

In The Court of Appeals of Maryland

No. 63
COA-REG-0063-2021

SEPTEMBER TERM, 2021

PRINCE GEORGE'S COUNTY,

Petitioner,

v.

ROBERT E. THURSTON, *et al.*,

Respondents.

BRIEF — PRINCE GEORGE'S COUNTY

(On Appeal from the Circuit Court for Prince George's County, Maryland
Honorable William A. Snoddy, Presiding)

Rajesh A. Kumar
Principal Counsel
Wayne K. Curry Admin. Bldg.
1301 McCormick Drive - Suite 3-126
Largo, MD 20774
301.952.3921 voice
rakumar@co.pg.md.us

Rosalyn E. Pugh, Esquire
The Pugh Law Group, LLC
1401 Mercantile Lane - Suite 211
Upper Marlboro, MD 20774
301.772.0006 voice
rpugh@pughlawgroup.com

Attorneys for Petitioner

Friday, February 18, 2022

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF THE CASE 1

QUESTION PRESENTED 3

 I. IS A RESOLUTION, HAVING THE FORCE AND EFFECT
 OF LAW, A VALID MEASURE TO ADOPT A DECENNIAL
 COUNTY COUNCIL REDISTRICTING PLAN? 3

STATEMENT OF FACTS 3

ARGUMENT 10

 A. INTRODUCTION 10

 B. THE 2012 AMENDMENT TO SECTION 305 OF THE
 CHARTER AUTHORIZED THE COUNTY COUNCIL TO
 PASS ANOTHER LAW BY RESOLUTION TO CHANGE
 THE COMMISSION’S PROPOSAL UPON NOTICE AND
 PUBLIC HEARING..... 11

 C. THE 2002 AND 2012 AMENDMENTS TO SECTION 305
 OF THE CHARTER HARMONIZED REDISTRICTING
 PROCEDURES TO ALIGN WITH STATE LAW TO
 AUTHORIZE THE COUNTY COUNCIL TO PASS A
 RESOLUTION TO ADMINISTER AND IMPLEMENT
 EXISTING REDISTRICTING LAW 18

CONCLUSION..... 20

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH
RULE 8-112..... 22

CERTIFICATE OF SERVICE..... 22

TABLE OF AUTHORITIES

CASES

Harford County v. Board of Supervisors, 272 Md. 33, 321 A.2d 151
(1974)12,21

Kendall v. Howard County, 431 Md. 590, 66 A.3d 684 (2013)18,19

Lamone v. Lewin, 460 Md. 450, 190 A.3d 376 (2018)13

Mayor & City Council of Baltimore v. Hackley, 300 Md. 277,
477 A. 2d 1174 (1984)17

Scull v. Montgomery Citizens League, 249 Md. 271, 239 A.2d 92 (1968)19

Smigiel v. Franchot, 410 Md. 302, 978 A.2d 687 (2009)13

STATUTES AND OTHER AUTHORITY

Chrt. § 1033

Chrt. § 3045

Chrt. § 3058

Chrt. § 31720

Chrt. § 41120

Chrt. § 101713,14

Chrt. § 11013

Md. Code Ann., Local Gov’t § 10-206 (2021)14

STATEMENT OF THE CASE

Nature of the Case

This case involves Section 305 of the Prince George's County Charter, which outlines ministerial and administrative redistricting procedures that the County Council must follow every 10-years to re-establish boundaries of Council districts. At issue here is the *final* redistricting procedure in § 305, which requires a redistricting plan to be adopted by resolution of the County Council upon notice and public hearing. On November 16, 2021, after notice and public hearing, the Council adopted Council Resolution (CR)123-2021, which embodied the Council's redistricting plan changing the proposal submitted by the Redistricting Commission. The resolution was transmitted (upon adoption) to the Board of Elections for further administrative action. App 13.

Course of Proceedings

On Monday, January 24, 2022 (sixty-nine days after CR-123-2021 was adopted and transmitted to the Board of Elections) Respondents¹

¹ Respondents are Robert E. Thurston of College Park, Stephanie Stulich of College Park, John D. Perkins of Beltsville, and Stanley Holmes of Suitland. App 18.

filed an emergency complaint² in the Circuit Court for Prince George's County.

On Friday, January 28, 2022, the case was scheduled for a TRO hearing before the Honorable William A. Snoddy. App 60. When the TRO hearing commenced, Judge Snoddy converted the TRO hearing to a full hearing on the merits. App 62. Judge Snoddy issued a written Order and Declaration on Monday, January 31, 2022. App 124.

