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Court of Appeals
Suzanne C. Johnson,
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IN THE COURT OF APPEALS OF MARYLAND

PRINCE GEORGE'S COUNTY, MD.	*	
	*	
Petitioners,	*	
	*	
v.	*	September Term 2021
	*	
ROBERT E. THURSTON, JR., *et al*.,	*	Petition Docket No. 405.
	*	
Respondents	*	
	*	
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ANSWER TO PETITION FOR WRIT OF CERTIORARI AND REQUEST FOR SUMMARY AFFIRMANCE

Respondents agree this is a matter of public importance, but request the Court grant summary affirmance under Md. Rule 8-303(f)(3). The trial judge correctly ruled that the County Council could not substitute the independent Redistricting Commission's plan with a plan of its own by simple resolution instead of a bill. The court rejected the Council's attempt to circumvent the County Charter's requirement of a bill in such circumstances.

To justify its action, the Council reads the Charter backwards. It claims Section 305 of the Charter allows the Council to adopt its own redistricting plan by simple resolution. But that section says otherwise. It provides that only the Commission's plan can become law via resolution if the Council, and only if the Council, "passes no other law" changing the Commission's plan:

> If the Council passes no other law changing the proposal, then ***the plan, as submitted, shall become law***, as of the last day of November, as an act of the Council, subject to Sections 320 and 321 of this Charter. ***Such law*** shall be adopted by resolution of the County Council upon notice and public hearing.

Section 315.

"Such law," of course, refers to the *Commission's plan* described in the preceding sentence. Any other reading would turn Section 305 on its head and permit the Council to redraw district lines with none of the checks or balances of the legislative process, including the executive veto.

The Commission's plan becomes effective by operation of law "if the Council passes no other law" by the "last day of November." Sec. 305. The vehicle of a simple Council resolution is appropriate simply to confirm and codify that this defaulting event had occurred, and that because the Council passed no law, the Commission's plan became law.

In 2012, the Council adopted and the voters ratified CB 55-2012, which allowed the Council to use a simple resolution to acknowledge a legislative fact, when the Commission's plan became effective by operation of law. Yet the Council wants CB 55-2012 to do more than it actually does. It likens Section 305 to the Maryland Constitution's requirement that the General Assembly must adopt its own redistricting plan via resolution. But in contrast to Section 305 of the Charter, which expressly requires the Council to pass a "law" if it wishes to override the Commission's plan, the Maryland Constitution expressly requires the legislature to act by resolution. *See* Md. Const., Art. III, Sec. 5.[1]

As the parties agreed below, there are no disputed facts here. The trial judge gave effect to the plain language of the Charter. As it has done in the past, the Court should exercise its discretion, under Md. Rule 8-303(f)(3) to summarily affirm the judgment of the lower court. *See, e.g., Anne Arundel County Taxpayers Ass'n v. Anne Arundel County Bd. of Elections,* 415 Md. 433, 2 A.3d 1095 (2010); *McHale v. Hagberg,* 415 Md. 431, 2 A.3d 1094 (2010).

[1] Art. III, Sec. 5 provides in pertinent part that " … [t]he General Assembly may by joint resolution adopt a plan setting forth the boundaries of the legislative districts for the election of members of the Senate and the House of Delegates[.]

A. Background.

For more than four decades, the Prince George's County Charter has given primary responsibility for the redistricting process to an independent commission. Although Section 305, the redistricting provision of the Charter, has been amended several times,[2] its basic provisions have remained unchanged.

A commission is appointed with at least two members from any political party polling at least fifteen percent of the vote in the preceding regular County Council election. By September 1 of the year prior to redistricting becoming effective, the Commission shall "prepare, publish and make available a plan of council districts." Sec. 305. The plan shall provide for Council districts that are "compact, contiguous, and equal in population." *Id*. After the plan is submitted to the County Council, it shall hold a hearing on the plan in "no less than fifteen calendar days and no more than thirty calendar days." *Id*. If the Council passes "no other law" changing the Commission's plan by the "last day of November," then the Commission's plan automatically becomes effective by operation of law.

