COMMISSIONER THOMASINA O. COATES *Petitioner,* v. AMANDA M. STEWART, *et al*. *Respondents*.	IN THE SUPREME COURT OF MARYLAND September Term No.

PETITION FOR WRIT OF CERTIORARI

Petitioner Commissioner Thomasina O. Coates ("Commissioner Coates"), by and through counsel, submits this Petition for Writ of Certiorari and, in support thereof, states as follows:

PROCEDURAL HISTORY

Commissioner Coates seeks review of a final order and permanent injunction entered on October 17, 2023, by the Circuit Court for Charles County in *Amanda M. Stewart v. Charles County Board of County Commissioners, et al*., Case No. C-08-cv-23-000002 (2022) (hereinafter, the "Injunction"). *See attached* **Exhibit A (**copies of the Injunction and docket entries evidencing its entry); **Exhibit B** (transcript of the trial court's oral opinion).

Commissioner Coates appealed the Injunction to the Appellate Court of Maryland (the "Appellate Court") the same day it was entered. *See Coates v. Charles County Board of County Commissioners, et al.*, No. ACM-REG-1623-2023. On June 30, 2025, the Appellate Court issued a reported opinion affirming the Injunction attached hereto as **Exhibit C** (hereinafter, the "Opinion" or "Op."). Noting, however, that the trial court made

a technical error in finding that the Injunction mooted Commissioner Coates counterclaim for a declaratory judgment, the Appellate Court remanded to allow the trial with instructions to revise the "declaratory judgment consistent with the Circuit Court's original findings and conclusions[.]" Op. at 57.

The Appellate issued its mandate on August 1, 2025. This petition follows.

QUESTION PRESENTED

Did the trial court err, as a matter of law, in entering an injunction that, among other things, permanently bars a commissioner on the Charles County Board of County Commissioners from participating in a vote to terminate the employment of the County Administrator?

FACTUAL BACKGROUND

At the heart of this lawsuit is the continued employment of Respondent Mark Belton ("Mr. Belton"), the County Administrator. Within four months of assuming office, and during the acute phases of the COVID-19 pandemic, Mr. Belton was charged by another county employee of engaging in racial discrimination. (E698).[1] In response, Mr. Belton hired Bernadette Sargeant ("Ms. Sargeant"), an attorney at Stinson LLP, to investigate the allegations. (E68,193) Around this time, Ms. Sargeant also began investigating Mr. Belton's allegations that Commissioner Coates had created a hostile work environment, as well as Commissioner Coates' allegations that Mr. Belton was racially biased. (E365).

[1] Commissioner Coates cites to the record extract filed in the Appellate Court.

Ms. Sargeant authored a report memorializing the findings of her investigation (the "Report"). (E819-45). Specifically, Ms. Sargeant concluded: (1) "Mark Belton's allegation that he has been subjected to an abusive hostile work environment Commissioner Thomasina Coates has been substantiated[,]" and (2) "Commissioner Coates' allegations that Mark Belton racially discriminated against her and against Commissioner Stewart as African American female commissioners…have not been substantiated." (E844-45).

Following Sargeant's investigation, on June 9, 2020, the Board voted 4-1 to adopt a measure referred to as "Prompt and Remedial Action" (hereinafter, the "PRA"), which provided that: (1) Commissioner Coates be excluded having any "input in the decision making, performance evaluation, contract negotiation, or any other employment decision regarding [ ] Belton; (2) that Commissioner Coates "only communicate policy initiatives and staff requests through the Commissioner President or Vice-President"; and (3) that Commissioner Coates "refrain from directing, contacting, emailing, or calling [Mr. Belton] directly." (E41).

The PRA does not contain a sunset provision or a penalty provision. It was never published or enrolled and is only accessible in the minutes of the June 9, 2020, closed session of the Board.

On December 13, 2022, the Board held a closed session. The purpose of the meeting was to terminate the employment of Mr. Belton and County Attorney E. Wesley Adams, III (the "Counter Attorney"). (E368, 803).

After a motion to place Mr. Belton on administrative leave until January 10, 2023, failed, Commissioner Reuben B. Collins, II ("Commissioner Collins") moved to have

"Belton resign as of December 13, 2022, and if his resignation was not provided he would be terminated without cause as of December 13, 2022." (E808). Commissioners Coates and Commissioner Ralph E. Patterson, II joined the votes.

The County Attorney declared the vote "illegal," and again proposed placing Mr. Belton on administrative leave until January 10, 2023. (E808). Following a short recess, the County Attorney proposed, once more, that Mr. Belton be placed on administrative leave and that Respondent Commissioners Amanda M. Stewart and Gilbert O. Bowling ("Commissioner Bowling") (collectively, the "Respondent-Commissioners") file a declaratory judgment action against the other three commissioners to determine whether Commissioner Coates' vote to terminate Mr. Belton was permissible given the PRA. (E809). After Commissioner Bowling moved to adopt the proposal, it was seconded and then passed. (E809).

Respondent-Commissioners filed suit on December 30, 2022, requesting, among other things, that the trial court enjoin Commissioner Coates from violating the PRA. Mr. Belton was subsequently joined as an intervenor-plaintiff on January 9, 2023. Following a bench trial, on October 17, 2023, the trial court entered the Injunction, which not only incorporated the terms of the PRA but also prohibited Commissioner Coates from participating in any vote to repeal the PRA.

REASONS TO GRANT THE WRIT

The Injunction permanently deprives an elected official of the ability to carry out a core duty of her office. It is a profound instance of judicial overreach, which the Appellate Court gave its imprimatur by issuing a reported opinion affirming its validity. Review,

therefore, is necessary to correct fundamental errors in the Appellate Court's reasoning, including those involving issues of first impression. Review is further warranted given the broader implications of the Appellate Court's holding. Unless corrected, the Appellate Court's decision opens the door to unnecessary, costly, and arbitrary intervention by the courts into the operations of the political branches of government.