On Tuesday, February 1, 2022, the County filed an appeal. App 126. The Court of Special Appeals docketed the appeal the same day. App 134. The County filed a petition for writ of certiorari in this Court at 12:50 am on Monday, February 7, 2022, which was followed by an emergency motion for expedited relief at 8:18 am on Tuesday, February 8, 2022. App 136. Respondents filed an answer to the petition and opposition to the County's emergency motion for expedited relief on Wednesday, February 9, 2022. App 154.

The Court granted the County's petition on Friday, February 11, 2022, and ordered that the case be transferred to the regular docket as

² The complaint was styled as an "(Emergency) Verified Complaint for Declaratory Judgment and Writ of Mandamus and For Temporary Restraining Order and Preliminary Injunctive Relief." App 18.

No. 63, September Term, 2021 (COA-REG-0063-2021). App 167, *Prince George's County v. Thurston*, 2022 Md. LEXIS 55.

QUESTION PRESENTED

- I. **Is a Resolution, having the force and effect of law, a valid measure to adopt a decennial County Council Redistricting Plan?**

STATEMENT OF FACTS

A. Existing Redistricting Law Already In Force And Effect

- Charter § 1101 — Effective Date of Charter

Prince Georgians adopted the Charter on November 3, 1970. Chrt. § 1101. At that time, boundaries and the County seat were required to remain as they were at the time the Charter took effect unless otherwise changed in accordance with law. Chrt. § 103.

- Charter § 305 — Redistricting Procedure

Section 305 of the Charter deals exclusively with ministerial and administrative redistricting procedures by which Council boundaries are to be reestablished.³ Over time, § 305 was amended pursuant to Charter

³ In accordance with the Charter, the County's Redistricting process is a hybrid, in that the Council shares redistricting authority with a commission. From its inception, the plain language of § 305 exempted this redistricting process from the veto powers granted to the executive in § 411 of the Charter.

amendments ratified in 1974 (CB-92-1974), 2002 (CB-69-2002), and 2012 (CB-55-2012).⁴

➤ **1974 Amendment of § 305**

After CB-92-1974 was ratified on November 5, 1974, § 305 was amended as follows:

The boundaries of Council districts shall be reestablished in 1972 and every tenth year thereafter. Whenever district boundaries are to be reestablished the Council shall appoint, not later than February 15 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. The Commission shall, at its first meeting, select one of its members to serve as chairman. No person shall be eligible for appointment to the Commission if he holds any elected office. By October 1 of the year prior to the year in which redistricting is to be effective, the Commission 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 within seventy calendar days following presentation of the Commission's plan no other law reestablishing the boundaries of the Council districts has

⁴ Underscoring indicates language added to existing law. [Brackets] indicate language deleted from existing law. Asterisks *** indicate intervening existing Code provisions that remain unchanged.

been enacted, then the plan, as submitted, shall become law, **as an act of the Council, subject to Sections 320 and 321 of this Charter.** (Emphasis added). App 170.

Also of note, § 304 of the Charter, which was ratified by petition in 1980, provides for the establishment of nine Council districts as follows:

- **Charter § 304 — Council Districts**

(a) Prince George's County is hereby divided into nine Council districts.

(b) The boundaries of the Council districts shall be established **pursuant to the provisions of Section 305 of this Charter** prior to the filing dates for the 1982 General Election to become effective on noon of the first Monday in December 1982 (Emphasis added). Chrt. § 304.

- **2002 Amendment of § 305**

On November 5, 2002, CB-69-2002 was ratified, amending § 305, to address the timing of the decennial redistricting process 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 15] 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 **[. The Commission shall, at its first meeting, select one of its members to] who** shall serve as chairman. No person shall be eligible for appointment to the Commission if he holds any elected office. By **[October 1] September 1** of the year prior to the year

in which redistricting is to be effective, the Commission 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 **[within seventy calendar days following presentation of the Commission’s plan no other law reestablishing the boundaries of the Council districts has been enacted] 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 (Emphasis added). App 194.

