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Intervener MDPetitions.com (“Intervener”) respectfully submits this Statement of Grounds and Authorities in Opposition to Plaintiffs’ Motion for Summary Judgment and in Support of Intervener’s Motion to Dismiss and/or for Summary Judgment.

**I. Introduction.**

In this action, the Maryland Democratic Party and five alleged registered voters seek to prevent the voters of Maryland from deciding for themselves whether to accept or reject a congressional redistricting scheme that has been described as a “barefaced manipulation that stands as an embarrassment to the state” and a blatant act of “impermissible political gerrymandering that ‘crossed the line.’” “Righting the tilted system of a gerrymandered map in Maryland,” *The Washington Post*, July 21, 2012; *Fletcher v. Lamone*, 831 F. Supp. 2d 887, 905 (D. Md. 2011) (Titus, J., concurring). A total of 59,201 confirmed registered voters signed a petition calling for Senate Bill 1, Chapter 1 of the 2011 Special Session of the Maryland General Assembly, also known as the Congressional Districting Plan, to be subject to referendum in the November 2012 general election. On July 20, 2012, the State Board of Elections certified the measure for placement on the November 2012 ballot. Not content to let Maryland voters consider the Congressional Districting Plan for themselves, the Maryland Democratic Party and five alleged registered voters sued to stop the referendum.

**II. Factual Background.**

The Congressional Districting Plan was enacted by the the Maryland General Assembly during a special session in 2011. Governor Martin O’Malley signed it into law on the same day it was enacted.

At least 55,735 valid signatures of registered Maryland voters are required to refer a law enacted by the General Assembly to referendum in the 2012 General Election. In 2011,

Intervener had organized and sponsored a successful campaign to petition Senate Bill 167, Chapter 191 of the 2011 Laws of Maryland, to referendum. *See* Affidavit of Neil C. Parrott (“Parrott Aff.”), attached as Exhibit 1, at ¶ 2. As part of this successful campaign, Intervener created an internet-based software program that registered Maryland voters could use in signing the petition. *Id.* at ¶ 2. More than 26,000 registered Maryland voters used Intervener’s internet-based software program to sign the petition to refer Senate Bill 167 to referendum, and the State Board of Elections accepted these signatures. *Id.*

Intervener also subsequently organized and led a campaign to refer the Congressional Districting Plan to referendum. *Id.* at ¶ 3. In early March 2012, Intervener asked the State Board of Elections for an advance determination of the sufficiency of Intervener’s petition materials, including a proposed signature page, the proposed text of a summary of the Congressional Districting Plan, a map identifying the new boundaries of the congressional districts, and the complete text of the Congressional Districting Plan. *Id.* at ¶ 4. The proposed signature page Intervener submitted to the State Board of Elections for an advance determination contained the following statement:

If the full text of the bill or part of the bill referred (the “proposal” does not appear on the back of this signature page or as an attachment, a fair and accurate summary of the substantive provisions of the proposal must appear on the back **or be attached** . . . . (emphasis added)

*Id.* This same language had been approved by the State Board of Elections for use in Intervener’s 2011 petition to refer Senate Bill 167 to referendum, and the State Board of Election had accepted petitions signature pages submitted in support of the 2011 petition where the signer had attached the text of Senate Bill 167 to the signature page. *Id.*

On March 15, 2012, the State Board of Elections determined that, with a few minor revisions, Intervener’s petition materials were sufficient. *Id.* at ¶ 5. Intervener made the

revisions and resubmitted its petition materials to the State Board of Elections for a further determination. *Id.* at ¶ 6. Like its prior submission, the signature page contained the same language set forth above. *Id.* On March 26, 2012, the State Board of Elections issued a follow-up determination:

In accordance with Election Law Article, § 6-202 of the Maryland Code Annotated, I have reviewed the format of the submitted petition material, including the map and have determined that it is sufficient under the advanced determination provisions of Election Law Article, § 6-202.

*Id.* at ¶ 7.

After receiving the advance determination, Intervener launched its petition campaign. *Id.* at ¶ 8. As part of this campaign, Intervener again made its internet-based software program available to registered Maryland voters to use in signing the petition.<sup>1</sup> *Id.* at ¶ 9. In reliance on the State Board of Election’s March 2012 advance determination, Intervener incorporated into the signature page the language that had been approved by the State Board of Elections regarding attachment of the text of the bill, or a fair and accurate summary of the bill, to the signature page. *Id.*

In order to use the software program, a registered Maryland voter who wished to sign the petition had to log on to Intervener’s internet website, [www.MDPetitions.com](http://www.MDPetitions.com), click on a box marked “redistricting petition” and follow a series of prompts or commands that led them through different screens. *Id.* at ¶ 10.

The first screen showed a map of the State of Maryland and the new boundaries for the State’s congressional districts and asked the rhetorical question, “Does this make any sense to you?” *Id.* at ¶ 12. Under this rhetorical question were two buttons stating “Sign the petition

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<sup>1</sup> Contrary to Plaintiffs’ assertion, Intervener’s internet-based software program contains some modifications from the program used during the campaign to petition Senate Bill 167 to referendum. *Id.* at ¶ 3.

now” and “Get volunteer packet.” *Id.* at ¶ 13. The screen then asked another rhetorical question, “Why should I care about redistricting?” followed by:

Career politicians would like to tell you that redistricting doesn’t matter and that we should just accept the crazy congressional redistricting lines that they’ve drawn for us.

In fact, redistricting affects every household in the state. Maryland should have districts that represent communities and groups of people. As an example, a district should allow the City of Baltimore to be represented by a congressman devoted to their causes, Anne Arundel County to theirs, Prince George’s County to their causes and so on.

Maryland’s approved Congressional map purposefully spreads out minority votes so that they cannot compete with establishment politicians. African American and Hispanic Districts are split up to keep white-establishment liberals in control and to minimize minority voting power. Rural voters and Republicans are combined into one large area in District 1 and then separated and combined with densely-populated urban areas in other districts to snuff out their voting power.

The map needs to give fair representation to all, and we have the power to overturn this severely gerrymandered map through the referendum process. Let’s demand true representation and overturn the current map by signing the petition today.

*Id.* at ¶ 14.

By clicking on either the “Sign the petition now” button or the underlined statement “sign the petition today,” the second screen would appear. *Id.* at ¶ 15. The second screen contained two distinct fields. *Id.* at ¶ 16. The field on the left hand side of the screen stated, “Get Your Petition,” and contained the following instructions:

**Maryland has strict rules regarding how the petition is filled out.**

This site will help insure that your petition is filled out properly in 5 easy steps.

