



August 19, 2024

Chairman Izzy Patoka  
Members of the Baltimore County Council  
400 Washington Avenue  
Towson, MD 21204

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Dear Chairman Patoka, Members of the Baltimore County Council and Mr. Benjamin:

We write on behalf of the **Baltimore County NAACP**, the **Vote4More! Coalition**, the **Baltimore County Fair Maps Coalition**, **Indivisible Towson**, the **ACLU of Maryland**, individual Black voters, and a number of State Legislators from Baltimore County, including **Sen. Charles Sydnor**, **Sen. Ben Brooks**, **Sen. Shelly Hettleman**, **Del. N. Scott Phillips**, **Del. Aletheia McCaskill**, **Del. Sheila Ruth**, **Del. Cheryl Pasteur**, **Del. Nick Allen**, **Del. Michele Guyton**, **Del. Carl Jackson**, and **Del. Eric Ebersole**, to raise concerns and request amendments to Baltimore County Council Bill 47-24, the ballot measure approved for the November ballot to expand the Baltimore County Council. As preface, we note that the primary purposes of the citizen-led movement to expand the County Council are to enhance election opportunities for BIPOC voters and to promote a Council that better reflects the rich diversity of Baltimore County’s population than does the current all-male, nearly all-white Council. As set forth below, however, absent needed amendments, the Ballot Measure proposed by Bill 47-24 will directly undermine – rather than further – these critical goals and will violate multiple laws.

**Bill 47-24 must be amended to meet legal requirements**

On July 1, 2024, the Baltimore County Council approved by supermajority vote Bill 47-24 for submission to County voters on the November ballot. This measure asks whether voters will expand the County Council from seven to nine members—a major question that will significantly impact Baltimore County government and all residents going forward. But instead of stopping there, the Bill goes much further, straying beyond the legal limits of a proper ballot measure by

(1) combining into one measure multiple topics about which voters might have conflicting views and (2) including provisions that plainly violate state and federal law.

Specifically, beyond the Council expansion issue that is properly the subject of a single ballot measure, Bill 47-24 does three additional things:

- 1) Creates, without proper public evaluation and process, an **unlawful redistricting plan and map** for the expanded nine-member council that would illegally dilute the voting power of BIPOC residents by limiting their election opportunities in violation of the federal Voting Rights Act;
- 2) Beyond expansion of the County Council, the Bill **usurps the authority of the state legislature by purporting to alter the election system and structure of the Baltimore County Board of Education** in violation of Maryland statutory law, then **applies the Council's racially dilutive election plan to the School Board**;
- 3) In addition to expanding the number of Council members, takes the separate, additional step of **changing the position of Council member from a part time to full time position**.<sup>1</sup>

We urge you to amend this Bill to rectify these defects in order to properly present the important issue of Council expansion to County voters without coupling it with unlawful additions. Such changes would save the County and its residents from exposure to litigation that will inevitably follow if this flawed measure is put to voters and passed in its current form.

We explain our legal concerns below.

**I. Maryland and Baltimore County adhere to the single subject rule for ballot measures, which Bill 47-24 fails.**

Both the Maryland Constitution<sup>2</sup> and the Baltimore County Charter<sup>3</sup> follow the established rule that legislative enactments and ballot measures put to the electorate must be limited to a single subject. *E.g., Anne Arundel County v. McDonough*, 277 Md. 271 (Md. 1976). But by its own extended and confusing description, Bill 47-24 covers far more than one subject. Although titled

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<sup>1</sup> Further, beyond these three changes, the Bill, if approved by voters, would: 4) increase the number of Planning Board members from seven to nine; 5) increase the number of County Board of Appeals members from seven to nine; 6) change the rules for party affiliation for Board of Appeals members; 7) change the size and structure of the redistricting commission; and 8) reinforce the power of the Council to invalidate the County Charter, while changing to eight the number of Council members needed to do so.

<sup>2</sup> Md. Const., Art. III, §29.