➤ **The 2012 Amendment of § 305**

In 2012, the County Attorney certified the order and form of seven questions to the local board of elections in accordance with the provisions of Section 7-103 of the Election Law Article pursuant to Council Bill (CB)-55-2012. App 248. Of significance to this case is Ballot Question A—presented to the voters as follows:⁵

**Prince George’s County
Question A
Charter Required Referendum
(CB-55-2012) Proposed Charter Amendment**

⁵https://elections.maryland.gov/elections/2012/ballot_question_language.html#pg (last visited February 17, 2021).

To authorize legislative action on the decennial County Council redistricting plan by resolution upon notice and public hearing.

The legislative *background* or *intent* for what became Question A is described in CB-55-2012 as follows:⁶

“This proposed Charter Amendment **authorizes the adoption of a County Council redistricting plan by resolution upon notice and public hearing.**” App 251. (Emphasis added).

After CB-55-2012 was ratified on November 6, 2012, § 305 was amended 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 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

⁶ Former Council Member Eric Olson and candidate for District 3 made the motion to move CB-55-2012 favorable out of committee. App 241.

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 act⁷ 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 added). App 248, Chrt. § 305.

B. The 2021 Redistricting Commission

As required in § 305 of the Charter (as amended), the County Council adopted Council Resolution (CR)-6-2021, which appointed a Redistricting Commission to prepare and publish a plan and report explaining the plan by September 1, 2021.⁸ As required also in § 305, the County Council held a public hearing on the plan. App 13.

⁷ It is important to note that § 1017(a) of the Charter provides that the word “bill” shall mean any **measure** introduced in the Council for legislative action. In other words, it is not necessary for legislation to be specifically referred to as a bill, in order for it to become law, consistent with § 317 of the Charter.

⁸ Although the Commission commenced work on a plan and report in March 2021, it primarily relied on population *estimates* because official U.S. 2020 Census data and adjusted prison population data from the State were not released until mid-August 2021.

C. Council's Resolution Changing Commission's Proposal

After the required public hearing in § 305 was held on the plan submitted by the Commission, the Council conducted public work sessions on October 12 and 14, 2021, to consider the Commission's proposal. On October 14, 2021, an alternate plan was proposed to change the Commission's proposal, which was further amended on October 19, 2021. The alternate plan, as amended, was introduced on October 19, 2021, via CR-123-2021.⁹ Consistent with § 305, a public hearing was held on the alternate plan, as amended, on November 16, 2021.¹⁰ At the conclusion of the hearing, the alternate plan, as amended, was adopted by resolution of the Council via CR-123-2021, and the Clerk of the Council was directed to transmit the plan to the Board of Elections for further administrative action. App 13.

⁹ The agenda also included Council Bill (CB)-115-2021, which staff realized was a mistake because § 305 was amended in 2012 requiring a resolution. The Chair removed CB-115-2021 from the agenda. CB-115-2021 was never introduced. App 295.

¹⁰ Although the speakers at the public hearing on the Council's plan spoke in opposition to it, their opposition is not a proper consideration for this Court in determining the outcome of this case.

ARGUMENT

A. Introduction

This case turns on a 2012 Charter amendment, which authorized the adoption of a County Council redistricting plan by resolution upon notice and public hearing. The County's position is that when the voters ratified the 2012 amendment, it was clearly intended that if the Council passes another law to change the Commission's proposal, it *shall* do so by *resolution*. (Emphasis added.)

To read the 2012 amendment (as the circuit court did) that a resolution is not law because it is not a *bill* or *substitute* for law; or, (as Respondents do) that it meant the Council is required to take an additional step, by passing a *simple* resolution to codify the Commission's plan which already by language becomes law by default, as explained below, would not be construing the Charter so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory. Nor would such interpretations discern legislative intent by starting with the text of the statute, reviewing the legislative history to confirm conclusions or resolve questions, and by considering the consequences of alternative readings of the text in order to avoid illogical or nonsensical interpretations.

B. The 2012 Amendment to Section 305 of the Charter Authorized the County Council to Pass Another Law by Resolution to Change the Commission’s proposal Upon Notice and Public Hearing

Primarily, the circuit court interpreted two sections of the Charter, which deals with the word “*law*.”

The first is § 317 (Enactment of Legislation) and the relevant language is as follows:

“The Council shall enact no law except by bill.”

The second is § 305 (Redistricting Procedure) and the relevant language is as follows:

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 added).¹¹

Interpreting and construing these two sections, the circuit court made the following declarations against the County:

- DECLARED that County Charter § 317 prohibits the Council from enacting any law “except by bill.”