Step 1 – Provide information requested on the petition, as indicated to the right.

Step 2 – Select members of your household who might also want to sign the petition.

Step 3 – Download the petition

Step 4 – Print the petition

Step 5 – Sign and date the petition.

*Id.* at ¶ 17. The field on the right hand side of the screen displayed a series of boxes where the user could enter unique identifiers:

**Get Started – It’s Easy**

Fill out the information form with **your** information.

First Name

Last Name

Suffix (optional)

Email Address

Phone Number

Zip Code (5 digit)

Birth Date    Month (Dropdown)    Date (Dropdown)    Year (Dropdown)

*Id.* at ¶ 18. Underneath “Birth Date” was a box that could be checked to receive updates about Intervener’s activities. *Id.* at ¶ 19. Underneath the “Updates” box was a button that stated “Continue,” followed by this acknowledgement: “By clicking “Continue” you agree to the terms and conditions.” *Id.* at ¶ 20.

Intervener’s internet-based program used the most current voter registration rolls made available by the Maryland State Board of Elections to identify whether a user was a registered Maryland voter. *Id.* at ¶ 21. If the user was not a registered Maryland voter, had entered his or her unique identifiers incorrectly, or if there was some other mismatch between the identifiers entered by the user and the voter rolls, the following screen appeared:

Oops, we couldn’t find you

This could happen for a couple of reasons:

1. You are not registered to vote in Maryland. If this is the case, you could register to vote and then sign the petition after you get your voter card.
2. The zip code you provided doesn't match the zip code in the voter database.
3. The name entered does not match the name provided to the Board of Elections when you signed up. As an example, Debra may be required instead of Debbie.

If you feel that you've reached this message in error, please contact us (</redistricting/petitions/sb1/contact>).

*Id.* at ¶ 22. Clicking on “register to vote” took the user to the State Board of Election’s webpage regarding voter registration information. *Id.* at ¶ 23. The screen also contained a “Search Again” button that took the user back to screen one. *Id.* at ¶ 24.

If the user was a registered Maryland voter, had entered his or her unique identifiers correctly, and these identifiers matched the voter rolls, screen three appeared. *Id.* at ¶ 25. Screen three identified each registered Maryland voter at the same address and instructed the user to deselect the name of any registered Maryland voter at the address not wishing to sign the petition by clicking on the box next to the voter’s name:

### **Voters in Household**

You’re almost done **NAME!**

We’ve selected everyone who’s registered to vote at your address. Please unselect anyone who will not be signing the petition:

Box Name 1

Box Name 2

Box Name 3

*Id.* at ¶ 26. Beneath the name was a “Continue” button. *Id.*

Clicking on the “Continue” button took the registered Maryland Voter to a fourth screen. *Id.* at ¶ 27. Under a caption on the fourth screen stating “**Your Petition is Almost Ready**” was a “Download a Petition” button. *Id.* at ¶ 28. Beneath this button were the following instructions:

**Instructions:**

**Step 1 – Download** the petition, you may need to save the file to your computer in order to open it

**Step 2 – Open** the File which includes the petition, a self-addressed envelope, and a copy of the bill

**Step 3 – Print** the petition. **The first two pages need to be printed on both sides of 1 page.**

- A) To do this without a duplex printer, print just page 1.
- B) Then insert the paper upside down in the manual feeder and print just page 2.
- C) Select pages 3-7 and print as normal

**Step 4 – Sign and date** the petition by your name, have others on the page sign, then **sign and date as the circulator last.**

- A) A copy of the actual 4-page bill needs to be available every time someone signs the petition.

NOTE: Unlike other petition efforts, this petition does not have the full bill on the back of the petition, but page 2 is an approved summary of the bill.

*Id.* at ¶ 29. On the bottom of the fourth screen was another “Download a Petition” button. *Id.*

Clicking on either button marked “Download a Petition” caused a fifth, “pop up” screen to appear along with a tool bar containing a download prompt. *Id.* at ¶ 30. This “pop up” screen stated as follows:

Thank you for downloading the petition.

By now you should have seen a download prompt for your Petition.

Please make sure to print pages one and two on the same sheet of paper (double sided).

The remaining pages can be printed single sided.

If you are having trouble downloading or can't print double sided, you can request to have a petition mailed to you.

*Id.* at ¶ 31. On the bottom of the “pop up” screen was a button marked “Finish.” *Id.*

Clicking on the “open” button on the download prompt enabled the registered Maryland voter to open and print his or her signature page, summary of the Congressional Districting Plan, and map, as well as the complete text of the Congressional Districting Plan and a foldable envelope to use in mailing the signature page to Intervener after it had been fully executed. *Id.* at ¶ 32. All of these materials were formatted for use with standard, 8½ by 11 inch paper and, on the top of the page, bore both a unique bar code and unique numeric code that matched the signature page to the accompanying summary, map, full text, and envelope. *Id.* at ¶ 33. Clicking on the “save” button on the download prompt enabled the registered Maryland voter to save these materials to his or her computer and for printing, execution, and mailing at a later date. *Id.* at ¶ 34. Clicking on the “Finish” button led to screen six, which thanked the registered Maryland voter for supporting the petition. *Id.* at ¶ 35. At no point did Intervener “pre-fill” or pre-print” any petition signature pages or even use the terms “pre-filled,” “pre-printed,” “pre-filled petition,” or “pre-printed petition.” *Id.* at ¶ 36.

Intervener ultimately collected at least 64,744 signatures in support of its petition, including signatures of registered Maryland voters who had used Intervener’s internet-based software program, and submitted these signatures to the Secretary of State. *Id.* at ¶ 37. The State Board of elections validated, verified, and accepted a total of 59,201 signatures as being the signatures of registered Maryland voters. *Id.* at ¶ 38. As many as 840 signatures were rejected

because the bill summary and redistricting map had been stapled to the signature page instead of being printed on the reverse side of the page. *Id.* On or about July 20, 2012, the State Administrator of Elections certified the Congressional Districting Plan for placement on the November 2012 ballot. *Id.* at ¶ 39.