The full text of Section 305 provides as follows:

> The boundaries of Council districts shall be reestablished in 1982 and every tenth year thereafter. Whenever district boundaries are to be reestablished the Council shall appoint, not later than February 1 of the year prior to the year in which redistricting is to be effective, a commission on redistricting, composed of two members from each political party chosen from a list of five names submitted by the Central Committee of each political party which polled at least fifteen percent of the total vote cast for all candidates for the Council in the immediately preceding regular election. The Council shall appoint one additional member of the Commission who shall serve as chairman. No person shall be eligible for appointment to the Commission if he holds any elected office. By September 1 of the year prior to the year in which redistricting is to be effective, the Commission

[2] In 2002, the Charter was amended to revise the schedule of hearings and submission of the Commission's plan, and to clarify that the Commission plan would become law if "no other law" were adopted by the Council "as of the last day of November." *See* CB 69-2002, ratified November 6, 2002.

> shall prepare, publish, and make available a plan of Council districts and shall present that plan, together with a report explaining it, to the Council. The plan shall provide for Council districts that are compact, contiguous, and equal in population. No less than fifteen calendar days and no more than thirty calendar days after receiving the plan of the Commission, the Council shall hold a public hearing on the plan. *If the Council passes no other law changing the proposal, then the plan, as submitted, shall become law, as of the last day of November, as an act of the Council,* subject to Sections 320 and 321 of this Charter. Such law shall be adopted by resolution of the County Council upon notice and public hearing.

B. The 2021 Councilmanic Redistricting Plan.

On January 28, 2021 the Prince George's County Council appointed the County Redistricting Commission pursuant to Section 305.[3] Throughout the spring and summer of 2021, the Commission held eleven public meetings and two public hearings. The Commission received several written submissions, inquiries, and alternate redistricting plans to consider.

With the benefit of extensive public input, the Commission submitted their plan to the Council on September 1, 2021, accompanied by a 52-page report.[4] The Council held a hearing on the Commission's plan on September 28, 2021. The Commission's plan created nine councilmanic districts consistent with the data from the 2020 Census, and complied with the laws governing the redistricting process as set forth in Section 2 of the federal Voting Rights Act, and the redistricting criteria set forth by the Supreme Court.

[3] David C. Harrington, president of the County Chamber of Commerce, and Dr. Charlene Dukes, former president of the Prince George's Community College and former chair of the Maryland State Board of Education, were appointed to the Commission as members, and Rev. James J. Robinson was appointed as the Chair of the Commission. Dr. Nathaniel Persily, the James B. McClatchy Professor of Law, Stanford Law School, served as consultant to the 2021 Redistricting Commission.

[4] *See* Redistricting Commission-Plan and Report https://pgccouncil.us/DocumentCenter/View/6648/2021-Redistricting-Commission-Report

Sidelining the Commission's plan, the Council introduced its own redistricting plan as Bill CB 115-2021 on October 19, 2021. On November 16, 2021 the Council purported to adopt its own redistricting plan, approving Resolution CR 123-2021 by a vote of 6-3. The Council's adoption of its own plan created a public outcry. *See* Plaintiff's Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction, at D. 39 (citing Rachel Chason, *Accusations of gerrymandering have deepened divisions in this Democratic suburb near D.C.*," THE WASHINGTON POST, November 10, 2021). Over 150 residents appeared at the hearing in opposition to the Council's plan. None spoke in favor of it.

Respondents filed a complaint for declaratory judgment and writ of mandamus challenging the Council's use of a resolution and not a bill to enact their own plan. Respondents are all citizens and registered voters of the County who were aggrieved by various aspects of the Council's plan, including the division of Vansville, an historically African-American community, into two councilmanic districts,[5] and the division of Old Town College Park into two councilmanic districts.[6]

The Circuit Court held a hearing on January 28, 2021. The court found that the "operative facts were not in dispute" and that "the issue to be decided is strictly a question of law …." The court held that the Council's resolution, CR 123-2021, "is not effective to the extent its intent is to serve as a "law … changing the Commission's plan." Order and Decl. Judg. at D. 113-114. It held that because "no other law" had been passed changing the Commission's plan, that the Commission's plan "became law" on the last day of November. *Id*.