I. Review is Warranted to Correct Fundamental Errors in the Opinion.

The problematic nature of the Injunction is obvious. Permanently enjoining 20%[2] of the governing body of Charles County from having a say in who should be the County Administrator—the governmental equivalent of a chief executive officer—is an extraordinary imposition on an elected official and the governing body of which she is a part. At oral argument, counsel for Respondent-Commissioners conceded that the Injunction diminished Commissioner Coates official powers, a point which Judge Friedman characterized as indisputable. *Coates v. Charles County Board of County Comm'rs*, Oct. 7, 2024, Oral Argument, www.courts.state.md.us/acm/oralargumentarchives.com. at 36:00-37:00. Nevertheless, the Appellate Court upheld the Injunction in an opinion whose underlying reasoning was flawed in several critical points.

A. The Board Lack Authority to Adopt the PRA.

The Appellate Court devoted a large portion of its opinion to addressing the question of whether the Board was acting in its administrative or legislative capacity in

[2] There are five commissioners on the Board.

promulgating the PRA. In *Queen Anne's Conservation, Inc. v. Cnty. Comm'rs Of Queen Anne's Cnty.*, 382 Md. 306, 326 (2004), this Court held that "***the test*** to determine when action is legislative and when executive or administrative is whether the action is one making a new law—an enactment of general application prescribing a new plan or policy—or is one which merely looks to or facilitates the administration, execution or implementation of a law already in force and effect." (Cleaned up) (emphasis added). Thus, as this Court stated in clear and unequivocal terms, a precondition for a governing body's exercise of administrative functions is the existence of an antecedent law that can be administered.

It is undisputed that, at the time the PRA was enacted, there was no statute or ordinance authorizing the type of sanctions imposed by the PRA. In side-stepping this issue, the Appellate Court reasoned that, although the *Queen Anne's* test is "one way of figuring out whether a county board's actions are administrative, we don't accept the broad premise that a board's action only counts as 'administrative' if it implements or enforces a law already in force and effect." Op at. 33-34. According to the Appellate Court, it is "obvious" that the PRA is administrative because it was adopted "in response to a specific personnel problem involving allegedly illegal conduct" and "pertained directly to the Board's management of its own members as it made county personnel decisions." *Id*

It is neither "obvious" nor correct that the PRA is administrative action. First, the ability of Commissioner Coates, an elected official, to have a say in who runs the County is not a "personnel" matter. Commissioner Coates is not an at-will employee serving at the pleasure of the Board. Rather, she is an elected official who, by virtue of her office, has

statutorily defined powers, including the power to vote on whether the County Administrator, *i.e.*, the chief executive of the County, should keep his appointment.

Second, the Appellate Court erred in its characterization of the test in *Queen Anne's* as one among others. Rather, the test is all-encompassing because, logically, there can be no valid administrative action when there is nothing to administer. This reality does not mean the Board or other local governments cannot regulate the conduct of its elected officials without judicial intervention. Indeed, LG § 10-303(c) authorizes the Board to enact laws governing the conduct of its members and impose penalties for violations of the same, which include "removal from office." The Board, however, never enacted such a law, and the courts cannot use their equitable jurisdiction to correct the Board's poor governance in this regard.

The Appellate Court reasoned that the Board's internal guidance, policies, and rules authorized the promulgation of the PRA, including the following Rule of Procedure:

> Board members may be excused from casting a vote for reasons such as perceived or actual conflict of interest, or from other reasons where the Board member and/or the County Attorney believe voting would be inappropriate. Otherwise and as a deliberative body, each Commissioner is expected to cast a vote.

Op. at 35. The Appellate Court's reliance on this ***procedural*** rule was misplaced. First, a rule of procedure is not a substitute for the public law that the Board was required to but failed to enact under LG § 10-303(c). Second, the procedural rule does not, as the Appellate Court suggests, authorize the county attorney or the Board to impose substantive restrictions on a commissioner's voting rights. Rather, it merely permits a commissioner

to voluntarily recuse herself when, in the commissioner's judgment or the judgment of the county attorney, she believes recusal would be appropriate.

In sum, the Board had no legal authority to promulgate the PRA and, by necessary implication, the trial court lacked authority to enforce the PRA through the Injunction. The Appellate Court's holding otherwise was clear legal error.

B. The Entry of the Injunction is Inconsistent with the Separation of Powers Doctrine.

This case directly implicates the "formidable doctrine of separation of powers," which "demands that the courts remain in the sphere that belongs uniquely to the judiciary—that of interpreting, but not creating, the statutory law." *Matter of Cintron*, 265 Md. App. 481, 251 (2025) (internal citations omitted).

In finding that the Injunction comported with this doctrine, the Appellate Court reasoned that, since the "Commissioners asked the court to declare in essence that the Board was bound by its own PRA, the "role the Board asked the court play was fully judicial and consistent other cases where our courts have intervened." Op. at 25. The Appellate Court's analysis was flawed for two reasons. First, if the PRA is merely administrative action, as the Appellate Court held it to be, then it is unclear how the Board could be "bound" to it to such an extent as to justify imposing barriers to its repeal. Similarly, if the PRA constituted administrative action, the proper role of the judiciary would be to review such action, not to enforce it through a remedy that the PRA did not provide. In entering the Injunction, the trial court transgressed the boundaries of its judicial role and, in so doing, acted without constitutional authority.

C. The Injunction is Incompatible with the First Amendment.

The Appellate Court gave little attention to the First Amendment implications of the Injunction, observing only that, since "the PRA was an administrative action rather than a law enacted by the Board, a First Amendment analysis [was] unnecessary." Op. at 50. As the U.S. Supreme Court has recognized, however, "[s]peech can be chilled and punished by administrative action as much as by judicial processes; in no case have we asserted or even implied the contrary." *Waters v. Churchill*, 511 U.S. 661, 669 (1994).