¹¹ As can be gleaned from § 305 of the Charter, the timing of the Redistricting process is key because § 305 sets mandatory administrative deadlines. Because Council’s review of the commission’s plan, as well as its ability to propose an alternative plan, is constrained by those deadlines, passage of its plan by resolution aids in the timely completion of the Redistricting process.

- DECLARED that pursuant to Charter § 305, the only manner by which the Council can change the redistricting plan submitted by the commission on redistricting (“Commission”) is by passing a law.
- DECLARED that under the County’s Charter, a resolution, while having the effect of law, is not a substitute for a law.
- DECLARED that the passage of CR-123-2021 is not effective to the extent its intent is to serve as a “law changing the [Commission’s plan].”
- DECLARED that since no other law has been passed changing the Commission’s plan submitted to the Council on September 1, 2021, the Commission’s plan became law on November 30, 2021. App 124.

The County posits that the circuit court erred on all fronts. Moreover, the Judge’s ruling was premised upon over-simplified semantics as opposed to a substantive review of the meaning of “bill” which can be found in the Charter. It is hornbook rule of statutory construction that in ascertaining the intention of the Legislature, all parts of a statute are to be read together to find the intention as to any one part and that all parts are to be reconciled and harmonized if possible. If there is no clear indication to the contrary and it is reasonably possible, a statute is to be read so that no word, clause, sentence or phrase shall be rendered surplusage, superfluous, meaningless or nugatory. *Harford County v. Board of Supervisors*, 272 Md. 33, 321 A.2d 151 (1974). As always with statutory construction, the court discerns legislative intent by starting

with the text of the statute, by checking the legislative history to confirm conclusions or resolve questions, and by considering the consequences of alternative readings of the text in order to avoid illogical or nonsensical interpretations. *Lamone v. Lewin*, 460 Md. 450, 190 A.3d 376 (2018).

First, the circuit court erred in not considering the legislative history of CB-55-2012, in order to confirm or resolve the legislative intent of the 2012 amendment—which it implicitly, but declined to expressly, invalidate.¹² Second, the circuit court did not consider the provisions of the Charter, as outlined below, which define the word “bill”, “act” “resolution,” “enactment” or “law” as is required to avoid an illogical or nonsensical interpretation of the Charter.

The word “**bill**” is defined and construed as meaning **any measure introduced** in the Council **for legislative action**. Chrt. § 1017(a) (Emphasis added). The word “**resolution**” shall mean a **measure adopted** by the Council **having the force and effect of law** but of a temporary or administrative character. Chrt. § 1017(c) (Emphasis added). And additional **legislative powers** under the Express Powers

¹² This Court has recognized that from the moment an amendment is ratified it became effective as law. *Smigiel v. Franchot*, 410 Md. 302, 978 A.2d 687 (2009) (quoting *Druggan v. Anderson*, 269 U.S. 36, 39, 46 S.Ct. 14, 70 L.Ed. 151 (1925)).

Act provides that, *in general*, a **county council may pass any** ordinance, **resolution**, or bylaw not inconsistent with State law that: (1) *may aid in exercising and enforcing any power in this title* or (2) may aid in maintaining the peace, good government, health, and welfare of the county. Md. Code Ann., Local Gov't § 10-206 (2021). Such powers include the creation and revision of election districts and precincts. *Id.* § 10-306.

Section 1017 of the Charter, which includes its definitions and rules of construction, provides that the 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. Chrt. § 1017(b) (Emphasis added). The word “**law**” shall be construed as **including all acts**, public local laws, ordinances, **and other legislative acts of the Council**, all ordinances and **resolutions** of the County Commissioners not hereby or hereafter amended or repealed, and all public general laws and public local laws of the General Assembly in effect from time to time after the adoption of this Charter, whenever such construction would be reasonable. Chrt. § 1017(d) (Emphasis added).

The circuit court erred in ignoring, all together, any inquiry into the legislative history of CB-55-2012, which could have aided its decision by confirming conclusions or resolving questions, and giving consideration

to the consequences of alternative readings in order to avoid illogical or nonsensical interpretations as follows:

- **Ballot Question A**

“To authorize legislative action on the decennial County Council redistricting plan by resolution upon notice and public hearing.”