### **III. Argument.**

#### **A. Standards of Review.**

A motion to dismiss should be granted if a complaint does not disclose, on its face, a legally sufficient cause of action. *Rossaki v. NUS Corp.*, 116 Md. App. 11, 18 (1997). In considering such motions, the Court must assume the truth of all well pled facts and all inferences that can reasonably be drawn from them. *Id.*

Summary judgment is appropriate when there is no genuine dispute of material fact and, based upon the undisputed facts, a party is entitled to judgment as a matter of law. *Brown v. Mayor of Baltimore*, 167 Md. App. 306, 317 (2006). However, mere allegations do not constitute facts, nor establish a genuine dispute of facts. *Vanhook v. Merchants Mutual Ins. Co.*, 22 Md. App. 22, 27 (1974).

#### **B. Plaintiffs' Motion Suffers From A Fundamental Failure of Proof.**

Significantly, Plaintiffs' motion is completely devoid of any evidence – in the form of affidavits or otherwise – establishing who they are and how they claim to have been aggrieved by a determination of the State Board of Elections, and in the case of Plaintiffs Dennis Whitley III, Anne Neal, Karren Jo Pope-Onwukwe, Joanna Hanes-Lahr, and Matthew Thomas (“the Registered Voter Plaintiffs”), what their interest is in this litigation, what “legal relation, status, right, or privilege” is being challenged or denied by Defendants, or that they are even registered to vote in the State of Maryland and support the relief requested herein. Because Plaintiffs have

failed to present any evidence establishing these most basic material facts, their motion for summary judgment must fail for a lack of proof.<sup>2</sup>

**C. Plaintiffs' Complaint Fails to State a Claim Upon Which Relief May Be Granted and Fails to Establish Subject Matter Jurisdiction.**

Section 6-209 authorizes two types of judicial review, albeit each with different predicates and different remedies. Under Section 6-209(a), “a person aggrieved by a determination made under § 6-202, § 6-206, or § 6-208(a)(2) of this subtitle may seek judicial review . . . in the case of . . . a petition to refer an enactment of the General Assembly pursuant to Article XVI of the Maryland Constitution,” and the reviewing court is authorized to grant such “relief as it considers appropriate to assure the integrity of the electoral process.” *Doe v. Montgomery County Bd. of Elections*, 406 Md. 697, 715 (2008); Md. Code Ann., Elec. Law § 6-209(a). Section 6-209(b), by contrast, authorizes a reviewing court, “[p]ursuant to the Maryland Uniform Declaratory Judgments Act and upon the complaint of any registered voter,” to “grant declaratory relief as to any petition with respect to the provisions of this title or any other provisions of law.” *Doe*, 406 Md. at 715; Md. Code Ann., Elec. Law § 6-209(b).

The Maryland Democratic Party and the Registered Voter Plaintiffs invoke the “aggrieved person” provision of Section 6-209(a) and seek both declaratory and injunctive relief. The Registered Voter Plaintiffs also invoke Section 6-209(b) in support of a claim for

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<sup>2</sup> In addition, Plaintiffs previously represented that their motion for summary judgment would raise legal issues only. In their motion, however, Plaintiffs claim as a factual matter that “it is indisputable that at least 14,254 [signatures] are signatures of voters who attested to their own signatures as circulator” and “at least 7,578 of the signatures determined to be valid by the State Board appear on forms which the signer’s information was generated and printed by a computer program.” Memorandum of Law in Support of Plaintiffs’ Motion for Summary Judgment at 1 and 2. Because Intervener has had no opportunity to review these signatures and verify or dispute Plaintiffs’ totals, summary judgment cannot be granted in Plaintiffs’ favor. Md. Rule 2-501(d); Parrott Aff. at ¶ 41. Of course, should the Court reject Plaintiffs’ legal arguments, these factual issues would become moot.

declaratory relief only. Because Plaintiffs' Complaint is insufficient as a matter of law to give rise to a claim for relief or establish subject matter jurisdiction under either section, the Complaint must be dismissed pursuant to Rule 2-322(c).

**1. Plaintiffs Do Not Claim to Be Aggrieved by Any Determination Made Under § 6-202, § 6-206, or § 6-208(a)(2).**

Section 6-209(a) could not be any clearer about its judicial review provision applying to persons aggrieved by determinations made “under § 6-202, § 6,206, or § 6-208(a)(2).” It does not authorize judicial review of determinations made under Section 6-208(a)(1). *See, e.g., Comptroller of the Treasury v. Blanton*, 390 Md. 528, 537 (2006) (noting that “Maryland has long accepted the doctrine of *expressio (or inclusio) unius est exclusio alterius*, or the expression of one thing is the exclusion of another”).

While the Maryland State Democratic Party and the Registered Voter Plaintiffs invoke Section 6-208(a), they fail to differentiate between the two different types of determinations referenced in the provision. Complaint at ¶¶ 77 and 78. Section 6-208(a) states:

In general. -- At the conclusion of the verification and counting process, the chief election official of the election authority shall:

- (1) determine whether the validated signatures contained in the petition are sufficient to satisfy all requirements established by law relating to the number and geographical distribution of signatures; and
- (2) if it has not done so previously, determine whether the petition has satisfied all other requirements established by law for that petition and immediately notify the sponsor of that determination, including any specific deficiencies found.

Md. Code Ann., Elec. Law § 6-208(a).

The Maryland State Democratic Party and the Registered Voter Plaintiffs challenge the State Election Authority's determination under Section 6-208(a)(1) that the number of validated

signatures was sufficient to qualify the Congressional Districting Plan for placement on the ballot, not any other determination made under Section 6-208(a)(2). Nor do they challenge any determination made by the State Election Authority under Section 6-202 or Section 6-206. The Complaint alleges, “Of the signatures submitted to the State Board by the petition sponsors, significantly less than 55,736 are actually valid – less than the number constitutionally required (55,736) for placing [the Congressional Districting Plan] on the November 2012 general election ballot.” Complaint at ¶ 76. It continues, “. . . the State Board’s determination, on July 20, 2012, under Md. Code Ann., Elec. Law § 6-208(a), that the number of accepted signatures exceeds the minimum, is not supported by substantial evidence and/or is premised upon erroneous conclusions of law.” *Id.* at ¶ 77. Because Section 6-209(a) only authorizes judicial review of determinations made under Section 6-202, Section 6-206, or Section 6-208(a)(2) and the Maryland Democratic Party and the Registered Voter Plaintiffs only challenge a determination made under Section 6-208(a)(1), they are not entitled to judicial review.

