

**In The  
Court of Appeals  
of  
Maryland**

Int'l Assoc. of Fire Fighters, Local 1715,  
Cumberland Firefighters, *et al.*

Petitioners

vs.

Sept. Term 2008, Case No. 88

The Mayor and City Council of  
Cumberland (Maryland), *et al.*

Respondents

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APPELLANTS' BRIEF**

**INTRODUCTION**

The Mayor and City Council of Cumberland (M&CC) owe a fiduciary and statutory duty to its residents to comply with their obligations under the Maryland Constitution and the Maryland Code. Over 2,500 residents of Cumberland have expressed a desire to amend the City Charter by signing a petition. Although the M&CC have publicly stated that they disagree with the policy expressed in that proposed amendment, they must fulfill their duty to process the petition without regard for the substance of the amendment. The debate regarding the merits of the amendment must be resolved at the ballot box, not by a City Hall stonewall.

The Plaintiffs below, IAFF 1715, Koelker, Grogg and DeHaven, are merely the conduit for having the charter amendment placed on the ballot. As this Court stated: "The

persons whose signatures were legally and constitutionally presented and filed . . . are entitled to have [the amendment] referred.” *Ficker v. Denny*, 326 Md. 626, 606 A.2d 1060 (1992). That is, this case is not a dispute between certain employees of the City of Cumberland and the M&CC. Rather, it involves the constitutional rights of over 2,500 residents of the City of Cumberland.

### STATEMENT OF THE CASE

On July 25, 2008 the sponsors of a charter amendment (Plaintiffs and others) sought to place a referendum question on the November 4, 2008 ballot requiring the submission of certain labor disputes to binding arbitration. *See* September 10, 2008 Memorandum and Order of Allegany County Circuit attached as Exh. 8, p. 2.<sup>1</sup> The petition sponsors sought to achieve this by petitioning the question to referendum under Maryland law, as specifically authorized by Article 23A, §14 of the Maryland Code. Exh. 8 at 2. In order to successfully petition the question to referendum, the sponsors were required to submit the signatures of 20% of the eligible voters of the City of Cumberland – 2,381 signatures. Exh. 8 at 3.

On July 25, 2008 the sponsors submitted 3,550 signatures “in favor of the petition” (the “first batch”). Exh. 8 at 2. On August 15, 2008, the M&CC found that only 2,172 signatures were valid and informed the sponsors of that fact. Exh. 8 at 2. On August 18,

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<sup>1</sup>Exhibits references are to the exhibits attached to Plaintiffs’ Petition for Writ of Certiorari. The numbers are consistent with the exhibit numbers used in the Circuit Court.

2008, the sponsors filed at additional 472 signatures (the “second batch”).<sup>2</sup> Exh. 8 at 2. The M&CC refused to consider the signatures in the second batch, treating the petition as terminated because the first batch contained less than the required number of signatures. The M&CC stated that they were treating the second batch as a second petition even though all the signatures were on exactly the same form and sought the same charter amendment. *See* Exh. 8 at 2-3.

Plaintiffs filed suit seeking equitable relief to require the M&CC to count the signatures in the second batch and to aggregate the two batches as one petition. The affidavit of Chuck Koelker, Exh. 7, was attached to the complaint to verify the allegations. Plaintiffs obtained an order from the Court shortening the time for Defendants to respond to the complaint. Plaintiffs also filed a motion for summary judgment.

On September 9, 2008 the Circuit Court for Allegany County conducted a hearing on Plaintiff’s motion for summary judgment and the Defendants’ motions to dismiss and/or for summary judgment. At that hearing nearly all of the evidence was presented by stipulation. Only Catherine Davis, the Administrator for the Allegany County Board of Elections was called as a live witness. She testified regarding the differences between “active” voters and “inactive voters.” Essentially, she explained that inactive voters are not eligible to vote until they are placed on the active list. They may accomplish that transfer

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<sup>2</sup>At the Circuit Court hearing the M&CC stated that the correct number was actually 473.

to the active list if, *inter alia*, they sign a petition for referendum or fill out a form verifying their city address at the time of the election. Once that is done, they are immediately placed on the active list and are allowed to vote.

