

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Paul Kendall, Pro se, et al.

(b) County of Residence of First Listed Plaintiff Howard County  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Susan Gray, 6510 Paper Place Highland, MD 20777  
240-426-1655

## DEFENDANTS

Howard County Maryland, et al,

County of Residence of First Listed Defendant Howard County  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(e)) <b>FEDERAL TAX SUIT</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input checked="" type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

42 USC 1983

Brief description of cause:

Challenging denial of right to vote and participate in referendum

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$**  
10,000,000.00

CHECK YES only if demanded in complaint:  
**JURY DEMAND:** ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

2/17/09

Susan B. Gray Atty. for non prose Plaintiffs

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MARYLAND

PAUL F. KENDALL, *Pro se* )  
2630 Turf Valley Road )  
Ellicott City, Maryland 21042 )  
(Howard County) )

Civil Case Number:

FRANK MARTIN, *Pro se* )  
2911 Beaver Lake Court )  
Ellicott, City, Maryland 21042 )  
(Howard County) )

JURY TRIAL DEMANDED

PHILLIP ROUSSEAU )  
9250 Silver Sod )  
Columbia, Maryland 21045 )  
(Howard County) )

BOBBIE ATHEY )  
AND LARRY ATHEY )  
15140 Players Way )  
Glenwood, Maryland 21738 )  
(Howard County) )

JOHN MEY AND JANET MEY )  
15130 Players Way )  
Glenwood, Maryland 21738 )  
(Howard County) )

DENISE EDEN AND PAUL EDEN )  
15253 Callaway Court )  
Glenwood, Maryland 21738 )  
(Howard County) )

KNUT ELLENES )  
AND ELEANORE ELLENES )  
15263 Callaway Court )  
Glenwood, Maryland 21738 )  
(Howard County) )

ORAL FOLKS AND SUE FOLKS	)
15155 Players Way	)
Glenwood, Maryland 21738	)
(Howard County)	)
	)
Plaintiffs	)
	)
	)
v.	)
	)
HOWARD COUNTY, MARYLAND,	)
3430 Courthouse Drive	)
Ellicott City, Maryland 21043	)
(Howard County)	)
	)
HOWARD COUNTY COUNCIL,	)
3430 Courthouse Drive	)
Ellicott City, Maryland 21043	)
(Howard County)	)
	)
HOWARD COUNTY COUNCIL, Sitting	)
as the HOWARD COUNTY ZONING	)
BOARD	)
3430 Courthouse Drive	)
Ellicott City, Maryland 21043	)
(Howard County)	)
	)
HOWARD COUNTY PLANNING	)
BOARD	)
3430 Courthouse Drive	)
Ellicott City, Maryland 21043	)
(Howard County)	)
	)
KENNETH ULMAN,	)
In his Official Capacity as County	)
Executive	)
3430 Courthouse Drive	)
Ellicott City, Maryland 21043	)
(Howard County)	)
	)

JAMES N. ROBEY,	)
In his Official Capacity as Former	)
County Executive	)
6150 Shadywood Road, Unit 402	)
Elkridge, Maryland 21075	)
(Howard County)	)
	)
MARGARET ANN NOLAN,	)
In her Official Capacity as County	)
Solicitor	)
3430 Courthouse Drive	)
Ellicott City, Maryland 21043	)
(Howard County)	)
	)
BARBARA M. COOK,	)
Individually, and in her Official	)
Capacity as Former County Solicitor	)
5093 Jericho Road	)
Columbia, Maryland 21044	)
(Howard County)	)
	)
PAUL JOHNSON,	)
Individually, and in his Official Capacity	)
as Deputy County Solicitor	)
3430 Courthouse Drive	)
Ellicott City, Maryland 21043	)
(Baltimore County)	)
	)
LYNN ROBESON,	)
Individually, and in her Official Capacity	)
as Assistant County Solicitor	)
3430 Courthouse Drive	)
Ellicott City, Maryland 21043	)
(Howard County)	)
	)
MARSHA S.MCLAUGHLIN,	)
Individually, and in her Official	)
Capacity as Director, Department of	)
Planning and Zoning	)
3430 Courthouse Drive	)

Ellicott City, Maryland 21043 )  
(Baltimore County) )

JAMES IRVIN, )  
Individually, and in his Official Capacity )  
as Director, Department of Public Works )  
3430 Courthouse Drive )  
Ellicott City, Maryland 21043 )  
(Howard County) )

CINDY HAMILTON, )  
Individually, and in her Official Capacity as )  
Chief, Division of Land Development, )  
Department of Planning & Zoning )  
3430 Courthouse Drive )  
Ellicott City, Maryland 21043 )  
(Carroll County) )

CHARLES F. DAMMERS, )  
Individually, and in his Official Capacity as )  
Chief, Development Engineering Division, )  
Department of Planning & Zoning )  
3430 Courthouse Drive )  
Ellicott City, Maryland 21043 )  
(Howard County) )

Defendants

**COMPLAINT AND DEMAND FOR JURY TRIAL**

NOW COMES the Plaintiffs, Paul F. Kendall, Frank Martin, *pro se*, Phillip Rousseau, Bobbie and Larry Athey, John and Janet Mey, Denise and Paul Eden, Knut and Eleanore Ellenes, and Oral and Sue Folks, by and through their attorney, Susan B. Gray, and for their Complaint against the Defendants, state:

## **JURISDICTION AND VENUE**

1. This Complaint is brought pursuant to 42 U.S.C. § 1983, and the First and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded on 28 U.S.C. §§ 1331 and 1343(3) and (4), and 28 U.S.C. §§2201 and 2202, the aforementioned statutory and constitutional provisions, and the federal jurisdictional right of this Court under 28 U.S.C. §1367 to exercise supplemental or pendant jurisdiction over state claims that arise out of the same core of operative facts. Venue in this Court exists and is proper pursuant to 28 U.S.C. § 1391 (b) in that Defendants reside in the Northern District of Maryland and a substantial part of the events and omissions giving rise to Plaintiffs' claims occurred within the Northern District of Maryland.

## **INTRODUCTION**

2. This Complaint, by several Plaintiffs, arises from a common fundamental problem existing in the Howard County Maryland land use related regulatory structure and decision-making processes. Howard County Maryland was once a rural community primarily dominated by a small group of substantial land owners who exercised substantial control over the development process under a strict regime where the principal players made rules designed to help favored ones and exceptions were granted based on "familiarity" with the County "principals" rather than adherence to the rule of law. Howard County now faces the challenges and growing pains of a once rural community joining a cosmopolitan arena where the old rules and ways of doing business no longer comport with the realities

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## **INTRODUCTION**

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of greater congestion, conflicting interests, and demands by a more diverse populace for greater scrutiny on the fairness of the process and adherence to the rule of law.

3. This problem has existed for more than 40 years, but in the last few years the abuse of the process has reached a level of unprecedented federal constitutional proportions. The problem is serious and endemic and, only through federal intervention, will Plaintiffs be able to obtain relief.

### **PARTIES**

4. Plaintiff Paul F. Kendall, (hereinafter "Plaintiff Kendall") is a citizen of the United States. At all times relevant to the events described herein, Mr. Kendall has been a taxpayer, property owner, resident and registered voter in Howard County Maryland who resides at 2630 Turf Valley Road Ellicott City, Maryland 21042.

5. Plaintiff Frank Martin, (hereinafter "Plaintiff Martin") is a citizen of the United States. At all times relevant to the events described herein, Mr. Martin has been a taxpayer, property owner, resident and registered voter in Howard County Maryland who resides at 2911 Beaver Lake Court, Ellicott, City, Maryland.

6. Plaintiff Philip Rousseau, (hereinafter "Plaintiff Rousseau") is a citizen of the United States. At all times relevant to the events described herein, Mr. Rousseau has been a taxpayer, property owner, resident and registered voter in Howard County Maryland who resides at 9250 Silver Sod, Columbia, Maryland.

7. Plaintiff Bobbie Athey, (hereinafter "Plaintiff Bobbie Athey") is a citizen of the United States. At all times relevant to the events described herein, she has been a taxpayer, property owner,



resident and registered voter in Howard County Maryland who resides at 15140 Players Way, Glenwood, Maryland.

8. Plaintiff Larry Athey, (hereinafter “Plaintiff Larry Athey”) is a citizen of the United States. At all times relevant to the events described herein, he has been a taxpayer, property owner, resident and registered voter in Howard County Maryland who resides at 15140 Players Way, Glenwood, Maryland.

9. Plaintiff Janet Mey, (hereinafter “Plaintiff Janet Mey”) is a citizen of the United States. At all times relevant to the events described herein, she has been a taxpayer, property owner, resident and registered voter in Howard County Maryland who resides at 15130 Players Way, Glenwood, Maryland.

10. Plaintiff John Mey, (hereinafter “Plaintiff John Mey”) is a citizen of the United States. At all times relevant to the events described herein, he has been a taxpayer, property owner, resident and registered voter in Howard County Maryland who resides at 15140 Players Way, Glenwood, Maryland.

11. Plaintiff Denise Eden, (hereinafter “Plaintiff Denise Eden”) is a citizen of the United States. At all times relevant to the events described herein, she has been a taxpayer, property owner, resident and registered voter in Howard County Maryland who resides at 15253 Callaway Court, Glenwood, Maryland.

12. Plaintiff Paul Eden, (hereinafter “Plaintiff Paul Eden”) is a citizen of the United States. At all times relevant to the events described herein, he has been a taxpayer, property owner, resident and

registered voter in Howard County Maryland who resides at 15253 Callaway Court, Glenwood, Maryland.

13. Plaintiff Eleanore Ellenes, (hereinafter “Plaintiff Eleanore Ellenes”) is a citizen of the United States. At all times relevant to the events described herein, she has been a taxpayer, property owner, resident and registered voter in Howard County Maryland who resides at 15263 Players Way, Glenwood, Maryland.

14. Plaintiff Knut Ellenes (hereinafter “Plaintiff Knut Ellenes”) is a citizen of the United States. At all times relevant to the events described herein, he has been a taxpayer, property owner, resident and registered voter in Howard County Maryland who resides at 15263 Players Way, Glenwood, Maryland.

15. Plaintiff Sue Folks, (hereinafter “Plaintiff Sue Folks”) is a citizen of the United States. At all times relevant to the events described herein, she has been a taxpayer, property owner, resident and registered voter in Howard County Maryland who resides at 15155 Players Way, Glenwood, Maryland.

16. Plaintiff Oral Folks (hereinafter “Plaintiff Oral Folks”) is a citizen of the United States. At all times relevant to the events described herein, he has been a taxpayer, property owner, resident and registered voter in Howard County Maryland who resides at 15155 Players Way, Glenwood, Maryland.

17. Defendant Howard County Maryland (hereinafter “Defendant Howard County”) is a chartered County of the State of Maryland.

18. Defendant Howard County Council, (hereinafter “Defendant County Council” or “Defendant Council”) is the legislative body of Howard County, Maryland. While sitting as an administrative body for certain zoning matters, the County Council is identified as the Howard County Zoning Board (hereinafter “Zoning Board” or “Howard County Zoning Board.”).

19. Defendant Kenneth Ulman, (hereinafter “Defendant Ulman”) is a citizen of the United States. Defendant Ulman is and has been County Executive for Howard County, Maryland since December 2006. From December 2002 to December 2006, he was a member of the Howard County Council.

20. James Robey, (hereinafter “Defendant Robey”) is a citizen of the United States. Defendant Robey was County Executive for Howard County, Maryland from December 1998 through November 2006. He became a state senator for Howard County in 2006 and remains in that seat today.

21. Defendant Margaret Ann Nolan, (hereinafter referred to as “Defendant Nolan”) is a citizen of the United States. Since some time in 2007, she has been and currently is the Howard County Solicitor and head of the Howard County Office of Law (hereinafter to as (“Office of Law”). The Office of Law is, under the Howard County Charter, the legal advisor of Howard County and all of its departments, branches, boards and agencies. It also is the legislative draftsman for the County Council.

22. Defendant Barbara Cook (hereinafter referred to as “Defendant Cook”) is a citizen of the United States. She was the Howard County Solicitor in the general timeframe of 1987 to February 28, 2007.

23. Defendant Paul Johnson, (hereinafter referred to as “Defendant Johnson”) is a citizen of the United States. Except for a short time in 2007 when he was Acting County Solicitor, at all times relevant to the events described herein, Defendant Johnson was and still is the Deputy County Solicitor for Howard County.

24. Defendant Lynn Robeson, (hereinafter referred to as “Defendant Robeson”) is a citizen of the United States. At all times relevant to the events described herein, Defendant Robeson was and still is an Assistant County Solicitor for Howard County.

25. Defendant, Marsha McLaughlin, hereinafter “Defendant McLaughlin”) is a citizen of the United States. At all times relevant to the events described herein, Defendant McLaughlin has held a high level position in the Howard County Department of Planning and Zoning (hereinafter “Department of Planning and Zoning or DPZ”). In 2003 she was appointed Director of the Department of Planning and Zoning, a position she continues to hold today.

26. Defendant James Irvin, (hereinafter “Defendant Irvin”) is a citizen of the United States. At all relevant times to the events described herein Defendant Irvin was, and still is, the Director of the Howard County Department of Public Works.

27. Defendant Cindy Hamilton (hereinafter “Defendant Hamilton”) is a citizen of the United States. At all times relevant to the events described herein, Defendant Hamilton was, and still is, employed by Howard County as Chief of the Department of Planning and Zoning’s Division of Land Development.

28. Defendant Charles Dammers (hereinafter “Defendant Dammers”) is a citizen of the United States. At all times relevant to the events described herein, Defendant Dammers was, and still is, employed by Howard County as Chief of the Department of Planning and Zoning’s Development Engineering Division.

**DENIAL OF THE RIGHT TO VOTE  
FACTUAL ALLEGATIONS**

29. Howard County is a body corporate and politic located in Maryland mid way between Baltimore and Washington, DC.

30. In 1969 the people of the county, pursuant to Article XI of the Maryland Constitution, adopted a Charter, or home rule, form of government. Under its Charter, the County has all of the rights and powers of local self-government and home rule as are set out in, or necessarily implied by, the Charter and by the Constitution and the laws of the State of Maryland.

31. In accord with the requirements of Article XI of the Maryland Constitution, the County Charter, since its inception, has required an elected legislative body, the County Council, and an elected County Executive. The County also has various legislative and executive Boards, including the Zoning Board, the Planning Board and the Board of Appeals, each of which makes certain decisions on land use matters in the county pursuant to delegated authority from the County Council.

32. The Howard County Charter is the local Constitution of the people of the County.

33. Absent a conflict with public general law (State law), all acts, laws and ordinances of the County must be consistent with the Howard County Charter. (See the Howard County Charter, the

relevant portions of which are attached hereto and incorporated herein as “Factual Allegations, Exhibit 1,” Howard County Charter, Section 206).

34. The Howard County Charter requires all “laws” or legislative acts to be passed by the County Council by “original bill.” (See “Factual Allegations, Exhibit 1,” Sections 207 and 209(a) of Charter).

35. Section 207 provides in relevant part:

“The Council is vested with the law-making power of the County...”

36. Section 209(a) provides in relevant part:

“All laws shall be passed by original bill.”

37. Any “law,” or “a part of any law” of the Council, except appropriations for current expenses, is subject to the right of the People to petition the law or part thereof to referendum. (See “Factual Allegations, Exhibit 1,” Section 211 of Charter).

Section 211 of the Charter specifies in relevant part:

(a) Scope of the referendum

The people of Howard County reserve to themselves the power known as “The Referendum,” by petition to have submitted to the registered voters of the County to approve or reject at the polls, any law or part of any law of the Council. The referendum petition...shall be sufficient if signed by five per centum of the registered voters of the County, but in any case not less than 1,500 or more than 5,000 signatures shall be required. Such petition shall be filed with the Board of Supervisors of Election ... within sixty days after the law is enacted. .however, if more than one-half, but less than the full number of signatures required to complete any referendum petition....be filed within sixth days from the date it is enacted, the time for...the remainder of signatures to complete the petition shall be extended for an additional thirty days.....No law making any appropriation for current expenses shall be subject to rejection or repeal under this section.

38. Under the Charter, a “law” is synonymous with a “legislative act” and an “ordinance” is synonymous with a “bill.” (See “Factual Allegations, Exhibit 1,” Section 914(b) of Charter).

39. Under Maryland law, as applicable to Howard County, an ordinance is distinctly a “legislative act,” prescribing some permanent rule of conduct or government to continue in force until the ordinance is repealed. All legislation creating liability or affecting in any important or material manner the people of a municipality is to be enacted by ordinance. Any municipal action of general application prescribing a new plan or policy is considered legislative and must be accomplished by ordinance.

40. Under the Charter, original bills (ordinances) must be enacted by the County Council through a specific process which includes a public hearing after notice, adoption of the bill by majority Council vote, and unless expressly exempted by the Charter, presentation of the adopted bill to the County Executive for ratification or veto. (See “Factual Allegations, Exhibit 1,” Sections 209(c)-(g) of Charter).

41. The Charter also provides that non-legislative acts may be passed by the County Council by resolution. Resolutions are not presented to the County Executive for ratification or veto. Nor are they subject to referendum.

42. Under Maryland law, as applicable to Howard County, a resolution ordinarily denotes something less solemn or formal than, or not rising to the dignity of, an ordinance. A resolution passed by a legislative body deals with matters of a special or temporary character and generally is simply an expression of opinion or mind concerning some particular item or business coming within the legislative

body's official cognizance, ordinarily ministerial in character and relating to the administrative business of the municipality.

43. Sections 207, 209 and 211 of the Charter, together, establish in all Howard County voters a right to petition to referendum and vote, on all county decisions which are "legislative acts," except appropriations for current expenses.

44. Although historically under Maryland law the act of zoning and the adoption of plans of general application, including General Plans of development have been considered legislative, nevertheless, in 1994, county citizens collected signatures of over 10,000 registered voters and put on the November 1994 ballot a proposed charter amendment to clarify that with the exception of one clearly defined category of zoning decisions ("change or mistake" zoning reclassifications applicable to Euclidian zones), all zoning decisions and all changes to the County's General Plan were "legislative acts" and must be passed by the County Council by original bill subject to petitioning to referendum.

45. This amendment was adopted by the voters in the 1994 general election and codified into the Charter as Section 202(g). (See Factual Allegation Exhibit 1-County Charter, Section 202(g)). Section 202(g) provides:

(g) Planning and zoning.

Any amendment, restatement or revision to the Howard County General Plan, the Howard County Zoning Regulation or Howard County Zoning Maps, other than a reclassification map amendment established under the "change or mistake" Principle set out by the Maryland Court of Appeals, is declared to be a legislative act and may be passed only by the Howard County Council by original bill in accordance with the legislative procedure set forth in section 209 of the Howard County Charter. Such an



act shall be subject to executive veto and may be petitioned to referendum by the people of the county pursuant to section 211 of the Charter.

46. This charter provision declares that any amendment, restatement or revision to the Howard County Zoning Regulations or Zoning Map (other than “change or mistake” rezoning applicable to Euclidian zones), or the General Plan is a “legislative act” and must be passed by the Howard County Council by original bill.

47. The purpose of this provision is to reserve to the people the right to vote in a referendum to challenge certain classified zoning actions undertaken by Howard County. That right to vote in §202(g) of the Howard County Charter was granted to the citizens of Howard County without condition or limitation on status.

48. The Howard County Charter stands in a preeminent position to the Howard County Code and any interpretations of or actions taken pursuant to provisions of the Howard County Code in conflict with the Howard County Charter are illegal as impermissible exercises of governmental authority. (See “Factual Allegations, Exhibit 1,” Section 206 of Charter).

49. Counts I through IV of this Complaint arise because for years it has been the plan, policy and practice of Howard County and its legislative and executive agencies, acting under color of state law, but in violation of the County Charter, to make legislative determinations or facilitate the making of such determinations, particularly on matters related to land use, through means other than the appropriate and required legislative process and passage of an original bill, in order to circumvent the people’s right of referendum and their ability to veto or approve these decisions at the polls. In the past three years alone there have been hundreds of decisions of such nature.

50. Circumventing the peoples' right of referendum typically is done in one of three ways: (1) the County Council passes laws and accomplishes "legislative acts" by resolution instead of by bill; (2) the County Council, by bill, illegally delegates "legislative" decision-making to administrative entities; and (3) administrative entities, without any purported delegation, make "legislative" determinations which are required under the Charter to be accomplished by the County Council by bill.

51. Section 202(g) of the Howard County Charter was adopted by the citizens of Howard County in the general election on November 8, 1994. Shortly, after the adoption of that provision, Defendants made clear their intention not to implement or to severely limit its implementation.

52. Within days after adoption of Section 202(g), various Howard County officials including Defendants Johnson and Cook in concert with Defendants McLaughlin and the Howard County Council, along with the County Executive at the time, began work on legislation whose expressed purpose was to limit the effect of Section 202(g). This legislation became Council Bills 107 and 108.