To be sure, the Appellate Court also relied on *Nevada Comm'n on Ethics v. Carrigan*, 564 U.S. 117 (2011) in eschewing a more rigorous First Amendment analysis. In that case, the Supreme Court upheld application of a "content-neutral" recusal law that applied "equally to all legislators regardless of party or position." *Id.* at 120, 125.

Unlike in *Carrigan*, the PRA was not the mere application of a neutral and generally applicable recusal law. Indeed, and as discussed *infra*, no such law existed at the time the PRA was enacted. Instead, the PRA and, by extension the Injunction, targeted the speech of a single commissioner based solely on the opinion of the other commissioners that the vote would be improper. Such a restriction cannot withstand First Amendment scrutiny.

The Appellate Court's reasoning was flawed for another reason. The PRA and the Injunction do not merely enjoin Commissioner Coates from voting. As the *Carrigan* court made clear, a "legislator voting on a bill is not fairly analogize to one simply discussing the bill or expressing an opinion for or against it. The former is performing a governmental act as a representative of his constituents; only the latter is exercising personal First Amendment rights." *Carrigan*, 564 U.S. at 128 n.5.

Here, the Injunction went far beyond merely enjoining Commissioner Coates from voting. It also prohibited Commissioner Coates from "having any input in any decision making, performance evaluation, contract negotiation or other employment decision regarding" Belton. (E1117). It further enjoined Commissioner Coates from "communicating policy initiatives and staff requests to [Belton] except through the Board's President or Vice President." (E1117). And, finally, it enjoined Commissioner Coates from "directing, contacting, emailing or falling [Belton] directly." (E1117). These provisions, for reasons other than the holding in *Carrigan*, infringe on core protected speech and cannot survive strict scrutiny. *Bond v. Floyd*, 385 U.S. 116, 135–36 (1966) ("The manifest function of the First Amendment in a representative government requires that legislators be given the widest latitude to express their views on issues of policy.").

D. The Appellate Court's Standing Analysis was Flawed.

None of the Respondents have standing in this case. Mr. Belton does not have standing because he failed to exhaust administrative remedies before filing and, as this Court noted, he was not authorized to "bypass the Human Relations Commission's procedures by bringing a declaratory judgment action or invoking the general equity power of a court." *Maryland-Nat'l Cap. Park & Plan. Comm'n v. Crawford*, 307 Md. 1, 30–31 (1986). Citing *Liss v.* Goodman, 224 Md. 173, 177-78 (196), the Appellate Court held that Respondent-Commissioners had standing because a trial court is an "appropriate venue for disputes among and between government bodies, especially where the conflict stands to impair the government's ability to function or perform its essential duties." Op. at 17. The instant lawsuit, however, was not "between" government bodies. Respondent-

Commissioners, a minority of the Board, sued the ***Board*** and a majority of its Commissioners to preclude one commissioner from voting to take an action that, hypothetically, could trigger an employment discrimination sometime in the future. To hold that Respondent-Commissioners had standing under these circumstances would be to eviscerate that principle that Maryland courts do not resolve "purely theoretical question or questions that may never arise." *Prince George's Cnty. v. Maryland-Nat'l Cap. Park & Plan. Comm'n*, 269 Md. 202, 209 (1973).

D. Belton is Not an Employee under Title VII and Title 20.

In an issue of first impression, the Appellate Court adopted the Eighth Circuit's test for determining whether a plaintiff is excluded from asserting a claim under Title VII of the Civil Right of 1968 ("Title VII") and Title 20 of the State Government Article ("Title 20") because he or she is an "appointee on the policy-making level." Under the test adopted by the Appellate Court, courts consider the following factors in determining whether this exclusion applies: "whether the [appointee] has discretionary, rather than solely administrative powers"; (2) "whether the [appointee] serves at the pleasure of the appointing authority"; and (3) "whether the [appointee] formulates policy." *Stillians v. Iowa*, 843 F.2d 276 (8th Cir. 1988).

While Commissioner Coates has no quarrel with the Eighth Circuit test when read alongside Supreme Court guidance,[3] the Appellate Court plainly misapplied it. The office

[3] In *Chisom v. Roemer*, 501 U.S. 380, 399 (1991), for example, the Supreme Court noted that the exception is not limited to those who formulate policy. Rather, it is "sufficient that the appointee is in a position requiring the exercise of discretion concerning issues of public importance." *Id.*

of the county administrator is established by the County Code, and the powers of the office are set forth in Mr. Belton's employment agreement attached hereto as **Exhibit D**. As the terms of the contract make clear, Mr. Belton effectively runs Charles County and is afforded near limitless discretion to do so. To hold that, notwithstanding this extraordinary grant of power, Mr. Belton is not an appointee on the "policymaking level" would be to render the exclusion practically meaningless.

E. The PRA was Arbitrary and Capricious.

At trial, Commissioner Coates provided uncontradicted testimony that: (1) she did not become aware that she was under investigation until the June 9, 2020, closed session of the Board; (2) she was not provided a copy of the Sargeant Report during or after the meeting and did not have a meaningful opportunity to question the factual findings announced or to present evidence to rebut the findings in the meeting; (3) she was not provided an opportunity after the PRA was enacted to challenge the findings of the report; and (4) during the meeting, the County Attorney informed the Board members that, if they did not enact the PRA, then they could face criminal sanctions.

In short, there was overwhelming evidence that the PRA was arbitrary and capricious. The Appellate Court, however, declined to consider these arguments because they had become "water under the bridge" in the intervening years between the enactment of the PRA and the commencement of the instant proceedings. Op. at 63. The Appellate Court further found that, since the issue of "whether the Board *should have* adopted the PRA on June 9, 2020 . . . is a separate legal matter," the extent to which the PRA was

arbitrary and capricious should have been asserted in Commissioner Coates counterclaim, which she did not do. Op. at 59.