The day after the hearing the Circuit Court issued its Memorandum and Order (Exh. 8) and held that the M&CC correctly treated the first petition as completely terminated by the M&CC's August 15, 2008 determination that fewer than the required 2,381 signatures were valid. The Court refused to allow Plaintiffs the opportunity to supplement the petition with the second batch of signatures and granted the M&CC's motion for summary judgment (and the other defendants' motions to dismiss) on that sole basis. Exh. 8 at 3-4. Plaintiffs filed this appeal and seek reversal of that decision.

### **ISSUE PRESENTED**

**Did the Circuit Court for Allegany County err by treating signatures submitted to the M&CC in two batches as separate petitions?**

### **STATE CONSTITUTIONAL AND STATUTORY PROVISIONS REGARDING MUNICIPAL CHARTER AMENDMENTS**

Maryland State law requires municipal charters to allow for amendment by means of a referendum. A petition for a referendum requires 20% of registered voters to sign a petition to have the charter amendment placed on the ballot. Article XI-E, § 4 of the Maryland Constitution states that municipal charters may be amended as follows:

The adoption of a new charter, the amendment of any charter or local laws, or the repeal of any part of a charter or local laws shall be proposed either by a resolution of the legislative body of any such municipal corporation or by a

petition containing the signatures of at least five per cent of the registered voters of a municipal corporation and filed with the legislative body of said municipal corporation. The General Assembly shall amplify the provisions of this section by general law in any manner not inconsistent with this Article.

The Maryland General Assembly amplified the Maryland Constitutional provisions with Article 23A, § 14 of the Maryland Code:

(a) **Twenty per centum** or more of the persons who are qualified to vote in municipal general elections in the particular municipal corporation **may initiate a proposed amendment or amendments to the municipal charter, by a petition** presented to the legislative body of the municipal corporation, by whatever name known. The petition shall contain the complete and exact wording of the proposed amendment or amendments, and the proposed amendment or amendments shall be prepared in conformity with the several requirements contained in subsections (b) and (c) of § 13 of this subtitle. Each person signing it shall indicate thereon both his name and residence address. **Upon receiving the petition, the legislative body is directed to verify that any person who signed it is qualified to vote in municipal general elections**, and shall consider the petition as of no effect if it is signed by fewer than twenty per centum of the persons who are qualified to vote in municipal general elections. **If the petition complies with the requirements of this section, the legislative body shall by resolution, passed as in its normal legislative procedure, and not later than sixty days after the petition shall have been presented to it, specify the day and the hours for the election at which the question shall be submitted to the voters of the municipal corporation. This may be at either the next regular municipal general election or at a special election, in the discretion of the legislative body. In the event a special election is designated, it shall be within a period of not less than forty days nor more than sixty days after the final passage of the resolution.** In the resolution, the exact wording shall be specified which is to be placed on the ballots or voting machines when the question is submitted to the voters of the municipal corporation.

(b) Provided, however, that if the legislative body shall approve of the amendment or amendments provided for in the petition presented to it under subsection (a) above, it shall have the right by resolution to adopt the amendment or amendments thereby proposed and to proceed thereafter in the

same manner as if the amendment or amendments had been initiated by such legislative body and in compliance with the provisions of § 13 of this article.

(Emphasis added).

The Election Law Article of the Maryland Code does not directly apply to referenda amending a municipal charter. Md. Code, Election Law Article, § 1-101(v)(3). However, it is clear that, under the Election Law Article, supplementation of a referendum petition is allowed. It is also clear that the Election Law Article uses the term “referendum” in the singular but still allows a petition sponsor to support the petition with signatures filed on more than one day.

The M&CC and the Cumberland Board choose to use the Allegany County Board of Elections to run their elections. However, because the Maryland Election Law is not binding, the M&CC and Cumberland Board are not obligated to comply with the time constraints set forth in the Code of Maryland Regulations or in the Elections Law Article. The M&CC are not relieved of their duty to comply with the requirements of Article XI-E, § 4 of the State Constitution or Article 23A, § 14 of the Maryland Code. They must timely count the signatures on a petition for a referendum. If the petition is supported by sufficient signatures, and is otherwise in proper form, they must place the charter amendment on the ballot at the next general election or conduct a special election within 60 days. There is nothing in the Maryland Constitution or Maryland Code that prohibits a charter amendment petition from being supported by signatures filed on more than one day.