The circuit court and Respondents read this text to mean that legislative action is required by resolution to confirm or codify the default plan of the Commission, choosing to ignore the language in § 305 that states “*If the Council passes no other law ... then the plan, as submitted, shall become law, as of the last day of November, as an action of the Council.*” A review of the legislative history of the amendment, demonstrates that this alternate reading is an illogical and nonsensical reading of the Charter. In example, in 2001, the Council did not propose an alternative redistricting plan, and, therefore, consonant with the language of § 305, the Commission’s plan became law on November 30 of that year, in the absence of further action by the Council. Further, the additional language of § 305 which provides that the default adoption of the Commission’s plan is “*subject only to § 320 and § 321*, further buttresses the County’s position, that no further action on the part of the Council is required, in the absence of an alternative Council plan, to give effect to the Commission’s plan and thus the resolution provision does

not apply to it. Significantly, if further legislative action, whether by resolution or bill, were required by the Council to adopt the Commission's plan, such additional action, whether by resolution or bill, would automatically be subject to §§ 320 and 321, without the need for the added provision for same in § 305. It is thus, patently obvious that the "subject to" clause is there solely to ensure that the default plan, automatically adopted by operation of law, is formally published and codified.

- **Legislative Intent of CB-55-2012**

"This proposed Charter Amendment authorizes the ***adoption*** of a ***County Council redistricting plan*** by resolution *upon notice and public hearing.*" (Emphasis added).

- **And § 305 (As Amended)**

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 added).

A reasoned and thorough review of the 2012 amendment, cannot logically support the conclusion that it applies to the default process for the adoption of a ***Commission's default redistricting plan***. If that were the case, it would have said so. Instead, the specific legislative intent was to authorize the ***adoption*** of a ***County Council***

redistricting plan by *resolution* upon notice and public hearing—when the Council *passes* another plan instead of the Commission’s proposal.

It is a well-settled principle that the Legislature is presumed to act with full knowledge of existing laws.¹³ Significantly, the 2012 amendment did *not* amend or remove the existing text or language, “*If the Council passes no other law changing the [Commission’s] proposal, then the plan as submitted, shall become law, as an act of the Council, subject to Sections 320 and 321 of this Charter,*” from § 305. Thus, the Respondents would be hard-pressed to argue that, it was the legislative intent to apply the *added* language “*Such law shall be adopted by resolution of the County Council upon notice and public hearing*” to the Commission’s plan. It would be an illogical and nonsensical interpretation of the Charter to adopt a resolution of the County Council upon notice and public hearing for the Commission’s plan which *automatically* becomes law on November 30.

¹³ *Mayor & City Council of Baltimore v. Hackley*, 300 Md. 277, 477 A.2d 1174 (1984).

C. The 2002 and 2012 Amendments to Section 305 of the Charter Harmonized Redistricting Procedures to Align with State Law to Authorize the County Council to Pass a Resolution to Administer and Implement Existing Redistricting Law

Redistricting law has existed since the County’s citizens voted to adopt the Charter in 1970. Section 305 (Redistricting procedures) is best characterized as **ministerial** in character and relating to the **administrative** business—i.e.—the Council’s legal obligation to *implement* and *administer* decennial redistricting based on US Census data as required by § 305 of the Charter.

In *Kendall v. Howard County*, this Court explained the difference between a *resolution* and *bill* as follows:

Resolution

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 speaking, is simply an expression of opinion or mind concerning some particular item of business coming within the legislative body’s official cognizance, ordinarily **ministerial** in character and relating to the **administrative** business of the municipality.”¹⁴

¹⁴ This comports with the definition of resolution in § 1017(c) of the Charter. The State also adopts its plan by resolution.

Bill

A **bill** or ordinance is distinctly a legislative act; it prescribes “*some permanent role of conduct or government, to continue in force until the ordinance is repealed.*”

431 Md. 590, 595-96, 66 A.3d 684, 687 (2013) (Emphasis added). A recognized test for determining whether a municipal ordinance is legislative and so subject to referendum, or whether it is executive or administrative and is not, is whether the ordinance *is one making a new law* -- an enactment of general application prescribing a new plan or policy -- or is one which merely looks *to or facilitates the administration, execution, or implementation of a law already in force and effect*. *Scull v. Montgomery Citizens League*, 249 Md. 271, 239 A.2d 92 (1968).

The Express Powers Act grants the County Council with additional legislative powers to pass **resolutions** not inconsistent with State law that may aid in executing and enforcing any power granted to it. Because the circuit court mistakenly viewed CR-123-2021 as *law subject to enactment* under § 317 of the Charter, it rendered nugatory the 2012 amendment, that expressly authorized legislative action on the decennial County Council redistricting plan by **resolution**—*not* subject to enactment under § 317.