**2. The Registered Voter Plaintiffs Fail to Allege That They Are “Aggrieved” in Any Way.**

In addition, in order to be “aggrieved” for purposes of judicial review under Section 6-209(a), a plaintiff’s interests must be personally and specifically affected in a way different from the public generally. *Doe*, 406 Md. at 716 (quoting *Sugarloaf Citizens’ Assoc. v. Dep’t of Env’t*, 344 Md. 271, 288 (1996)). An “aggrieved” person must suffer some “special damage” differing in character and kind from that suffered by a member of the general public. *Id.* at 716-717 (quoting *Jordan Towing, Inc. v. Hebbville Auto Repair, Inc.*, 369 Md. 439, 433 (2002)). Moreover, that “special damage” must be caused by a determination made by the State Board of Elections under one of the three specific provisions listed in Section 6-209(a). Md. Code Ann., Elec. Law § 6-209(a).

The Complaint is devoid of any allegation that the Registered Voter Plaintiffs have suffered any “special damage” or otherwise been aggrieved in any way by any determination made by the State Administrator of Elections, much less by one of the three types of determinations expressly required by Section 6-209(a). As a result, the Registered Voter Plaintiffs cannot maintain a claim for judicial review under Section 6-209(a) for this additional reason.

**3. The Registered Voter Plaintiffs Failed to Plead Any Facts Establishing A Justiciable Controversy.**

Section 6-209(b) authorizes a reviewing court to “grant declaratory relief as to any petition with respect to the provision of this title or other provisions of law” “[p]ursuant to the Maryland Uniform Declaratory Judgments Act and upon the complaint of any registered voter.” Md. Code Ann., Elec. Law § 6-209(b). The existence of a justiciable controversy is an absolute prerequisite to a declaratory judgment action under the Maryland Uniform Declaratory Judgment Act (“UDJA”). *Boyd's Civic Ass'n v. Montgomery County Council*, 309 Md. 683, 689 (1987); *Hatt v Anderson*, 297 Md. 42, 45 (1983); Md. Code Ann., Cts. & Jud. Proc. § 3-409(a). A controversy is justiciable when interested parties assert adverse claims upon a statement of facts that must have accrued and on which a legal decision is sought or demanded. *Hatt*, 297 Md. at 45-46. The issue to be decided must present more than a mere difference of opinion between the parties. *Hatt*, 297 Md. at 45. Moreover, the existence of a justiciable issue “is an especially important principle in cases seeking to adjudicate constitutional rights; in such instances we ordinarily require concrete and specific issues to be raised in actual cases, rather than theoretical or abstract propositions.” *Hatt*, 297 Md. at 46.

The Complaint falls far short of demonstrating the existence of a justiciable controversy between the Registered Voter Plaintiffs and Defendants, especially for a case that impacts the

constitutional right of referendum of the citizens of Maryland. It alleges no facts demonstrating the existence of an “actual controversy” or the presence of “antagonistic claims” between the Registered Voter Plaintiffs and Defendants. Md. Code Ann., Cts. & Jud. Proc. §§ 3-409(a)(1) and (2). Nor does it allege any facts demonstrating that a “legal relation, status, right, or privilege” of the Registered Voter Plaintiffs is being “challenged or denied” by Defendants. *Id.* at § 3-409(a)(3). Instead, the portion of the Complaint describing the Registered Voter Plaintiffs consists of five paragraphs that contain nothing more than names and addresses and the bare allegation that the Registered Voter Plaintiffs are “registered to vote in Maryland at that address.” Complaint at ¶¶ 16-20. The Complaint does not allege that these persons’ right to fair and effective representation will be compromised or that the commonality of their community of interests will be harmed or ignored if the Congressional Districting Plan is not repealed. It does not even claim that they will be placed in new or different congressional districts. Because the Registered Voter Plaintiffs have failed to allege facts establishing the existence of a justiciable controversy subject to review under the UDJA, their claim under Section 6-209(b) fails as a matter of law.

**D. Computer Generated Petitions.**

The Maryland State Democratic Party and the Registered Voter Plaintiffs challenge thousands of signatures of confirmed registered Maryland voters on the grounds that these confirmed registered voters used Intervener’s internet-based software program in signing the petition. In essence, the Maryland State Democratic Party and the Registered Voter Plaintiffs argue that the only way registered voters can sign a petition is to physically write out their names and addresses by hand or use a typewriter. It is the anachronistic argument of the Maryland State Democratic Party and the Registered Voter Plaintiffs – not the thousands of signatures of

confirmed registered Maryland voters who used Intervener’s internet-based software program – that should be rejected.

The Maryland Constitution does not specify how a petition must physically be executed in order for a registered Maryland voter’s signature to be accepted. Rather, Article XVI, Section 4 only states, “The General Assembly shall prescribe by law the form of the petition, the manner for verifying its authenticity, and other administrative procedures which facilitate the petition process and which are not in conflict with this Article.” *Id.* Pursuant to this authority, the General Assembly enacted Section 6-203 of the Election Law article of the Maryland Code, which provides, in pertinent part, as follows:

- (a) In general. – To sign a petition, an individual shall:
  - (1) sign the individual’s name as it appears on the statewide voter registration list or the individual’s surname of registration and at least one full given name and the initials of any other names; and
  - (2) **include** the following information, **printed or typed**, in the spaces provided:
    - (i) the signer’s name as it was signed;
    - (ii) the signer’s address;
    - (iii) the date of signing; and
    - (iv) other information required by regulations adopted by the State Board.

Md. Code. Ann., Elec. Law § 6-203(a) (emphasis added).

The State Board of Elections, in turn, has adopted the following regulation:

**.06 Signer Identification.**

- A. In General. Each signature page shall contain labeled spaces for providing, adjacent to each signature, the information specified in this regulation.
- B. Required Information. When signing the signature page, each signer shall:

- (1) Sign the individual's name as it appears on the Statewide voter registration list or the individual's surname of registration and at least one full given name and the initials of any other names; and
- (2) **Provide** the following information, **to be printed or typed** in the appropriate spaces:
  - (a) Date of signing,
  - (b) Signer's name as it was signed, and
  - (c) Current residence address, including house number, street name, apartment number (if applicable), town, and ZIP code.

COMAR § 33.06.03.06 (emphasis added).

Neither Section 6-203(a) of the Election Law or Section 33.06.03.06 of the Code of Maryland Regulations require that registered Maryland voters who wish to sign a petition must physically write out their names and addresses by hand or use a typewriter, if they can find one. A referendum petition is not a test of handwriting proficiency or typing skills. What matters is that the information required by the law be present. Nothing in either the code provision or the regulation prohibits persons from using a computer keyboard or a dot matrix, inkjet, laser or other type printer to “print,” “type,” “include,” or “provide” any of the required information. Based on a plain reading of Section 6-203(a) of the Election Law or Section 3.06.03.06 of the Code of Maryland Regulations, the Maryland State Democratic Party and the Registered Voter Plaintiffs are wrong as a matter of law. They also fail to cite a single case that supports the proposition that a signer may not use tools as common and ordinary as computers and computer software programs to “print,” “type,” “include,” or “provide” the information required by Section 6-203(a).