## STATEMENT OF THE FACTS

### The Parties

Plaintiffs Chuck Koelker, Steven Grogg and Jeffrey DeHaven are employees of the Cumberland Fire Department. The International Association of Fire Fighters, Local 1715 (IAFF 1715) is the collective bargaining representative of the fire fighters and other employees of the Fire Department in the City of Cumberland. Koelker, Grogg and DeHaven are also officers of IAFF 1715. They bring this suit in their individual capacity and as representatives of IAFF 1715.

The M&CC is a municipality under Maryland law. The M&CC constitute the legislative body of that municipality.

The Board of Elections of Allegany County has been selected by the M&CC to assist it and to run the elections that take place under the City Charter. Catherine Davis is the Administrator for the Allegany County Board of Elections.

The Maryland State Board of Elections oversees the Allegany County Board of Elections and determines the final format of the ballot that is prepared for the November 4, 2008 elections.

In the spring of 2008 Plaintiffs obtained a list of registered voters from the Allegany County Board of Elections. That list, provided to Plaintiffs on a compact disk stated that there were 11,906 registered voters. Therefore, the petition for referendum needed to have at least 2,381 signatures in support of it (20% of 11,906). (See Exh. 6). Catherine Davis

explained in her testimony that the active list is used for all administrative purposes and that she was told by the State Board of Elections to use it for referendum petitions.

### **The Petition**

During the spring and summer of 2008 the petition sponsors collected thousands of signatures in support of a petition to amend the City Charter. That petition states:

We, the undersigned voters of the City of Cumberland, Maryland, hereby petition to have this amendment of the City Charter submitted to a vote of the registered voters of the City of Cumberland for approval or rejection at the next general election or at a special election called by the City Council.

### **Proposal**

COLLECTIVE BARGAINING AND BINDING ARBITRATION FOR  
NON-MANAGEMENT EMPLOYEES OF THE FIRE DEPARTMENT.  
[NEW ARTICLE 37A TO THE CHARTER OF THE CITY OF  
CUMBERLAND]

NON-MANAGEMENT EMPLOYEES OF THE FIRE DEPARTMENT OF THE CITY OF CUMBERLAND SHALL BE ENTITLED TO DESIGNATE A UNION TO ACT AS THEIR EXCLUSIVE REPRESENTATIVE AND TO ENGAGE IN COLLECTIVE BARGAINING WITH THE CITY REGARDING WAGES, BENEFITS, AND WORKING CONDITIONS. THE CITY COUNCIL SHALL PROVIDE BY ORDINANCE FOR BINDING ARBITRATION WITH THE EXCLUSIVE REPRESENTATIVE IN ORDER TO RESOLVE LABOR DISPUTES. THE ORDINANCE SHALL PROVIDE FOR THE APPOINTMENT OF A NEUTRAL ARBITRATOR, THE FACTORS THAT SHOULD BE CONSIDERED BY THE ARBITRATOR, AND THE PROCEDURES FOR IMPLEMENTING THE ARBITRATOR'S DECISION AS PART OF THE CITY'S BUDGETARY PROCESS. ANY ORDINANCE THAT IS ENACTED SHALL PROHIBIT STRIKES OR WORK STOPPAGES BY THE REPRESENTED EMPLOYEES.

NOTICE TO SIGNERS: The information you provide on this petition may be used to change your voter registration address. Please print all information other than your signature. P.O. Boxes are not generally valid. By signing this petition, you agree that the above-mentioned charter amendment proposal should be placed on the ballot as a question and that, to the best of your knowledge, you are registered to vote in the State of Maryland and the City of

Cumberland and are eligible to have your signature counted for petition purposes.

A sample of the petition is Exh. 1. On or about July 25, 2008 Plaintiffs filed over 3,550 signatures in favor of the above petition. The M&CC counted those signatures and, on August 15, 2008, announced that only 2,172 signatures were valid (Exh. 4, 5). On August 18, 2008 Plaintiffs filed an additional 472 signatures. Assuming the M&CC's counting was correct with regard to the first set of signatures Plaintiffs filed 2,644 signatures in favor of the petition. This was more than 20% of both the active and inactive lists. However, because the number is close and the second batch has yet to be counted, Plaintiffs will provide additional facts and argument on this issue.