Under § 305 of the Charter, as amended through 2012, when the Commission’s plan becomes law as of the last day in November that law

is not required to be presented to the County Executive for approval or disapproval because it does not get *enacted by bill*—it becomes *law*. Chrt. §§ 317, 411. Likewise, when Council passes a resolution changing the Commission’s proposal before the last day of November, that *law* is not required to be presented to the County Executive for approval or disapproval because a resolution is not enacted under § 317. Chrt. §§ 317, 411.

Moreover, by definition as proscribed in § 1017(a) of the charter, a “bill” in the context of the County Charter, encompasses ***any measure*** introduced in the Council for legislative action. Further, § 1017(c) of the Charter defines the word “resolution” as a measure adopted by the Council having the force and effect of law, which stated another way, denotes a legislative action.

CONCLUSION

For the reasons set forth herein, the circuit court’s ruling, in sole reliance on the language in § 317, declaring that the Council is prohibited from enacting any law “except by bill,” is clearly erroneous and should be reversed. To not do so would completely render nugatory the legal significance of the 2012 Charter amendment, even in light of the circuit court’s own contradictory ruling, which expressly denied the specific relief sought by the Respondents to invalidate it. Additionally, if the

circuit court's ruling, that a proper interpretation of the language of § 317 requires a nullification of § 305 as amended, although Question A was ratified, is upheld, it would not be construing the Charter so that no word, clause, sentence, or phrase shall be rendered surplusage, superfluous, meaningless, or nugatory. *Board of Supervisors*, 272 Md. 33, 321 A.2d 151 (1974). This is true, in light of the rules of statutory construction as well as, in light of the legislative history, which plainly states, that the intent of the 2012 Charter amendment was to authorize **legislative action** on the decennial **County Council** redistricting plan by **resolution**.

Respectfully submitted,

/ s / R a j e s h A . K u m a r
Rajesh A. Kumar — 9806230294
Principal Counsel
Wayne K. Curry Administration Bldg.
1301 McCormick Drive, Suite 3-126
Largo, Maryland 20774
301.952.3921 voice
rakumar@co.pg.md.us

/s/ Rosalyn E. Pugh

Rosalyn E. Pugh, Esquire
Attorney No. 8312010375
The Pugh Law Group, LLC
1401 Mercantile Lane, Suite 211
Upper Marlboro, Maryland 20774
301.772.0006 voice
rpugh@pughlawgroup.com

Attorneys for Petitioner

**CERTIFICATION OF WORD COUNT AND COMPLIANCE
WITH RULE 8-112**

1. This Brief contains 4,647 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 stated in Rule 8-112.

/s/ Rajesh A. Kumar

Rajesh A. Kumar — 9806230294

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Friday, February 18, 2022, the foregoing **Brief and Appendix** was filed and served electronically through the MDEC System and two paper copies by first-class mail, postage prepaid, upon Matthew G. Sawyer, The Law Offices of Matthew G. Sawyer, LLC, 30 Courthouse Square, Suite 100, Rockville, Maryland 20850 and Timothy F. Maloney, Samuel P. Morse, Esquires, Joseph

Greenwald & Laake, P.A., 6404 Ivy Lane, Suite 400, Greenbelt,
Maryland 20770.

/s/ Rajesh A. Kumar

Rajesh A. Kumar — 9806230294

**CITATIONS AND VERBATIM TEXT
OF PERTINENT CONSTITUTIONAL
PROVISIONS, STATUTES,
ORDINANCES, RULES AND
REGULATIONS**

Section 103. Name and Boundaries.

The corporate name shall be "Prince George's County, Maryland," and it shall thus be designated in all actions and proceedings touching its rights, powers, properties, liabilities, and duties. Its boundaries and County seat shall be and remain as they are at the time this Charter takes effect unless otherwise changed in accordance with law.

Section 304. Council Districts.

- (a) Prince George's County is hereby divided into nine Council districts.
- (b) The boundaries of the Council districts shall be established pursuant to the provisions of Section 305 of this Charter prior to the filing dates for the 1982 General Election to become effective on noon of the first Monday in December, 1982.

(Petition ratified Nov. 4, 1980)

Editor's note(s)—The composition of the nine Council Districts is set out following Section 8-121 of the County Code.