The Appellate Court's analysis is fundamentally flawed. The issue of whether the PRA was arbitrary and capricious is inextricably linked to the validity of the PRA and the Injunction. To hold otherwise would be to suggest that the trial court could somehow equitably enforce a measure that is, in substance, inequitable. Furthermore, the Appellate Court cites no authority for its suggestion that the passage of time deprived Commissioner Coates of the ability to argue, defensively,[4] that the PRA was arbitrary and capricious. In fact, the authority suggests the opposite. *See Murray v. Midland Funding, LLC*, 233 Md. App. 254, 262 (2017) ("[T]rule is clear that a simple declaration that a judgment is void, is subject neither to a statute of limitations nor laches.").

II. Review is Warranted Given the Broader Implications of the Opinion.

This case calls upon the Court to examine the limits of a trial court's equitable jurisdiction. In the Opinion, the Appellate Court upheld a naked injunction, one neither clothed with statutory authority nor necessity. Relying on internal guidelines, policy statements, misinterpreted procedural rules, and findings of a report drafted by someone Mr. Belton hired, the Appellate Court upheld an order permanently enjoining an elected official from opining on the employment of a person charged with the day-to-day operations of the County. This extraordinary judicial imposition on a political branch of

[4] While Commissioner Coates did not assert the argument that the PRA was arbitrary and capricious offensively in her Counterclaim, she asserted the contention defensively in her Amended Answer to the Verified Complaint.

government was unsupported by any compelling need. If, in fact, Mr. Belton is an employee within the meaning of Title VII and Title 20, he could have asserted such a claim following his termination. If, on the other hand, he is not an employee entitled to bring an employment discrimination claim, then his termination would not constitute a legal injury for which an Injunction would be warranted.

The Appellate Court's decision to uphold a permanent injunction against an elected official to prevent a speculative injury for which an adequate remedy at law exists has troubling implications. The Opinion opens the door to the cooptation of the judiciary for what are at, bottom, political disputes. Politicians, armed with majority support, could weaponize unproven allegations of misconduct against a minority faction and, consistent with the Appellate Court's decision, petition courts to limit the ability of the minority faction to participate in the political process. Since the availability of such injunctive relief does not depend on the existence of a neutral and generally applicable statute or ordinance whose application is subject to judicial review, the recipients of such a sanction have few, if any, meaningful ways to oppose such action.

Second, the Opinion opens the door to orders permanently enjoining officials for personal attributes, rather than clear and identifiable conflicts of interest. Commissioner Coates was enjoined because, as the trial court found, she exhibited racial bias. Assuming, for the sake of argument, the finding of racial bias was adequately supported, which Commissioner Coates expressly denies, the effect of this finding is not limited only to the instant proceeding but may potentially serve as grounds to enjoin Commissioner Coates from considering issues involving any White employee of Charles County. Where the

underlying conflict of interest is racial bias, there is no logical limit to the judicial intervention that may be invoked in response to this bias. These troubling implications warrant consideration by this Court.

CONCLUSION

For the reasons stated above, Petitioner Commissioner Thomasina O. Coates respectfully requests that this Court grant the writ of certiorari.

COMMISSIONER THOMASINA O. COATES

By counsel,

/s/ John D. Perry
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WORD COUNT CERTIFICATION

The undersigned certifies that, pursuant to Maryland Rule 8-303(b)(1), this Petition for Writ of Certiorari is 3,722 words and 15 pages excluding the caption, signature block, word count certificate, and certificate of service.

/s/ John D. Perry

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August, 2025, a true and accurate copy of the foregoing was served email and mail on:

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Entered: Clerk, Circuit Court for
Charles County, MD
October 17, 2023

EXHIBIT A

IN THE
CIRCUIT COURT FOR CHARLES COUNTY

COMMISSIONER AMANDA M. STEWART, *et al.*,	*	
Plaintiffs,	*	
v.	*	Case No.: C-08-CV-23-000002
CHARLES COUNTY BOARD OF COUNTY COMMISSIONERS, *et al.*,	*	
Defendants.	*	

* * * * *

ORDER

1. Upon consideration of:

(a) Plaintiff Commissioners Amanda M. Stewart's and Gilbert O. Bowling, III's request for declaratory relief in their December 30, 2022 Verified Complaint in the form of a permanent injunction to enjoin Defendant Commissioner Thomasina O. Coates from participating in decisions regarding Plaintiff-Intervenor County Administrator Mark Belton's employment and participating in any vote to undo or otherwise modify the Defendant Charles County Board of County Commissioners' (the "Board") June 9, 2020 Prompt and Remedial Action ("PRA") or rescind the Board's June 9, 2020 amendment to the Commissioners' Rules of Procedures;

(b) Defendant Coates's request for declaratory relief in her February 24, 2023 Verified Counter-Claim and Cross-Claim;

(c) Defendant Coates's September 7, 2023 Trial Brief for Hearing on Plaintiff Commissioners' Request for a Preliminary Injunction in opposition thereto;

(d) The relevant evidence introduced by the Parties and admitted by the Court at the September 8, 2023 hearing;

(e) Counsel's argument on September 18, 2023;

(f) Defendant Coates's September 25, 2023 Motion for Reconsideration, Plaintiff Commissioners' September 26, 2023 Response thereto, and Defendant Coates's September 27, 2023 Reply in support of same; and

(g) Counsels' argument on October 13, 2023 concerning Defendant Coates's Motion for Reconsideration and the Court's grant of a permanent, rather than preliminary, injunction.

2. And having found and concluded that:

(a) Additional discovery or other proceedings is unlikely to result in relevant and admissible evidence;

(b) The PRA and amendment to the Commissioners' Rules of Procedures are valid and enforceable;

(c) Plaintiff Commissioners have established both the standards for a preliminary injunction and a permanent injunction on the merits; and

(d) The Parties were afforded adequate notice and an opportunity to be heard with respect to whether a hearing on the merits would be necessary in light of the Court's findings issued orally on September 21, 2023.