Nor is Maryland law so hidebound as to compel the use of the mid-twentieth century definitions of the terms “print” and “type” that the Maryland State Democratic Party and the Registered Voter Plaintiffs advocate. Maryland law readily accommodates new and innovative technologies like Intervener’s internet-based software program, which is fully consistent with both the letter and the purpose of Maryland’s election laws. In this regard, the Court of Appeals has declared that the purpose of Section 6-203(a) is “to provide a personal attestation, as a signature is often used, to evidence support for the petition and to provide a unique identifier in conjunction with the printed name, address, date, and other information required by the State Board.” *Montgomery County Volunteer Fire-Rescue Ass’n v. Montgomery County Bd. of Elections*, 418 Md. 463, 479 (2011) (“*Fire-Rescue Ass’n*”).

Furthermore, regarding the “printed” name, address, date, and other information, the Court of Appeals continued, “The later information is used to subsequently verify the eligibility of the petition signer to support the petition,” meaning that it is used by the State Board of Elections to confirm that the person is a registered Maryland voter. *Id.*; Md. Code. Ann., Elec. Law § 6-207(a)(2). Persons who printed their names and addresses on properly formatted petition signature pages using Intervener’s internet-based software program, then signed and dated those pages, did everything required of them by Section 6-203(a). They personally attested to their support for the petition by signing and dating the petition page, and they provided all of the unique identifier required by the State Board of Elections – their printed full names and addresses – as well as their dates of birth, to enable the State Board of Elections to verify that they are registered Maryland voters. They satisfied both the letter and the purpose of the law. Indeed, the State Board of Elections was able to verify that thousands of such persons are registered Maryland voters.

The Maryland State Democratic Party and the Registered Voter Plaintiffs are wrong when they assert that Intervener “pre-filled” or “pre-printed” the names and addresses of registered Maryland Voters. Intervener did no such thing. Nor did Intervener “type,” “print,” “include,” or “provide,” the names and addresses of registered Maryland voters on petition signature pages. It was the registered Maryland voters who did so by logging on to a computer, accessing Intervener’s website, typing in their name and unique identifiers and following the various prompts to create their own petition signature pages. Likewise, it was the registered Maryland voters who then printed the petition signature pages they had created. Registered Maryland voters did the typing and printing, not Intervener. Registered Maryland voters, not Intervener, “typed,” “printed,” “included” and “provided” their names and addresses on the petition signature pages challenged by the Maryland State Democratic Party and the Registered Voter Plaintiffs.

In addition, the Maryland State Democratic Party and the Registered Voter Plaintiffs are also wrong when they assert that one member of a household cannot use Intervener’s internet-based software program to assist other household members at their request in signing the petition. The law has no such prohibition. Under the Maryland State Board of Elections’ guidelines, even a “petition circulator may fill in the information on the petition page, except for signature, only at the request of the signer.” Maryland State Board of Elections, “Procedures for Filing a Statewide or Public Law Referendum Petition: Presidential Election November 6, 2012” (Revised March 2011) at 7, available at <http://www.elections.state.md.us/pdf/6-201-3a.pdf>.

Moreover, it is well settled that “election procedures are to be conducted with due regard to the intent of the voter.” *Fire-Rescue Ass’n*, 418 Md. at 477 n.14 (citing *Dutton v. Tawes*, 225 Md. 494, 495 (1961)). Regardless of whether these confirmed registered Maryland voters

“typed, “printed,” “included,” or “provided” their names and addresses with a pen, typewriter, computer, or some other instrument, their intent is clear: they wished to exercise their constitutional right to referendum. In this particular instance, the confirmed registered Maryland voters who used Intervener’s internet-based software program to help them sign the petition went to substantial effort to “type,” “print,” “include” and “provide” their names and addresses on or to petition signature pages. In addition to all of the steps described above, they also signed and dated the petition signature pages, executed or had executed the circulator’s affidavit, and then mailed the fully executed materials to Intervener. Not only did the registered Maryland voters “type,” “print,” “include,” and “provide” the required information, but there is no mistaking their clear intent.

The argument of the Maryland State Democratic Party and the Registered Voter Plaintiffs that it is somehow improper to use an internet-based software program in signing a petition is also directly contrary to the position taken by the State Board of Elections on computer generated signature pages. The State Board of Elections has specifically stated that it accepts signature pages that have been downloaded from a website. Its “Petition Signature Gathering FAQ” states:

**Can a petition be posted on a web site?**

Yes, and signatures on the downloaded signature page will be valid as long as the page is in the proper format and contains all required information.

State of Maryland, “Petition Signature Gathering FAQ” (Revised February 28, 2012) at 4, available at <http://www.elections.state.md.us/petitions/Petition%20Signature%20Gathering%20FAQ.pdf>.

Nor is a registered voter’s use of Intervener’s internet-based software program in signing a petition anything like a signature on “walking lists,” which the State Board of Elections has

stated it will not accept. *Id.* at 6. “Walking lists” are pre-printed lists of names and addresses that registered voters are merely asked to sign and date. *Id.* A person seeking signatures in support of a petition uses a “walking list” by going door-to-door through a neighborhood with a list of pre-printed names and addresses and asking residents for their signatures. Unlike with Intervener’s internet-based software program, which requires registered voters to type in their names and unique identifiers and go through the series of steps described above to download, print, sign, and date their own petition signature pages, a person who signs a “walking list” has not “typed,” “printed,” “included,” or “provided” his or her name or address at all.