<sup>3</sup> The Baltimore County Code states: "Each law enacted by the County Council shall embrace but one (1) subject, and that subject shall be described in its title and no law, or section of law, shall be repealed, revived or amended by reference to its title or section only." Section 311C

“County Charter – County Council – Composition – Number of Councilmembers”, the Bill covers much more than that. To quote the Bill, it is:

FOR the purpose of increasing the number of Councilmembers from seven to nine, beginning with the 2026 election cycle; requiring that, for the purposes of determining compensation, membership on the County Council shall be considered a full-time position; amending the number of councilmanic districts from seven to nine, beginning with the 2026 election cycle; prohibiting a revision of councilmanic districts after the 2026 general election, except following the decennial census or ratification of a Charter amendment to increase or decrease the number of councilmanic districts, requiring the formation of a Redistricting Commission upon such a ratification, and amending certain related recommendation restrictions; amending the membership of the Redistricting Commission such that one member is nominated by each Councilmember and confirmed by the County Council; 2 increasing the Planning Board membership consistent with a nine member County Council; amending the number of members of the County Board of Appeals to be equal to the number of Councilmembers and amending the political party affiliation requirements; amending the number of affirmative votes necessary for the County Council to start the process of County Charter termination; revising and reconstituting the councilmanic districts to increase the number of districts to nine; amending certain terms or phrases to be gender-neutral; providing for different effective dates of amendments to Article II of the Charter and Articles V, VI, and XII of the Charter upon their ratification; revising and reconstituting the councilmanic districts of Baltimore County into nine districts, contingent upon the passage and ratification of the Charter amendments by the voters of Baltimore County; requiring certain written notification to be sent to the Baltimore County delegation to the Maryland General Assembly, contingent upon the passage and ratification of the Charter amendments by the voters of Baltimore County; and generally relating to the Baltimore County Charter and Baltimore County Council

This obviously is *not* a single subject, and the Title and description are themselves misleading in that they fail to even mention the significant effect the Bill will have on the structure and selection process of the County School Board.

For Black voters, the Bill creates provisions in conflict with one another: On the one hand, many voters might wish to support expansion of the Council to nine, in order to enhance election fairness. However, at the same time, they could oppose the Bill’s election plan and map, as this aspect of the Bill flies in the face of fairness by enacting a system that limits election opportunities for minority voters, in violation of the Voting Rights Act. Such conflicts are not merely hypothetical: Sen. Sydnor, for example, feels exactly this way: He supports the expansion of the Council to nine or (better yet) 11 members, but as a Baltimore County resident and plaintiff in the Baltimore County VRA lawsuit, he is diametrically opposed to the proposed electoral map.

Similarly, County residents may or may not wish to change Council positions from part time to full time. And the entirely separate issue of how the County School Board is configured raises

distinct issues for voters who may favor appointed over elective school system leadership. Such conflicts demonstrate the wisdom of the single subject rule and illustrate the problems with Bill 47-24's amalgamation of several subjects into one ballot measure.

## **II. Aspects of Bill 47-24 also violate state and federal law.**

The Maryland Constitution, Article XI–A, § 1, mandates that a county charter is subject to, and must comply with, the public general laws of Maryland. Likewise, under the U.S. Constitution's Supremacy Clause, all state and local laws must comply with federal law. Thus, if a provision of a county charter, including a charter amendment, conflicts with other state or federal law, the charter provision is invalid. *See, e.g., Montgomery County v. Board of Supervisors of Elections for Montgomery County*, 311 Md. 512 (Md. 1988); *East v. Gilchrist*, 296 Md. 368 (1983) (collecting cases); *Wilson v. Bd. of Sup. of Elections*, 273 Md. 296 (1974); *Schneider v. Lansdale*, 191 Md. 317 (1948).

This principle invalidates Bill 47-24 in two respects: First, its inclusion of a redistricting plan and map that violate the Voting Rights Act invalidate that portion of the measure; and second, the Bill's purported alteration of the structure of the school board directly conflicts with Maryland statutory law, making that part of the Bill invalid.

### **A. The redistricting plan and map appended to Bill 47-24 violate the federal Voting Rights Act of 1965**

The redistricting plan and map appended to Bill 47-24 as exhibits were not adopted through the County's ordinary redistricting process, which is undertaken through involvement of an appointed redistricting commission and includes extensive opportunity for public review, comment, and analysis. Instead, this plan and map appear to have been created by select Council members, without public input, nor even involvement of the full Council. As a result of this skewed process, lack of legal analysis and vetting, the plan and map unsurprisingly fail to consider the dilutive impact it has on BIPOC voters. Given the County's recent record of Voting Rights Act violations, this is highly problematic: As with the County's 2021 redistricting plan, the Bill 47-24 plan and map are racially dilutive and unlawful, and violate Section 2 of the Voting Rights Act.