3. For the reasons stated in the Court's oral rulings on the record on September 21, 2023, and October 13, 2023, which are hereby fully incorporated into this Order, and pursuant to Rule 15-502(b), which allows the Court to issue an injunction "at any stage of an action" and "upon the terms and conditions justice may require," and Rule 15-505(b), which authorizes this Court to consolidate "a trial on the merits" with a hearing on the preliminary injunction "[b]efore or

after commencement of the hearing," it is this 16TH day of OCTOBER, 2023, by the Circuit Court for Charles County:

ORDERED, that the Temporary Restraining Order issued on January 24, 2023, be and hereby is TERMINATED; and it is further

ORDERED, that Plaintiff Commissioners' request for declaratory and injunctive relief in Counts I and II of their Verified Complaint in the form of a permanent injunction requested in their Verified Complaint be and hereby is GRANTED; and it is further

ORDERED, that Defendant Coates be and hereby is ENJOINED from participating in any decisions concerning Plaintiff-Intervenor Belton's employment; and it is further

ORDERED, that Defendant Coates be and hereby is ENJOINED from having any input in any decision making, performance evaluation, contract negotiation or other employment decision regarding Plaintiff-Intervenor Belton; and it is further

ORDERED, that Defendant Coates be and hereby is ENJOINED from communicating policy initiatives and staff requests to Plaintiff-Intervenor Belton except through the Board's President or Vice President; and it is further

ORDERED, that Defendant Coates be and hereby is ENJOINED from directing, contacting, emailing, or calling Plaintiff-Intervenor Belton directly; and it is further

ORDERED, that Defendants Coates and the Board be and hereby are ENJOINED from taking any action with a vote that includes Defendant Coates to:

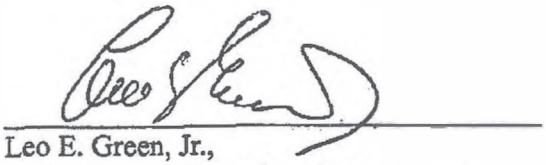
(a) rescind, amend, or otherwise modify the PRA; or

(b) rescind the June 9, 2020, amendment to the Commissioners' Rules of Procedures; and it is further

ORDERED, that Plaintiff Commissioners' request in their Response to Defendant Coates's Motion for Reconsideration to voluntarily dismiss Count III of their Verified Complaint is GRANTED and Count III be and hereby is DISMISSED; and it is further

ORDERED, that Plaintiff Commissioners' request in their Response to Defendant Coates's Motion for Reconsideration to voluntarily dismiss Count IV of their Verified Complaint is hereby GRANTED and Count IV be and hereby is DISMISSED; and it is further

ORDERED that Defendant Coates's request for declaratory relief in Count 1 of her Verified Counter-Claim and Cross-Claim be and hereby is DENIED and DISMISSED.



Leo E. Green, Jr.,
Judge, Circuit Court for Charles County

Maryland Judiciary Case Search

NOTICE: Available

Case Detail

Case Information

Court System: **Circuit Court For Charles County - Civil**
Location: **Charles Circuit Court**
Case Number: **C-08-CV-23-000002**
Title: **Amanda Stewart, et al. vs.The Charles County Board of County Commissioners, et al.**
Case Type: **Declaratory Judgment**
Filing Date: **12/30/2022**
Case Status: **Appealed**

Other Reference Numbers

Case Appealed: **ACM-REG-2133-2022**
Case Appealed: **ACM-REG-1623-2023**

Involved Parties Information

Defendant

Name: **Patterson, Ralph E.**
Removal Date: **02/14/2023**

Address: **COMMISSIONER, in his official capacity,**
200 Baltimore Street
City: **La Plata** State: **MD** Zip Code: **20646**

Attorney(s) for the Defendant

Name: **Concepcion, Theresa Luz**
Appearance Date: **01/06/2023**
Removal Date: **02/14/2023**

Name: **BARNARD, THOMAS**
Appearance Date: **01/06/2023**
Removal Date: **02/14/2023**
Address Line 1: **100 LIGHT STREET**
City: **BALTIMORE** State: **MD** Zip Code: **21202**

Comment:

File Date: **09/22/2023**
Document Name: **Hearing Notice Issued**
Comment: **Copies sent to Parties by AO Clerk**

File Date: **09/25/2023**
Document Name: **Motion - Reconsideration**
Comment: **Defendant Commissioner Thomasina O. Coates' Motion for Reconsideration**

File Date: **09/25/2023**
Document Name: **Motion - Shorten Time**
Comment: **Defendant Commissioner Thomasina O. Coates' Motion to Shorten Time to Respond to Motion for Reconsideration**

File Date: **09/26/2023**
Document Name: **Response/Reply**
Comment: **Plaintiff Commissioners' Response to Defendant Coates's Motion for Reconsideration & Motion to Shorten Time**

File Date: **09/27/2023**
Document Name: **Reply to Opposition**
Comment: **Defendant Commissioner Thomasina O. Coates' Reply to Plaintiff-Commissioners' Response to Motion for Reconsideration**

File Date: **10/03/2023**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **E-served Attorney for Plaintiffs, Attorney for Defendants and Attorney for Interested Person**

File Date: **10/04/2023**
Document Name: **Hearing Notice Issued**
Comment: **Copies sent to Parties by AO Clerk**

File Date: **10/04/2023**
Document Name: **Memorandum**
Comment: **from Chambers to AO**

File Date: **10/13/2023**
Document Name: **Hearing Sheet**

Comment:

File Date: **10/17/2023**
Document Name: **Order**
Comment: **regarding Injunction and Motion for Reconsideration. Copies Eserved to attorneys**

File Date: **10/17/2023**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Order**