Section 305. Redistricting Procedure.

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 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.

(Amended, CB-92-1974, ratified Nov. 5, 1974; Petition ratified Nov. 4, 1980; Amended, CB-69-2002, ratified Nov. 5, 2002; Amended, CB-55-2012, ratified Nov. 6, 2012)

Editor's note(s)—Members of the Prince George's County Redistricting Commission were appointed by CR-5-2001. The Commission's plan was allowed to become law without amendment by the Council.

Members of the 2011 Prince George's County Redistricting Commission were appointed by CR-2-2011. CB-64-2011 adopted the 2011 County Council Redistricting Plan.

Section 317. Enactment of Legislation.

Every law of the County shall be styled: "Be it enacted by the County Council of Prince George's County, Maryland." The Council shall enact no law except by bill. The subject of every law shall be described in its title. Every law enacted by the Council, except the budget law and supplementary appropriation laws, shall embrace but one subject. No law or section of law shall be revived or amended by reference to its title only. A bill may be introduced by any member of the Council on any legislative session-day of the Council. 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 by the Clerk of the Council within ten days on an official bulletin board to be set up by the Council 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. Every copy of each bill shall bear the name of the member of the Council introducing it and the date it was introduced. 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. The Council may reject any bill on its introduction without a hearing by a majority vote of the members of the full Council. Such public notice shall be published in the County newspapers of record and in media for public notice as defined in Section 1008 of this Charter. The public hearing may, but need not be, held on a legislative session-day and may be adjourned from time to time. After the public hearing, a bill may be finally enacted on a legislative session-day with or without amendment, 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 thereon and proceedings had, as in the case of a newly introduced bill. Any bill not enacted by the last day of November of each year shall be considered to have failed. To meet a public emergency affecting the public health, safety, or welfare, the County may enact emergency bills. Every emergency bill shall be plainly designated as such and shall contain, after the enacting clause, a declaration stating that an emergency exists and describing the claimed emergency in clear and specific terms. The term "emergency bill" shall not include any measure creating or abolishing any office; changing the compensation, term, or duty of any officer; granting any franchise or special privilege; or creating any vested right or interest. No bill shall be enacted except by the affirmative vote of a majority of the full Council. No emergency bill shall be enacted except by an affirmative vote of two-thirds of the members of the full Council. In the event of an emergency declared by the Governor pursuant to provisions of State law, which emergency affects any part or all of Prince George's County, the Council may provide, by law, for modification of voting, quorum, and publication requirements consistent with State law, for matters relating to and necessary to respond to the emergency.

(Amended, CB-92-1974, ratified Nov. 5, 1974; Amended, CB-70-2002, ratified Nov. 5, 2002; Amended, CB-59-2006, ratified Nov. 7, 2006; Amended, CB-50-2008, ratified Nov. 4, 2008; Amended, CB-52-2014, ratified Nov. 4, 2014)

Section 320. Publication of Laws.

The Council shall cause all laws and all amendments to this Charter to be published promptly following their enactment as provided by law. Such laws and Charter amendments shall also be made available to the public at reasonable prices to be fixed by the Council.

Section 321. Compilation of Laws.

At intervals not greater than every four years, the Council shall compile and codify all laws of the County in effect at such times. Each such codification shall be submitted to the Council, and, if adopted by law, shall be known as the "Prince George's County Code." Such code shall be published with an index and such appropriate

notes, citations, annotations, and appendices as the Council may determine. At least annually the Council shall prepare and publish a Supplement to the County Code of laws.

(Amended, CB-67-1978, ratified Nov. 7, 1978)

Section 411. Executive Veto.

Upon the enactment of any bill by the Council, with the exception of such measures made expressly exempt from the executive veto by this Charter, it shall be presented to the County Executive within ten days for his approval or disapproval. Within ten days after such presentation, he shall return any such bill to the Council with his approval endorsed thereon or with a statement, in writing, of his reasons for not approving the same. Upon approval by the County Executive, any such bill shall become law. Upon veto by the County Executive, his veto message shall be entered in the Journal of the Council, and, not later than at its next legislative session-day, the Council may reconsider the bill. If, upon reconsideration, two-thirds of the members of the full Council vote in the affirmative, the bill shall become law. Whenever the County Executive shall fail to return any such bill within ten days after the date of its presentation to him, the Clerk of the Council shall forthwith record the fact of such failure in the Journal, and such bill shall thereupon become law. In the case of budget and appropriation bills, the County Executive may disapprove or reduce individual items in such bills, except where precluded by State law. Each item or items not disapproved or reduced in a budget and appropriation bill shall become law, and each item or items disapproved or reduced in a budget and appropriation bill shall be subject to the same procedure as any other bill vetoed by the County Executive.