#### **The List of Active Voters**

The M&CC contend that there are 12,911 registered voters and that a petition for referendum must be supported by the signatures of 2,582 registered voters. This position is contradicted by the compact disk given to Plaintiffs in the spring of 2008. The M&CC contends that the compact disk only contains a list of "active voters" and that the full list is larger because it contains "inactive voters." Plaintiffs contend that they were justified in relying on the original list from the Allegany County Board of Elections and that Maryland law does not allow "inactive voters" to cast a vote until they have been placed on the active list (something that can be done on election day at the precinct).

## **The Counting of Signatures**

The M&CC have publicly stated that they are opposed to the petition (Exh 3, 5). They have also stated that they do not intend on counting all of the signatures or passing a resolution to have the charter amendment placed on the November 4 ballot or to call a special election on the charter amendment (Exh. 3, 5).

The M&CC have taken the position that they do not have to count all of the signatures because the second batch of signatures was filed with the City Clerk on August 18, 2008 and the first batch was filed a few weeks earlier (Exh 5). The M&CC contend that the filing of the signatures on two separate days results in them being treated as two separate petitions and, therefore, neither petition has sufficient signatures (Exh. 5). Plaintiffs contend that this is plainly illegal and that the charter amendment must be presented to the voters. Plaintiffs contend that the M&CC have no discretion in this matter and that they must be compelled to comply with State law.

### **ARGUMENT**

#### **A. THE CIRCUIT COURT ERRED WHEN IT HELD THAT THE PETITION SPONSORS WERE NOT ENTITLED TO SUPPLEMENT THE PETITION WITH ADDITIONAL SIGNATURES.**

In *Secretary of State v. McLean*, 249 Md. 436, 437, 239 A.2d 919 (1968) the Court of Appeals allowed the sponsors of a referendum petition to supplement the petition with additional signatures after the initial count showed that an inadequate number had been submitted. This Court endorsed the aggregation of signatures from two separate sponsors,

on two separate dates, in support of one referendum petition. *Id.* In doing so, the Court noted that a “petition may consist of several papers, but each paper shall contain the full text of the Act . . .” *McLean*, 249 Md. at 437, 238 A.2d at 920. In other words, a petition is not defined by the date it is submitted but by the text which it contains.

In *McLean* submissions from two different sponsors in favor of a single petition for referendum were attacked because the financial statement of one of the parties was inadequate. *McLean*, 249 Md. at 443, 238 A.2d at 921-22. After an initial denial of the petition the Circuit Court held that a good faith attempt to meet the signature requirement required the government to allow the petitioners to cure the defects in the petition. The Circuit Court stated:

[Petitioners] made a good faith and bona fide effort to comply with Section 169C which, while not strict or in literal compliance on May 31, 1967, was a sufficient degree of compliance to merit an opportunity to amend to the strict requirement of the Section. The amendment of June 30, 1967, met this latter standard. The petition for a Writ of Mandamus, therefore is granted.

*McLean*, 249 Md. at 442, 238 A.2d at 922-23.

The Court of Appeals viewed the issue as a much simpler matter. The Court simply aggregated the signatures that were submitted on two days and found that the petition was adequately supported. *McLean*, 249 Md. at 442, 238 A.2d at 922-23. This approach squarely rejects the M&CC’s argument that the initial filing must be adequate in all respects and is not subject to further supplementation.

The Circuit Court in the instant case relied upon *Gittings v. Bd. of Supervisors of Elections for Baltimore County*, 38 Md. App. 674, 678, 382 A.2d 349 (1978) for the proposition that the second batch of signatures could not be aggregated with the first. However, nothing in *Gittings* alters the holding in *McLean* and *Gittings* is inapposite to the case at hand. In *Gittings* the petition sponsors were seeking through a referendum to block a county zoning ordinance. In order to do so, the applicable statute required a certain number of signatures by a certain date and allowed for subsequent supplementation if the first deadline was met. The petition sponsors failed to meet the first deadline for submitting signatures. The Court held:

As we perceive [petitioner's] argument, they admit they failed to comply with the provisions of s[ection] 309 (a) of the County Charter but suggest that equity requires that they be permitted another shot at compliance. We have no right under the law to grant such a dispensation.

*Gittings*, 38 Md. App. at 678, 382 A.2d at 351. In the instant case, on the other hand, there was no deadline violated because there is no deadline stated in the statute. Nothing in *Gittings* indicates that a petition cannot be cured if no deadline is violated.

The lower court's decision in this case was, in essence, that a petition must be perfect in all respects when it is first filed, even if there is no deadline that is violated. If there is a deficiency in the petition, all of the signatures are forfeited and the petition may be ignored and cannot be cured. There is no statutory basis for this holding and it must be reversed.