Finally, limiting registered Maryland voters to hand writing their names and addresses or typing them on typewriters in order to sign petition signature pages would unduly burden voters’ constitutional right of referendum. Maryland courts have long recognized that “the referendum process is a ‘basic instrument of democratic government.’” *Howard County Citizens for Open Gov’t v. Howard County Bd. of Elections*, 201 Md. App. 605, 626 (2011) (“*Howard County*”) (quoting *Ritchmount P’ship v. Bd. of Supervisors of Elections*, 283 Md. 48, 61 (1978)). The right to referendum therefore “enjoys a considerable degree of constitutional protection.” *Howard County*, 201 Md. App. at 623. Because signing or sponsoring a referendum petition implicates a registered voter’s constitutional rights, the courts have held that any legislation regulating the referendum process “must be reasonable and must not place any undue burden” on a registered voter. *Barnes v. State*, 236 Md. 564, 573(1964); *see also Burruss v. Bd. of County Comm’rs*, 2012 Md. LEXIS 380, \*\*51-55 (June 25, 2012); *Fire-Rescue Ass’n*, 418 Md. at 476-77 (“Prior decisions of this Court affirm that statutory requirements upon the referendum petition process are viable if not unduly burdensome on the constitutionally protected right to referendum.”); *Doe*, 406 Md. at 733; *Howard County*, 201 Md. App. at 623. This standard also applies to rules

and regulations promulgated by the State Board of Elections. *Fire-Rescue Ass'n*, 418 Md. at 477 (“The State Board’s guidelines, similarly, may not evade the requirement of reasonableness, they must not be unduly burdensome, and they should not frustrate the intent of the petition signer.”).

In *Fire-Rescue Ass'n*, the Court reviewed the manner in which the State Board of Elections “approached signature review on submitted petitions as evidenced by the revised ‘State of Maryland Petition Acceptance and Verification Procedures: Statewide or Public Local Law Referendum Petition.’” 418 Md. at 475. At that time, the State Board of Elections required the printed name and the signature to match exactly and that the printed name/signature match the name on the voter registration list. *Id.* The Court ruled that the State Board of Elections’ requirement was unduly burdensome on a registered voter’s right to referendum. *Id.* at 476-477.

There is no reasonable or rational basis, much less a compelling basis, for requiring registered voters to physically write out their names and addresses by hand or use a typewriter to type their names and addresses onto petition signature pages in order to exercise their constitutional right to referendum. The Maryland State Democratic Party and the Registered Voter Plaintiffs claim that such a requirement is necessary to prevent fraud, but they do not point to a single instance of actual fraud in this particular petition drive or the prior petition drives in which registered voters used Intervener’s internet-based software program in signing petition pages.

Regardless, requiring that petition signature pages be physically written out by hand or with a typewriter would be completely ineffective as an anti-fraud measure. The Maryland State Democratic Party and the Registered Voter Plaintiffs assert that anyone who knows the “name, zip code, and birth date” of a voter could use Intervener’s internet-based software program to download and sign a petition signature page as the voter. Complaint at ¶ 40. Much more likely

is that anyone who knows a voter's name and address could write in that name and address and sign a petition signature page as the voter.<sup>3</sup> The latter type of fraud is much more likely than the former because address information is so much more readily available than is date of birth information. *Fire-Rescue Ass'n*, 418 Md. at 492 n.6 (Harrell, J., dissenting) (noting use of telephone books in petition fraud). It would make little sense to require, as an anti-fraud measure, an interpretation of Section 6-203(a)(2) of the Election Law and Section 33.06.03.06(B)(2) of the Code of Maryland Regulations that prohibits the use of a tool as helpful and beneficial as Interveners' internet-based software program when that same, restrictive interpretation would do nothing to address a much more likely type of fraud. In any event, it is the task of the General Assembly, not the Maryland State Democratic Party, the Registered Voter Plaintiffs, or the Court to design appropriate anti-fraud measures that balance the need for integrity in the petition process and the people's constitutional right to referendum.

There also are compelling reasons for not applying the restrictive interpretation of Section 6-203(a)(2) of the Election Law and Section 33.06.03.06(B)(2) of the Code of Maryland Regulations advocated by the Maryland State Democratic Party and the Registered Voter Plaintiffs. Intervener's internet-based software program helps registered Maryland voters to avoid some of the most common errors that prevent signatures from being validated, verified, and counted, such as missing middle initials or other "name standard" issues. *See, e.g., Fire-Rescue Ass'n*, 418 Md. at 475-476. It also greatly benefits disabled or less able voters who may not be able to write or write legibly or use a typewriter with ease. The restrictive interpretation of Section 6-203(a)(2) of the Election Law and Section 33.06.03.06 (B)(2) of the Code of

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<sup>3</sup> The State Board of Elections request voters provide their birth dates, but a birth date is not required and a signature will not be rejected if a birth date is not provided. COMAR § 33.06.03.06(C).

Maryland Regulations advocated by the Maryland State Democratic Party and the Registered Voter Plaintiffs would effectively deprive these persons of their constitutional right to petition. There is no reasonable or rational basis, much less a compelling basis, for rejecting thousands of signatures of confirmed, registered Maryland voters simply because they used Intervener's internet-based software program in signing petition pages. Doing so would unduly burden these voters' constitutional rights.

**E. Signer as Own Circulator.**

The Maryland State Democratic Party and the Registered Voter Plaintiffs also challenge any signature for which the signer also served as the circulator on a particular signature page.

Section 4 of Article XVI of the Maryland Constitution describes the "circulator" requirement as follows:

There shall be attached to each paper of signatures filed with a petition an affidavit of the person procuring those signatures that the signatures were affixed in his presence and that, based upon the person's best knowledge and belief, every signature on the paper is genuine and bona fide and that the signers are registered voters at the address set opposite or below their names.

Md. Const., art. XVI, § 4.

Section 6-201 of the Election Law article of the Maryland Code states, in pertinent part, that "Each signature page shall contain . . . a space for the required affidavit made and executed by the circulator." Md. Code Ann., Elec. Law § 6-201(c)(6). Section 6-204 states, in its entirety:

- (a) In general. --- Each signature page shall contain an affidavit made and executed by the individual in whose presence all of the signatures on that page were affixed and who observed each of those signatures being affixed.
- (b) Requirements. -- The affidavit shall contain the statements, required by regulation, designed to assure the validity of the signatures and the fairness of the petition proceed.
- (c) Age of circulator. -- A circulator must be at least 18 years old at the time any of the signatures covered by the affidavit are affixed.

Md. Code Ann., Elec. Law § 6-204.

The relevant regulations, Sections 33.06.03.07 and 33.06.03.08 of the Code of Maryland Regulations, state, in their entirety, as follows:

**.07 Circulator Identification.**

- A. Identification Required. Each signature page shall include an identification of an individual circulator, as required by this regulation.
- B. Information To Be Provided. The identification of the circulator shall include that individual's:
  - (1) Printed or typed name;
  - (2) Residence address, including house number, street name, apartment number (if applicable), town, and ZIP code; and
  - (3) Telephone number.