File Date: **10/17/2023**
Document Name: **Notice of Appeal to ACM**
Comment: **Notice of Appeal**

File Date: **10/17/2023**
Document Name: **Civil Information Report - Appeal to ACM**
Comment: **Civil Information Report--Appeal**

File Date: **11/07/2023**
Document Name: **Mandate & Statement of Costs**
Comment: **Appeal Dismissed**

File Date: **11/17/2023**
Document Name: **Order to Proceed**
Comment: **without a Prehearing Conference or Alternative Dispute Resolution from the Appellate Court of Maryland**

File Date: **11/17/2023**
Document Name: **Transcript**
Comment:

File Date: **11/17/2023**
Document Name: **Transcript**
Comment:

File Date: **11/17/2023**
Document Name: **Transcript**
Comment:

File Date: **11/17/2023**
Document Name: **Transcript**

Comment:

File Date: **12/22/2023**
Document Name: **Miscellaneous Document**
Comment: **Proposed Order with Judge's Notation "Moot. Court addressed in final ruling"**

File Date: **01/22/2024**
Document Name: **Certification**
Comment:

File Date: **01/22/2024**
Document Name: **Original Record Sent**
Comment: **to the Appellate Court of Maryland. Copy of Record Index mailed to Attys**

File Date: **07/03/2025**
Document Name: **Reported Opinion from ACM**
Comment: **Judgment of the Circuit Court for Charles County Affirmed in Part. Vacated in Part. and Remanded for further Proceedings consistent with this Opioion.**

File Date: **08/04/2025**
Document Name: **Mandate & Statement of Costs**
Comment: **Judgment of the Circuit Court for Charles County Affirmed in Part, Vacated in Part and Remanded for further Proceedings**

File Date: **08/08/2025**
Document Name: **Line**
Comment: **Line Regarding Counsel's Change of Firm Affiliation and Contact Information**

File Date: **08/08/2025**
Document Name: **Motion/Request/Notice - Strike/Withdraw and Enter Appearance**
Comment: **Motion to Withdraw Appearance of Counsel**

File Date: **08/13/2025**
Document Name: **Order**
Comment: **Order Withdrawing Appearance. Copies eserved**

File Date: **08/13/2025**
Document Name: **Writ /Summons/Pleading - Electronic Service**
Comment: **Order - Withdraw Appearance**

Service Information

Service Type	Issued Date
Summons Issued	01/03/2023

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EXHIBIT B

IN THE CIRCUIT COURT FOR CHARLES COUNTY, MARYLAND

IN THE MATTER OF:

COMMISSIONER AMANDA S. STEWART :
Et al. :
Plaintiff :
: CASE NO.: C-08-CV-23-000002
Vs. :
:
COMMISSIONER THOMASINA O. COATES:
Et al. :
Defendant :

OFFICIAL TRANSCRIPT OF PROCEEDINGS

ORAL OPINION HEARING - VIA ZOOM

FROM SEPTEMBER 21, 2023

BEFORE: THE HONORABLE LEO E. GREEN
VISITING JUDGE

APPEARANCES:

On behalf of the Plaintiff:
Andrew D. Levy, Esq.
Anthony May, Esq.

On behalf of Interested Party Mark M. Belton:
Bruce L. Marcus, Esq.

On behalf of the Defendant:
Mariam W. Tadros, Esq.
John D. Perry, Esq.

On behalf of Charles County Bd. of County Commissioners
Kevin Karpinski, Esq.

Transcribed by:

Neca Rocco

CONTENTS

ORAL OPINION HEARING

[3:07:36.]

JUDGE GREEN (ZOOM): Alright, Madam Clerk, the Court calls the case of the Honorable Amanda Stewart, et al vs. THC Charles County Commissioners, et al, C-08-CV-23-2. It was the second case filed this year.

Good afternoon, folks. I have all counsel present, and they have been accounted for off the record, and they were all present before me.

I need to make an announcement before I render this decision., and I need to remind everybody that everything, you cannot record, photograph, or do anything with this broadcast in any way, shape, or manner.

Counsel knows this, but I am speaking more to the livestream folks than I am from that end. So, I appreciate it. All lawyers are present and accounted for.

Folks, let me first say, when I reflect upon my career, I cannot think of a harder civil case that I have been presented with over the years.

This is a case that I have thought about more over time, maybe because it has been pending with me for nine months, which to the average person is a long time, and to a

judge that is a long time, too, and lawyer time is rather quick.

I said this when we concluded our oral arguments on Monday, and I want to say it again because I have a larger audience here today, that the lawyers have been fantastic.

The plaintiff's lawyers which represent Commissioners Stewart, Bowling, and then Mr. Belton, have been fabulous in arguing the facts of this case.

The lawyers who have represented Commissioner Coates, again, have done a wonderful job in showing me some of the law that does not fit this particular case and the unusual facts.

Generally, for this member of the bench, it has been easy to fit the facts into the law. The puzzle pieces of the law and the facts, they usually come together nicely for the Court to achieve justice, or at least in my mind to achieve justice.

This case is difficult because it is unique, the requests so bold, and the resolution will have profound effects on all, not only just the commissioners, the immediate staff, but everybody in this case. It is a

profound case, one that will have immediate if not lasting results.

I am fond of Martin Luther King, not only because he was a great leader but as a Catholic high school student, I was given a great deal of his teachings, both on social justice and on theology.

One of my favorite Martin Luther King quotes is this, "Injustice anywhere is a threat to justice everywhere." I endeavor to seek justice here, and I pray to God that I render justice correctly in this case.

The Court held a hearing on January 24th, 2023, at which time this member of the bench dismissed Commissioners Collins and Patterson as defendants, and issued a temporary injunction against Commissioner Coates.

Commissioner Coates waived the rights to a hearing within twenty days, pursuant to the rule, and the parties proceeded with limited discovery as well as mediation. Before the Court now is whether or not a permanent injunction should be granted.