53. On December 14, 1994, a meeting was held with Defendants Paul Johnson, County Solicitor, Barbara Cook and several citizens who had been instrumental in placing 202(g) on the ballot and securing its adoption by the voters. At that meeting Defendants Johnson and Cook, in order to confuse those in attendance, stated that to fully implement §202(g), would violate the due process rights of individual property owners who requested a zoning map or regulation amendment. This was clearly pre-textual because the Office of Law had an opinion of the Maryland Attorney General's Office expressing in unqualified terms that the Charter provision §202(g) was constitutional. Moreover, if the Office of Law had felt that this provision was legally infirm, they failed in their duty, clearly established

under Maryland Jurisprudence, to request a declaratory judgment from the Maryland Courts prior to placement of the text of the referendum provision on the ballot in November of 1994. This was not done because based on the opinion of the Maryland Attorney General's Office, a decision of the Maryland Courts would likely have upheld Section 202(g) as constitutional and in accord with the Supreme Court's decision in *City of Eastlake v. Forest City Enterprises, Inc.*, 426 U.S. 668 (1976).

54. In fact, during the time the Council was considering Bills 107 and 108 one member of the Howard County Council suggested that the County obtain a declaratory judgment as to how Section 202(g) should be implemented. Defendants Johnson and Cook advised it could not be done.

55. In 1995 Howard County established a Charter Review Committee to review and recommend changes to the County Charter. Defendant Johnson advised the Committee on Planning and Zoning matters. Johnson acknowledged that the County had not implemented 202(g). He advised the Charter Review Commission that their task was to change the Charter so as to comply with the County Code as recently amended by Council Bills 107 and 108.

56. Defendant Johnson's statements in addition to being a perversion of the legal primacy of the Howard County Charter were an express admission that he deliberately and willfully engaged in a course of questionable and likely illegal conduct in refusing to implement Section 202(g) of the Howard County Charter.

57. Over the past 14 years, there have been many letters, much testimony and other grassroots efforts to get the County to abide by the terms of Section 202(g) of the Howard County Charter. Such efforts have been ignored. There have been other examples, as recently as December

2008 in Howard County Circuit Court, where Defendant Johnson has made clear that Section 202(g) will not be applied according to its plain terms.

58. In Howard County, circumvention of the right of referendum is endemic, particularly in matters related to land use, such as planning and zoning decisions, transportation and other infrastructure development, land development, environmental protection and land preservation.

59. The Supreme Court has recognized that the right to vote is a fundamental or “core constitutional liberty.” No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges this right.” *Wesberry vs. Sanders*, 376 U.S. 1, 17 (1964).

60. Such circumvention has been occurring in Howard County for years; it is engrained in and has become a part of the very fabric of the governance structure. This denial of the electorate’s right of referendum and vote is intentional and purposeful among a core group of high level agency officials who advise elective representatives. Because of the degree to which elected officials must depend on this group for advice, these individuals have made it extremely difficult, if not virtually impossible for elected representatives to carry out their responsibilities without violating constitutionally protected rights of the people they serve.

61. For purposes of this Complaint, and because of the extreme number of violations of electorate’s right to vote, including Plaintiffs, only land use related actions and determinations from the

last three years are being challenged. Plaintiffs will request that should this Court hold that there was a failure to provide a right to vote under the United States Constitution, this Court provide a mechanism for reviewing other non-land use related actions and determinations which have occurred in this same time-frame. Federal oversight will be necessary to rectify this serious and systemic problem which has resulted in a fundamental breakdown in the democratic process in Howard County.

**COUNT I**  
**VIOLATION OF PROTECTED LIBERTY INTEREST BY**  
**DENIAL OF RIGHT TO VOTE**  
**In Violation of the First and Fourteenth**  
**Amendments of the United States Constitution and 42 U.S.C. §1983**  
  
**Land Use Related Resolutions for 2006, 2007 and 2008**  
**(Howard County)**

*As to Defendants: Howard County Maryland; Howard County Council; Paul Johnson, Individually, and in his Official Capacity as Deputy County Solicitor; Marsha McLaughlin, Individually, and in her Official Capacity as the Director of Planning and Zoning; James Irvin, Individually, and in his Official Capacity as the Director of Public Works*

62. Plaintiffs reincorporate by reference and include for all purposes the allegations contained in paragraphs 1 through 61 of this Complaint as if fully stated here.

63. As to this Count I, Defendants also sue James Robey, in his Official Capacity as former County Executive, Cook, Individually and in her Official Capacity as the former County Solicitor, Kenneth Ulman, in his Official Capacity as County Executive and Margaret Ann Nolan, in her Official Capacity as County Solicitor, as to the events described in these paragraphs which occurred during their respective tenures in office.

64. Each resolution set forth in this Count of the Complaint was introduced at the request of the County Executive and adopted by the County Council.

#### **2006 Resolutions**

65. Resolution No. 27, attached hereto and incorporated herein as “Count I-Exhibit 1,” declares that property located at 6700 Freetown Road, Columbia, Maryland and owned by Howard County is no longer needed for public purposes; authorizes the County Executive to enter into a long-term lease of the property; waives the advertising and bidding requirements of the County Code; and provides that the County Executive is not bound to lease the property if he finds that it may have further public use and submits his finding to the County Council.

66. Resolution No. 30, attached hereto and incorporated herein as “Count I-Exhibit 2,” approves the development of the Patuxent Square affordable housing project in Laurel, Maryland.

67. Resolution No. 40, attached hereto and incorporated herein as “Count I-Exhibit 3,” approves an amendment to the Howard County Master Plan for Water and Sewerage, consisting of text, tables, and maps incorporating various revisions, including:

- a. Revision of the priority designations assigned in the Master Plan to certain private development projects;
- b. Update of the water and sewer facilities maps to reflect changes in the Metropolitan District; and
- c. Revision of the inventory of wastewater treatment facilities.

68. Resolution No. 41, attached hereto and incorporated herein as “Count I-Exhibit 4,” grants a variance from the front, rear, and side primary structure setbacks and use setbacks for property located at 6700 Freetown Road.

69. Resolution No. 42, attached hereto and incorporated herein as “Count I-Exhibit 5,” grants a variance from the front, rear, and side building restriction lines at a Department of Public Works facility located at 8800 Ridge Road.

70. Resolution No. 43, attached hereto and incorporated herein as “Count I-Exhibit 6,” adopts the Howard County Consolidated Plan FY 2006-FY 2010 for housing.

71. Resolution No. 54, attached hereto and incorporated herein as “Count I-Exhibit 7,” declares that property located at 6121 Rockburn Branch Park Road, ElkrIDGE, Maryland and owned by Howard County is no longer needed by the County for public purposes; authorizes the County Executive to enter into a long-term curatorship/lease; and provides that the County Executive is not bound to lease the property if he finds that it may have further public use and submits his finding to the County Council.

72. Resolution No. 57, attached hereto and incorporated herein as “Count I-Exhibit 8,” approves the Capital Program for Howard County for Fiscal Years 2008 through 2012, and the Extended Capital Program for Fiscal Years 2013 through 2016.

73. Resolution No. 88, attached hereto and incorporated herein as “Count I-Exhibit 9,” amends Volume I (Storm Drainage) of the Design Manual; clarifies storm drainage fee requirements; clarifies requirements for drainage area maps, subdivision plats, and checklists; makes certain technical

corrections in the computation of runoff; makes certain modifications to hydraulic requirements; adds certain requirements for culverts, arches and bridges; clarifies swale criteria in residential subdivisions; removes certain obsolete tables; amends certain requirements for storm water management, clarifies when certain credits apply; clarifies storm water management requirements for certain cluster developments; adds new criteria for different types of facilities; modifies certain requirements relating to floodplain management, erosion and sediment control; eliminates certain appendices; makes certain technical corrections; and generally relates to the adoption of revised standards for storm drainage systems.

74. Resolution No. 89, attached hereto and incorporated herein as "Count I-Exhibit 10," adopts the Housing Unit Allocation Chart for Fiscal Year 2007 pursuant to the adequate Public Facilities Act of Howard County.

75. Resolution No. 90, attached hereto and incorporated herein as "Count I-Exhibit 11," adopts the Open/Closed Chart, to designate school regions and districts that are open for residential development.

76. Resolution No. 91, attached hereto and incorporated herein as "Count I-Exhibit 12," approves a public interest use for a telecommunications antenna and associated equipment on land owned by Truman and Lavinia Kelley; finds that the proposed use is in the public interest; authorizes an amendment to the deed of easement to release the land used for the proposed telecommunications antenna from an agricultural preservation easement.



77. Resolution No. 93, attached hereto and incorporated herein as “Count I-Exhibit 13,” declares that the 100 unit townhouse and apartment complex and management office owned by Howard County and known as Guilford Gardens, is not longer needed for public purposes; authorizes the County Executive to convey the property to the Howard County Housing Commission for low and moderate income housing; waives the advertising and bidding requirements of the County Code; provides that the County Executive is not bound to convey the property if he finds that it may have a future public use and submits his finding to the County Council.

78. Resolution No. 104, attached hereto and incorporated herein as “Count I-Exhibit 14,” authorizes the Office of Law to institute condemnation proceedings for the acquisition of a portion of Parcel 414, Block 3, and Tax Map 34.

79. Resolution No. 108, attached hereto and incorporated herein as “Count I-Exhibit 15,” approves the closure of a portion of Riverwood Drive.

80. Resolution No. 110, attached hereto and incorporated herein as “Count I-Exhibit 16,” approves a Special Amendment to the Howard County Master Plan for Water and Sewerage to extend a waterline in violation of the General Plan.

81. Resolution No. 122, attached hereto and incorporated herein as “Count I-Exhibit 17,” declares that portions of open space lots conveyed to Howard County, Maryland are not longer needed for public purposes if the County receives replacement open space; authorizes the County Executive to dispose of the property to Maple Lawn Farms I, LLC; waives the advertising and bidding requirements

of the County Code; and provides that the County Executive is not bound to dispose of the property if he finds that it may have further public use and submits his finding to the County Council.

82. Resolution No. 123, attached hereto and incorporated herein as “Count I-Exhibit 18,” grants a variance from the front building and use restriction lines at the location for the new West Friendship Volunteer Fire Station.

83. Resolution No. 135, attached hereto and incorporated herein as “Count I-Exhibit 19,” approves an amendment to the Howard County Inventory of Scenic Roads which adds a portion of Governor Warfield Parkway to the inventory.

84. Resolution No. 136, attached hereto and incorporated herein as “Count I-Exhibit 20,” adopts a comprehensive revision of Volume III (Roads and Bridges) of the Design Manual in order to revise the standards and specifications relating to the design and construction of roads and highways in Howard County.

85. Resolution No. 137, attached hereto and incorporated herein as “Count I-Exhibit 21,” declares that property located at 350 West Friendship Road, Sykesville, and owned by Howard County is no longer needed by the County for public purposes; authorizes the County Executive to enter into a long-term Cooperative Agreement and Lease with the Town of Sykesville; and provides that the County Executive is not bound to lease the property if he finds that it may have a further public use and submits his finding to the County Council.

86. Resolution No. 138, attached hereto and incorporated herein as “Count I-Exhibit 22,” declares that property located at 8510 High Ridge Road, Ellicott City, and owned by Howard County is

no longer needed by the County for public purposes; authorizes the County Executive to enter into a long-term lease of the property; and provides that the County Executive is not bound to lease the property if he finds that it may have a further public use and submits his finding to the County Council.

87. Resolution No. 139, attached hereto and incorporated herein as “Count I-Exhibit 23,” authorizes the Office of Law to institute condemnation proceedings for the acquisition of a fee simple area and an easement on Parcel 112, Block 21, and Tax Map 43.

88. Resolution No. 140, attached hereto and incorporated herein as “Count I-Exhibit 24,” approves an amendment to the Howard County Master Plan for Water and Sewerage, consisting of text, tables, and maps incorporating various revisions, including:

1. Revision of the priority designations assigned in the Master Plan to certain private development projects; and
2. Update of the water and sewer facilities maps to reflect changes in the Metropolitan District.

89. Resolution No. 142, attached hereto and incorporated herein as “Count I-Exhibit 25,” declares that it is in the interest of the public health, safety, and welfare of the citizens of Howard County to accept the dedication of portions of the streets known as Grover Place and Hill Street abutting lots 21,22 and 23 in block 5 and lots 18, 19, 20, 21, and 22 in block 6; to reject the offer of dedication of Hill Street abutting lots 1 through 6 in block 4 and lots 10 and 22 (along Hill Street only) in block 6 as shown on the Plat of North Laurel; and to accept the relocation of Hill Street through lots 9 and 19 in

block 6 of the subdivision plat entitles “Property of North Laurel Park Company: recorded among the land records of Howard County at *liber* 61, *folio* 470 in 1894.

90. Resolution No. 143, attached hereto and incorporated herein as “Count I-Exhibit 26,” declares that it is in the interest of the public health, safety and welfare to accept the dedication of a portion of Forrest Avenue abutting lots 677 through 726 as shown on the plat entitled “Plat of Harwood” recorded at *liber* 60, *folio* 155 in 1893.

### **2007 Resolutions**

91. Resolution No. 24, attached hereto and incorporated herein as “Count I-Exhibit 27,” approved the closure of portions of Ivory, Pfefferkorn, Ten Oaks, Burntwoods and East Ivory roads.

92. Resolution No. 36, attached hereto and incorporated herein as “Count I-Exhibit 28,” declares that land known as a portion of Riverwood Drive owned by Howard County is not longer needed by the County for public purposes; authorizes the County Executive to terminate the property interest, vesting title to the adjacent property owner, 7200 Riverwood LLC, a subsidiary of COPT Development and Construction Services, LLC, waives the advertising and bidding requirements of the County Code, and provides that the County Executive is not bound to terminate the property interest if he finds that it may have a further public use and submits his finding to the County Council.

93. Resolution 37, attached hereto and incorporated herein as “Count I-Exhibit 29,” declares that property owned by Howard County, shown on Tax Map 25, Parcel 264 and located on Martha Bush Drive in Ellicott City, is no longer needed by the County for public purposes; authorizes the County

Executive to convey the property; waives<sup>1</sup> the advertising and bidding requirements of the County Code; and provides that the County Executive is not bound to convey the property if he finds that it may have a further public use and submits his finding to the County Council.

94. Resolution No. 38 attached hereto and incorporated herein as “Count I-Exhibit 30,” grants a variance from the side primary structure setback at the Bethany Lane Fire Station.

95. Resolution No. 39, attached hereto and incorporated herein as “Count I-Exhibit 31,” adopts Howard County’s Annual Action Plan for housing.

96. Resolution No. 40, attached hereto and incorporated herein as “Count I-Exhibit 32,” approves an amendment to the Howard County Master Plan for Water and Sewerage, consisting of tables and maps incorporating various revisions, including:

1. Revision of the priority designations assigned in the Master Plan to certain private development projects;
2. Revision of the inventory of shared sewage disposal facilities;
3. Update of the water and sewer facilities maps to reflect changes in the Metropolitan District; and
4. Revision of the inventory of wastewater treatment facilities.

97. Resolution No. 41, attached hereto and incorporated herein as “Count I-Exhibit 33,” adopts a comprehensive revision of Volume IV (Standards Specifications and Details for Construction) of the Design Manual to revise the standards and specifications relating to the construction of roads and utilities in Howard County.

98. Resolution No. 44, attached hereto and incorporated herein as "Count I-Exhibit 34," approves the Capital Program for Howard County for Fiscal Years 2009-2013 and the Extended Capital Program for Fiscal Years 2014 through 2017.

99. Resolution No. 76, attached hereto and incorporated herein as "Count I-Exhibit 35," adopts the schedule of rates for the Building Excise Tax.

100. Resolution No. 88, attached hereto and incorporated herein as "Count I-Exhibit 36," authorizes the transfer of 10 acres of land located at Tamar Drive and MD 175 owned by the Public School System to St. John Evangelist Baptist Church in exchange for the transfer of 41. 15 acres of land located at 2685 Marriottsville Road to the Howard County Public School System

101. Resolution No. 89, attached hereto and incorporated herein as "Count I-Exhibit 37," adopts the green neighborhood standards that must be met in order to receive a Green Neighborhood Allocation.

102. Resolution No. 90, attached hereto and incorporated herein as "Count I-Exhibit 38," adopts the Housing Unit Allocation Chart for Fiscal Year 2008.

103. Resolution No. 91, attached hereto and incorporated herein as "Count I-Exhibit 39," adopts the Open/Closed Chart to designate the school regions and districts that are open for residential development.

104. Resolution No. 115, attached hereto and incorporated herein as "Count I-Exhibit 40" amends a variance from the side primary structure setback for a new storage facility and granting a variance from the side use setback for the Bethany Lane Fire Station.

105. Resolution No. 119, attached hereto and incorporated herein as “Count I-Exhibit 41,” adopts the green neighborhood standards that must be met in order to receive a Green Neighborhood Allocation.

106. Resolution No. 120, attached hereto and incorporated herein as “Count I-Exhibit 42,” approves the development of an affordable housing project to be known as The Residences at Ellicott Gardens.

107. Resolution No. 121, attached hereto and incorporated herein as “Count I-Exhibit 43,” approves the development of an affordable housing project to be known as Park View at Emerson.

#### **2008 Resolutions**

108. Resolution No. 17, attached hereto and incorporated herein as “Count I-Exhibit 44,” declares that a portion of a preservation easement running over and across 1.1733 acres of real property located on portions of 18910 and 18840 Windsor Forest Road will be released and extinguished and is no longer needed by Howard County, Maryland as a preservation easement in consideration for an exchange and grant to the County of another preservation easement running over and across the same approximate amount of acreage located across a portion of 18950 Windsor Forest Road; waives the advertising and bidding requirements of Section 4.201 of the Howard County Code; and provides that the County Executive is not bound to release and extinguish the easement in exchange for the same approximate amount of acreage if he finds that the Surplus Easement may have a further public use and submits his finding to the County Council for its consideration.

109. Resolution No. 39, attached hereto and incorporated herein as “Count I-Exhibit 45,” declares that certain real property comprising approximately 26.233 acres owned by Howard County, Maryland and located along Martha Bush Drive in Ellicott City, Maryland is no longer needed by the County for public purposes; authorizes the County Executive to sell the property; waives the advertising and bidding requirements of Section 4.201 of the Howard County Code; and provides that the County Executive is not bound to sell the property if he finds that it may have a further public use and submits his finding to the County Council for its consideration.

110. Resolution No. 40, attached hereto and incorporated herein as “Count I-Exhibit 46,” declares that certain real property comprising approximately 24.5 acres owned by Howard County, Maryland and located along Rogers Avenue in Ellicott City, Maryland is no longer needed by the County for public purposes; authorizes the County Executive to sell the property; waives the advertising and bidding requirements of Section 4.201 of the Howard County Code; and provides that the County Executive is not bound to sell the property if he finds that it may have a further public use.

111. Resolution No. 41, attached hereto and incorporated herein as “Count I-Exhibit 47,” approves the Capital Program for Howard County Fiscal Years 2010 through 2014 and Extended Capital Program for Fiscal Years 2015 through 2018.

112. Resolution No. 107, attached hereto and incorporated herein as “Count I-Exhibit 48,” adopts the Housing Unit Allocation Chart for Fiscal Year 2009 pursuant to the Adequate Public Facilities Act of Howard County.



113. Resolution No. 65, attached hereto and incorporated herein as “Count I-Exhibit 49,” adopts the Open/Closed Chart, pursuant to the Adequate Public Facilities Act of Howard County, to designate the school regions and school districts that are open for residential development.

114. Resolution No. 77, attached hereto and incorporated herein as “Count I-Exhibit 50,” approves the 2008 Amendment to the Howard County Master Plan for Water and Sewerage, consisting of text, tables, and maps incorporating various revisions based on:

1. An analysis of the water and sewerage systems, including systems expansion to serve presently undeveloped area within the Planned Service Area and augmentation of undersized existing facilities;
2. The progress of projects for future water supply and sewerage treatment needs in the county and outside of the county, including improvements to the Western Third Zone water supply and expansion of the Patapsco Wastewater Treatment Plant being built in coordination with Baltimore City and Baltimore County;
3. Review of service priorities for properties in the Planned Service Area; and
4. Changes in the anticipated alignment, location, and sizing of future facilities.

115. Resolution No. 96, attached hereto and incorporated herein as “Count I-Exhibit 51,” grants a variance from the structure and use setback requirements at the new Robinson Nature Center along Cedar Lane in Columbia.

116. Resolution No. 97, attached hereto and incorporated herein as “Count I-Exhibit 52,” grants a variance from the height requirements at the Meadowbrook Park Indoor Sports Center at Meadowbrook Park.

117. Resolution No. 98, attached hereto and incorporated herein as “Count I-Exhibit 53,” supplements the Historic Sites Inventory for Howard County and adopts certain criteria.

118. Resolution No. 111, attached hereto and incorporated herein as “Count I-Exhibit 54,” declares that certain real property known as the “Gateway School” comprising approximately 7.768 acres owned by Howard County, Maryland and located at NW Route 108, Clarksville, Maryland is no longer needed by the County for public purposes; authorizes the County Executive to sell the property; waives the advertising and bidding requirements of Section 4.201 of the Howard County Code, and provides that the County Executive is not bound to sell the property if he finds that it may have further public use and submits his finding to the County Council for its consideration.

119. Resolution No. 129, attached hereto and incorporated herein as “Count I-Exhibit 55,” approves an amendment to the Howard County Inventory of Scenic Roads which adds several rural, historically significant roads to the Inventory.

#### **Nature of Cause of Action and Relief Sought**

120. Plaintiffs reincorporate by reference and include for all purposes the allegations contained in paragraphs 1 through 119 of this Complaint as if fully stated here.

121. Pursuant to Sections 202(g) and /or 207, 209 and 211 of the Howard County Charter, all of the resolutions introduced at the request of the County Executive and adopted by the County Council referred to in this Count I of the Complaint were “legislative acts” required to be passed by original bill, subject to petitioning to referendum.