**B. MD CODE, ART. 23A, § 14 ALLOWS AN INITIALLY NONCOMPLIANT PETITION TO BE CURED.**

The Allegany County Circuit Court adopted the view that any irregularity found in a petition upon submission effectively ends the petition's life for all time, even if there is time left to cure the petition. This death sentence imposed on the petition conflicts with the language of Md. Code, Art. 23 A, § 14, which indicates that an initially deficient petition is simply not effective until a sufficient number of signatures are submitted in support of it. There is no indication in § 14 that a defect in a petition definitively terminates or forfeits the valid portions of the document. Section 14 reads, in relevant part:

Upon receiving the petition, the legislative body is directed to verify that any person who signed it is qualified to vote in municipal general elections, and shall *consider the petition as of no effect* if signed by fewer than twenty per centum of the persons who her qualified to vote in municipal general elections.

Md. Code, Art. 23A, § 14 (emphasis added).

Section 14 deems a petition that is found to lack the required number of signatures “of no effect.” It does not deem the petition “terminated” or “forfeited.” This distinction is of great importance because something that is presently “of no effect” has not lost its potential to become effective.

The phrase “of no effect” does not support the contention that a petition without the required number of signatures is immediately and automatically terminated. The Circuit Court incorrectly accepted the M&CC's argument that a petition can never be cured and that the sponsors must submit all of the signatures at one time. The Circuit Court stated: “[T]he

Court agrees with the City that the petition submitted after the August 15 determination by the City that there were insufficient qualified voters on the July 25 petition is not retroactive to the earlier petition.” Exh. 8 at 3. If the petition cannot be supplemented it has not simply been rendered “of no effect.” Rather, it has been terminated and all of the signatures have been discarded – regardless of whether any statutory time limitations have passed. The statutory language does not support this narrow interpretation. A petition is simply without effect until enough signatures are provided to render it operational. It is not “null and forever void.” Nothing in the statute requires a petition sponsor to submit the signatures in one batch, on one day, in one box, or stapled together with one staple. The statute does not create a deadline for submitting supplemental signatures. Moreover, there is no policy reason for requiring the signatures to be submitted in one batch and on one day. Rather, one can easily imagine that, as an accommodation to the Board of Elections or responsible legislative body, multiple batches would be far easier to handle. For example, if a petition is near the deadline for submission, the people checking the signatures may appreciate the opportunity to begin the process of checking them early.

There is a difference between a petition for a charter amendment, such as the petition in this case, as compared to petitions which delay the effectiveness of a county or state legislative enactment. The Maryland Elections Code contains detailed requirements for such referenda and a strict timetable. However, in the case of a municipal charter amendment, there is no deadline stated. This is for good reason – a charter amendment does not become

effective until it is passed by the electorate. A referendum related to an enactment of the General Assembly, on the other hand, must have a strict deadline so that there is finality and the law can be put into effect.

A referendum petition that is not immediately effective may, at some point, terminate. It terminates when it can no longer be cured because statutorily mandated deadlines have expired. In this case, the M&CC terminated the petition at a time when it was merely ineffective. There was no statutory requirement that all of the signatures had to be filed on one day and no mandated deadlines were breached. Even if the first batch of signatures was inadequate, Maryland's appellate Courts have recognized that technical deficiencies in referendum petitions can be cured. *Blackwell v. City Council for the City of Seat Pleasant*, 94 Md. App. 393, 406-07, 617 A.2d 1110, 1116 (1993); *Dutton v. Tawes*, 225 Md. 484, 493, 171 A.2d 688 (1961). In short, the lower court erred when it held that the second batch of signatures could not be used to supplement the first batch, filed a mere three weeks earlier.