**.08 Circulator's Signed and Dated Affidavit.**

- A. Affidavit Required. Each signature page shall include an affidavit to be signed and dated by the circulator, as required by:
  - (1) Election Law Article, §6-204(a), Annotated Code of Maryland; and
  - (2) This regulation.
- B. Scope and Tenor. The affidavit shall state that:
  - (1) All of the information given by the circulator under Regulation .07 of this chapter is true and correct;
  - (2) The circulator was 18 years old or older when each signature was affixed to the page;
  - (3) The circulator personally observed each signer as the page was signed; and
  - (4) To the best of the circulator's knowledge and belief, all:
    - (a) Signatures on the petition are genuine, and

(b) Signers are registered voters in the State.

COMAR §§ 33.06.03.07 and 33.06.03.08.

The plain purpose of the “circulator affidavit” is to “bolster the validity of the signature entries.” *Fire-Rescue Ass’n*, 418 Md. at 479. However, none of the constitutional, statutory, or regulatory provisions regarding the affidavit requirement impose any limitation on the identity of the affiant other than the requirement that he or she must be at least 18 years old. Nor do they prohibit a person from attesting to the fact that he or she signed a petition signature page, that his or her signature is genuine, and that he or she is registered to vote in the State of Maryland.

In fact, the signer is probably in the best position of anyone to swear to these facts under penalty of perjury. In this regard, a person who signs a document obviously observes himself or herself doing so. It would be difficult not to do so. It also would be completely disingenuous for a person whose signature appears on a document to disavow the signature on the basis that he did not see himself sign the document. A person who signs a document also is the best person to attest to the genuineness of his or her signature on the document.

Similarly, as between a petition signer and a third-party circulator, the person best able to attest to the identity of the signer is the signer himself, not the circulator, who may very well be a complete stranger to the signer. There is no requirement that a signer present any form of proof of identification to a circulator. The same is true regarding whether the signer is registered to vote in the State of Maryland. The signer, not a third-party circulator, is the person best able to attest to whether the signer is registered to vote in the State of Maryland. The signer and a third-party circulator may have met for the first time when the circulator approached the signer at a sporting event or movie theater and asked the signer for a moment of his or her time to review the petition. Or, the signer and a third-party circulator may have met for the first time when the

signer walked up to a petition booth or table set up outside a grocery store and asked the circulator about signing the petition. The law does not require that the signer and the circulator know each other; it only requires that, to the best of the circulator's knowledge and belief, the signer's signature is genuine and that the signer is registered to vote in the State of Maryland.

The Maryland State Democratic Party and the Registered Voter Plaintiffs have it exactly backwards when they claim the fraud prevention purpose of the affidavit is "utterly defeated" if a signer attests to his or her own signature. It is well settled that laws are to be "construed reasonably with reference to the purpose to be accomplished." *Kaczorowski v. Mayor of Baltimore*, 309 Md. 505 (1987). "Results that are unreasonable, illogical, or inconsistent with common sense should be avoided." *Id.* (internal quotations and citations omitted); *Town of Oxford v. Koste*, 204 Md. App. 578, 586 (2012) (noting that courts should avoid "absurd or unreasonable" readings of statutes). Signatures on petition pages are the most trustworthy, not the least trustworthy, when the person who signs the petition page also attests under penalty of perjury to having signed the page, to the genuineness of his or her signature, and to the fact that he or she is registered to vote in the State of Maryland. Having the signer personally attest to these facts under penalty of perjury does the most to "bolster the validity of the signature entries." *Fire-Rescue Ass'n*, 418 Md. at 479. The State of Maryland could have required, as an additional anti-fraud measure, that each signer attest under penalty of perjury to having signed the petition, to the genuineness of his or her signature, and to being registered to vote in the State of Maryland, but it plainly chose not to impose this higher standard of proof. It would be unreasonable and illogical, if not absurd, to reject petition signatures because they satisfy a higher level of proof than required by the law.

The Maryland State Democratic Party and the Registered Voter Plaintiffs also claim that “[n]o person can serve as a witness to his or her own actions.” Complaint at ¶ 48. That patently is not the case. Witnesses testify to their own actions all the time. It is among the most common, if not the most common, form of testimony offered. While witnesses may not be compelled to provide self-incriminating testimony, nothing in the law prevents a witness from testifying on his or her own behalf. One of the most common questions posed to witnesses testifying under oath is “Is that your signature?”

The Maryland State Democratic Party and the Registered Voter Plaintiffs fail to identify a single case in which a petition signer was prohibited from also signing as a circulator or, more generally, in which a person was prohibited from attesting to his or her own signature. Indeed, the only Maryland court that ever addressed the question posed by the Maryland State Democratic Party and the Registered Voter Plaintiffs rejected it soundly. In *Doe v. Montgomery County Board of Elections*, 2008 Md. Cir. Ct. LEXIS 7 (Cir. Ct. Montgomery Co., Md. July 24, 2008), the Court found as follows:

Plaintiffs contend that 679 signatures should be disqualified from the February 4 filing, and 332 from the February 19 filing because the circulator executed an affidavit as to his or her own signature.

Although certainly not binding precedent, the court finds persuasive the position of the Attorney General’s office on this subject. By letter dated April 20, 1987 . . . chief counsel to the Attorney General asserted that there is no constitutional or statutory prohibition preventing a person who circulates a petition from signing and executing an affidavit as to his or her signature.

Such a practice is consistent with the State Board’s Guidelines, as well. Plaintiffs have advanced no valid reason why a circulator cannot observe his or her own signature being affixed to a petition, provided that Circulator is a registered voter otherwise eligible to sign. The court disagrees with Plaintiffs’ suggestion that the circulator must sign in the presence of another adult, and has not been directed to case or statutory law that supports that proposition.

All questioned signatures in category C are valid.

*Id.* at \*\*15-16. While the Court of Appeals subsequently reversed and remanded the matter on other grounds, it did not consider the issue of whether a circulator could attest to the veracity of his or her own signature, as the appellants, who were represented by the same counsel who represent the Maryland State Democratic Party and the Registered Voter Plaintiffs in this case, abandoned the argument. *Doe*, 406 Md. at 709 n.10.

Nor has the State Board of Elections advised the public that a person who circulates a petition is prohibited from signing and executing an affidavit as to his or her signature. The State Board of Elections' "Petition Signature Gathering FAQ" states:

**Can the circulator be a petition signer of the petition that he/she is circulating?**

Yes – Provided he/she is otherwise eligible to sign the petition.