122. Many of the resolutions introduced at the request of the County Executive and adopted by the County Council referred to in this Count I of the Complaint were actions done pursuant to Council Bills CB 66-1988, CB 30-1990, CB 104-1992, CB 10-1992, CB 51-1994. (For the relevant portions of these bills, see “Count I, Exhibits, 56, 57, 58 and 59,” respectively. Such exhibits are attached hereto and incorporated herein.). These Council bills, enacted over the last 15 years as part of the Municipal Code, were enacted in violation of the above charter provisions. CB 66, enacted in 1988, covers the method for adopting the Howard County Design Manual and the Capital Program. CB 30 and 104, enacted in 1990 and 1992, respectively, cover the relocation or closure of public roads. CB 10, enacted in 1992, concerns the 10 Year Capital Program and the Capital Improvement Master Plans. And, CB 51, enacted in 1994, covers the scenic roads inventory, part of the General Plan, the standards for scenic and other county roads. Each Council bill, referred to above, requires actions to be done by resolution instead of original bill and therefore each of these Council Bills violates Sections 202(g) and /or 207, 209 and 211 of the Howard County Charter.

123. Adoption of the resolutions referred to in this Count I of the Complaint, often pursuant to enactments that violated the Howard County Charter were part of a long standing, well orchestrated, and ongoing practice of Defendants in collaboration with each other and with other high level county officials and influential players in the development community to shift decision making authority on land use matters outside the reach of the electorate through a process of systematic disenfranchisement for the economic benefit of certain developers in Howard County.

124. Plaintiffs have a protected liberty interest in the fundamental right to vote and bring “legislative acts” to referendum by petition. This liberty interest is established by Sections 202(g), 207, 209 and 211 of the Howard County Charter. Plaintiffs, as registered voters in Howard County, have a constitutionally protected right under the First and Fourteenth Amendment to the United States Constitution to associate and petition to referendum and, if successful, take to vote each of the above specified “legislative acts.”

125. The actions of Defendants, in supplanting the required original bills with the resolutions set forth above, totally and completely disenfranchised Plaintiffs and the entire Howard County electorate of their right to take these acts to referendum and vote. Such deprivation violates (a) Plaintiffs’ First Amendment right to express their beliefs by vote, to associate as these rights are made applicable to Howard County by the Fourteenth Amendment to the United States Constitution; (b) Plaintiffs’ right to substantive due process and equal protection as established by the Fourteenth Amendment to the United States Constitution in that total disenfranchisement is patently and fundamentally unfair and results in an utter breakdown in the electoral process; and, (c) Plaintiffs’ right to petition the government for redress of grievances as protected under the First and Fourteenth Amendments to the United States Constitution. All such deprivations constitute violations of 42 U.S.C. §1983.

126. The right to vote under Sections 202(g) and/or 207, 209, and 211 of the Howard County Charter was granted to the citizens of Howard County without condition or limitation of status.

127. Other legislative actions during the timeframe encompassed by this Complaint have been done by original bill in Howard County and were subject to petitioning to referendum.

128. Many of the legislative actions listed above and impermissibly passed by resolution benefited well-entrenched, politically connected, wealthy developers and landowners and their attorneys by preventing public objection through the mechanism of the referendum to their plans or to benefits to be preferentially conveyed to them by Defendant Howard County. The passage by resolution of these land use matters usually favoring increased development, and the provision of special benefits to a select few, deprived those who would object to such policies of the ability to have their voices heard.

129. The distinction made between legislation passed by bill and that passed by resolution has created a system of favoritism whereby the legislation passed by resolution results in an unjustified and unwarranted, arbitrary and illegal distinction between these wealthy and politically connected developers, landowners and their attorneys, and the general public, whereby the right to vote was denied to Plaintiffs and the public, thereby insulating the developer/landowners' interests from legislative opposition and veto by the electorate.

130. Plaintiffs' right to vote is a fundamental right protected by federal law under the First and Fourteenth Amendments to the United States Constitution and any infringement or denial of that right must be subjected to a strict scrutiny level of review.

131. The actions of the Defendants in denying Plaintiffs their right to vote, their right to substantive due process and equal protection, and their right to seek redress of grievances constituted

state action in that the decisions were decisions of governmental actors made in furtherance of official government policy.

132. The actions of the Defendants bear no rational relationship whatsoever to any legitimate state concern or to the general welfare.

133. The actions of the Defendants are nothing more than aberrant, arbitrary, capricious abuses of governmental power.

134. The actions of the Defendants do not support or demonstrate any compelling or overriding interest or end for which any legitimate governmental purpose can be justified or served in the distinctions made between actions of the Howard County Council done by resolution and those done by original bill.

135. There was no basis rationally related to any governmental interest for the distinction made between those pieces of legislation granted passage by original bill and those not granted passage by original bill.

136. The actions of Defendants in violating Plaintiffs' constitutional rights through the denial of their right to vote, were unreasoning actions maliciously, wantonly, oppressively undertaken, without consideration and in disregard of the facts or circumstances of each legislative action.

137. Defendants Cook, Johnson and Nolan, are legal advisors to and legislative drafters for the County Council. They also are the persons responsible for approving for legal sufficiency each proposed resolution.

138. Defendants Cook, Nolan and Johnson, in the ordinary course of business, willfully and wantonly approved each resolution as to legal sufficiency, knowing that the Council's passage of the resolution would and did, totally and completely, deprive Plaintiffs and the entire Howard County electorate of (a) their right to vote and associate established under the right of referendum in Sections 202(g), 207, 209, and 211 of the Howard County Charter and the First Amendment of the United States Constitution as applied through the Fourteenth Amendment to the states; (b) their right to substantive due process and equal protection under the law as established by the Fourteenth Amendment to the United States Constitution; and (c) their right to petition the government for redress of grievances as protected under the First and Fourteenth Amendments to the Constitution.

139. In particular, Defendants Cook and Johnson knew of the requirements of Sections 202(g), 207, 209 and 211 of the Charter, yet and with full knowledge of such provisions deliberately counseled against utilization of Section 202(g) by legal reference that was without any basis in reason or law. The actions of Defendants Cook and Johnson in not abiding by the clear terms of the preexisting statute were due either to gross incompetence or deliberate and willful intentionality to break the law.

140. Defendants, Cook and Johnson, on numerous occasions have admitted by making clear during various public proceedings their intention not to abide by, or enforce, the terms of Section 202(g) of the Howard County Charter. At the public hearing on the implementation of 202(g), Defendant Johnson made clear that the County did not intend to implement the provision. Defendant Cook, while County Solicitor, and Defendant Johnson as the legal officer, on information and belief with the primary responsibility for land use advice in the Howard County Office of Law, with full knowledge and

awareness of the terms of Section 202(g) refused to initiate a challenge to the terms of Section 202(g) before its adoption by the voters as was required by long standing established judicial precedent in Maryland if there was a reasonable belief as to its illegality. The failure to challenge the proposed charter provision demonstrates that the plain meaning of Section 202(g) expresses the terms and conditions of a law preexisting to the time of the actions of the Howard County Council challenged by Plaintiffs in this Count Me of the Complaint. Defendants Cook and Johnson's refusal are contumacious, willful and intentional acts of breaking the law as embodied in Section 202(g) of the Howard County Charter.

141. Defendant McLaughlin, as Director of the Office of Planning and Zoning has the primary responsibility for administrative land use decisions in Howard County and is the principle advisor to the Howard County Executive and County Council on planning and zoning land use matters. With full knowledge and awareness of the terms of Section 202(g) and with responsibility for the contents of the Howard County General Plan, she permitted actions that eliminated agricultural preservation easements, thus changing the Howard County Zoning Map, and permitted amendments to the Master Plan for Water and Sewer as expressly incorporated in the General Plan without abiding by the terms of Section 202(g) and processing these actions as resolutions rather than original bills. Defendant McLaughlin has worked for the Department of Planning and Zoning for over twenty years and is familiar with and well versed in the distinction between resolution and original bill and has been intimately involved in Howard County land use in the Department of Planning and Zoning during a time when the legal mechanism for approval of changes to the zoning map, the General Plan, and the zoning regulations evolved from



resolution to original bill. Defendant McLaughlin was instrumental and a key player in the scheme to refuse enforcement of the terms of Sections 202(g), 207, 209 and 211 of the Howard County Charter. Defendant McLaughlin's increasing level of executive responsibility demonstrates that the plain meaning of these Charter provisions would be well known to her as would be knowledge of their applicability to many of the resolutions identified above, and that therefore, Sections 202(g), 207, 209 and 211 expressed the terms and conditions of a law preexisting to the time of the actions of the Howard County Council challenged by Plaintiffs in this Count I of the Complaint. Defendant McLaughlin's actions in enabling the passage of the above specified acts by resolution instead of by original bill are contumacious, willful and intentional acts of breaking the law as embodied in Sections 202(g), 207, 209 and 211 of the Howard County Charter.

142. As principal planning and zoning advisor, Defendant McLaughlin, on information and belief, recommended approval of most of the resolutions cited above, knowing that the Council's passage of them by resolution would deprive Plaintiffs and the entire Howard County electorate of (a) their right to vote and associate established under Section 202(g), 207, 209, and 211 of the Howard County Charter and the First Amendment of the United States Constitution as applied through the Fourteenth Amendment to the states; (b) their right to substantive due process and equal protection under the law as established by the Fourteenth Amendment to the United States Constitution; and 3) their right to petition the government for redress of grievances as protected under the First and Fourteenth Amendment to the Constitution. All such deprivations constitute violations of 42 U.S.C. §1983.

143. Defendant Irvin, as Director of the Department of Public Works, has the primary responsibility for administrative public works related decisions in Howard County which affect land use matters, and is the principle advisor to the Howard County Executive and County Council on such matters. With full knowledge and awareness of the terms of Section 202(g) and with responsibility for advising on the public works related contents of the Howard County General Plan, for jointly developing the Capital Projects Program with McLaughlin, and for preparing and implementing the Master Plan for Water and Sewerage and its amendments, he permitted the closure and relocation of roads, the inclusion of projects into the Capital Program and amendments to the Master Plan for Water and Sewer as expressly incorporated in the General Plan without abiding by the terms of Section 202(g) and processing these actions as resolutions rather than original bills. Defendant Irvin has been the Director of the Department of Public Works for over twenty years and is familiar with and well versed in the distinction between resolution and original bill and has been intimately involved in Howard County land use during a time when the legal mechanism for approval of changes to the zoning map, the General Plan, and the zoning regulations evolved from resolution to original bill. Defendant Irvin was instrumental and a key player in the scheme to refuse enforcement of the terms of Sections 202(g), 207, 209 and 211. Defendant Irvin's high level of executive responsibility demonstrates that the plain meaning of Charter provisions would be well known to him as would be knowledge of their applicability to many of the resolutions identified above, and that therefore, these Charter provisions expressed the terms and conditions of a law preexisting to the time of the actions of the Howard County Council challenged by Plaintiffs in this Count I of the Complaint. Defendant Irvin's actions in enabling the

passage of the above specified acts by resolution instead of by original bill are contumacious, willful and intentional acts of breaking the law as embodied in Sections 202(g), 207, 209 and 211 of the Howard County Charter.

144. As principal advisor on public works matters, Defendant Irvin, on information and belief, recommended approval of many of the resolutions cited above, knowing that the Council's passage of them would deprive Plaintiffs and the entire Howard Electorate of (a) their right to vote and associate established under Section 202(g), 207, 209, and 211 of the Howard County Charter and the First Amendment of the United States Constitution as applied through the Fourteenth Amendment to the states; (b) their right to substantive due process and equal protection under the law as established by the Fourteenth Amendment to the United States Constitution; and (c) their right to petition the government for redress of grievances as protected under the First and Fourteenth Amendment to the Constitution. All such deprivations constitute violations of 42 U.S.C. §1983.

145. The actions of Defendants McLaughlin and Irvin, in not abiding by the clear terms of Sections 202(g), 207, 209 and 211, were due either to gross incompetence or deliberate and willful intentionality to break the law.

146. The actions of Defendants effected an unconstitutional allocation of the fundamental right to vote.

147. Defendants Howard County, Maryland and the Howard County Council are persons for purposes of 42 U.S.C. §1983.

148. Defendants, Robey, Ulman, McLaughlin, Cook, Johnson, Nolan and Irvin are persons for purposes of 42 U.S.C. §1983 and are named herein and are sued in their official capacities in that the actions taken were done through the exercise of power possessed by virtue of state law and made possible only because defendants were and are clothed with the authority of state law.

149. Defendants Cook, Johnson, McLaughlin, and Irvin are persons for purposes of 42 U.S.C. §1983 and are named herein and are sued in their individual capacities because their acts as stated herein, though done through the exercise of power possessed by virtue of state law and made possible only because defendants were and are clothed with the authority of state law, were and are so obviously wrong, in light of preexisting law, that only a plainly incompetent officer or one who is knowingly violating the law would have done such things.

150. Defendants Cook, Johnson, McLaughlin and Irvin, with full knowledge of the priority of the Howard County Charter over the specific regulations, nevertheless, advised Defendants Howard County Maryland and the Howard County Council to approve the resolutions listed in this Count and the underlying authorizing statutes, in violation of Sections 202(g) and/or 207, 209 and 211 of the Howard County Charter.

151. All Defendants named herein this Count I acted under color of state law in executing the actions complained of herein.

152. The actions of the Defendants were and are outrageous and shock the conscience in that they are false and dishonest, clearly intended to deny Plaintiffs the fundamental right to vote, their right to substantive due process and equal protection under the law as well as their right to petition the

government to seek redress for grievances, and through the sheer magnitude of the scope and breath of the denial of fundamental rights, and therefore represent an invidious undermining of our shared understanding of fair and impartial government as the elected source of power in civilized society through the right to vote.

153. The actions of Defendants described herein are the direct and proximate cause of the harm suffered by Plaintiffs in that the actions were taken on behalf of Howard County by those responsible for implementing or executing its policies, ordinances, regulations or decisions officially adopted and promulgated by Defendant's officers, or the result of the Howard County's custom. Defendant Howard County's official actions, policies and customs were the moving force behind the deprivation of Plaintiffs' rights herein.

154. Plaintiffs have been damaged in the deprivation of protected liberty interests, including the violation of their fundamental right to vote.

155. Plaintiffs' requested relief will remedy the harm inflicted by Defendants.

**WHEREFORE** Plaintiffs pray that judgment be entered in their favor and that this Court:

**As to Council Bills Identified above Which Require Certain "Legislative Acts" to be Adopted by Resolution:**

- A. Declare that the following provisions in the following Council Bills violated §202(g) and/or 207, 209 and 211 of the Howard County Charter because these provisions require "legislative acts" be passed by resolution instead of by original bill:

CB 66-1988 Sections 16.108 Definitions

(9) Capital program; (15) Design Manual ("Count I, Exhibit 56");

CB 30-1990 & CB 104-1992 Section 18.204 Road Closures or

Relocations (c) (1), (2) and (3) as modified by CB 104-1996 (c)(1), (2) and (3) requiring action by Resolution. (“Count I, Exhibit 57”);

CB 10-1992 Section 22.405 (e) (2) (i) and (e) (2) (ii) Capital Improvement Master Plans to be Adopted by Resolution. (“Count I, Exhibit 58”);

CB 51-1994 Section 16.1403 (a) Scenic Road Inventory Adopted by Resolution; Section 18.210 General Road Standards and Scenic Road Standards Adopted by Resolution

- B. Declare that the above provisions are null and void *ab initio* and are of no effect;
- C. Enjoin Defendants from undertaking any acts in furtherance of these provisions;
- D. Declare that Defendants’ custom, usage and practice of violating the terms of §202(g) and/or 207, 209 and 211 of the Howard County Charter by enacting ordinances requiring “legislative acts” to be unconstitutional and therefore, order Defendants immediately and forthwith to abide by the terms of such sections;
- E. Award compensatory damages from Defendant Howard County and Defendants Cook, Johnson, McLaughlin and Irvin in their personal capacity in an amount to be determined at trial for the matters alleged in this Complaint;
- F. Award punitive damages against Defendants Howard County, Maryland and Cook, Johnson, McLaughlin and Irvin in the amount of \$1,000,000 each as provided by law;
- G. Award Plaintiffs such amount as would be necessary to establish initially under federal oversight and then in perpetuity a monitoring, review and advocacy organization to help ensure transparency in government, fairness in land use decision-making and process, and to protect the electorate’s right of referendum and vote on “legislative acts;”
- H. Award costs of suit incurred;
- I. Award reasonable attorney’s fees, pursuant to 42 U.S.C 1988; and
- J. Provide such other and further relief as the Court may deem proper.

**As to Resolutions:**

- A. Declare that each resolution above violated §202(g) and/or 207, 209 and 211 of the Howard County Charter and denied Plaintiffs their Constitutionally protected right to take each resolution to referendum and vote;
- B. Declare that each resolution is null and void *ab initio* and is of no effect;
- C. Enjoin Defendants from undertaking any acts in furtherance of or authorized by these resolutions;

- D. Declare that Defendants' custom, usage and practice of violating the terms of §202(g) and/or 207, 209 and 211 of the Howard County Charter of passing "legislative acts" by resolution instead of by bill was and is unconstitutional and therefore, order Defendants immediately and forthwith to abide by the terms of these Charter provisions;
- E. Award compensatory damages from Defendant Howard County and Defendants Cook, Johnson, McLaughlin and Irvin in their personal capacity in an amount to be determined at trial for the matters alleged in this Complaint;
- F. Award punitive damages against Howard County, Maryland and Defendants Cook, Johnson, McLaughlin and Irvin each in their personal capacity in the amount of \$1,000,000 as provided by law;
- G. Award Plaintiffs such amount as would be necessary to establish initially under federal oversight and then in perpetuity a monitoring, review and advocacy organization to help ensure transparency in government, fairness in land use decision-making and process, and to protect the electorate's right of referendum and vote on "legislative acts;"
- H. Award costs of suit incurred;
- I. Award reasonable attorney's fees, pursuant to 42 U.S.C. 1988; and
- J. Provide such other and further relief as the Court may deem proper.

**COUNT II**  
**DENIAL OF RIGHT TO VOTE**  
**In Violation of the First and Fourteenth**  
**Amendments of the United States Constitution and 42 U.S.C. §1983**

**Non “Change or Mistake” Piecemeal Map Amendments**  
**(Howard County)**

*As to Defendants: Howard County, Maryland; Howard County Council, Howard County Council, Sitting as the Zoning Board; Paul Johnson, Individually, and in his Official Capacity as Deputy County Solicitor; Marsha McLaughlin, Individually, and in her Official Capacity as the Director of Planning and Zoning*

156. Plaintiffs reincorporate by reference and include for all purposes the allegations contained in paragraphs 1 through 155 of this Complaint as if fully stated here.

157. As to this section of Count II of this Complaint, Defendants also sue James Robey, in his Official Capacity as former County Executive, Cook, Individually, and in her Official Capacity as the former County Solicitor, Kenneth Ulman, in his Official Capacity as County Executive and Margaret Ann Nolan, in her Official Capacity as County Solicitor, as to the events described in these paragraphs which occurred during their respective tenures in office.

158. Sections 16.200 *et seq.* of the Howard County Zoning Regulations (See Section 16.200 *et seq.* which is attached hereto and incorporated herein as “Count II, Exhibit 1”) provide for processing and approval of “piecemeal” map and regulation amendments by the Howard County Zoning Board by administrative action. These amendments to the Howard County zoning map and/or regulations, except for those made under the “change or mistake” rule, are actions within the scope of the Section 202(g). Consequently, those portions of Section 16.200 *et seq.* abrogating Section 202(g) of the Howard County



Charter which permit amendments to the zoning map by action other than original bill are therefore in direct conflict with Section 202(g) of the Howard Charter. Only amendments based on the “change or mistake” exception found in Section 202(g) of the Howard County Charter are permitted to be made administratively by the Zoning Board. None of the following zoning map and/or regulation amendments was approved pursuant to the “change or mistake” doctrine and therefore each falls within the scope of Section 202(g) requiring an original bill with the right of petitioning to referendum and vote.

159. Zoning Board Case 1056M: (See “Count II, Exhibit 2” attached hereto and incorporated herein). In May of 2006 the Howard County Zoning Board considered a petition of the Lutheran Village at Miller’s Grant to amend the Zoning Map of Howard County to reclassify 50+/- acres of R-20 (Residential-Single) zoned land to the PSC (Planned Senior Community) zoning district, with a Preliminary Development Plan. (See Section 127.1 of the Howard County Zoning Regulations attached hereto and incorporated herein as “Count II, Exhibit 3”). The PSC is a “floating zone.” On July 31, 2006 the Zoning Board approved the requested zoning map amendment.

160. Zoning Board Case 1062M: (See “Count II, Exhibit 4” attached hereto and incorporated herein). In June of 2006 the Howard County Zoning Board considered a petition of Gorman Crossing, LLC, to amend the Zoning Map of Howard County to reclassify 7+- acres of land to the PSC (Planned Senior Community) zoning district, with a Preliminary Development Plan. (See “Count II, Exhibit 3” for zoning regulations). The PSC is a “floating zone.” On September 5, 2006, the Zoning Board approved the requested zoning map amendment.