**C. SUBSTANTIAL COMPLIANCE IS THE STANDARD WHEN A TECHNICAL DEFECT HAS NOT PREJUDICED THE ELECTORATE'S RIGHT TO PARTICIPATE IN THE REFERENDUM PROCESS.**

Contrary to the lower court's draconian position, the Maryland appellate courts have indicated that substantial compliance satisfies Article 23A if that compliance has not prejudiced the voting rights of the public. *Mayor of City of Hagerstown v. Lyon*, 236 Md. 222, 234-35, 203 A.2d 260 (1964), *Mayor of City of Hagerstown v. Lyon*, 236 Md. 222, 234-35, 203 A.2d 260 (1964). See also, *Blackwell*, 94 Md. App. at 406-07, 617 A.2d at

1116. Allowing Plaintiffs to timely cure a petition does not prejudice the electorate in any way. The petition for the charter amendment, if submitted with all of the signatures in the first place, would necessarily be put to referendum. Prohibiting the supplementation of the petition with additional signatures furthers no legitimate purpose. On the contrary, allowing supplementation furthers the interests of the electorate and those voters who provided the original signatures.

In *Ficker v. Denny*, 326 Md. 626, 606 A.2d 1060 (1992) the Court held that petition sponsors owe the signers of a petition the duty to pursue the referendum petition. The M&CC owe those signers the same duty – they must allow the petitioning process to go forward until a statutory deadline has been exceeded. Once the 20% threshold has been met the M&CC have no choice but to refer the issue to the voters.

**D. THE LOWER COURT’S INTERPRETATION OF THE STATUTE EFFECTIVELY INCREASES THE 20% REQUIREMENT FOR A PETITION BECAUSE A SPONSOR MUST ANTICIPATE THAT SOME SIGNATURES MAY BE DEEMED INVALID.**

If the number of signatures in support of a ballot cannot be supplemented after the initial submission the 20% minimum language in §14 will effectively be adjusted upward. Under the lower court’s interpretation of Article 23A, § 14 a party seeking to place a referendum on the ballot would almost certainly have to gather substantially more than the 20% required by the statute because there is no way of verifying exactly how many signatures the M&CC will ultimately strike.

The problems created by the lower court's interpretation are easily avoided. For the 20% requirement to have true meaning, timely supplementation of the signatures in support of petitions must be allowed. Otherwise, the 20% figure would be upwardly adjusted to 30%, 40%, or perhaps 50%, for those wishing to ensure that a petition reach the ballot.

**E. THE EQUITABLE POLICY AGAINST FORFEITURE SUPPORTS PLAINTIFFS' ARGUMENT THAT A PETITION CAN BE TIMELY SUPPLEMENTED.**

The lower court's holding creates a forfeiture to the detriment of the rights of the petition signers. If the initial submission is a "do or die" event, the Court is creating a forfeiture that is not required by the statutory language.

"Considered harsh and odious, forfeitures are disfavored in the law and should be avoided if possible." *Thompson v. Grindle*, 113 Md. App. 477, 483, 688 A.2d 466, 469 (1997). See *National Union Fire Ins. Company of Pittsburg v. Bramble*, 388 Md. 195, 207, 879 A.2d 101, 108 (2004) (applying forfeiture principals to "compensated surety" situation and observing that "forfeiture on technical grounds will not be favored"). In situations where a statute allows forfeiture, the nature of the penalty is such that those provisions must be "interpreted strictly." *Thompson*, 113 Md. App. at 482, 688 A.2d at 469. A corollary of this principle is that if a statute does not expressly call for forfeiture, the Court should not reach to interpret it in such a harsh manner.

Here, the lower court interpreted the phrase "of no effect" in such a manner that petitions filed with one or more deficiencies are deemed forfeited and cannot be cured. This

interpretation is not required by the term “of no effect,” and the harshness of the result requires the Court to avoid such an interpretation if possible. Petitions that lack the requisite number of signatures are not forever waived and abandoned; they merely lack force unless the appropriate number of signatures is reached or a statutorily mandated time period is exceeded.

**F. THE PROPER NUMBER OF SIGNATURES REQUIRED FOR THE PETITION IN THIS CASE SHOULD BE 20% OF THE “ACTIVE VOTERS” IN CUMBERLAND.**

A case currently pending before the Court of Appeals, *Jane Doe v. Montgomery County Board of Elections*, involves the issue of how to count the number of eligible voters – whether to include “inactive voters.” The instant case involves a similar issue. The recent order by the Court of Appeals in that case does not definitively resolve the issue raised in this case and the Circuit Court’s decision in this case may be inconsistent with the Court of Appeals’ decision.

This issue was well briefed and argued in the *Jane Doe* case and Plaintiffs will not reiterate those arguments in this case. However, the facts in the instant case may be slightly different from those in *Jane Doe* and Plaintiffs request that the Court take those facts into consideration.