To the citizens that are listening, a prelude to these remarks and opinions. The Court must work through a variety

of legal issues in order to give a ruling. The lawyers more than understand this.

Each part of this decision is important. Any one decision could be a reason for the higher courts to find that I am in error.

As I said, this arises out of a conflict among the Charles County Board of County Commissioners, and it spans over a couple of years, but at the same time it spans really over actions that were taken in December, specifically December 13th, 2022.

On December 30th, 2022, Commissioners Bowling and Stewart filed their verified complaint for a temporary restraining order, for a permanent injunctions, and declaratory relief, and/or alternatively a writ of mandamus on their verified complaint against the Board, as I said, Commissioner Patterson and President Collins Reuben Collins, and Commissioner Thomasina Coates. Collectively, they were the original defendant.

This case was docketed on what I believe to be January 2nd, 2023. It was the second case of this calendar year for the court.

In the verified commission, Commissioner Stewart and Commissioner Bowling sought a declaratory judgment concerning the rights and obligations of the parties with respect to Commissioner Coates's authority to participate in decisions regarding the county administrator, Mark Belton's employment.

Additionally, the commissioner, the plaintiff commissioners, that is again Stewart and Bowling, sought by way of an injunction or a mandamus to prevent the original defendants, now and at any time in the future, from allowing Commissioner Coates to participate in discussion or votes concerning terms and conditions in Mr. Belton's employment, and from taking any action, a) undue or otherwise modify the June 9th, 2020 prompt and remedial action, or rescind the June 9th, 2020 amendment to the Commissioner Rules of Procedure, in a vote that includes Commissioner Coates.

As I stated earlier, I, for reasons stated on the record on January 24th of 2023, did grant the dismissal of Commissioner Patterson and Commissioner, or I'm sorry Commissioners Patterson and Collins. Those issues are not before me today.

It is established, and there is no doubt, that Mark Belton is the present county administrator, and he was allowed to intervene, and was aligned in the plaintiff category. This is extremely important, that he is aligned in the plaintiff category.

Again, we must remember what that PRA, and we use the term PRA, all of us have, but we use prompt remedial action, was enacted after the commission received what we have labeled as the Sergeant report. This was written by Attorney Bernadette Sergeant.

And in this report, she found, among other things, that Commissioner Coates subjected County Administrator Belton to an abusive and hostile work environment. There were many examples of direct racial bias and lack of credibility on the part of Commissioner Coates, and overwhelming evidence to substantiate Mr. Belton's claims against Ms. Coates.

Again, County Administrator Belton suffered from the effect of Commissioner Coates having made disparaging and false comments about him to county officials, employees, residents, and state officials.

A subsequent complaint by Commissioner Coates against Belton was found to be baseless and retaliatory. The report

was so unfavorable that the Board's president, Reuben Collins, declared at the time, "I believe we are left with no other choice based on the facts presented in the investigation, but to adopt the prompt remedial measures necessary to protect both the County and ourselves as individuals."

We must look at and determine what the prompt remedial action said. What did it say? Specifically the Board determined that Commissioner Coates would be excluded from having any input in any decision making performance evaluations, contract negotiations, or other employment concerning Mr. Belton." I believe it said County Administrator Belton, but for this purpose, they are both interchangeable.

"Require, that she would be required to communicate policy initiatives and staff requests to Mr. Belton through the commission," that is the president or the vice president at the time, and not to Mr. Belton directly.

It also required her to refrain from directly contacting, emailing, or calling Mr. Belton directly.

There was no expiration to this action. And what prompted Commissioner Coates to take immediate action after

the November 2022 election was the fact that there was a sunset or expiration date on the PRA.

Also troubling to this member of the bench is that the commissioners, themselves, and perhaps the staff, the county administrator, the human services, or human relations director, and maybe a couple or a handful more, or maybe more than a handful, maybe two or three handfuls, no other person knew about the PRA.

The amendment to the policy and procedures were presumptively known to all as it was published as had been pointed out by Counsel for Commissioner Coates. It was never voted on by the commission in open session.

How was anyone, unless they had great insight, was basically a political junkie, which I don't say that disparagingly, or working, or had some working knowledge or insider information as to what the commissioners matters were before them, would have known why this provision was, which is laudatory in every respect, was placed as an amendment. This was a mistake.

Simply put, the PRA was flawed in the Court's opinion for two reasons. One, as I said, it lacked a sunset. And two, it lacked any sunshine. It was there, it was not seen

by the light of day, or at least it recently was, recent with this matter was made public.

It is undisputed that under Charles County law and the laws of the State of Maryland that are applicable here, the Commissioners only hire one person, that is the county administrator. At this point, that is Mark Belton.

As I work through these legal issues, the further facts will be supplied as they come out.

Going back to my days as a Constitutional law student, the professor used to state that we must first determine if the litigant has standing to bring a Constitutional question. And I am pretty sure that is still the law, and still the standard, and still what the Court needs to do.

But if I am wrong, I am going to address it first because that is the way I, my way of learning Constitutional law was in a way that I addressed it over the twenty-plus years I have been a judge.

We have three plaintiffs here, Commissioner Stewart, Commissioner Bowling, and Mark Belton. The easiest of these three to determine if they have standing, is Mark Belton. In every respect, his job is on the line, so to speak.

It happens with every administrator, county or municipal director, county administrator, different words are used, different words in different counties. But here, we have county administrator. He had more than standing, that is the easy call in my vote.

Commissioners Stewart and Bowling are a bit more difficult, but they do standing for the following reasons. The body as a whole, the Board of County Commissioners authorized this action in their December 13th, 2022 meeting. That normally does not carry the day, but it is extremely helpful for the Court.

Also, I found case law, really, that came to me as part of another case, that states that, "In determining whether an implied right of action exists, our central inquiry is whether the legislative body intended to provide a private right to bring an action."