State of Maryland, "Petition Signature Gathering FAQ (Revised February 28, 2012) at 2, available at <http://www.elections.state.md.us/petitions/Petition%20Signature%20Gathering%20FAQ.pdf>.

In addition, Maryland State Democratic Party and the Registered Voter Plaintiffs confuse convenience with constitutionality. There is no requirement that a circulator must attest to a specific number of petition signatures. Nor is there a bar to a circulator attesting to only one signature. Therefore, the notion that requiring a third-party circulator decreases the potential number of witnesses called into court to testify as to the validity and genuineness of his or her signature is without merit. Each petition signer could find a unique, third-party circulator to attest to the petition signer's signature page. In such a scenario, the results would be no different than if a petition signer also signs as his or her circulator.

In sum, the “circulator” argument of the Maryland State Democratic Party and the Registered Voter Plaintiffs is plainly incorrect. Nothing in Maryland law prohibits a person who circulates a petition from signing and executing an affidavit as to his or her own signature. Far from being unreliable or untrustworthy, such signatures are the most reliable and trustworthy of all of the signatures submitted in support of a petition, as not only are they sworn to under penalty of perjury, but they also are supported by direct, personal knowledge of the affiant. The State Board of Elections properly accepted these signatures, and there is no reason at all for excluding them.

**F. Attachment of Bill Summary.**

Finally, it was error for the State Board of Elections to reject as many as 840 signatures on the grounds that the signers had stapled a summary of the Congressional Districting Plan to their signature pages rather than printing the summary on the reverse side of their signature pages. First and foremost, in March 2012, Intervener obtained an advance determination from the State Board of Elections for language specifically stating that “attachment” of the summary was sufficient and relied on this advance determination by incorporating the approved language into the signature page. Parrott Aff. at ¶¶ 4-7.

Second, and perhaps more importantly, rejecting the signatures of confirmed registered Maryland voters on this basis constitutes an undue burden on the signers’ constitutional right to referendum. While the State Board of Elections may promulgate rules or regulations to regulate the referendum process, it cannot do so if the result will unduly burden or frustrate the intent of the petition signers. *Fire-Rescue Ass’n*, 418 Md. at 477. Article XVI, Section 4 of the Maryland Constitution states, “A petition may consist of several papers, but each paper shall contain the full text, or an accurate summary approved by the Attorney General, of the Act or part of the Act

petitioned.” Md. Const., art. XVI, § 4. Section 6-201 of the Election Law article likewise uses the word “contain”:

- (c) Signature Page. – Each signature page shall contain: . . .
  - (i) a fair and accurate summary of the substantive provisions of the proposal; or
  - (ii) the full text of the proposal; . . . .

Md. Code Ann., § 6-201(c)(2). The word “contain” is not defined, but obviously includes concepts such as “to comprise,” “to hold,” and “to enclose.” Regardless of whether the bill text or summary is printed on the back or included as an attachment, in both instances it can fairly be said that the bill text or summary is “contained” within the signature page.

Importantly, the State Board of Elections has issued a Statewide Referendum Petition form, on standard 8½ by 11 inch paper, that leaves no room on the front side of the paper for the bill text or summary. Parrott Aff. at ¶ 40. By regulation, the State Board of Elections requires numerous items be included on the front side of the signature page, including the bill number and bill title, specification of county, subject and purpose, statement of signers’ support and eligibility, signer identification, circulator identification, and circulator affidavit. COMAR §§ 33.06.03.03 – 33.06.03.08. Thus, some other accommodation has to be made for the inclusion of the bill text or summary, which is a constitutional requirement. In addition, because of the length of some bills, it may be physically impossible to print the full text of the bill, or even an accurate summary, on the back of the signature page.<sup>4</sup> While the State Board of Elections previously had accepted signatures where the bill text or summary was not printed in the back of

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<sup>4</sup> The full text of the Congressional Districting Plan requires four pages of fine print to reproduce, not including the map that depicts the new boundaries of Maryland’s congressional districts. Parrott Aff. at ¶ 33.

the signature page, but instead was attached to the signature page, at some point after Intervener obtained its advance determination in March 2012, the State Board of Elections discontinued this practice and instead determined that it would accept signatures only if the bill text or summary was printed on the reverse side of the signature page.

By revoking its earlier practice of accepting signatures of confirmed registered Maryland voters if the bill text or summary was attached to the signature page rather than printed on the back of the signature page, the State Board of Elections has unduly burdened the constitutional rights of those voters. *Fire-Rescue Ass'n*, 418 Md. at 476 (finding the State Board of Elections placed an undue burden on voters by requiring an exact match between a voter's signature on a petition signature page and the voter's printed name, as it appears on the voter registration list). While the burden on voters may not be particularly onerous, the State Board of Elections is likely to assert that it changed its practice simply for administrative convenience, should the bill text or summary become separated from signature page. Intervener addressed that concern, however, by including a unique code on each signature page that corresponds to the bill text or summary attachment. When a registered Maryland voter prints his or her signature page and the attachment, both the signature page and the attachment (along with a foldable envelope and instructions and the full text of the bill) include this code on the top of the page.<sup>5</sup> Thus, if the attachment becomes separated from the signature page, the code on the top of the page allows the State Board of Elections to identify the signature page to which the attachment corresponds. To find otherwise, especially when the requirements of the State Board of Election leaves no room on the face of signature page for the bill text or summary, impermissibly burdens the constitutional right of referendum.

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<sup>5</sup> For example, the code on the sample signature page attached to Delegate Parrott's affidavit is A1A85215. Parrott Aff. at ¶ 33. The top each page bears this same unique code. *Id.*

**IV. Conclusion.**

For the foregoing reasons, Intervener's cross-motion to dismiss and/or for summary judgment should be granted.

Dated: August 8, 2012

Respectfully submitted,

JUDICIAL WATCH, INC.

Handwritten signature of Paul J. Orfanedes in blue ink, with a small "PR" in the upper right corner of the signature.

Paul J. Orfanedes  
Md. Bar No. 9112190026

Handwritten signature of Chris Fedeli in blue ink, written over a horizontal line.

Chris Fedeli  
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*Attorneys for Intervener*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 8th day of August, 2012, I caused a true and correct copy of the foregoing Intervener's Statement of Grounds and Authorities in Opposition to Plaintiffs' Motion for Summary Judgment and in Support of Intervener's Cross-Motion to Dismiss and/or for Summary Judgment to be served, via email and first-class U.S. mail, postage prepaid, on the following:

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