161. Zoning Board Case 1063M: (See “Count II, Exhibit 5” attached hereto and incorporated herein). In July 2006 the Howard County Zoning Board considered a petition of Ken Clements to amend the Zoning Map for Howard County for 13 +/- acres of land from the RC-DEO (Rural Conservation-Density Exchange Option) zoning district to the Business Rural (“BR”) zoning district, with a Preliminary Development Plan. (See Section 117.1 of the Howard County Zoning Regulations attached hereto and incorporated herein as “Count II, Exhibit 6”). The BR is a “floating zone.” On September 5, 2000 the Zoning Board approved such zoning map amendment.

162. Zoning Board Case 1066M: (See “Count II, Exhibit 7” attached hereto and incorporated herein). In June of 2007 the Howard County Zoning Board considered a petition of Murray Hill PSC, LLC to amend the Zoning Map for Howard County by changing the Preliminary Development Plan (“PDP”) for an 18+/- acre PSC District identified as Tax Map 47, Grid 2, and Lots 1-4. (See “Count II, Exhibit 3” for zoning regulations). The PDP amendment increased the residential density from 8 to 12 units per net acre. On September 21, 2007 the Zoning Board approved such zoning map amendment.

163. Zoning Board Case 1069M: (See “Count II, Exhibit 8” attached hereto and incorporated herein). In January 2008 the Howard County Zoning Board considered the petition of Ken Clements to amend the Zoning Map for Howard County by changing the permitted uses on the Preliminary Development Plan (“PDP”) for a 13 acre BR (Business-Rural) zoning property found at Tax Map 6, Grid 2, and Parcel 106. (See “Count II, Exhibit 6” for zoning regulations). On March 6, 2008 the Zoning Board approved such zoning map amendment.

164. Zoning Board Case 1070M: (See “Count II, Exhibit 9” attached hereto and incorporated herein). In January of 2008 the Howard County Zoning Board considered the petition of Redmiles Services, Inc. to amend the Zoning Map for Howard County by changing the Preliminary Development Plan for an existing Business-Rural (BR) District to increase the size of a proposed building from 5,000 to approximately 30,000 square feet and to make alterations to the originally approved use. (See “Count II, Exhibit 6” for zoning regulations). On March 28, 2008 the Zoning Board approved such zoning map amendment.

165. Zoning Board Case 1060M: This pending case is to amend the Howard County Zoning Map to reclassify property from the R-20 (Residential-Single) zoning district to the Planned Senior Community (“PSC”) zoning district. (See “Count II, Exhibit 3” for zoning regulations). The PSC is a “floating zone.” If approved, this amendment will not be passed by the Howard County Council by original bill, subject to petitioning to referendum, as required by § 202(g) of the Charter.

166. Zoning Board Case 1077M: This pending case is to amend the Howard County Zoning Map to reclassify property from the R-20 (Residential-Single) zoning district to the OT Overlay zoning district. (See Section 117.3 of the Howard County Zoning Regulations attached hereto and incorporated herein as “Count II, Exhibit 10”). If approved, this amendment will not be passed by the Howard County Council by original bill, subject to petitioning to referendum, as required by § 202(g) of the Charter.

167. Zoning Board Case 1079M: This pending case is to amend the Preliminary Development Plan for property in the Business Rural (“BR”) zoning district. (See “Count II, Exhibit 6”

for zoning regulations. Such amendment, if approved, will not be passed by the Howard County Council by original bill, subject to petitioning to referendum, as required by § 202(g) of the Charter.

### **Other Zoning Map and Regulation Changes**

*As to Defendants: Howard County Maryland; Margaret Ann Nolen, in her Official Capacity as County Solicitor; Paul Johnson, Individually, and in his Official Capacity as Deputy County Solicitor; Marsha McLaughlin, Individually, and in her Official Capacity as the Director of Planning and Zoning; Kenneth Ulman, in his Official Capacity as County Executive*

#### **FDP 117—A—II (Sieling Industrial Park)**

168. As to this section of Count II, in addition to the Defendants identified directly above, Plaintiffs sue the Howard County Planning Board.

169. Section 125 of the Howard County Zoning Regulations sets forth the requirements for creating a “New Town” (NT) zoning district. (See Section 125 of the Howard County Zoning Regulations attached hereto and incorporated herein as “Count II, Exhibit 11”). It also sets forth the process for establishing the specific zoning requirements for properties located in this district. In so doing, the section impermissibly delegates to the Howard County Planning Board the power to change the zoning map and regulations for properties in the district in derogation of Sections 202(g), 207, 209 and 211 of the Howard County Charter.

170. Section 125 C 13 of these regulations provides:

Approval of the Final Development Plan (or upon approval of each phase thereof if submitted on a separate segment basis) the same shall be recorded among the Land Records of Howard County and the provisions thereof as to land use shall bind the property covered **with the full force and effect of specific Zoning Regulations**. After such recordation, no new structure shall be built, no new additions to existing structures

made, and no change in primary use affected different from that permitted in the Final Development Plan except by an amendment to the Final Development Plan.

(Emphasis added.)

171. A Final Development Plan because it binds “the lands covered by the Final Development Plan with the **“full force and effect of specific zoning regulations,”** according to Section 125 C 13 of the Howard County Zoning Regulations, is a zoning regulation for a specific parcel of land and is therefore, under §202(g) an amendment, restatement or revision to the Howard County Zoning Regulations.

172. On September 6, 2007, the Howard County Planning Board at a public meeting approved Final Development Plan amendment FDP-117-A-II by adding to the list of permitted uses the phrase “Full service food and grocery store and related uses, of 100,000 square feet or more.” This Final Development Plan amendment revised the zoning regulations for the 181+/- acre Sieling Industrial property and changed the permitted uses on the property from relatively low intensity commercial/industrial uses to those which included “big box” grocery stores.

173. Because Final Development Plans bind lands so covered with the full force and effect of specific zoning regulations, the above approved change was required to be accomplished by original bill pursuant to §202(g) of the Howard County Charter for proper approval.

174. Plaintiff Rousseau has spent almost a year, attempting, through various administrative appeals processes, to have the Planning Board and other administrative entities consider this voting right claim. He has been rebuffed at every turn. At each step in the process, on argument of Defendant Johnson, the various Boards have refused to consider his claim.

**Clock Tower  
(Sieling Industrial Park)**

175. As to this section of Count II, in addition to the defendants identified in this section above (Other Zoning Map and Regulation Changes), Plaintiffs sue the Howard County Planning Board.

176. A Final Development Plan because it binds “the lands covered by the Final Development Plan with the **“full force and effect of specific zoning regulations,”** according to Section 125 C 13 of the Howard County Zoning Regulations, is a zoning regulation for a specific parcel of land in the New Town zoning district and is therefore, under §202(g) an amendment, restatement or revision to the Howard County Zoning Regulations.

177. In a public meeting held on April 24, 2008, the Howard County Planning Board effectively amended the height limitations in FDP-117-A-II and all earlier FDP’s applicable to the Sieling Industrial Park property by approving a structure shown in Site Development Plan, SDP 07-131 having a height almost twice that allowed in the governing Final Development Plans.

178. Such approval effectively changed the FDP’s governing the Sieling Industrial property. Because Final Development Plans bind lands so covered with the full force and effect of specific zoning regulations, the above approved change was required to be accomplished by original bill pursuant to §202(g) of the Howard County Charter for proper approval.

179. Such approval changed the zoning regulations for the property and because this action was not approved by an original bill, it was done in violation of the Howard County Charter.

**Fourth Amended Comprehensive Sketch Plan  
(Turf Valley)**

180. In addition to Defendants listed in this section above (Other Zoning Map and Regulation Changes), Plaintiffs sue Lynn Robeson in her individual and official capacity as Assistant County Solicitor, and the Howard County Planning Board.

181. Section 126 of the Howard County Zoning Regulations sets forth the requirements for creating a “Planned Golf Course Community” (GPCC) zoning district. (See Section 126 of the Howard County Zoning Regulations attached hereto and incorporated herein as “Count II, Exhibit 12”). It also sets forth the process for establishing the specific zoning requirements for property located in this district. In so doing, the section impermissibly delegates to the Howard County Planning Board the power to change the zoning map and zoning regulations for properties in the district in derogation of Sections 202(g), 207, 209 and 211 of the Howard County Charter.

182. Plaintiff Kendall challenged these actions of the Planning Board. Plaintiff Kendall raised the issue of the Board’s authority to engage in zoning actions numerous times in a variety of administrative proceedings. (See Motion to Dismiss attached hereto and incorporated herein as “Count II, Exhibit 13”) On each occasion Lynn Robeson, former counsel with Richard Talkin, developer attorney for the Turf Valley project, advised the Planning Board that it could not consider the question of whether the Board had the authority to make such a zoning change or later that the Planning Board possessed such authority.

183. The Fourth Amended Comprehensive Sketch Plan was approved in April of 2006. The purpose of that plan was to add 120 acres into the Residential Sub-district. Approval of the Fourth

Amended Comprehensive Sketch Plan in PB 368 by the addition of 120 acres to the PGCC Residential Sub-district was a change to the Howard County Zoning Map and therefore was required to be accomplished by original bill pursuant to Sections 202(g) and 207, 209 and 211 of the Howard County Charter.

184. Such approval changed the zoning map for the PGCC Residential Sub-district. Because the Comprehensive Sketch Plan was not approved by an original bill it was done in violation of the Howard County Charter.

**Second Amendment to the Residential Sub-district FDP and the  
Second Amendment to the Multi-Use Sub-district FDP  
(Turf Valley)**

185. In addition to Defendants listed in this section above (Other Zoning Map and Regulation Changes), Plaintiffs sue the Howard County Planning Board.

186. Section 126 F 9 of the Howard County Zoning Regulations provides:

Approval of the Final Development Plan by the Planning Board and recordation thereof among the Land Records of Howard County and the provisions of said Final Development Plan, shall bind the lands covered by the Final Development Plan with the **full force and effect of specific zoning regulations**. After such recordation, no new structure shall be built, no new additions to existing structures made and no change in primary use made different from that permitted in the Final Development Plan, except by an amendment of the Final Development Plan according to the process established herein for the approval of Final Development Plans.

(Emphasis added.)

187. A Final Development Plan because it binds “the lands covered by the Final Development Plan with the **“full force and effect of specific zoning regulations,”** according to Section 126 F 9 of the



Howard County Zoning Regulations, is a zoning regulation for a specific parcel of land and is therefore, under §202(g) an amendment, restatement or revision to the Howard County Zoning Regulations and Zoning Map.

188. The Second Amendment to the Residential Sub-district Final Development Plan, approved April 25, 2008, and the Second Amendment to the Multi-Use Sub-district, approved September 21, 2007 revised the Zoning Map by the addition of Parcel 706 to the Residential Sub-district and the redrawing of the boundaries on the Zoning Map of each sub-district.

189. Because Final Development Plans bind lands so covered with the full force and effect of specific zoning regulations, approval of the Second Amendments to the Turf Valley Residential Sub-district Final Development Plan and the Multi-use Sub-district Final Development Plan, effected revisions to the Howard County Zoning Map and regulations, that were required to be accomplished by original bill pursuant to §202(g) of the Howard County Charter.

190. Such approvals changed the zoning map and the zoning regulations and because these actions were not approved by an original bill they were done in violation of the Howard County Charter.

**Change in Location and Construction of Lorien  
(Howard County)**

191. In addition to Defendants listed in this section above (Other Zoning Map and Regulation Changes), Plaintiffs sue Lynn Robeson in her individual and official capacity as Assistant County Solicitor.

192. Section 126 F 9 of the Howard County Zoning Regulations provides:

Approval of the Final Development Plan by the Planning Board and recordation thereof among the Land Records of Howard County and the provisions of said Final Development Plan, shall bind the lands covered by the Final Development Plan with the **full force and effect of specific zoning regulations**. After such recordation, no new structure shall be built, no new additions to existing structures made and no change in primary use made different from that permitted in the Final Development Plan, except by an amendment of the Final Development Plan according to the process established herein for the approval of Final Development Plans.

(Emphasis added.)

193. A Final Development Plan because it binds “the lands covered by the Final Development Plan with the **“full force and effect of specific zoning regulations,”** according to Section 126 F 9 of the Howard County Zoning Regulations, is a zoning regulation for a specific parcel of land and is therefore, under §202(g) an amendment, restatement or revision to the Howard County Zoning Regulations.

194. The Lorien Center at the time of the hearing on PB 368, the 4<sup>th</sup> Amended Comprehensive Sketch Plan, was sited near the top of Turf Valley Road. At the time of the hearing on the 4<sup>th</sup> Amended CSP, the Multi-Use Sub-district was under a First Amended Final Development Plan. Sometime during the latter stages of the PB 368 hearing in the Spring of 2006, the proposed location for the Lorien Center was moved across the Multi-Use Sub-district next to Marriottsville Road to a location that did not show the kind of development represented by Lorien. Shortly after the movement of the planned location of Lorien, land was cleared for the project and construction was started. The developer misrepresented the change of location and indeed sought to conceal its move. The Department of Planning and Zoning knew full well that the location had moved. Plaintiff Kendall filed a Motion to Dismiss the petition for approval of the 4<sup>th</sup> Amended Comprehensive Sketch Plan but on advice of Lynn Robeson, the Planning

Board denied the motion. (See Motion to Dismiss attached hereto and incorporated herein as “Count II, Exhibit 14”)

195. The above cited section of the Howard County Zoning Regulations provides that “no new structure shall be built” after recordation of the Final Development Plan. This restriction stands as a complete bar to the developer in this case from building anything on the land covered by the First Amended Final Development Plan for the Multi-Use Sub-district, unless another Final Development Plan was filed.

196. No new Final Development Plan was filed before the planned location of Lorien was changed and development started. A revised Final Development Plan was required to be filed for the change in location and the “new structure” to be built represented by the Lorien Center. Section 202(g) of the Charter would have required such FDP amendment to be approved by the County Council by original bill. In fact, the Second Amended Final Development Plan was not filed until long after the move in location and the start of construction.

197. The decision made to move the Lorien Center and begin construction without the required filing of the new Final Development Plan required under the PGCC regulations was a decision to change the location and permit this “new structure” by administrative decision of the Department of Planning and Zoning, through the artifice of misrepresenting or hiding the existence of the change before the Planning Board, thereby allowing the secret administrative decision of DPZ to be unknowingly ratified by the Planning Board.

198. The actions of the Department of Planning and Zoning in approving the move in location of Lorien and the start of construction constitute changes to the Howard County Zoning Maps and Zoning Regulations which were required under Section 202(g) and Section 207, 209 and 211 of the Charter to be to be accomplished by original bill.

199. Such approvals changed the zoning map and the zoning regulations and because these actions were not approved by an original bill they were done in violation of the Howard County Charter.

### **Villas of Cattail Creek**

#### **SDP 01-115**

200. In addition to Defendants listed in this section above (Other Zoning Map and Regulation Changes), Plaintiffs sue Cindy Hamilton, Individually, and in her Official Capacity as Chief of the Division of Land Development, Howard County Department of Planning and Zoning and Charles Dammers, Individually, and in his Official Capacity as Chief of the Development Engineering Division, Department of Planning and Zoning.

201. In December of 2001, Charles Dammers, as Chief of DPZ's Development Engineering Division signed and approved SDP 01-115. Shortly thereafter, in January 2002, Cindy Hamilton as Chief of DPZ's Division of Land Development signed and approved this same plan. This site development plan was recorded in the Land Records of Howard County, Md. and has the force and effect of law. Development on a site covered by an SDP must be in accordance with the SDP.

202. Site development plan, SDP 01-115, approved in December 2001 and January 2002 was for a "senior" community of 25 homes. This SDP specified that the "total tract area" covered was 19.5

acres and that the total number of buildable units allowed on the tract was 25, the maximum number established in Board of Appeals case BA 00-10E.

203. In 2008, Cindy Hamilton and Charles Dammers approved a revised SDP 01-115 which changed the maximum number of units allowed on the tract from 25 to 93. The actions of Hamilton and Dammers in approving this SDP revision which increased the number of units allowed on the tract constitute changes to the Howard County Zoning Maps and Zoning Regulations which were required under Section 202(g) and Section 207, 209 and 211 of the Charter to be accomplished by original bill.

204. Such amendment to the zoning map and regulations for the property was done without actual or purported authority, outside the scope of any legitimate public process, and in violation of Sections 202(g) and 207, 209 and 211 of the County Charter.

205. Such amendment was made to cover up repeated fraudulent acts made by or facilitated by Defendants over the last 10 years. These acts resulted not only in the violation of Plaintiffs right to vote, but also in expensive homes purchased by Cattail Plaintiffs being made worthless.

206. Although compensatory relief is not sought in this Complaint for specific damages suffered by Bobby and Larry Athey, Janet and John Mey, Denise and Paul Eden, Knut and Eleanore Ellenes, and Oral and Sue Folks, Cattail homeowners, Plaintiffs request that the failure to have zoning as required for their community has resulted in the total failure of the sewer system and the economic loss of over sixty million dollars—the value of the 93 homes in the Cattail community.

### **Nature of the Cause of Action and Relief Sought**

207. Plaintiffs reincorporate by reference and include for all purposes the allegations contained in paragraphs 1 through 206 of this Complaint as if fully stated here.

208. Pursuant to Sections 202(g) and 207, 207 and 211 of the Howard County Charter, the zoning map and regulation amendments referenced in Count II of this Complaint and accomplished either by 1) Zoning Board decision, 2) decision of the Planning Board, or 3) decision of the Department of Planning and Zoning, were “legislative acts” required to be passed by original bill, subject to petitioning to referendum.

209. Section 16.200 *et seq.* of the Howard County Zoning Regulations and Sections 117.1, 117.3, 125, 126 and 127.1 of the Howard County Zoning Regulations provided the statutory framework which impermissibly required the above referenced zoning map and regulation amendments (except the moving of Lorien and the increase in the maximum number of buildable units for the Villas of Cattail Creek ) to be accomplished by administrative approval of the Zoning Board or Planning Board instead of by original bill as mandated by the Howard County Charter.

210. The decisions of the Department of Planning and Zoning to move the 1) location of Lorien and 2) to increase the maximum number of buildable units on the Villas of Cattail property were made outside the scope of any statutory delegation and reflect both arbitrary and illegal decision-making without any authority, as well as decisions which contravene the requirements of Section 202(g) and Section 207, 209 and 211 of the Howard County Charter.

211. This regulatory framework and the subsequent adoption of the above zoning map and regulation amendments administratively by the Zoning Board or Planning Board instead of by original bill, in large measure resulted from a long standing and on-going practice of Defendants working hand in hand with each other, with other high level county officials and with influential players in the development community to ensure that decision making authority on zoning matters remains outside the reach of the electorate's vote and in derogation of Plaintiffs' right to vote, despite the adoption of § 202(g) by the people of the county in 1994.

212. The DPZ decisions to move the location of Lorien and increase the maximum allowed units at the Villas, outside public review and without any authorized process, were simply another means of circumventing the mandates of Sections 202(g) and 207, 209 and 211 of the Howard County Charter.

213. Each of the zoning map and/or regulation amendments set forth in this Count II of this Complaint was a "legislative act" required by Sections 202(g) and 207, 209 and 211 of the Howard County Charter to be accomplished by original bill.

214. Plaintiffs have a protected liberty interest in the fundamental right to vote and bring the above specified amendments to the Howard County zoning map and regulations to referendum by petition. That right to vote is based on Sections 202(g) and 207, 209 and 211 of the Howard County Charter. Plaintiffs, as registered voters in Howard County, have a constitutionally protected right under the First and Fourteenth Amendment to the United States Constitution to associate and petition to referendum and, if successful, take to vote each of the above zoning map or regulation changes.

215. The actions of Defendants supplanting the required original bills with the administrative approval of the zoning map and regulation amendments set forth above, totally and completely disenfranchised Plaintiffs and the entire Howard County electorate of their right to take these acts to referendum and vote. Such deprivation violates (a) Plaintiffs' First Amendment right to express their beliefs by vote and to associate as this right is made applicable to Howard County by the Fourteenth Amendment to the United States Constitution; (b) Plaintiffs' right to substantive due process and equal protection as established by the Fourteenth Amendment to the United States Constitution in that total disenfranchisement is patently and fundamentally unfair and results in an utter breakdown in the electoral process; and, (c) Plaintiffs' right to petition the government for redress of grievances as protected under the First and Fourteenth Amendments to the United States Constitution. All such deprivations constitute violations of 42 U.S.C. §1983.

216. The right to vote under Sections 202(g) and 207, 209, and 211 of the Howard County Charter was granted to the citizens of Howard County without condition or limitation of status.

217. Other legislative actions during the timeframe encompassed by this Complaint have been done by original bill in Howard County and were subject to petitioning to referendum.

218. Many of the zoning map and or regulation amendments listed above, accomplished administratively either under infirm statutory authority or by decision of the Department of Planning Zoning made without any purported authority, benefited well-entrenched, politically connected, wealthy developers and landowners and their attorneys in the county by preventing public objection through the mechanism of the referendum to their plans. The adoption of these zoning decisions, usually favoring



increased development, deprives those who would object to such policies of the ability to have their voices heard.

219. The distinction made between “legislative acts” passed by Defendant County Council by bill and the “legislative acts” approved administratively by the Zoning Board, the Planning Board as required by statutory authority, or the Department of Planning and Zoning outside any authorized process, has created a system of favoritism which results in an unjustified and unwarranted, arbitrary and illegal distinction between developers and landowners, and the general public, whereby the right to vote was denied to Plaintiffs and the public, thereby insulating the developer/landowners’ interests from legislative opposition and veto by the electorate.