As you know, Black voters and civil rights groups sued Baltimore County for Voting Rights Act violations with respect to its 2021 redistricting plan, and the plan was enjoined as racially discriminatory and unlawful by federal judge Lydia K. Griggsby. *Baltimore County Branch of the NAACP v. Baltimore County, MD*, 2022 WL 657562 (D.Md. Feb. 22, 2022). In so holding, the Court found that – despite enormous public outcry and opposition – the County had configured its election plan in a way that would deny Black voters equal opportunity to elect representatives of their choice, and barred the County from implementing its discriminatory plan. The same deep flaw exists in the redistricting plan appended to Bill 47-24, making that aspect of the ballot measure unlawful. While Bill 47-24 offers Black voters just two realistic election opportunities out of nine, ACLU demographer William Cooper confirms that it is easily possible to create a nine-district plan in Baltimore County with three majority Black districts plus a fourth majority BIPOC district. As such, if the ballot measure passes in its current form, the County will almost certainly expose

itself to renewed voting rights litigation to invalidate this racially discriminatory plan. Making matters even worse, as currently framed, the ballot measure would dictate that this illegal map be applied to future school board elections, necessarily entangling the school system in future legal challenges.

**B. The portion of Bill 47-24 concerning the School Board conflicts with Maryland law and is thus invalid.**

Appended to the Bill as Section 5 is the following direction to the State Legislature concerning configuration of the Baltimore County Board of Education:

SECTION 5. AND BE IT FURTHER ENACTED, that the thirtieth day following the general election on November 5, 2024, the County Executive and County Council shall send written notification to the Baltimore County delegation to the Maryland General Assembly that § 9 3-2B-01 of the Education Article of the Annotated Code of Maryland relating to the composition and method of election of the Baltimore County Board of Education *is to be amended in accordance with this Act to consist of: nine nonpartisan elected members, elected from the nine councilmanic districts of Baltimore County, as set forth in this Act, by the voters of that councilmanic district; two appointed members; and one student member.*

As such, the Bill purports to order an amendment to the Maryland statute<sup>4</sup> that grants the Governor power to appoint four Board of Education members, not just two, changing the overall Board system from one with seven elected members, four appointed, and one student member to a system of nine elected members, two appointed, and one student member. The Bill further directs that the School Board will be elected using the County Council plan that violates the Voting Rights Act.

However, as confirmed by the Maryland Attorney General in an August 14 advice letter to Senator Sydnor, the Baltimore County Council does not have authority to order the State legislature to

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<sup>4</sup> MD Code, Education, § 3-2B-01 provides:

Baltimore County Board of Education

Members

(a) The Baltimore County Board of Education consists of:

- (1) Seven nonpartisan elected members;
- (2) Four appointed members; and
- (3) One student member.

Composition of members

(b)(1) Of the 11 elected and appointed members of the county board:

- (i) One member shall be elected from each of the seven councilmanic districts in the county, established by the County Council of Baltimore County, by the voters of that district; and
- (ii) Four members shall be appointed by the Governor from the county at large.

make this change.<sup>5</sup> See Attachment A. As such, it is invalid and should be stricken from the Ballot measure. *See, e.g., Board of Supervisors of Elections of Anne Arundel County v. Smallwood*, 327 Md. 220 (Md. 1992) (striking portions of ballot measure deemed invalid). Senator Sydnor and each of the other state legislators joining this letter hereby advise you that they oppose your inclusion of the Board of Education in the ballot question being put to voters and strongly urge you to amend the measure to remove it before the question is finalized.

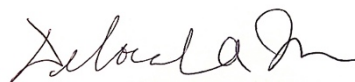
### Conclusion

To serve the laudatory purposes of enhancing election opportunities and fair representation envisioned through County Council expansion, amendments to correct legal flaws are urgently needed to Bill 47-24. Specifically, the amendments needed to remedy the Bill's flaws include: 1) striking the redistricting plan and map (which should be adopted through the usual process if a majority of voters endorse Council expansion); 2) striking the Council's direction to amend state law with respect to the School Board; and 3) striking the change from part time to full time Council membership.

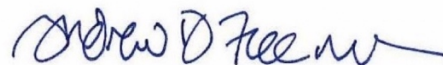
Such changes must be made *no later than* September 5, 2024, when ballots must be finalized. We urge you to undertake these amendments promptly, both to serve the greater good and to avoid costly and unnecessary litigation that will almost certainly follow if Bill 47-24 is put to voters and adopted in its current form.

Please contact us if you wish to discuss this matter. Additionally, please provide us with copies of any notices you have posted advertising the Ballot Measure and with the language you have prepared with respect to Bill 47-24 for use on the November ballot.

Respectfully,



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<sup>5</sup> As the Attorney General notes, the Bill 47-24 provision concerning the School Board can only meet constitutional requirements if it does not mean what it says, and instead is read as advisory and non-binding. But if that is the case, the School Board provision has no place in a Ballot Measure directed to voters as if they are being asked to endorse a change in the School Board's make up.