Murrell v. Mayor of Baltimore*, 376 Md. 170, 193, 829 A.2d 548, 562 (2003) (quoting *Gisriel v. Ocean City Election Bd.*, 345 Md. 477, 497, 693 A.2d 757, 767 (1997)). Because the grant of a writ of mandamus is "an extraordinary remedy," see *Hayward*, 426 Md. at 646, 45 A.3d at 229 (quoting *Ipes v. Bd. of Fire Comm'rs of Baltimore*, 224 Md. 180, 183, 167 A.2d 337, 339 (1961)), "the power to issue an extraordinary writ of mandamus is one which ought to be exercised with great caution." *Doering v. Fader*, 316 Md. 351, 361, 558 A.2d 733, 738 (1989) (citing *In Re Petition for Writ of Prohibition*, 312 Md. 280, 539 A.2d 664 (1988)).

Generally, 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,'

but not where there is any 'vestige of discretion' in the agency action or decision." *Faison-Rosewick*, 434 Md. at 511, 76 A.3d at 1010 (quoting *S. Easton Neighborhood Ass'n v. Town of Easton*, 387 Md. 468, 477 n.3, 876 A.2d 58, 63 n.3 (2005)). Thus, a writ of mandamus will not be issued where the right is unclear of the party seeking it, *see, e.g., Wilson v. Simms*, 380 Md. 206, 223, 844 A.2d 412, 423 (2004), doubtful, *see, e.g., Brack v. Bar Ass'n of Baltimore City*, 185 Md. 468, 474, 45 A.2d 102, 105 (1945), or where the act sought to be compelled is within the discretion of the decision-maker against whom the writ is sought. *See Hayward*, 426 Md. at 646, 45 A.3d at 229 ("Ordinarily, mandamus does not lie where the action to be reviewed is discretionary or depends on personal judgment.") (citing *Goodwich*, 343 Md. at 145, 680 A. 2d at 1047); *see also Prince George's Cnty. v. Aluisi*, 354 Md. 422, 450, 731 A.2d 888, 903-04 (1999) ("[T]he process is extraordinary, and if the right be doubtful, or the duty discretionary, or of a nature to require the exercise of judgment, . . . this writ will not be granted.") (quoting *George's Creek Coal & Iron Co. v. Cnty. Comm'rs of Allegany Cnty.*, 59 Md. 255, 259 (1883)).

Other considerations relate to the effect of granting mandamus relief. For example, a writ of mandamus will not be granted where it "would introduce into municipal administration great confusion or disorder." *Kinlein v. Baltimore*, 118 Md. 576, 581, 85 A. 679, 681 (1912) (affirming the trial court's refusal to grant the writ of mandamus because "[t]o grant the remedy under the facts in this case would . . . be to establish a principle that would introduce very great disorder and confusion in the administration of the finances of the city, and subject it to unnecessary expense. . . . This would . . . hamper the conduct of city business, and subject the taxpayers to needless expense.") (citations omitted).

In summary, the writ of mandamus will not issue unless two requirements are met. First, the party against whom enforcement is sought must have an imperative, "ministerial" duty to do as sought to be compelled, *see, e.g., Murrell*, 376 Md. at 196, 829 A.2d at 564, i.e., "a duty prescribed by law," *Freeman v. Local 1802, Am. Fed'n of State*, 318 Md. 684, 693, 569 A.2d 1244, 1248 (1990). *See, e.g., Wilson*, 380 Md. at 226, 844 A.2d at 424-25 ("Because the statute does not require [plaintiff] to be granted back pay, . . . [plaintiff's] mandamus action does not lie 'to compel performance of a statutory duty.'") (quoting *Eck v. State Tax Comm'n*, 204 Md. 245, 255, 103 A.2d 850, 855 (1954)). Therefore, mandamus should not issue ordinarily when the act sought to be compelled of the official or administrative agency is discretionary in nature. In addition, the party seeking enforcement of that duty must have a clear entitlement to have the duty performed. The writ should not be issued where the right to the performance of the duty is doubtful. *Brack*, 185 Md. at 474, 45 A.2d at 105. Where the obligation to perform some particular duty is unclear or involves the exercise of any "vestige of discretion," or where the party seeking enforcement of the duty does not have a clear right to the performance of the duty it seeks to compel, the writ of mandamus will not be granted.

68. Wagner's and the Board's obligations under the Election Law Article with respect to the certification of the referendum under MD Code, Election Law, 6-206 and MD Code, Election Law,

§6-208 are undoubtedly ministerial, as set forth herein. Even to the extent that the decision whether to certify relies on an opinion as to the legality of the referendum, that opinion is provided by “the advice of the legal authority.” *Id.* As stated above, the Election Law’s requirements that the Board and Wagner properly certify a petition (or in this case reject) are mandatory, nondiscretionary ministerial acts.

69. Plaintiffs have a clear right to a proper determination of the Petition under the Maryland Election Law. *See infra*, ¶10, ¶¶16-17. Plaintiffs’ interestss in the proper implementation of Election Laws with respect to referendum affecting zoning and data center cut to the heart of Plaintiff’s interest in Maryland. There is little doubt that if the referendum is allowed to proceed, under the circumstances described herein above, without the Court issuing a writ of mandamus to Defendants the Board and Wagner to properly implement the Election Law, with respect to the Petition and the proposed referendum that Plaintiffs will be irreparably harmed. Indeed, Plaintiffs have no adequate remedy at law.

70. Accordingly, the Court should issue a writ as requested herein.

WHEREFORE, for the foregoing reasons, Plaintiffs request that this Court grant the relief requested herein and

- A. Issue a writ of mandamus directed at Defendant Board and Wagner to compel them to issue a decision as to the petition consistent with MD Code, Election Law, §6-206 and §6-208 and deem the Petition for referendum by FCDRC deficient and legally invalid, and that there can be no referendum on the Ordinance for the reasons stated herein; and
- B. Award Plaintiffs all attorneys’ fees incurred in connection with this matter; and
- C. Award any and other relief as is deemed just and proper in this case.

Respectfully submitted,

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