220. Plaintiffs’ right to vote is a fundamental right protected by federal law under the First and Fourteenth Amendments to the United States Constitution and any infringement or denial of that right must be subjected to a strict scrutiny level of review.

221. Section 16.200 *et seq.* of the Howard County Code and Sections 117.1, 117.3, 125,126 and 127.1 of the Howard County Zoning Regulations, as well as the approval of each map or regulation amendment referenced above are official enactments of Howard County, a body politic.

222. As County Executives, James Robey had and Kenneth Ulman had or has a duty to carry-out the Constitution of the County—it’s Charter, and each was or is responsible for implementing Sections 202(g) and 207, 209 and 211 as to the map and regulation changes made while he was in office.

223. The Howard County Planning Board impermissibly delegated by the County Council the power to make zoning map and regulation changes in the PGCC and New Town districts in violation of

the above Charter provisions, impermissibly exercised this authority in approving the map and regulation changes for Sieling Industrial Park and Turf Valley.

224. Defendants Cook, Nolan, Johnson and Robeson, as County attorneys are or were responsible for advising the Executive and Legislative branches of government, including the Zoning Board, the Planning Board, and administrative agencies including DPZ, on the proper application of the Howard County Charter and other laws of the County, while each held his or her position.

225. Marsha McLaughlin, as Director of the Office of Planning and Zoning, advised the Executive and Legislative branches on the above map or regulation amendments, and on information and belief, made the decision effecting a map amendment in the moving of the planned location for Lorien.

226. Cindy Hamilton and Charles Dammers, in their positions as Chief, Division of Land Development and Chief, Development Engineering Division, respectively, signed revised SDP 01-115 effectuating the increase in permitted units on the Villas' tract.

227. Defendant County Council enacted Section 16.200 *et seq.* of the Municipal Code and Sections 117.1, 117.3, 125, 126 and 127.1 of the Howard County Zoning Regulations which impermissibly delegate to the Zoning Board and Planning Board the authority to make the map and regulation changes referenced in this Count II. Despite repeated requests by county residents over the years, Defendant County Council has refused to change this statutory framework and implement §202(g).

228. There is no statutory authority for the decisions made by the Department of Planning and Zoning.

229. The actions of the Defendants in denying Plaintiffs their right to vote, their right to substantive due process and equal protection, and their right to seek redress of grievances constituted state action in that the decisions were decisions of governmental actors made in furtherance of official government policy.

230. The actions of the Defendants bear no rational relationship whatsoever to any legitimate state concern or to the general welfare.

231. The actions of the Defendants are nothing more than aberrant, arbitrary, capricious abuses of governmental power.

232. The actions of the Defendants do not support or demonstrate any compelling or overriding interest or end for which any legitimate governmental purpose can be justified or served in the distinctions made between the above administrative approvals of the Zoning Board, Planning Board or DPZ and other “legislative acts” appropriately accomplished by original bill.

233. There was no basis rationally related to any governmental interest for the distinction made between the “legislative acts” granted passage by original bill and the above zoning map or regulation amendments approved administratively.

234. The actions of the Defendants in violating Plaintiffs’ constitutional rights through the denial of their right to petition and vote, were unreasoning actions maliciously, wantonly, oppressively undertaken, without consideration and in disregard of the facts or circumstances of the case.

235. Defendants Cook, and Johnson are or were the legal advisors to and legislative drafters for the County Council and were responsible for drafting CB107 and CB 108, the implementing legislation for §202(g) enacted in early 1995, which fails in every respect to implement §202(g) as it is applied to non “change or mistake” zoning map amendments and zoning regulation changes. In so drafting and recommending approval of CB 107 and CB 108 and subsequent amendments (now codified as Section 16.200 *et seq.* in the County Code), Defendants Cook and Johnson willingly and wantonly intended to deprive Plaintiffs and the Howard County electorate of their right to petition and vote on non “change or mistake” zoning map amendments and zoning regulation changes.

236. Defendant Robeson was counsel to the Planning Board in Turf Valley matters described above. Defendant, Robeson, with full knowledge and awareness of the terms of Section 202(g), impermissibly permitted the Planning Board to make decisions and approve of the Turf Valley map and regulation amendments, and on information and belief, knew of the decision moving the planned location of Lorien, thus effecting a map amendment, without abiding by the terms of Section 202(g) and requiring such map and regulation amendments to be accomplished by original bill. Defendants Robeson has worked for the Office of Law for several years and is familiar with and well versed as to matters which constitute a “non change or mistake” change to the zoning map and regulations. As an attorney in the Office of Law who advised the Planning Board during the hearing on the petition for approval of the 4<sup>th</sup> Amended Comprehensive Sketch Plan, Defendant Robeson previously worked for Richard Talkin, the attorney who was representing the developer and owner of the Turf Valley Project in that very hearing. Defendant Robeson represented the developer while working for Richard Talkin. In

fact, at the time of the hearing Ms. Robeson was still listed on Martindale-Hubbell as working for Richard Talkin. Ms. Robeson never disclosed that conflict or apparent conflict. Having worked for the attorney for the developer of Turf Valley and then representing the County in a case involving the same developer her former employer, Defendant, Robeson was instrumental and a key player in the scheme to refuse enforcement of the terms of Section 202(g). Defendant Robeson's position and the obvious bias exhibited during the hearing demonstrates that she was acting in support of the developer. Because of her work for the Planning Board, the motions filed by Plaintiff Kendall on the issue of authority of the Planning Board to engage in zoning, the plain meaning of Section 202(g) would be well known to her as would its applicability to the zoning map and regulation amendments referenced above, and that therefore, Section 202(g) expressed the terms and conditions of a law preexisting to the time of the actions challenged by Plaintiffs in this Count II of the Complaint. Defendant Robeson's actions in facilitating the approval of the 4<sup>th</sup> Amended CSP by administrative decision instead of by original bill are contumacious, willful and intentional acts of breaking the law as embodied in Section 202(g) of the Howard County Charter.

237. As the persons responsible for advising the Zoning Board, Planning Board and DPZ on zoning matters so as to ensure that the decisions of these entities are not legally infirm, Defendants Cook, Johnson and Robeson, in the ordinary course of business, willfully and wantonly, sanctioned the approval of the zoning map or regulation amendments above knowing that such approvals would and did, totally and completely, deprive Plaintiffs and the entire Howard County electorate of (a) their right to vote and associate established under the right of referendum in Sections 202(g), 207, 209, and 211 of

the Howard County Charter and the First Amendment of the United States Constitution as applied through the Fourteenth Amendment to the states; (b) their right to substantive due process and equal protection under the law as established by the Fourteenth Amendment to the United States Constitution; and (c) their right to petition the government for redress of grievances as protected under the First and Fourteenth Amendments to the Constitution.

238. In particular, Defendants Cook, Johnson, Robeson and McLaughlin knew of the requirements of Sections 202(g), 207, 209 and 211 of the Charter, yet and with full knowledge of such provisions deliberately counseled against utilization of Section 202(g) by legal reference that was without any basis in reason or law. The actions of Defendants Cook, Johnson, Robeson and McLaughlin in not abiding by the clear terms of the preexisting statute were due either to gross incompetence or deliberate and willful intentionality to break the law.

239. As to the violation of Plaintiffs rights related to the map and regulation amendments for Seiling Industrial Park and Turf Valley, Defendants Johnson, Robeson, and McLaughlin were fully aware that each decision taken violated Plaintiffs' right to petition the decision to referendum and vote. Nonetheless, each Defendant facilitated such decision through a variety of means including, failing to inform the Planning Board that its decision would violate the Charter; misrepresenting, either affirmatively or by omission, the nature of the decision to be taken by the Board; effectuating the decision surreptitiously outside of public review and, particularly as to Johnson and McLaughlin, attempting to derail appellate review of such decisions, particularly appellate review of matters related to Plaintiffs right of referendum and vote.

240. As to the violation of Plaintiffs rights related to the map and regulation amendment for the 19.5 acre Villas tract, Defendants Hamilton and Dammers were fully aware that their approval of revised SDP 01-115 effected an impermissible zoning change for the tract. Moreover, given the fact that the construction had already been completed, it is clear that the act in revising the number of housing units was done knowingly, and as will be developed in this case, was done in order to cover up a fraudulent scheme that originally misrepresented the number of units in order to cover up another scheme that involved a faulty sewer system. Defendants Johnson and McLaughlin also were intimately involved in and necessary players in effecting this fraudulent scheme. Given the high level position of each of these individuals and the fact that each has been in his or her position since before the adoption of §202(g) by the voters in 1994, and thus has seen the change in the required mechanism for adopting such zoning map and regulation amendments from administrative decision to original bill, McLaughlin and Johnson clearly were aware, and Hamilton and Dammers were aware or should have been aware that the zoning map/regulation amendment they approved violated §202(g) of the Howard County Charter and Plaintiff right of referendum and vote.

241. The zoning map and regulation amendment approved by Hamilton and Dammers was particularly invidious because not only did it violate Plaintiffs right to vote, but as to the Plaintiffs who purchased homes in the Villas community, the denial of the right to vote by illegal amendment was simply an artifice to cover up past fraudulent practices.

242. On information and belief, Defendant McLaughlin as Director of the Department of Planning and Zoning, was well aware of and sanctioned the zoning map and regulation amendments accomplished by Hamilton and Dammers in approving the revised SDP 01-115.

243. Defendants, Cook and Johnson, on numerous occasions have admitted by making clear in public their intention not to abide by, or enforce, the terms of Section 202(g) of the Howard County Charter. Defendant Cook, while County Solicitor, and Defendant Johnson as the legal officer, on information and belief with the primary responsibility for land use advice in the Howard County Office of Law, with full knowledge and awareness of the terms of Section 202(g) refused to initiate a challenge to the terms of Section 202(g) before its adoption by the voters as was required by long standing established judicial precedent in Maryland if there was a reasonable believe as to its illegality. The failure to challenge the proposed charter provision demonstrates that the meaning of Section 202(g) plainly expressed the terms and conditions of a law preexisting to the time of the actions of the Howard County Zoning Board challenged by Plaintiffs in this Count II of the Complaint. Defendants Cook and Johnson's repeated acts to preclude application of §202(g) to non "change or mistake" piecemeal map amendments are contumacious, willful and intentional acts of breaking the law as embodied in Section 202(g) of the Howard County Charter.

244. Defendant, McLaughlin, Director of the Office of Planning and Zoning, with full knowledge and awareness of the terms of Section 202(g), impermissibly permitted the processing and approval of the above map and regulation amendments, and on information and belief, actually made the decision moving the planned location of Lorian and concealed that decision from the Planning Board



and the public, thus effecting a map amendment, without abiding by the terms of Section 202(g) and requiring such map and regulation amendments to be accomplished by original bill. Defendants McLaughlin has worked for the Department of Planning and Zoning for over twenty years and is familiar with and well versed as to matters which constitute a non “change or mistake” change to the zoning map and regulations. Having been intimately involved in Howard County land use in the Department of Planning and Zoning during a time when the legal mechanism for approval of changes to the zoning map and regulations evolved from decision by the Zoning Board or Planning Board to original bill, Defendant, McLaughlin was instrumental and a key player in the scheme to refuse enforcement of the terms of Section 202(g). Defendant McLaughlin’s increasing level of executive responsibility demonstrates that the plain meaning of Section 202(g) would be well known to her as would be knowledge of its applicability to the zoning map and regulation amendments referenced above, and that therefore, Section 202(g) expressed the terms and conditions of a law preexisting to the time of the actions challenged by Plaintiffs in this Count II of the Complaint. Defendant McLaughlin’s actions in enabling the passage of the above specified zoning map and regulation amendments by administrative decision instead of by original bill are contumacious, willful and intentional acts of breaking the law as embodied in Section 202(g) of the Howard County Charter.

245. As principal planning and zoning advisor, Defendant, McLaughlin, on information and belief, recommended approved of the map and regulation amendments in the cases cited above, or in the case of Lorien actually made the impermissible decision, knowing that the approval of such decision administratively would deprive Plaintiffs and the entire Howard County electorate of (a) their right to

vote and associate established under Section 202(g), 207, 209, and 211 of the Howard County Charter and the First Amendment of the United States Constitution as applied through the Fourteenth Amendment to the states; (b) their right to substantive due process and equal protection under the law as established by the Fourteenth Amendment to the United States Constitution; and 3) their right to petition the government for redress of grievances as protected under the First and Fourteenth Amendment to the Constitution. All such deprivations constitute violations of 42 U.S.C. §1983.

246. The actions of Defendants effected an unconstitutional allocation of the fundamental right to vote.

247. Defendants Howard County, Maryland, the Howard County Council and the Howard County Council, sitting as the Zoning Board are persons for purposes of 42 U.S.C. §1983.

248. Defendants, Robey, Ulman, Cook, Nolan, Johnson, Robeson, McLaughlin, Hamilton and Dammers are persons for purposes of 42 U.S.C. §1983 and are named herein and are sued in their official capacities for the acts taken while they were in office, in that the actions taken were done through the exercise of power possessed by virtue of state law and made possible only because defendants were or are clothed with the authority of state law.

249. Defendants Cook, Johnson, Robeson, McLaughlin, Hamilton and Dammers are persons for purposes of 42 U.S.C. §1983 and are named herein and are sued in their individual capacities because their acts as stated herein, though done through the exercise of power possessed by virtue of state law and made possible only because defendants were and are clothed with the authority of state

law, were and are so obviously wrong, in light of preexisting law, that only a plainly incompetent officer or one who is knowingly violating the law would have done such things.

250. Defendants Cook, Johnson and McLaughlin with full knowledge of the priority of the Howard County Charter over the specific regulations, nevertheless, advised Defendants Howard County Maryland, the Howard County Council, sitting as the Zoning Board, and the Planning Board to approve the zoning map and regulation amendments listed in this Count, and further advised the County Council to enact Section 16.200 *et seq.* and not apply 202(g) to various zoning districts including Planned Golf Course Community (PGCC) and New Town (NT), in violation of Sections 202(g), 207, 209 and 211 of the Howard County Charter. As to the approval of the Turf Valley map and regulation amendments, Defendant Robeson, also with full knowledge of the priority of the Charter over the Municipal Code, advised Defendants Planning Board and McLaughlin in a manner so as not to implement § 202(g).

251. All Defendants named herein this Count II acted under color of state law in executing the actions complained of herein.

252. The actions of the Defendants were and are outrageous and shock the conscience in that they are false and dishonest, clearly intended to deny Plaintiffs the fundamental right to vote, their right to substantive due process and equal protection under the law as well as their right to petition the government to seek redress for grievances, and through the sheer magnitude of the scope and breath of the denial of fundamental rights, and therefore represent an invidious undermining of our shared understanding of fair and impartial government as the elected source of power in civilized society through the right to vote.

253. The actions of Defendants Howard County Maryland, Robey, Ulman, the Howard County Council, the Howard County Council, sitting as the Zoning Board, the Howard County Planning Board, Cook, Nolan, Johnson, Robeson, McLaughlin, Hamilton and Dammers described herein are the direct and proximate cause of the harm suffered by Plaintiffs in that the actions were taken on behalf of Howard County by those responsible for implementing or executing its policies, ordinances, regulations or decisions officially adopted and promulgated by Defendant's officers, or the result of the Howard County's custom. Defendant Howard County's official actions, policies and customs were the moving force behind the deprivation of Plaintiffs' rights herein.

254. Plaintiffs have been damaged in the deprivation of a protected liberty interest through a violation of the fundamental right to vote.

255. Plaintiffs' requested relief will remedy the harm inflicted by Defendants.

**WHEREFORE** Plaintiffs pray that judgment be entered in their favor and that this Court:

**As to Section 16.200 *et seq.* of the Municipal Code and Sections 117.1, 117.3, 125, 126 and 127.1 of the Howard County Zoning Regulations:**

- A. Declare that Section 16.200 *et seq.* fails to implement Sections §202(g) and 207, 209 and 211 of the Howard County Charter as applied to all piecemeal zoning map and regulation amendments, except "change or mistake" amendments, and therefore, establishes a regulatory framework which denies Plaintiffs their Constitutionally protected right to petition these amendments to referendum and vote;
- B. Declare that Sections 117.1 (Business Rural), 117.3 (Office Transition), 125 (New Town), 126 (Planned Golf Course Community) and 127.1 (Planned Senior Community) of the Howard County Zoning Regulations fail to implement Sections §202(g) and 207, 209 and 211 of the Howard County Charter as applied to these Zoning Districts, and therefore, further establish a regulatory framework which denies Plaintiffs their Constitutionally protected right to petition these amendments to referendum and vote;

- C. Declare that all of the above sections are null and void *ab initio* and are of no effect;
- D. Enjoin Defendants from undertaking any acts authorized by or in furtherance of these sections;
- E. In particular, enjoin Defendants from accepting or processing any further applications for approval of any piecemeal map or regulation amendments, other than for “change or mistake” cases;
- F. Declare that Defendants’ custom, usage and practice of violating the terms of §202(g) and/or 207, 209 and 211 of the Howard County Charter by establishing a regulatory structure which requires all “non change or mistake” piecemeal map and regulations amendments to be approved administratively by the Zoning Board or Planning Board to be unconstitutional and therefore, order Defendants immediately and forthwith to abide by the terms of the Charter provisions;
- G. Award compensatory damages from Defendant Howard County and Defendants Cook, McLaughlin and Johnson in their personal capacity in an amount to be determined at trial for the matters alleged in this Complaint;
- H. Award punitive damages against Defendants Howard County, Maryland and Cook, Johnson and McLaughlin in their personal capacity in the amount of \$1,000,000 each as provided by law;
- I. Award Plaintiffs such amount as would be necessary to establish initially under federal oversight and then in perpetuity a monitoring, review and advocacy organization to help ensure transparency in government, fairness in land use decision-making and process, and to protect the electorate’s right of referendum and vote on “legislative acts;”
- J. Award costs of suit incurred;
- K. Award reasonable attorney’s fees, pursuant to 42 U.S.C. 1988; and
- L. Provide such other and further relief as the Court may deem proper.

**As to the Individual Zoning Map or Regulation Amendment Cases Decided or to be Decided by the Zoning Board or Planning Board:**

- A. Declare that the Zoning Board’s or Planning Board’s approval of the above zoning map and regulation amendments violated Sections 202(g) and 207, 209 and 211 of the Howard County Charter and that each decision denied Plaintiffs their Constitutionally protected right to petition to such amendment to referendum and vote;
- B. Declare that each decision of the Zoning Board or Planning Board is null and void *ab initio* and is of no effect;
- C. Enjoin Defendants from taking any actions in furtherance of these decisions;

- D. Enjoin Defendant County Council, sitting as the Zoning Board from taking any further action on the aforementioned pending cases;
- E. Declare that Defendants' custom, usage and practice of violating the terms of §202(g) and/or 207, 209 and 211 of the Howard County Charter by accomplishing non "change or mistake" piecemeal map and regulation amendments by administrative decision was and is unconstitutional and therefore, order Defendants immediately and forthwith to abide by the terms of these Charter provisions;
- F. Award compensatory damages from Defendant Howard County and Defendants Cook, Johnson, Robeson and McLaughlin in their personal capacity and in an amount to be determined at trial for the matters alleged in this Complaint;
- G. Award punitive damages against Howard County, Maryland and Defendants Johnson, Robeson and McLaughlin in their personal capacity in the amount of \$1,000,000 each as provided by law;
- H. Award Plaintiffs such amount as would be necessary to establish in perpetuity a monitoring, review and advocacy organization to help ensure transparency in government, fairness in land use decision-making and process, and to protect the electorate's right of referendum and vote on "legislative acts;"
- I. Award costs of suit incurred;
- J. Award reasonable attorney's fees, pursuant to 42 U.S.C. 1988; and
- K. Provide such other and further relief as the Court may deem proper.

**As to the Decision of Defendant McLaughlin Effecting a Zoning Map Change by Approving a New Location for Lorien:**

- A. Declare that McLaughlin's approval of a new location of Lorien, violated Sections 202(g) and 207, 209 and 211 of the Howard County Charter and that this decision denied Plaintiffs their Constitutionally protected right to petition such change to referendum and vote;
- B. Declare that McLaughlin's decision is null and void *ab initio* and is of no effect;
- C. Enjoin Defendants from taking any actions in furtherance of this decision;
- D. Order Defendants immediately and forthwith to abide by the terms of these Charter provisions;
- E. Award compensatory damages from Defendant Howard County and Defendant McLaughlin in her personal capacity in an amount to be determined at trial for the matters alleged in this Complaint;
- F. Award punitive damages against Howard County, Maryland and Defendants Robeson and McLaughlin in their personal capacity in the amount of \$1,000,000 each as provided by law;

- G. Award Plaintiffs such amount as would be necessary to establish in perpetuity a monitoring, review and advocacy organization to help ensure transparency in government, fairness in land use decision-making and process, and to protect the electorate's right of referendum and vote on "legislative acts;"
- H. Award costs of suit incurred;
- I. Award reasonable attorney's fees, pursuant to 42 U.S.C. 1988; and
- J. Provide such other and further relief as the Court may deem proper.