[5] Plaintiff's Complaint, D.18-31 at ¶4.

[6] *Id*. at ¶2.

In its petition, the County complained about the alleged delay in bringing this action. But it never raised this issue below and failed to preserve it. The only reference to delay was the Council's complaint that Respondents did not challenge the CB 55-2012 ballot question in 2012. (See Transcript, p. 31, lines 1-5). Respondents are not challenging the validity of that as a referendum.

Defendant Prince George's County noted an appeal on February 1, 2021, and the case was docketed in the Court of Special Appeals as *Prince George's County v. Thurston, et al*., Sept. Term 2021, No. 1865. On February 7, 2021, Prince George's County filed the instant petition.

I. ARGUMENT

A. The Council was constrained by the provisions of Section 305 of the County Charter to adopt a bill, not a resolution.

The Charter was adopted by the voters of Prince George's County on November 3, 1970. This Court has repeatedly recognized that a county charter is equivalent to a constitution. *See*, *e.g.*, *Save Our Streets v. Mitchell*, 357 Md. 237, 248 (2000). Like the federal constitution and the fifty state constitutions, the County Charter "provide[s] a broad organizational framework establishing the form and structure of government in pursuance of which the political subdivision is to be governed and local laws enacted." *Cheeks v. Cedlair Corp.*, 287 Md. 595, 607 (1980).

The General Assembly granted express powers to the governments of home rule counties, including requirements for legislation and that it be advertised.[7] The Council cannot enact laws

[7] Art. XI-A, Section 3 provides in pertinent part that "all legislation shall be enacted at the times so designated for that purpose in the charter, and the title or a summary of all laws and ordinances proposed shall be published once a week for two successive weeks prior to enactment followed by publication once after enactment in at least one newspaper of general circulation in the county, so that the taxpayers and citizens may have notice thereof."

by any other means, except those provided in the Charter. Article XI-A, Section 2 of the State Constitution provides that the express powers granted to a charter county "shall not be enlarged or extended … but … by the General Assembly." *See also* Express Powers Act, Md. Code Ann. LOCAL GOVERNMENT §§ 10-101, *et seq*.

1. The County Charter provides that the Commission's redistricting plan becomes law if the Council enacts "no other law" with a different plan. The resolution adopted by the Council purporting to substitute its plan for the Commission's is not a "law."

Section 305 of the Charter plainly provides that unless the Council passed another law changing the Commission's plan, then the Commission's plan "shall become law, as of the last day of November."

> If the Council *passes no other law* changing the proposal, then the plan, as submitted, shall become law, as of the last day of November, as an act of the Council, subject to Sections 320 and 321[8] of this Charter.

Sec. 305 (emphasis added).

In other words, *by operation of the law*, the Commission plan became law "on the last day of November" absent the Council's enactment of another law changing the Commission's plan. The Charter declared that "if no other law" changing the proposal were enacted, then the Commission's plan "as submitted" would be treated as an act of the Council.

Significantly, the Charter made this default adoption of the Commission plan expressly subject to only two other provisions of the Charter, Sections 320 and 321, which govern publication and codification *after* the plan became law, ensuring that the redistricting plan be codified since it now had the force and effect of law. This "operation of law" provision did not

[8] These sections require publication and codification after enactment, but none of the procedural requirements associated with legislation, such as publication or the executive veto.

require any action by the Council, other than ensuring the subsequent publication and codification of the Commission's plan.