(Amended, CB-92-1974, ratified Nov. 5, 1974; Amended, CB-59-2006, ratified Nov. 7, 2006)

Section 1017. Definitions and Rules of Construction.

As used in this Charter or the schedule of legislation attached hereto:

- (a) The word "bill" shall mean any measure introduced in the Council for legislative action.
- (b) The 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.
- (c) The word "resolution" shall mean a measure adopted by the Council having the force and effect of law but of a temporary or administrative character.
- (d) The word "law" shall be construed as including all acts, public local laws, ordinances, and other legislative acts of the Council, all ordinances and resolutions of the County Commissioners not hereby or hereafter amended or repealed, and all public general laws and public local laws of the General Assembly in effect from time to time after the adoption of this Charter, whenever such construction would be reasonable.
- (e) The words "enact," "enacted," or "enactment," when used in connection with the legislative acts of the Council, shall mean the action by the Council in approving any item of legislative business prior to its submission to the County Executive for his approval or veto.

-
- (f) The word "State" shall mean the State of Maryland.
 - (g) The words "State law" shall mean all laws or portions of law enacted by the General Assembly of Maryland which may not be repealed by the Council after the effective date of this Charter.
 - (h) The word "shall" shall be construed as mandatory and the word "may" shall be construed as permissive.
 - (i) The word "person" shall include the words "individual," "corporation," "partnership," and "association" unless such a construction would be unreasonable.
 - (j) The word "officer" shall include the word "councilman."
 - (k) The words "County Executive" shall be construed as meaning the chief executive officer of the County and the elected Executive Officer mentioned in Section 3, Article XI-A of the Constitution of Maryland.
 - (l) Whenever in this Charter the masculine gender is used, such words shall be construed to include the feminine gender.
 - (m) The word "agency" when used to designate a subordinate element of government shall be construed as including all offices, departments, institutions, boards, commissions, and corporations of the County government and, when so specified, all other offices, departments, institutions, boards, commissions, and corporations which receive or disburse County funds.
 - (n) The words "administrative officers" as used in Section 313 of this Charter shall mean the head of any agency which receives or disburses County funds.
 - (o) When computing a period of time in days, the day of the event shall not be included in the computation, but the last day shall be included in the determination. Unless the words "calendar days" are used, Saturdays, Sundays, and holidays observed by the County shall not be included.
 - (p) The words "qualified voter," wherever they appear in this Charter, shall mean "registered voter."

(Amended, CB-92-1974, ratified Nov. 5, 1974; Amended, CB-40-1976, ratified Nov. 2, 1976; Amended, CB-109-1978, ratified Nov. 7, 1978; Amended, CB-71-2002, ratified Nov. 5, 2002)

Section 1101. Effective Date of Charter.

This Charter shall become effective on the thirtieth day following its adoption, except as otherwise specifically provided in the Transitional Provisions (Article XII) of this Charter.

Editor's note(s)—The Charter was adopted by County voters on Nov. 3, 1970.

Md. Ann. Code Art. LG, § 10-206

Statutes current through all legislation of the 2021 Regular Session of the General Assembly

Michie's™ Annotated Code of Maryland > Local Government (Divs. I—V) > Division III. Counties. (Titles 9—15) > Title 10. Express Powers Act. (Subts. 1—3) > Subtitle 2. Express Powers of Charter Counties. (§§ 10-201—10-206)

§ 10-206. Additional legislative powers.

(a) In general. — A county council may pass any ordinance, resolution, or bylaw not inconsistent with State law that:

- (1) may aid in executing and enforcing any power in this title; or
- (2) may aid in maintaining the peace, good government, health, and welfare of the county.

(b) Limits on exercise of powers. — A county may exercise the powers provided under this title only to the extent that the powers are not preempted by or in conflict with public general law.

(c) Limit on powers to regulate alcoholic beverages. — A county may not pass any law under this title regarding the licensing, regulating, prohibiting, or submitting to referendum the manufacture or sale of alcoholic beverages.