**As to the Decision of Defendants Hamilton, Dammers and McLaughlin Effecting a Zoning Map/Regulation Change by Increasing the Number of Units Allowed on the Villas of Cattail Tract:**

- A. Declare that the decision of Hamilton, Dammers and McLaughlin, in approving or sanctioning the approval of SDP 01-115, as revised in 2008, violated Sections 202(g) and 207, 209 and 211 of the Howard County Charter and that this decision denied Plaintiffs their Constitutionally protected right to petition such amendment to referendum and vote;
- B. Declare that SDP 01-115 as revised in 2008, is null and void *ab initio* and is of no effect;
- C. Enjoin Defendants from taking any actions in furtherance of or authorized by this revised SDP;
- D. Order Defendants immediately and forthwith to abide by the terms of these Charter provisions;
- E. Award compensatory damages from Defendant Howard County and Defendants Hamilton, Dammers and McLaughlin in their personal capacity in an amount to be determined at trial for the matters alleged in this Complaint;
- F. As to each Villas of Cattail homeowner Plaintiff, award punitive damages in the amount of \$1,000,000 each against Howard County, Maryland and Defendants Hamilton, Dammers and McLaughlin, as provided by law;
- G. Award Plaintiffs such amount as would be necessary to establish initially under federal oversight and then in perpetuity a monitoring, review and advocacy organization to help ensure transparency in government, fairness in land use decision-making and process, and to protect the electorate's right of referendum and vote on "legislative acts;"
- H. Award costs of suit incurred;
- I. Award reasonable attorney's fees, pursuant to 42 U.S.C. 1988; and
- J. Provide such other and further relief as the Court may deem proper.

**COUNT III**  
**DENIAL OF RIGHT TO VOTE**  
**In Violation of the First and Fourteenth**  
**Amendments of the United States Constitution and 42 U.S.C. §1983**

**Metropolitan District Inclusion**  
**(Howard County)**

*As to Defendants: Howard County Maryland; Howard County Council; Paul Johnson, Individually, and in his Official Capacity as Deputy County Solicitor; Marsha McLaughlin, Individually, and in her Official Capacity as the Director of Planning and Zoning; James Irvin, Individually, and in his Official Capacity as the Director of Public Works*

256. Plaintiffs reincorporate by reference and include for all purposes the allegations contained in paragraphs 1 through 255 of this Complaint as if fully stated here.

257. As to this section of this Count III of this Complaint, Defendants also sue James Robey, in his Official Capacity as former County Executive, Cook, Individually, and in her Official Capacity as the former County Solicitor, Kenneth Ulman, in his Official Capacity as County Executive and Margaret Ann Nolan, in her Official Capacity as County Solicitor, as to the events described in these paragraphs which occurred during their respective tenures in office.

258. The Metropolitan District is the public water and sewer District in Howard County, Maryland. To establish eligibility for public water and sewerage service, properties must gain entry into the Metropolitan District.

259. Inclusion in the District creates significant ongoing and permanent financial and maintenance obligations on the part of the county to properties so included.



260. Inclusion in the District creates liabilities on the owners of such properties including front foot benefit assessment charges, water and sewer connection charges and fees levied annually on each property. These charges finance the construction, operation and maintenance of the public water and sewerage system.

261. Inclusion of a property into the Metropolitan District has significant land use implications. Metropolitan District inclusion opens up a property to more intense development or uses not otherwise possible and therefore has clear zoning implications.

262. Inclusion in the Metropolitan District is necessary for connection to public sewer and water lines, and normally for the issuance of building permits for all properties located in the Planned Service Area (PSA) of the County--that area of the County planned to be serviced in the long term by the public water and/or sewerage system.

263. From the inception of its Charter form of government in 1969 to 1997, properties were included in the Metropolitan District by the enactment of an original bill by the County Council. Such enactments were subject to petitioning to referendum and vote by the electorate of the county.

264. In 1997, during a period of strong citizen protest against several major development projects, Defendant County Council, through the enactment of Bill 28-1997 which is attached hereto and incorporated herein as "Count III, Exhibit 1," shifted the decision-making for Metropolitan District inclusion from itself by legislative act to the Director of Public Works, by administrative decision, thus shielding such decisions from public review and referendum. In a legislative slight of hand, the County Council with the assistance and counsel of Defendants Cook and Johnson, through the enactment of CB

28-1997 shifted the responsibility for the opportunity to seek passage of the inclusion of property into the Metropolitan District by original bill to the public, wherein only a timely complaint by a member of the public in response to one-time notice of the proposed inclusion in a local paper would suffice to accomplish what the County Council was required to do under Sections 207, 209 and 211. Ironically, the provision for removal and return of a property from and back into the Metropolitan District was not changed and still requires an original bill subject to petitioning to referendum. Howard County Code, §18.125.

265. The County Council violated Sections 207, 209 and 211 of the Howard County Charter by permitting the decisions on inclusion in the Metropolitan Water District to be made by the Director of Public Works.

266. Each of the properties set forth in this section of the Count III of this Complaint was included in the Metropolitan District by administrative decision of Defendant Irvin as Director of the Department of Public Works in violation of Sections 207, 209 and 211 of the Howard County Charter. Through each decision, Defendant Irvin affected a “legislative act” which was required under Sections 207, 209 and 211 of the Howard County Charter to be passed by the County Council by original bill subject to petitioning to referendum and vote.

## **2006**

### **Metropolitan District Inclusions by Administrative Decision**

	Effective Date
<b>METROPOLITAN DISTRICT DECISION NUMBER 1-2006</b>	Jan. 30, 2006
OWNERS: Carlos García and Beatriz García	

LOCATION: 7100 Newberry Drive, Columbia, Maryland 21044

**METROPOLITAN DISTRICT DECISION NUMBER 2-2006**

Jan. 30, 2006

OWNERS: Charles J. Gastinger, Jr. and Barbara E. Gastinger

LOCATION #1: 6200 Waterloo Road, Columbia, Maryland 21045

LOCATION #2: 6200 W. Waterloo Road, Columbia, Maryland 21045

**METROPOLITAN DISTRICT DECISION NUMBER 3-2006**

Feb.13, 2006

OWNER: Mary Carroll Potter (aka Mary Carroll Muth)

LOCATION: Route 108 and Cedar Lane, Clarksville, Maryland 21029

**METROPOLITAN DISTRICT DECISION NUMBER 4-2006**

Feb.13, 2006

OWNERS: Richard Joseph Sykes and Cynthia A. Sykes

LOCATION: 10826 Hunting Lane, Columbia, Maryland 21044

**METROPOLITAN DISTRICT DECISION NUMBER 5-2006**

Feb.13, 2006

OWNER: Karen A. Tamalavicz

LOCATION: 5191 Talbots Landing, Ellicott City, Maryland 21043

**METROPOLITAN DISTRICT DECISION NUMBER 6-2006**

Mar. 20, 2006

OWNERS: Joseph E. Federline, Jr. and Cynthia Lee Federline

LOCATION #1: 5171 Talbots Landing, Ellicott City, Maryland 21043

LOCATION #2: 5165 Talbots Landing (S. Ilchester Road),  
Ellicott City, Maryland 21043

**METROPOLITAN DISTRICT DECISION NUMBER 7-2006**

Mar. 20, 2006

OWNERS: Dean P. McCullough and Teresa S. McCullough

LOCATION: Owen Brown Road, Columbia, Maryland 21045

**METROPOLITAN DISTRICT DECISION NUMBER 8-2006**

Mar. 20, 2006

OWNERS: R/E Group, Inc.

LOCATION: 5195 Talbots Landing, Ellicott City, Maryland 21043

**METROPOLITAN DISTRICT DECISION NUMBER 9-2006**

Mar. 20, 2006

OWNERS: Richard E. Rittermann and Jean A. Rittermann

LOCATION: 5187 Talbots Landing, Ellicott City, Maryland 21043

**METROPOLITAN DISTRICT DECISION NUMBER 10-2006**

May 30, 2006

OWNERS: Clarksville Roadside LLC

LOCATION: 6390 Ten Oaks Road, Clarksville, Maryland 21029

<p><b>METROPOLITAN DISTRICT DECISION NUMBER 11-2006</b>  OWNERS: Jayaram Kumar and Geetha Jayaram  LOCATION: 11460 Old Frederick Road, Marriottsville, Maryland 21104</p>	<p>June 12, 2006</p>
<p><b>METROPOLITAN DISTRICT DECISION NUMBER 12-2006</b>  OWNERS: Housep Taymoorian and Rosik Abarchian  LOCATION: 10142 Owen Brown Road, Columbia, Maryland 21044</p>	<p>June 12, 2006</p>
<p><b>METROPOLITAN DISTRICT DECISION NUMBER 13-2006</b>  OWNERS: Michael J. Baluck  LOCATION: 6302 Trotter Road, Clarksville, Maryland 21029</p>	<p>August 7, 2006</p>
<p><b>METROPOLITAN DISTRICT DECISION NUMBER 14-2006</b>  OWNERS: Anthony D. Scarpone and Rose Marie Scarpone,  Trustees of the Scarpone Family Trust  LOCATION #1: 10495 Clarksville Pike, Columbia, Maryland 21044  LOCATION #2: 10499 Clarksville Pike, Columbia, Maryland 21044  LOCATION #3: 10503 Clarksville Pike, Columbia, Maryland 21044</p>	<p>August 7, 2006</p>
<p><b>METROPOLITAN DISTRICT DECISION NUMBER 15-2006</b>  OWNERS: Ronald J. Osborn and Judith M. Chatfield, Trustees  of The Ronald J. Osborn Revocable Trust and  The Judith M. Chatfield Revocable Trust  LOCATION #1: 5297 Talbots Landing, Ellicott City, Maryland 21043  LOCATION #2: 5301 Talbots Landing, Ellicott City, Maryland 21043  LOCATION #3: 5305 Talbots Landing, Ellicott City, Maryland 21043  LOCATION #4: 5309 Talbots Landing, Ellicott City, Maryland 21043</p>	<p>Oct. 16, 2006</p>
<p><b>METROPOLITAN DISTRICT DECISION NUMBER 16-2006</b>  OWNERS: Friendly Farms, LLC  LOCATION #1: 10739 S. Taylor Farm Road, Woodstock, Maryland 21163  LOCATION #2: 10735 S. Taylor Farm Road, Woodstock, Maryland 21163</p>	<p>Nov. 6, 2006</p>
<p><b>METROPOLITAN DISTRICT DECISION NUMBER 17-2006</b>  OWNER: Howard County, Maryland  LOCATION: 6692 Cedar Lane, Columbia, Maryland 21044  Robinson Nature Center Site</p>	<p>Dec. 11, 2006</p>

**2007**

**Metropolitan District Inclusions by Administrative Decision**

	Effective Date
<b>METROPOLITAN DISTRICT DECISION NUMBER 1-2007</b> OWNERS: Frank A. Laumann, III and Nancy H. Laumann LOCATION: 9120 Gorman Road, Laurel, Maryland 20723-5902	Jan. 8, 2007
<b>METROPOLITAN DISTRICT DECISION NUMBER 2-2007</b> OWNER: Maryland Financial and Real Estate Trust, LLC LOCATION: 11535 Old Frederick Road, Woodstock, Maryland 21163	Feb. 5, 2007
<b>METROPOLITAN DISTRICT DECISION NUMBER 3-2007</b> OWNERS: Carl Otis Mauck and Sharon H. Mauck LOCATION: 11920 Lime Kiln Road, Fulton, Maryland 20759	Feb. 5, 2007
<b>METROPOLITAN DISTRICT DECISION NUMBER 4-2007</b> OWNERS: Robert Mowrey LOCATION: 7565 Old Columbia Road, Laurel Maryland 20723	Feb. 5, 2007
<b>METROPOLITAN DISTRICT DECISION NUMBER 5-2007</b> OWNERS: Theresa M. Kaminski and Thomas J. Kaminski (Deceased) LOCATION: 6102 Tulane Drive, Clarksville, Maryland 21029	Feb. 26, 2007
<b>METROPOLITAN DISTRICT DECISION NUMBER 6-2007</b> OWNER: Kassit, LLC, a Maryland limited liability company LOCATION #1: 5260 Talbots Landing (S. Ilchester Road), Ellicott City, Maryland 21043	April 16, 2007

LOCATION #2: 5264 Talbots Landing (S. Ilchester Road),  
Ellicott City, Maryland 21043  
LOCATION #3: 5268 Talbots Landing, Ellicott City, Maryland  
21043

**METROPOLITAN DISTRICT DECISION NUMBER 7-2007** June 4, 2007

OWNERS: James R. Clements and Theresa L. Clements  
LOCATION: 7000 Long View Road, Columbia, Maryland 21044

**METROPOLITAN DISTRICT DECISION NUMBER 8-2007** June 4, 2007

OWNERS: Dae Yung Lee and In Sik Lee  
LOCATION: 10810 Hunting Lane, Columbia, Maryland 21044

**METROPOLITAN DISTRICT DECISION NUMBER 9-2007** July 2, 2007

OWNER: G&R/Wessel, LLC, a Maryland limited liability company  
LOCATION #1: 11456 Scaggsville Road, Fulton, Maryland 20759  
LOCATION #2: 11460 Scaggsville Road (Route 216), Fulton,  
Maryland 20759  
LOCATION #3: NW Route 216, Fulton, Maryland 20759

## **2008**

### **METROPOLITAN DISTRICT DECISIONS**

	Effective Date
<b>METROPOLITAN DISTRICT DECISION NUMBER 1-2008</b>	Feb. 11, 2008
OWNER: Howard County, Maryland	
LOCATION #1: Trotter Road, Clarksville, Maryland 21029 (Lot 5)	
LOCATION #2: Trotter Road, Clarksville, Maryland 21029 (Lot 6)	
<b>METROPOLITAN DISTRICT DECISION NUMBER 2-2008</b>	Feb. 11, 2008
OWNERS: 10990 Johns Hopkins Road, LLC	
Branch Banking and Trust Company, Lessee	
LOCATION: 10990 Johns Hopkins Road, Laurel, Maryland 20723-6001	
<b>METROPOLITAN DISTRICT DECISION NUMBER 3-2008</b>	Feb. 11, 2008
OWNERS: Robert D. Semon and Michon C. Semon	
LOCATION #1: 5693 Trotter Road, Clarksville, Maryland 21029	

LOCATION #2: 5699 Trotter Road, Clarksville, Maryland 21029  
LOCATION #3: 5705 Trotter Road, Clarksville, Maryland 21029  
LOCATION #4: 5711 Trotter Road, Clarksville, Maryland 21029

**METROPOLITAN DISTRICT DECISION NUMBER 4-2008** Mar. 10, 2008

OWNER: BS Land Acquisition, LLC  
LOCATION: 8034 Harriet Tubman Lane, Simpsonville,  
Maryland 21150

**METROPOLITAN DISTRICT DECISION NUMBER 5-2008** Mar. 10, 2008

OWNERS: H. Dale Mauck and Jaye P. Mauck  
LOCATION: 10514 Vista Road, Columbia, Maryland 21044

**METROPOLITAN DISTRICT DECISION NUMBER 6-2008** Mar. 10, 2008

OWNERS: Tracy Standafer and Frank Standafer  
LOCATION: 9830 Owen Brown Road, Columbia, Maryland 21045

**METROPOLITAN DISTRICT DECISION NUMBER 7-2008** April 28, 2008

OWNER: William Perry Fisher  
LOCATION: 5556 Landing Road, Elkridge, Maryland 21075

**METROPOLITAN DISTRICT DECISION NUMBER 8-2008** May 5, 2008

OWNERS: Sang Won Lee and Michelle Lee  
LOCATION: 6111 Tulane Road, Clarksville, Maryland 21029

**METROPOLITAN DISTRICT DECISION NUMBER 9-2008** May 5, 2008

OWNERS: Trotter Crossing, LLC  
LOCATION: 5686 Trotter Road, Clarksville, Maryland 21029

**METROPOLITAN DISTRICT DECISION NUMBER 10-2008** June 23, 2008

OWNERS: Ralph and Vera Baney Trust by Ralph R. Baney,  
Trustee, Vera P. Baney, Trustee (Deceased)  
LOCATION: 5203 Talbots Landing, Ellicott City, Maryland 21043

**METROPOLITAN DISTRICT DECISION NUMBER 11-2008**

June 23, 2008

OWNER: Mildred L. Graham

LOCATION: 6114 Tulane Road, Clarksville, Maryland 21029-1506

**METROPOLITAN DISTRICT DECISION NUMBER 12-2008**

Sept. 15, 2008

OWNERS: Howard F. Bankes, Jr. and Shirley Ann Bankes

LOCATION: 6555 Cedar Lane, Columbia, Maryland 21044-4028

**METROPOLITAN DISTRICT DECISION NUMBER 13-2008**

Nov. 17, 2008

OWNERS: Kingdon Gould, Jr. and Mary T. Gould

LOCATION: 7861 Murray Hill Road, Laurel, Maryland 20723

**METROPOLITAN DISTRICT DECISION NUMBER 14-2008**

Nov. 17, 2008

OWNERS: Gary S. Gross and Marcia M. Gross

LOCATION: 10839 Hunting Lane, Columbia, Maryland 21044

**Developer Agreements for Shared Sewage Disposal Facilities  
(Howard County)**

*As to Defendants: Howard County Maryland; Kenneth Ulman, in his Official Capacity as County Executive; Paul Johnson, Individually, and in his Official Capacity as Acting County Solicitor; Marsha McLaughlin, Individually, and in her Official Capacity as the Director of Planning and Zoning; and James Irvin, Individually, and in his Official Capacity as the Director of Public Works*

267. Shared septic systems are a controversial type of sewerage disposal facility some times used outside the Planned Service Area to maximize lot yields for new residential development. Built by the developer, but turned over to the county through developer agreement to become part of the county public sewerage system, these facilities serve multiple homes on separate lots through a common system of piping and a common drain field.

268. Shared Sewage Disposal Facilities W/S (Water & Sewerage) Agreement No. 50-4359-DF-06-031, between Howard County, Maryland and Walnut Grove Holding LLC, (attached hereto and



incorporated herein as Count III Exhibit 2), was signed April 17, 2007 by the developer and Defendants Kenneth Ulman, Howard County Executive, James Irvin, Director, Department of Public Works and Johnson, Acting County Solicitor. This agreement, which is the mechanism by which the Walnut Grove shared septic system will be accepted into the county's public sewerage system, with the costs and liabilities to the public and homeowners such acceptance entails, is a "legislative act" required under Sections 207, 209 and 211 of the Howard County Charter to be effectuated by original bill.

269. On information and belief, Defendants have entered in other such developer agreements, yet to be identified, for shared septic systems within the last three years. Such agreements will be identified through discovery and this Complaint amended accordingly. Each of these agreements accomplished a "legislative act" required under Sections 207, 209 and 211 of the Howard County Charter to be passed by the County Council by original bill subject to petitioning to referendum and vote.

#### **Nature of the Cause of Action and Relief Sought**

270. Plaintiffs incorporate by reference and include for all purposes the allegations contained paragraphs 1 through 269 of this Complaint as if fully stated here.

271. Section 18.101 of Municipal Code, attached hereto and incorporated hereinto as "Count III, Exhibit 3, enacted in 1997 through the passage of CB 28-1997, but in violation of the above charter provisions, impermissibly requires the "legislative act" of including properties into the Metropolitan District to be accomplished by administrative decision of the Director of Public Works, instead of by required original bill mandated by the Howard County Charter.

272. Sections 18.1205-18.1210 of the Municipal Code, attached hereto and incorporated herein as “Count III, Exhibit 4,” enacted in violation of the above charter provisions, impermissibly requires the “legislative act” of accepting shared sewage disposal facilities into the public sewerage system by developer agreement, instead of by required original bill. The acceptance of a “shared” septic system into the public sewage system is similar to the inclusion of property into the Metropolitan District, except that the permanent financial liabilities to the citizens of the County for the inclusion may be more significant. Shared septic systems are built in areas that are planned never to have public water and sewer. The County owns the system, is responsible for its operation, maintenance and repair, and should the system fail it can result in significant costs to County taxpayers to remedy the problem. Inclusion of properties into the Metropolitan District and acceptance of shared septic systems into the public utilities system, on information and belief, can cause the County to incur ongoing liabilities of millions of dollars annually. These amounts represent permanent obligations of substantial importance to the citizens of Howard County.

273. Enactment of these Code provisions and the subsequent approval of the above Metropolitan District inclusions and shared septic developer agreement by administrative action instead of by original bill, in large measure resulted from a long standing and on-going practice of Defendants working hand in hand with each other, with other high level county officials and with influential players in the development community to shift decision making authority on important land use matters outside the reach of the electorate’s vote and in derogation of Plaintiffs’ right to vote.

274. Plaintiffs have a protected liberty interest in the fundamental right to vote and bring all “legislative acts,” including the incorporation of properties into the Metropolitan District and the acceptance of shared septic systems into the public sewage system, to referendum by petition. The liberty interest in these actions is established by Sections 207, 209 and 211 of the Howard County Charter. Plaintiffs, as registered voters in Howard County, have a constitutionally protected right under the First and Fourteenth Amendment to the United States Constitution to petition to referendum and, if successful, take to vote each of the above specified “legislative acts.”

275. The actions of Defendants in supplanting the required original bill with administrative decision-making of the Director of Public Works for Metropolitan District inclusions and the endorsement of Defendants Ulman, Irvin and Johnson on the Walnut Grove Developer Agreement, as set forth above, totally and completely disenfranchised Plaintiffs and the entire Howard County electorate of their right to take these acts to referendum and vote. Such deprivation violates (a) Plaintiffs’ First Amendment right to express their beliefs by vote and to associate as this right is made applicable to Howard County by the Fourteenth Amendment to the United States Constitution; (b) Plaintiffs’ right to substantive due process and equal protection as established by the Fourteenth Amendment to the United States Constitution in that total disenfranchisement is patently and fundamentally unfair and results in an utter breakdown in the electoral process; and, (c) Plaintiffs’ right to petition the government for redress of grievances as protected under the First and Fourteenth Amendments to the United States Constitution. All such deprivations constitute violations of 42 U.S.C. §1983.