Plaintiffs contend that the Circuit Court properly held that Plaintiffs were required to obtain signatures from 20% of the active voters identified on the list provided by the Allegany County Board of Elections. The petition sponsors requested a list from the County

Board of Elections. The form used for that request (an exhibit to the M&CC's motion for summary judgment) specifically stated that the purpose of the list was for use in connection with a referendum petition. The list the sponsors were given contained 11,906 voters – it was the active voter list. Catherine Davis testified that the active list is used for all administrative purposes. She also testified that she was informed by the State Board of Elections that the proper list for use in connection with a petition for a referendum is the active list. This was the list that was given to the petition sponsors in this case and they had the right to rely upon the County Board of Election's list.

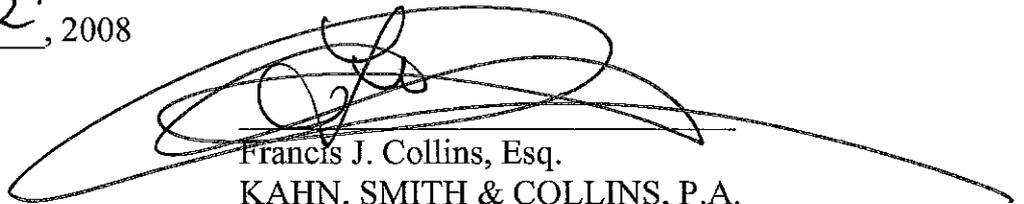
### **CONCLUSION**

The Article 23A, § 14 of the Maryland Code plainly requires that the M&CC pass a resolution to place the charter amendment before the voters. The M&CC can do this by placing the Amendment on the ballot at the “next general election,” November 4, 2008, or by conducting a special election, not later than sixty days after the resolution. Md. Code, Art. 23A, § 14. This Court does not have the authority to make the choice between the next general election or a special election. However, the Court does have the authority to issue a writ of mandamus requiring the M&CC to count the second batch and to make the choice. It seems clear that, for purposes of municipal economy, the best choice is to conduct the vote during the next general election. Therefore, Plaintiffs request that this Court enter an order requiring the M&CC to make the choice so that the citizens of the City of Cumberland have the possibility of avoiding the cost of a special election.

Plaintiffs request that the Circuit Court's Order dated September 10, 2008 be reversed and that this Court order the M&CC to count the signatures submitted on August 18, 2008 and to add them to the first batch of signatures as one petition.

Plaintiffs also request that this Court hold that the referendum petition must be placed on the ballot if it is supported by at least 2,381 signatures (20% of Cumberland voters identified by the Allegany County Board of Elections).

DATED: September 12<sup>th</sup>, 2008



Francis J. Collins, Esq.  
KAHN, SMITH & COLLINS, P.A.  
201 North Charles Street - 10th Floor  
Baltimore, Maryland 21201  
(410) 244 1010  
Attorneys for Petitioners

### CERTIFICATE OF SERVICE

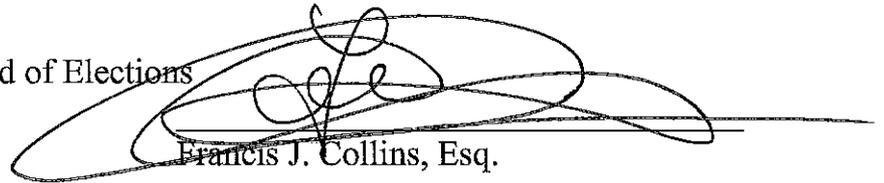
I hereby certify that on Sept 12, 2008 a copy of the foregoing was mailed and faxed and e-mailed to:

David Moore, Esq.  
Office of the Attorney General  
200 St. Paul Street  
Baltimore, MD 21202  
410-576-7906  
410-576-6955 (FAX)  
dmoore@oag.state.md.us  
Attorney for the State Board of Elections

Michael Cohen, Esq.  
213 Washington Street

Cumberland, MD 21502  
301-724-5200  
301-724-5205 (FAX)  
michaelcohen@atlanticbbn.net  
Attorney for the City of Cumberland

Armand Pannone, II, Esq.  
14 Green Street  
Cumberland, MD 21502  
301-759-2930  
301-777-5877 (FAX)  
ampjr@pennswoods.net  
Attorney for Allegany County Board of Elections



Francis J. Collins, Esq.