2. The 2012 amendment to Section 305 did not change this.

In 2012, the Council adopted, and the voters subsequently ratified, an amendment adding a single sentence to Section 305. *See* CB 55-2012. The plain language provides that if the Commission's plan "become[s] law [on] the last day of November," then the Council shall adopt a resolution to that effect upon notice and public hearing:

> If the Council passes no other law changing the proposal, then ***the plan, as submitted, shall become law***, as of the last day of November, as an act of the Council, subject to Sections 320 and 321 of this Charter. ***Such law*** shall be adopted by resolution of the County Council upon notice and public hearing**.** [Emphasis supplied, new law underscored]

The Council argues that "such law" refers back to the language "if the Council passes no other law." But this reading runs afoul of the plain language of the Charter and long-standing rules of statutory construction involving legislative use of the word "such." As this Court has held, "'[s]uch' is a relative adjective referring back to and identifying something previously spoken of. 'Such' naturally, by grammatical usage, refers to the last preceding antecedent."[9] *Board of Supervisors of Elections v. Weiss*, 217 Md. 133, 138, 141 A.2d 734, 737 (1958). Here, the preceding antecedent is the "plan, as submitted, shall become law." The "last preceding antecedent rule" has been a uniform rule of construction for more than a century.[10]

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[9] The relative pronoun here ("such") comes "as a rule" after its antecedent here ("the plan, as submitted, shall become law"). *See* The Elements of Style, The Elements of Style. Strunk, W., Jr. and White, E.B.., p. 15. Under no rules of statutory construction or basic grammar could the antecedent to the pronoun "such" here be the language "if the Council passes no other law changing the proposal."

[10] *See*, *e.g.*, *United States v. Bowen*, 100 U.S. 508 (1879) (finding that the qualifying word such . . . restricted the referent to the class of individuals described in the sentence which immediately preceded it) (cleaned up); *United States v. Ahlers*, 305 F.3d 54, 59-61 (1st Cir. 2002) (finding that the use of the word such plainly referred back to the entire antecedent phrase

The trial court applied this exact rule of statutory construction to the use of "such" in the 2012 amendment:

> How the court reads the sentence preceding the new language is this: There's a clause that says if the council passes no other law changing the proposal and the Court finds that to change the law the council has to submit a bill to enact it, then "the plan, as submitted becomes law." And that's the sentence. That's the active sentence there, the plan shall become law." The court reads such law as relating back to the plan that becomes law in November. That's how the court reads it. And the resolution is of an administrative character, that it's a resolution adopting the plan that by operation of law becomes law.

Transcript, p. 60, lines 9-20.

The Council's heavy reliance on *Harford v. Bd. of Supervisors*, 272 Md. 33, 321 A.2d 151 (1974) is curious here. The County Council in Harford, like the Council here, unsuccessfully attempted to substitute its own plan for the plan of the independent redistricting commission, but in that case acted too late, and the independent commission's plan went into effect.

Harford stands for the unremarkable conclusion that the voters "meant what they said" in adopting a charter amendment. *Id*. at 40. That is surely true here. Importantly, *Harford* involved a nearly identical charter provision to Section 305. The trial judge in *Harford* trenchantly observed that it was

> Clearly designed in a bipartisan fashion to prevent the unfortunate practice of 'gerrymandering' and the consequences which flow from it and to at least partially remove the important task of redefining Councilmanic districts from the field of partisan politics.

Id. at 36

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and thus retained a reference point that is specific and carefully circumscribed). The rule of the last antecedent holds that "a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows." *Barnhart v. Thomas*, 540 U. S. 20, 26 (2003).

In this case, the Council introduced a simple resolution, CR 123-2021, to adopt its own redistricting plan instead of the Commission's plan. But they had it backwards. The resolution process exists solely to codify the legislative fact that the Commission's plan became effective by operation of law, not to create "a law" as the Council must to adopt its own plan.

The Council claims that its own redistricting plan could be passed by simple resolution, exempt from all legislative procedural safeguards, including the executive veto. Redistricting is a fundamental exercise of legislative power. This Court has held that a Council cannot legislate by resolution to avoid executive veto, a critical component of the legislative process. *Montgomery County v. Anchor Inn Seafood Restaurant,* 374 Md. 327, 336, 822 A.2d 429, 434 (2000). Indeed, the Council itself has previously recognized this, adopting its own redistricting plan by bill, which was ultimately signed by the County Executive. *See* CB 64-2011.