276. The right to vote under Sections 207, 209, and 211 of the Howard County Charter was granted to the citizens of Howard County without condition or limitation of status.

277. Other legislative actions during the timeframe encompassed by this Complaint have been done by original bill in Howard County and were subject to petitioning to referendum.

278. Ensuring that the decision-making on Metropolitan District inclusion and the acceptance of shared septic systems into the public sewerage system occurs outside the scope of public review and vote particularly benefits well-entrenched, politically connected, wealthy developers and landowners in the county by precluding veto of their often controversial development plans and projects through the mechanism of the referendum. The inclusion of properties into the Metropolitan District and the acceptance of shared septic facilities into the public utility system, all by administrative decision, shield the owners/developers of these properties from the denial of public utilities by the electorate, and in so doing deprives those who would object to such projects or policies of the ability to have their voices heard.

279. The distinction made between legislation passed by bill and legislative decisions made by administrative decision, including the “legislative acts” referenced above, has created a system of favoritism whereby the legislation accomplished by administrative decision results in an unjustified and unwarranted, arbitrary and illegal distinction between these wealthy and politically connected developers and landowners, and the general public, whereby the right to vote was denied to Plaintiffs and the public, thereby insulating the developer/landowners’ interests from legislative opposition and veto by the electorate.

280. Plaintiffs' right to vote is a fundamental right protected by federal law under the First and Fourteenth Amendments to the United States Constitution and any infringement or denial of that right must be subjected to a strict scrutiny level of review.

281. Sections 18.101 and 18.1205-1210 of the Howard County Code establishing the current processes for accepting a property into the Metropolitan District and shared septic facilities into the public utility system, respectively, as well as the approval into the Metropolitan District of the properties referenced above and Defendants' endorsement of the Walnut Grove developer agreement, are official acts of Howard County, a body politic.

282. As County Executives, James Robey had and Kenneth Ulman has or had a duty to carry-out the Constitution of the County—its Charter, and each was or is responsible for implementing Sections 207, 209 and 211 as to the properties accepted into the Metropolitan District while each was in office. Both Robey and Ulman failed to implement these Charter provisions as to the above properties administratively accepted into the Metropolitan District while each was in office. Defendant Ulman failed to implement these provisions as to the act of including the Walnut Grove shared septic facility into the public utility system of the county.

283. The Howard County Council enacted bills which impermissibly delegated the power to approve requests for Metropolitan District inclusion to the Director of the Department of Public Works, and impermissibly required shared septic systems to be accepted into the public utility system by developer agreement. Although Defendant County Council has been requested on numerous occasions

to ensure that “legislative acts,” such as these are accomplished by original bill as required by the Charter, it has refused to do so.

284. Defendants Cook, Nolan and Johnson, as County attorneys are or were responsible for advising the Executive and Legislative branches of government, including the County Council and administrative agencies including DPZ and DPW, on the proper application of the Howard County Charter and other laws of the County. On information and belief, none of these Defendants has advised Defendant County Council that the statutorily required process for Metropolitan District inclusion is inconsistent with the Charter and should be changed. On information and belief, neither Cook nor Johnson advised Defendant County Council or Defendant County Executives that acceptance of shared disposal systems into the public utility system by developer agreement fails to carryout the mandates of Sections 207, 209 and 211 of the County Charter.

285. As to each of the above Metropolitan District inclusions, Defendant McLaughlin, as Director of the Office of Planning and Zoning, was responsible for coordinating with Defendant Irvin, as Director of Department of Public Works, to ensure that only properties inside of the PSA and as shown on the General Plan are included in the Metropolitan District. Although Defendant McLaughlin was not a signatory on the Metropolitan District inclusion approvals, the acts of both McLaughlin and Irvin were necessary for each approval.

286. As to the Walnut Grove Developer Agreement, both McLaughlin and Irvin were responsible for coordinating the development and approval of the subdivision plans for the Walnut

Grove subdivision, including the plans for the use of the shared septic system. Both were responsible for permitting such developer agreement to be signed.

287. The actions of the Defendants, in denying Plaintiffs their right to vote, their right to substantive due process and equal protection, and their right to seek redress of grievances constituted state action in that the decisions were decisions of governmental actors made in furtherance of official government policy.

288. The actions of the Defendants bear no rational relationship whatsoever to any legitimate state concern or to the general welfare.

289. The actions of the Defendants are nothing more than aberrant, arbitrary, capricious abuses of governmental power.

290. The actions of the Defendants do not support or demonstrate any compelling or overriding interest or end for which any legitimate governmental purpose can be justified or served in the distinctions made in what actions of the Howard County, Maryland were accomplished by administrative decision and what were done by original bill.

291. There was no basis rationally related to any governmental interest for the distinction made between those pieces of legislation granted passage by original bill and those not granted passage by original bill.

292. The actions of Defendants Cook, Johnson, McLaughlin, and Irvin in violating Plaintiffs' constitutional rights through the denial of their right to vote, were unreasoning actions maliciously,

wantonly, oppressively undertaken, without consideration and in disregard of the facts or circumstances of the case.

293. Defendants Cook and Johnson are or were legal advisors to and legislative drafters for the County Council. On information and belief, Defendants Cook and Johnson were the persons responsible for drafting and recommending approval of the Council bills enacting Sections 18.101 and 18.1205-18.1210 of the County Code.

294. Defendants Cook and Johnson, in the ordinary course of business, willfully and wantonly recommended the passage of these code sections knowing that the delegation of the decision to incorporate properties into the Metropolitan District to the Director of Public Works and the authorization to accept shared septic facilities into the public utility system by developer agreement were impermissible under Sections 207, 209 and 211 of the Charter.

295. Defendants Cook, Johnson, McLaughlin, and Irvin in the ordinary course of business, willfully and wantonly further sanctioned the impermissible delegation of such legislative decision-making by allowing the Metropolitan District inclusions referenced in this Count III to be granted administratively by Defendant Irvin, Director of the Department of Public Works, and the Walnut Grove shared septic system to be accepted into the public sewerage system through developer agreement. Defendants Cook, Johnson, McLaughlin, and Irvin allowed such actions knowing that they would totally and completely, deprive Plaintiffs and the entire Howard County electorate of (a) their right to vote and associate established under the right of referendum in Sections 202(g), 207, 209, and 211 of the Howard County Charter and the First Amendment of the United States Constitution as applied through



the Fourteenth Amendment to the states; (b) their right to substantive due process and equal protection under the law as established by the Fourteenth Amendment to the United States Constitution; and (c) their right to petition the government for redress of grievances as protected under the First and Fourteenth Amendments to the Constitution.

296. In particular, Defendants Cook, Johnson, McLaughlin and Irvin knew of the requirements of Sections 207, 209 and 211 of the Charter, and with full knowledge of the meaning of such provisions deliberately sanctioned their violation without any basis in reason or law. The actions of Defendants Cook, Johnson, McLaughlin and Irvin, in not abiding by the clear terms of these charter provisions were due either to gross incompetence or deliberate and willful intentionality to break the law.

297. Having correctly advised Defendant County Council in the past of the nature of “legislative acts” and the types of acts which must be passed by original bill in non-land use matters, demonstrates Defendants Cook and Johnson’s full knowledge and awareness of the terms of Sections 207, 209 and 211 of the Howard County Charter and the meaning of a “legislative act.”

298. Having facilitated the approval and continued implementation of the provision of the Council bill requiring County Council action by original bill if administrative decision-making on Metropolitan District inclusion is formally protested, clearly and unequivocally shows Defendants Cook, Johnson, McLaughlin and Irvin’s awareness that the delegation of such decision to an administrative entity violates the plain terms of Sections 207, 209 and 211 of the Howard County Charter and thus deprives Plaintiffs and all Howard County voters of their right to petition these decisions to referendum and vote. The continued violation of Plaintiffs’ right to petition these matters to

vote is made possible only by Defendants Cook and Johnson's drafting and recommendation of approval of Council Bill 28-1997, (Section 18.101 of the County Code) and the on-going sanction, by inaction, of current illegal practices. Defendants Cook, Johnson, McLaughlin and Irvin's sanctioning of the above Metropolitan District inclusions by administration decision are contumacious, willful and intentional acts of breaking the law as embodied in Sections 207, 209 and 211 of the Howard County Charter.

299. The continued violation of Plaintiffs' right to petition the acceptance of shared septic facilities into the county's public utility system also is made possible only by Defendants Cook and Johnson's drafting and recommendation of approval of Sections 18.1205-1210 of the County Code and the on-going sanction, by inaction, of current illegal practices. Defendants Johnson, McLaughlin and Irvin's sanctioning of county endorsement of the Walnut Grove Shared Sewerage Disposal Agreement are contumacious, willful and intentional acts of breaking the law as embodied in Sections 207, 209 and 211 of the Howard County Charter.

300. Defendant, James Irvin, as Director of the Department of Public Works having primary responsibility for administrative public works related decisions in Howard County, clearly understands the effects of accepting a property into the Metropolitan District and a shared septic facility into the public utility system, including the obligations and responsibilities this imposes upon the County and the changes in land use opportunities such decisions afford. With full knowledge and awareness of the terms of Sections 207, 209 and 211 of the Charter, he impermissibly approved by administrative decision each of the Metropolitan District inclusions referenced in this Count III and endorsed the Walnut Grove Shared Sewage Disposal Facilities Agreement.

301. Defendant McLaughlin, with similar responsibilities as to planning and zoning matters, also clearly understands the effects of accepting a property into the Metropolitan District and a shared septic facility into the public utility system; including the obligations and responsibilities this imposes upon the County and the changes in land use opportunities such decisions afford. With similar awareness of the terms of Sections 207, 209, and 211 of the Charter, she acted in total disregard of the Charter to permit the above Metropolitan District inclusions and county acceptance of the Walnut Grove shared septic facility.

302. Defendants Irvin and McLaughlin held high level positions in their respective departments for over twenty years and each is familiar with and well versed in the type of actions which must be accomplished by original bill having been intimately involved in Howard County land use and public works matters during a time when the legal mechanism for approval of changes to the zoning map, the General Plan, and the zoning regulations evolved from resolution or decision and order of the Zoning Board to original bill, and during a time when the right of referenda was in the forefront of public discussion. Both Defendants were in office at the time the County Council enacted Council Bill 28-1997 which shifted the decision-making on Metropolitan District inclusion from the County Council by bill to the Director of the Department of Public Works. Both were in office when the County Council enacted Sections 18.1205-18.1210 of the County Code requiring acceptance of shared septic facilities into the public sewerage system by developer agreement instead of by original bill. Defendants Irvin and McLaughlin were and are instrumental and key players in the scheme to refuse enforcement of the terms of Sections 207, 209 and 211.

303. Defendants Irvin's and McLaughlin's high level of executive responsibility demonstrates that the plain meaning of these Charter provisions would be well known to them as would be knowledge of their applicability to Irvin's decisions to include properties into the Metropolitan District and decisions to accept shared septic system as public utilities, and that therefore, Sections 207, 209 and 211 expressed the terms and conditions of a law pre-existing to the time of his actions as challenged by Plaintiffs in this Count III of the Complaint. Defendant Irvin's actions in approving, the above specified legislative acts by administrative decision and McLaughlin's actions in facilitating these decisions are contumacious, willful and intentional acts of breaking the law as embodied in Sections 207, 209, and 211 of the Howard County Charter.

304. Defendant, Irvin, in administratively approving the inclusion of the above referenced properties into the Metropolitan District and endorsing the Walnut Grove Shared Sewage Disposal Facilities Agreement, and McLaughlin, in facilitating such approvals, had full knowledge that their acts would deprive Plaintiffs and the entire Howard County electorate of (a) their right to vote and associate established under Section 202(g), 207, 209, and 211 of the Howard County Charter and the First Amendment of the United States Constitution as applied through the Fourteenth Amendment to the states; (b) their right to substantive due process and equal protection under the law as established by the Fourteenth Amendment to the United States Constitution; and (c) their right to petition the government for redress of grievances as protected under the First and Fourteenth Amendment to the Constitution. All such deprivations constitute violations of 42 U.S.C. §1983.

305. The actions of Defendants effected an unconstitutional allocation of the fundamental right to vote.

306. Defendants Howard County, Maryland and the Howard County Council are persons for purposes of 42 U.S.C. §1983.

307. Defendants, Robey, Kenneth Ulman, Cook, Johnson, Nolan, McLaughlin and Irvin are persons for purposes of 42 U.S.C. §1983 and are named herein and are sued in their official capacities in that the actions taken were done through the exercise of power possessed by virtue of state law and made possible only because defendants were and are clothed with the authority of state law.

308. Defendants Barbara Cook, Johnson, McLaughlin and Irvin are persons for purposes of 42 U.S.C. §1983 and are named herein and are sued in their individual capacities because their acts as stated herein, though done through the exercise of power possessed by virtue of state law and made possible only because defendants were and are clothed with the authority of state law, were and are so obviously wrong, in light of preexisting law, that only a plainly incompetent officer or one who is knowingly violating the law would have done such things.

309. Defendants Cook, Johnson, McLaughlin and Irvin, with full knowledge of the priority of the Howard County Charter over specific regulations, nevertheless, facilitated and/or effectuated the inclusion of the properties referenced above into the Metropolitan District by administrative decision, as well as the enactment and continued implementation of Section 18.101 of the County Code, the organic statute delegating such decision-making to Defendant Irvin, all such actions being in violation of Sections 207, 209 and 211 of the Howard County Charter.

310. Defendants Johnson, McLaughlin and Irvin, with full knowledge of the priority of the Howard County Charter over specific regulations, nevertheless, facilitated and/or effectuated the acceptance of the Walnut Grove shared septic system into the county's public utilities system by developer agreement, as well as the enactment and continued implementation of Sections 18.1205-18.1210 of the County code , the organic statute establishing that acceptance of such system as public utilities would be made by developer agreement, all such actions being in violation of Sections 207, 209 and 211 of the Howard County Charter.

311. All Defendants named herein this Count III acted under color of state law in executing the actions complained of herein.

312. The actions of the Defendants were and are outrageous and shock the conscience in that they are false and dishonest, clearly intended to deny Plaintiffs the fundamental right to vote, their right to substantive due process and equal protection under the law as well as their right to petition the government to seek redress for grievances, and through the sheer magnitude of the scope and breath of the denial of fundamental rights, and therefore represent an invidious undermining of our shared understanding of fair and impartial government as the elected source of power in civilized society through the right to vote.

313. The actions of Defendants described herein are the direct and proximate cause of the harm suffered by Plaintiffs in that the actions were taken on behalf of Howard County by those responsible for implementing or executing its policies, ordinances, regulations or decisions officially adopted and promulgated by Defendant's officers, or the result of the Howard County's custom.

Defendant Howard County's official actions, policies and customs were the moving force behind the deprivation of Plaintiffs' rights herein.

314. Plaintiffs have been damaged in the deprivation of a protected liberty interest through a violation of the fundamental right to vote.

315. Plaintiffs' requested relief will remedy the harm inflicted by Defendants.

**WHEREFORE** Plaintiffs pray that judgment be entered in their favor and that this Court:

**Metropolitan District Inclusions**

**As to Section 18.101 of the County Code:**

- A. Declare that Section 18.101 of the County Code, violated Sections 207, 209 and 211 of the Howard County Charter;
- B. Declare that Section 18.101 of the Code is null and void *ab initio* and is of no effect;
- C. Enjoin Defendants from undertaking any acts in furtherance of or authorized by Section 18.101 of the Code;
- D. Declare that Defendants' custom, usage and practice of violating the terms of Sections 207, 209 and 211 of the Howard County Charter, by accomplishing the "legislative act" of Metropolitan District inclusion by administrative decision instead of by original bill, was and is unconstitutional and therefore, order Defendants immediately and forthwith to abide by the terms of the Charter;
- E. Award compensatory damages from Defendant Howard County and Defendants Cook, Johnson, McLaughlin and Irvin in their personal capacity in an amount to be determined at trial for the matters alleged in this Complaint;
- F. Award punitive damages against Howard County, Maryland and Defendants Cook, Johnson, McLaughlin and Irvin in the amount of \$1,000,000 each as provided by law;
- G. Award Plaintiffs such amount as would be necessary to establish initially under federal oversight and then in perpetuity a monitoring, review and advocacy organization to help ensure transparency in government, fairness in land use decision-making and process, and to protect the electorate's right of referendum and vote on "legislative acts;"
- H. Award costs of suit incurred;
- I. Award reasonable attorney's fees, pursuant to 42 U.S.C. 1988; and

- J. Provide such other and further relief as the Court may deem proper.

**As to each Metropolitan District Inclusion:**

- A. Declare that each Metropolitan District Inclusion violated Sections 207, 209 and 211 of the Howard County Charter and denied Plaintiffs their Constitutionally protected right to petition these “legislative acts” to referendum and vote;
- B. Declare that each Metropolitan District Inclusion is null and void *ab initio* and is of no effect;
- C. Enjoin Defendants from undertaking any acts in furtherance of or authorized by these Metropolitan District Inclusions;
- D. Declare that Defendants’ custom, usage and practice of violating the terms of Sections 207, 209 and 211 of the Howard County Charter by including properties in the Metropolitan District by administrative decision was and is unconstitutional and therefore, order Defendants immediately and forthwith to abide by the terms of these Charter sections;
- E. Award compensatory damages from Defendant Howard County and Defendants Cook, Johnson, McLaughlin and Irvin in an amount to be determined at trial for the matters alleged in this Complaint;
- F. Award punitive damages against Howard County, Maryland and Defendants Cook, Johnson, McLaughlin and Irvin in the amount of \$1,000,000 each as provided by law;
- G. Award Plaintiffs such amount as would be necessary to establish initially under federal oversight and then in perpetuity a monitoring, review and advocacy organization to help ensure transparency in government, fairness in land use decision-making and process, and to protect the electorate’s right of referendum and vote on “legislative acts;”
- H. Award costs of suit incurred;
- I. Award reasonable attorney’s fees pursuant to 42 USC 1988; and
- J. Provide such other and further relief as the Court may deem proper.



## **Shared Septic Agreements**

### **As to Sections 18.1205-1210 of the County Code:**

- A. Declare that Sections 18.1205-1210 of the County Code allowing shared septic systems to be accepted into the County public utilities system, violated Sections 207, 209 and 211 of the Howard County Charter;
- B. Declare that these Sections of the Code are null and void *ab initio* and are of no effect;
- C. Enjoin Defendants from undertaking any acts in furtherance of or authorized by these Sections of the Code;
- D. Declare that Defendants' custom, usage and practice of violating the terms of Sections 207, 209 and 211 of the Howard County Charter, by accomplishing the "legislative act" of accepting a Shared Septic Facility into the public sewerage system by agreement, instead of by original bill, was and is unconstitutional and therefore, order Defendants immediately and forthwith to abide by the terms of the Charter;
- E. Award compensatory damages from Defendant Howard County and Defendants Cook, Johnson, McLaughlin and Irvin in an amount to be determined at trial for the matters alleged in this Complaint;
- F. Award punitive damages against Howard County, Maryland and Defendants Cook, Johnson, McLaughlin and Irvin in the amount of \$1,000,000 each as provided by law;
- G. Award Plaintiffs such amount as would be necessary to establish initially under federal oversight and then in perpetuity a monitoring, review and advocacy organization to help ensure transparency in government, fairness in land use decision-making and process, and to protect the electorate's right of referendum and vote on "legislative acts;"
- H. Award costs of suit incurred;
- I. Award reasonable attorney's fees, pursuant to 42 USC 1988; and
- J. Provide such other and further relief as the Court may deem proper.

### **As to Walnut Grove Shared Sewage Disposal Facilities W/S (Water and Sewer) Agreement No. 50-43-59-DF-06-031:**

- A. Declare that this agreement violated Sections 207, 209 and 211 of the Howard County Charter and denied Plaintiffs their Constitutionally protected right to petition to referendum and vote the "legislative act" of accepting a shared septic system into the public utilities system;

- B. Declare that the above Walnut Grove Agreement is null and void *ab initio* and is of no effect;
- C. Enjoin Defendants from undertaking any acts in furtherance of, or authorized by this agreement;
- D. Declare that Defendants' custom, usage and practice of violating the terms of Sections 207, 209 and 211 of the Howard County Charter by accepting shared septic systems into the public utilities system was and is unconstitutional and therefore, order Defendants immediately and forthwith to abide by the terms of these Charter sections;
- E. Award compensatory damages from Defendant Howard County and Defendants Cook, Johnson, McLaughlin and Irvin in their personal capacity in an amount to be determined at trial for the matters alleged in this Complaint;
- F. Award punitive damages against Howard County, Maryland and Defendants Johnson, McLaughlin and Irvin in the amount of \$1,000,000 each as provided by law;
- G. Award Plaintiffs such amount as would be necessary to establish initially under federal oversight and then in perpetuity a monitoring, review and advocacy organization to help ensure transparency in government, fairness in land use decision-making and process, and to protect the electorate's right of referendum and vote on "legislative acts;"
- H. Award costs of suit incurred;
- I. Award reasonable attorney's fees, pursuant to 42 USC 1988; and
- J. Provide such other and further relief as the Court may deem proper.

**COUNT IV**  
**DENIAL OF RIGHT TO VOTE**  
**In Violation of the First and Fourteenth**  
**Amendments of the United States Constitution and 42 U.S.C. §1983**

**Maryland Rt. 32 Interchanges**  
**(Howard County)**

*As to Defendants: Howard County Maryland; Howard County Council; James Robey, in his Official Capacity as former County Executive; and Kenneth Ulman, in his Official Capacity as County Executive; Margaret Ann Nolan, in her Official Capacity as County Solicitor; Cook, Individually, and in her Official Capacity as former County Solicitor; Paul Johnson, Individually, and in his Official Capacity as Deputy County Solicitor; Marsha McLaughlin, Individually, and in her Official Capacity as the Director of Planning and Zoning; and James Irvin, Individually, and in his Official Capacity as the Director of Public Works*

316. Plaintiffs reincorporate by reference and include for all purposes the allegations contained in paragraphs 1 through 315 of this Complaint as if fully stated here.

317. Prior to the approval of §202(g) by the Howard County electorate in 1994, it was the plan, policy and practice of Defendants to require all planned transportation infrastructure other than local roads, to be shown on the County's General Plan. The General Plan and amendments thereto were adopted by Defendant County Council by resolution not subject to referendum.

318. Prior to the approval of §202(g) by the voters in 1994, it also was the plan, policy, practice and requirement of Defendants that such transportation infrastructure could not be built or even studied unless shown on the General Plan, and conversely, that if shown on the General Plan, such infrastructure had to be built or dedications for such infrastructure made during the subdivision process.

319. By having this plan, policy, practice and requirement, the determination as to what future transportation infrastructure would be built in the county (other than local roads) resided with the County Council outside the purview of the Executive branch, but, because of passage by resolution, insulated from public vote.

320. Many of the signatures needed to put §202(g) on the ballot in 1994 were gathered by county residents unhappy that under existing County policies, and practices they had no mechanism to veto future transportation infrastructure. Adoption of §202(g) was seen as a way of remedying this problem.

321. After §202(g) was approved by the voters, Defendants Cook, Johnson, McLaughlin and Irvin, surreptitiously and without knowledge or consent of the County Council or the electorate, changed County plans, policies, practices and customs regarding how and by whom such infrastructure decisions are made. Through this practice, they shifted the decision-making from the County Council and the legislative process required by Sections §202(g) 207, 209 and 211 of the Howard County Charter, thus circumventing Plaintiffs' and the entire Howard County electorate's right of referendum and vote.

322. Defendants Cook, Johnson, McLaughlin and Irvin began to allow subdivisions to be approved without the construction of roads shown on the General Plan.

323. Defendants Cook, Johnson, McLaughlin and Irvin began to allow construction of major transportation improvements not shown on the County's General Plan. Within the last several months the construction of a major interchange at the intersection of Rt. 32 and Burntwoods Road not shown on

the General Plan has been completed and opened to traffic. At least four other interchanges on Rt. 32 not shown on the General Plan have been studied for future construction.

324. As to the recently built interchange on Rt. 32, and the at least four other interchanges have been studied, and now, on information and belief, approved by the Federal Highway Administration for future construction, Defendants Robey, Cook, McLaughlin, Irvin and Johnson conspired to ensure that these interchanges were not subject to the possibility of public referendum and vote by submitting to the County Council for approval by original bill pages 104, 105, and 165 of the 2000 General Plan. (Such pages are attached hereto and incorporated herein as "Count IV, Exhibit 1). Such pages contain maps showing existing major highway infrastructure, and identifying future highway improvements included in the 2000 General Plan. Rt. 32 is shown on each map, but none of the interchanges referenced above is shown. Instead, each map contains an asterisk toward the bottom of the page which states in small print: "Note: Interchange locations for MD 32 from MD 108 to I-70 to be determined."

325. The study, approval and construction of interchanges on Rt. 32, not shown on the County's General Plan, has large scale implications for county residents, not the least of which is future land use change such interchanges would facilitate.

326. The study, approval and actual or planned construction of interchanges on Rt. 32, not shown on the County's General Plans reflects a major policy change which was never disclosed to the public; is being accomplished administratively by the Executive branch of government, outside of public

review; and is being accomplished through a process which precludes the electorate's ability to petition such a policy change to vote.

327. On information and belief, Federal highway funds have or will be used to pay for all or a portion of the recently completed Rt. 32 interchange at Burntwoods Road and the other four interchanges so studied.

328. On information and belief, in order to qualify for federal funds and receive National Environmental Policy Act (NEPA) approval for the construction of these interchanges, county and state officials certified that they were consistent with the County's General Plan. Section 12 entitled "Environmental Assessment Form" asks "Is this action in accord with federal, state, regional and local comprehensive or functional plans including zoning?" The Defendants answered "yes" to this question although neither the County's 2000 General Plan nor its predecessor plan, the 1990 General Plan shows an interchange at Rt. 32 and Burntwoods Road nor any of the four other interchanges studied and apparently approved. This misrepresentation may have allowed the County to avoid explaining something that could have adversely affected receipt of federal highway funding.

329. Neither Plan has been amended subsequent to its adoption to show these interchanges. Consequently, the electorate of Howard County never had the opportunity to ratify or reject by vote any policy change which would make these interchanges part of the planned transportation system for the County. Because neither the recently completed interchange at Rt. 32 and Burntwoods Roads nor any of the other interchanges on Rt. 32 apparently studied and approved for future construction, is on the General Plan, contrary to certifications made by state or county officials to obtain NEPA approval or

Federal Highway funding, it was, is and has been the official policy of Howard County since August of 1983 not to have any of these interchanges as part of the transportation network in Howard County. Also contrary to any certifications made by county or state officials, it was, is, and has been the official policy of Howard County since August of 1983 not to have interchanges at four other locations on Rt. 32 which are not shown on the General Plan, but which upon information and belief have been studied by state and county officials over the last few years and approved for future construction.

### **Nature of the Cause of Action and Relief Sought**

330. Plaintiffs reincorporate by reference and include for all purposes the allegations contained in paragraphs 1 through 329 of this Complaint as if fully stated here.

331. The decision as to what transportation improvements (other than local roads) will be part of the transportation infrastructure in the County is a “legislative act,” required under Section 202(g) and 207, 209 and 211 of the Howard County Charter to be passed by Defendant County Council by original bill subject to petitioning to referendum.

332. The decision to include the recently completed Burntwoods Road/Rt. 32 interchange and the four other interchanges apparently already studied and approved as part of the transportation infrastructure in the county was a “legislative act” accomplished through the concerted efforts of all levels of Howard County government. Such decision, made by means other than original bill, totally and completely circumvented Plaintiffs’, as well as the entire Howard County electorate’s, right to approve or reject at the polls this major policy decision having tremendous implications for the people of Howard County.

333. This circumvention of Plaintiffs' right of referendum as to the major policy decision establishing the number and locations of interchanges to be ultimately constructed on Rt. 32 is another example of the long standing and on-going practice of Defendants working hand in hand with each other, with other high level county officials and with influential players in the development community to accomplish significant land use changes with minimal, if any, public review or debate and to shift decision-making authority on important land use matters outside the reach of the electorate's vote and in derogation of Plaintiffs' right to vote.

334. Plaintiffs have a protected liberty interest in the fundamental right to vote and bring all "legislative acts," including the determination of the planned transportation infrastructure in the county, to referendum by petition. This liberty interest is established by Sections 202(g) and 207, 209 and 211 of the Howard County Charter. Plaintiffs, as registered voters in Howard County, have a constitutionally protected right under the First and Fourteenth Amendment to the United States Constitution to petition to referendum and, if successful, take to vote each of the above specified "legislative acts."

335. The actions of Defendants, in supplanting the required original bills with decision-making of unknown administrative entities as set forth above, totally and completely disenfranchised Plaintiffs and the entire Howard County electorate of their right to take these acts to referendum and vote. Such deprivation violates (a) Plaintiffs' First Amendment right to express their beliefs by vote and to associate as this right is made applicable to Howard County by the Fourteenth Amendment to the United States Constitution; (b) Plaintiffs' right to substantive due process and equal protection as



established by the Fourteenth Amendment to the United States Constitution in that total disenfranchisement is patently and fundamentally unfair and results in an utter breakdown in the electoral process; and, (c) Plaintiffs' right to petition the government for redress of grievances as protected under the First and Fourteenth Amendments to the United States Constitution. All such deprivations constitute violations of 42 U.S.C. §1983.

336. The right to vote under Sections 207, 209, and 211 of the Howard County Charter was granted to the citizens of Howard County without condition or limitation of status.

337. Other legislative actions during the timeframe encompassed by this Complaint have been done by original bill in Howard County and were subject to petitioning to referendum.

338. Shifting the decision-making on the Rt. 32 improvements to be part of the planned transportation system for the county outside the General Plan process and reach of Plaintiffs' vote particularly benefits certain well-entrenched, politically connected, wealthy developers and landowners in the county who would benefit from the addition highway capacity created by interchanges along Rt. 32, in that such additional highway capacity is necessary for and very well could be the catalyst for major upzonings of their properties, contrary to the express policies in the 1990 and 2000 General Plans. Precluding the electorate's ability to ratify or reject at the polls, the study, approval and construction of these interchanges deprives those who would object to such projects or policies of the ability to have their voices heard.

339. The distinction made between legislation passed by bill and legislative decisions made administratively by the Executive branch or by County Council action other than original bill, including

all actions taken by Defendants necessary to the study, approval, and construction or future construction of the Rt. 32 interchanges referenced above, has created a system of favoritism whereby the legislation accomplished by administrative decision results in an unjustified and unwarranted, arbitrary and illegal distinction between these wealthy and politically tied in developers and landowners, and the general public, whereby the right to vote was denied to Plaintiffs and the public, thereby insulating the developer/landowners' interests from legislative opposition and veto by the electorate.

340. Plaintiffs' right to vote is a fundamental right protected by federal law under the First and Fourteenth Amendments to the United States Constitution and any infringement or denial of that right must be subjected to a strict scrutiny level of review.

341. As County Executives James Robey had and Kenneth Ulman had or has a duty to carry-out the Constitution of the County—its Charter, and each was or is responsible for implementing Sections 202(g) has to legislative decisions of the county, including the legislative decision that the Rt. 32 interchanges referenced above are and will be part of the transportation infrastructure of the county.

342. On information and belief, both Robey and Ulman failed to implement Section 202(g) in that both recommend study, approval and construction of the interchanges referenced above, even though such interchanges are not shown on the General Plan, with such recommendations resulting in the construction of the Burntwoods Rd/Rt. 32 interchange and approval of the other interchanges.

343. Similarly, on information and belief, Defendant County Council failed to implement Section 202(g) in that it recommended study, approval and construction of the interchanges referenced above, even though such interchanges are not shown on the General Plan, with such recommendations

resulting in the construction of the Burntwoods Rd/Rt. 32 interchange and approval of the other interchanges.

344. Defendants Cook, Nolan and Johnson, as County attorneys, are or were responsible for advising the Executive and Legislative branches of government, including the County Council and administrative agencies including DPZ and DPW, on the proper application of the Howard County Charter and other laws of the County. Each had an obligation to advise these entities that the Rt. 32 interchanges referenced above had to be placed on the General Plan by original bill before they could be considered part of the planned transportation system in Howard County and before these entities can recommend the study, approval and construction of these interchanges. Each Defendant had an obligation to advise these entities that the decision to recommend the study, approval and construction of the interchanges was a “legislative act” which was required to be accomplished by original bill subject to petitioning to referendum.

345. As to the above decision to study, approve and construct these interchanges, Marsha McLaughlin, as Director of the Office of Planning and Zoning and Defendant Irvin, as Director of the Department of Public Works were responsible for coordinating with each other to identify the projects to be part of the planned transportation infrastructure in the county, and in so doing, on information and belief, recommended approval of such interchanges, knowing full well that the interchanges were not on the County’s General Plan.

346. McLaughlin, also responsible for approving subdivision plans and Defendant Irvin, responsible for reviewing such plans, on information and belief, has over the last few years approved

subdivision plans designed not to impede the construction of the Rt. 32 interchanges, each knowing full well that such interchanges are not shown on the County's General Plan and that county ordinance requires subdivisions to be designed in accordance with the transportation infrastructure shown on the General Plan.

347. Defendants McLaughlin, Irvin, Cook and on information and belief, Johnson, were intimately involved in heated controversies regarding the placement of transportation improvements on the General Plan not long before §202(g) was approved by the voters. Given their long tenure in office, intimate involvement with these prior controversies over the study and construction of transportation improvements shown and not shown on the General Plan, and their specialized knowledge of planning and zoning matters and county ordinances, Defendants Cook, Johnson, McLaughlin and Irvin clearly knew at the time they recommended approval of the Rt. 32 interchanges and failed to advise the County Executives and County Council of the impermissible effect of their approvals of the Rt. 32 interchanges, that 1) prior to the adoption of §202(g) by the voters of Howard County in 1994, it had been the plan, policy and practice of the county to show future transportation improvements (other than local roads) on the General Plan; 2) that it is the very nature and purpose of the General Plan to show such future transportation infrastructure on the Plan; and 3) that county ordinances and regulations require transportation infrastructure to be consistent with what is shown on the General Plan. They further knew that allowing these interchanges to be studied, approved and built without showing them on the General Plan violated the mandates of §202(g) of the County Charter and Plaintiffs' right of referendum.

348. The actions of the Defendants in denying Plaintiffs their right to vote, their right to substantive due process and equal protection, and their right to seek redress of grievances constituted state action in that the decisions were decisions of governmental actors made in furtherance of official government policy.

349. The actions of the Defendants bear no rational relationship whatsoever to any legitimate state concern or to the general welfare.

350. The actions of the Defendants are nothing more than aberrant, arbitrary, capricious abuses of governmental power.

351. The actions of the Defendants do not support or demonstrate any compelling or overriding interest or end for which any legitimate governmental purpose can be justified or served in the distinctions made in what actions of the Howard County, Maryland were accomplished by administrative decision and what were done by original bill.

352. There was no basis rationally related to any governmental interest for the distinction made between those pieces of legislation granted passage by original bill and those not granted passage by original bill.

353. The actions of Defendants Cook, Johnson, McLaughlin, and Irvin in violating Plaintiffs' constitutional rights through the denial of their right to vote, were unreasoning actions maliciously, wantonly, oppressively undertaken, without consideration and in disregard of the facts or circumstances of the case.

354. Defendants Cook, Johnson, McLaughlin, and Irvin, Nolan, in the ordinary course of business, willfully and wantonly further sanctioned the impermissible delegation of such legislative decision-making by allowing the study, approval and construction or future construction of the Rt. 32 interchanges to be handled administratively by all branches of county government knowing that this would totally and completely, deprive Plaintiffs and the entire Howard County electorate of (a) their right to vote and associate established under the right of referendum in Sections 202(g), 207, 209, and 211 of the Howard County Charter and the First Amendment of the United States Constitution as applied through the Fourteenth Amendment to the states; (b) their right to substantive due process and equal protection under the law as established by the Fourteenth Amendment to the United States Constitution; and (c) their right to petition the government for redress of grievances as protected under the First and Fourteenth Amendments to the Constitution. All such deprivations constitute violations of 42 U.S.C 1983.

355. In particular, Defendants Cook, Johnson, McLaughlin and Irvin knew of the requirements of Sections 202(g) of the Charter, and with full knowledge of the meaning of such provisions deliberately sanctioned its violation without any basis in reason or law. The actions of Defendants Cook, Johnson, McLaughlin and Irvin in not abiding by the clear terms of these charter provisions were due either to gross incompetence or deliberate and willful intentionality to break the law.

356. Having correctly advised Defendant County Executive in the past that the Executive branch could not make the decisions as to what transportation infrastructure would be built, but that this decision had to be made by the Defendant County Council by the placement on or removal of

infrastructure improvements on the General Plan, demonstrates Defendants Cook and Johnson's full knowledge and awareness that only infrastructure improvements shown on the General Plan could be recommended for study and approval.

357. Having been involved in the controversy resulting in the advice given above, both Defendant McLaughlin and Irvin were aware that the approval of the Rt. 32 interchanges could only be given if they were shown on the General Plan, and that administrative approval of such interchanges violated Plaintiffs right to referendum and vote.

358. The actions of Defendants effected an unconstitutional allocation of the fundamental right to vote.

359. Defendants Howard County, Maryland and the Howard County Council are persons for purposes of 42 U.S.C. §1983.

360. Defendants, Robey, Kenneth Ulman, Cook, Johnson, Nolan, McLaughlin and Irvin are persons for purposes of 42 U.S.C. §1983 and are named herein and are sued in their official capacities in that the actions taken were done through the exercise of power possessed by virtue of state law and made possible only because defendants were and are clothed with the authority of state law.

361. Defendants Cook, Johnson, McLaughlin and Irvin are persons for purposes of 42 U.S.C. §1983 and are named herein and are sued in their individual capacities because their acts as stated herein, though done through the exercise of power possessed by virtue of state law and made possible only because defendants were and are clothed with the authority of state law, were and are so obviously

wrong, in light of pre-existing law, that only a plainly incompetent officer or one who is knowingly violating the law would have done such things.

362. Defendants Cook, Johnson, McLaughlin and Irvin, with full knowledge of the priority of the Howard County Charter over specific regulations, nevertheless, facilitated and permitted the study, approval and construction or future construction of the Rt. 32 interchanges reference above by administrative decision of Sections 202(g) of the Howard County Charter.

363. All Defendants named herein this Count IV acted under color of state law in executing the actions complained of herein.

364. The actions of the Defendants were and are outrageous and shock the conscience in that they are false and dishonest, clearly intended to deny Plaintiffs the fundamental right to vote, their right to substantive due process and equal protection under the law as well as their right to petition the government to seek redress for grievances, and through the sheer magnitude of the scope and breath of the denial of fundamental rights, and therefore represent an invidious undermining of our shared understanding of fair and impartial government as the elected source of power in civilized society through the right to vote.

365. The actions of Defendants described herein are the direct and proximate cause of the harm suffered by Plaintiffs in that the actions were taken on behalf of Howard County by those responsible for implementing or executing its policies, ordinances, regulations or decisions officially adopted and promulgated by Defendant's officers, or the result of the Howard County's custom.



Defendant Howard County's official actions, policies and customs were the moving force behind the deprivation of Plaintiffs' rights herein.

366. Plaintiffs have been damaged in the deprivation of a protected liberty interest through a violation of the fundamental right to vote.

367. Plaintiffs' requested relief will remedy the harm inflicted by Defendants.

**WHEREFORE** Plaintiffs pray that judgment be entered in their favor and that this Court:

**As to the Rt. 32 Interchanges:**

- A. Declare that Defendants actions in securing construction of the Rt. 32/Burntwoods Roads interchange and the study and approval of at least four other interchanges on Rt. 32 not shown on the General Plan violated Section 202(g), 207, 209 and 211 of the Howard County Charter and denied Plaintiffs their Constitutionally protected right to petition the decision to include these interchanges as part of the County's transportation network to referendum and vote;
- B. Declare that all actions taken in furtherance of the construction of these interchanges is null and void *ab initio* and of no effect;
- C. Enjoin Defendants from undertaking any acts in furtherance of the approval or construction of any of the additional four interchanges on Rt. 32 apparently already studied and approved by the Federal Highway Administration;
- D. Declare that Defendants' custom, usage and practice of violating the terms of Sections 202(g) and 207, 209 and 211 by approving or recommending approval of transportation projects (other than local roads) not on the General Plan was and is unconstitutional in that it circumvents Plaintiffs right of referendum and vote and order Defendants immediately and forthwith to abide by the terms of the Charter;
- E. Order Defendant Howard County, Maryland to reimburse the Federal Highway Administration for federal funds used in any aspect of the planning, land acquisition or construction of any of the Rt. 32 interchanges referenced above if the County increases the intensity of development outside the Planned Service Area above the existing base density;
- F. Award compensatory damages from Defendant Howard County and Defendants Cook, Johnson, McLaughlin and Irvin in their personal capacity in an amount to be determined at trial for the matters alleged in this Complaint:

- G. Award punitive damages against Howard County, Maryland and Defendants Cook, Johnson and Irvin in the amount of \$1,000,000 each as provided by law;
- H. Award Plaintiffs such amount as would be necessary to establish initially under federal oversight and then in perpetuity a monitoring, review and advocacy organization to help ensure transparency in government, fairness in land use decision-making and process, and to protect the electorate's right of referendum and vote on "legislative acts;"
- I. Award costs of suit incurred;
- J. Award reasonable attorney's fees, pursuant to 42 U.S.C. 1988; and
- K. Provide such other and further relief as the Court may deem proper.

BY THE PLAINTIFFS,



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BY ATTORNEY FOR REMAINING PLAINTIFFS



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February 17, 2009

## JURY DEMAND

The Plaintiffs herein give notice to all Defendants and the court that they seek a jury trial for all those issues triable by jury.

## DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that they, the *pro se* Plaintiffs, and attorney for the remaining Plaintiffs, in the above action have read the above Complaint and that the information contained in the Complaint is true and correct. 28 U.S.C. Section 1746; 18 U.S.C. Section 1621.



PAUL F. KENDALL , pro se

FRANK MARTIN, pro se



SUSAN B. GRAY

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