The Council's act violates the legislative process required by the Charter, which states unequivocally that "[t]he Council shall enact no law except by bill."[11] Sec. 317. Section 305 expressly required a "law" for their own plan, but the Council acted without a bill.

Section 317 provides important procedural safeguards and the checks and balance associated with the passage of a bill. When a bill is introduced, the Council must provide a copy of the bill and notify the public of the time and place a hearing will be held on the bill. *See* Sec. 317.[12] If a hearing is held, and an amendment thereafter changes the substance of the bill, there

[11] Charter Section 1017 provides the working definitions and rules of statutory construction. In subpart (h), it states "[t]he word 'shall' shall be construed as mandatory [.]"

[12] "On the introduction of any bill, a copy thereof and notice of the time and place of the public hearing on the bill shall be posted … in a public place and by any other such methods as the Council shall dictate. Additional copies of the bill shall be made available to the public and to the press …. Within ten days following the introduction of a bill the Clerk of the Council shall schedule and give public notice of a public hearing on the bill, which hearing shall not be less than fourteen days after its introduction."

must be a new hearing. *Id*.[13] Once a bill is enacted by the Council it must be presented to the County Executive. Sec. 411. The bill becomes law if the County Executive signs the bill, or fails to return the bill to the Council within ten days of presentment. *Id*. If the County Executive vetoes the bill, a two-thirds vote of the full Council can override the veto, and the bill becomes law. *Id.* Presentment to the County Executive is an indispensable part of the legislative process.

In contrast, the Charter has no procedural safeguards for resolutions generally. Section 1017(c) provides "[t]he word 'resolution' shall mean a measure adopted by the Council having the force and effect of law but of a temporary or administrative character." The Charter is replete with examples of "temporary or administrative" actions, not subject to executive veto, where it requires a resolution: temporary administrative appointments (Sec. 505), annual salary classifications (Sec. 903), annual tax levy (Sec. 811), bond pledges (Sec. 323), and exemptions of agencies from an annual audit (Sec. 313).

A bill, on the other hand, is defined by the Charter as any "measure introduced in the Council for legislative action." Sec. 1017(a). That section goes on to provide that "[t]he words 'act,' 'ordinance,' 'public local law,' and 'legislative act,' when used in connection with any action by the Council, shall be synonymous and shall mean any bill enacted in the manner and form provided in this Charter." Sec. 1017(b).

The distinction between bills and resolutions is well established in legislative bodies generally, both in Maryland and throughout the country. *See*, *e.g.*, *Cape Girardeau v. Foudeu*, 30 Mo. App. 551 (1888) ("A resolution is merely a suggestion or a direction … not submitted to

[13] "After the public hearing, a bill may be finally enacted … except, that if a bill is amended before enactment and the amendment constitutes a change of substance, the bill shall not be enacted until it is reprinted or reproduced as amended and a public hearing shall be set … as in the case of a newly introduced bill."

the executive for his approval. A resolution is ordinarily passed without the forms and delays which are generally required by constitutions and municipal charters as prerequisites to the enactment of valid laws or ordinances."); *Laidlaw Transit, Inc. v. Alabama Educ. Ass'n*, 769 So. 2d 782 (Ala. 2000) ("A resolution … is not a law …. The Legislature has no power to make or change law by resolution").

C. Conclusion.

Here, the Council needed a bill, not a resolution, to adopt its own redistricting plan. The court correctly interpreted Section 305. For the foregoing reasons, the Court should issue an order under Md. Rule 8-303(f)(3) summarily affirming the trial court's decision.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 3754 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements state in Rule 8-112.

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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2022, a copy of the foregoing Answer to Petition and Request for summary Affirmance was filed and served via the Court's MDEC System.

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