Now, we are going to get into this, whether this was a legislative or administrative act here, but they legislated this that evening, and they declared it then. Now, whether that was administrative or legislative, that is different. But here, the body public did so on December 13th, 2022, and granted the right to bring this action. That is one reason.

The second reason, the commissioners have a right and duty, that is Commissioners Stewart and Bowling, have a right and duty to protect their county, and protect themselves, and their colleagues. I agree with their counsel in that regard.

Also, the third reason is, they have a duty to protect the county from violations of state and federal law relative to discrimination and other matters, but here, discrimination is the allegation, and this is what we are working with.

Now, the Court has long wrestled, and I am not going to say that this has been an easy call. I related this to many of the lawyers during, I don't know, two, maybe three, maybe four times. I have long wrestled with whether this is a political issue or not.

However, one must first determine, in my view, what type of action was the PRA and the amended Rules of Procedure? Was it legislative or was it administrative? To me, this is the most, this is the key, the root, the trunk, the root of where I can go in different things.

If I find that it is legislative, we are dead, I can't go any further. If I find it is administrative, I can go

further. This is the truncation, this is the determination of which road I go down, this is the determination of where it is.

The short answer is this, and it is important to parse this out. And there is some question whether I can sever these issues, but I do believe I can. Because the short answer is very simple. The amendment to the rules and procedures, while flawed, and it was flawed. And because it was not done in public session, it was not done in an open body, it was not resolved, but it ended up as a rule, was done behind closed doors, is flawed. But that is purely legislative.

So, what is the PRA? That is the real question here, and that is the PRA, what we have and what we do, what we figure is what is the PRA? And what is the action that is being called upon by the plaintiff commissioners and Mr. Belton? Is it administrative or is it legislative?

Here it is simple. A case that came down a day after we had our hearing on January 24th, 2023, actually our hearing was the 23rd, this came down the 24th, was the Dzurec opinion vs. Calvert County Commissioners.

It specifically stated the code of ethics falls squarely within the common law principles articulated in the Sugearofe (sp.) and the Kenwood Gardens cases. And it said further, to go on, "Under common law, ordinarily, courts will not consider the motives of legislators or public officials when they undertake purely legislative acts."

The court went on to say, "The common law principle that a Court will not review legislative actions for bias or conflict stems from the separation of powers concerning (inaudible) under Article VIII of the Declaration of Rights."

And that is the Maryland law, that is the Maryland Constitution that said we have a separation of branches of government. And that is Dzurec, which is, comes from the Supreme Court, written by Justice (inaudible). And the citation is given by everybody, but will be supplied by counsel.

Now, to determine whether it is administrative or legislative, the Court must look at and analyze another case. And from the facts that I was given, and the argument, I don't think anybody is in dispute with this.

Because both Plaintiff Commissioner Stewart and Respondent Commissioner Coates both testified that the Board of County Commissioners does many things, from budget, to handling constituent complaints, to legislation. The question is, what is administrative, executive, and legislative?

Justice Harrel, who I know very well because he was, for a long time was an appellate judge and had a chambers down the hall from me in Prince George's County. I knew him well, and agree with him most of the time, but don't agree with him all the time for merit.

[Zoom chimes.]

Wait, I am having some issues here. Alright, Mr. Marcus, could you just kind of mute yourself? I'm sorry.

Justice Harrell said in the Queen Anne Conservation vs. the County Administrators of Queen Ann County, the following: "County commissioners in this present case successfully wore two different hats in four legislative actions followed by administrative and executive action."

"The test to determine when action is legislative, and when executive or administrative, is whether the action is, 1), making a new law, or enacting a general application

which (inaudible), or it is one that merely looks to or facilitates the administrative, execution, or implementation of a law already in force or effect."

I reached a conclusion that the hiring and firing of a county administrator in Charles County is administrative or executive, not legislative. There is no law telling me, or telling anybody, as I said earlier, the first and only thing that the county commissioners do, or the only employee they hire, is the county administrator.

Therefore, I find that the hiring of the administrator is administrative and executive, not legislative.

So, I have gone from that span out of that map. And he is specific, the Dzurec, and I say that name wrong, I'm sure, and I apologize to that resident of Calvert County, which is a neighboring county to Charles County, if I got that name wrong.

So, the one, and then we go through, we have to go through a few more legal questions in order to determine where we are at on this case.

Is the county administrator an employee of the county? I find that he is. And one looks through law and also looks through the contract that has been placed in Evidence. I

believe that gives me a simple answer, those two things give me a simple answer.

And also, the commissioners are his or her boss, or supervisor, and their directive, the county administrator is to carry out the directives of the commission from that end.

So then, that brings us to the question of whether or not the Court can enjoin a commission or a body from certain actions? And as I said, this is a difficult case. The plaintiff commissioners through their attorneys cite the case of Maryland National Capitol Park and Planning Commissioner vs. Elyse Craford.

This is a 1984 case written by the then, Court of Special Appeals. in this case, it does involve race, it does infer the implementation of affirmative action which was at issue.

In Crawford, the Court held that a Court could grant injunctive relief before Crawford exhausted her administrative remedy.

The Crawford Court spent a great deal of ink or time on the exhaustion of administrative remedies and affirmative action, which by the way, were big issues in the United

States Supreme Court and our courts, the Maryland courts, in the 1980s.

At issue there was an anti-discrimination law, and that generally says that all hiring or promotion of others shall not be maintained or conducted in a manner which does not discriminate on the basis of race, color, sex, religion, or national origin.

Federal law does provide that if a court finds that a respondent has intentionally engaged or intentionally engaging in an unlawful employment (inaudible) the Court may enjoin the respondent in such unlawful employment practice in that regard. So, the Court does have that authority. I find that it does.

Another issue that the Court has to resolve is, would the issuance of an injunction violate Commissioner Coates's First Amendment rights? For some reason, this student of the Constitution and the Maryland Declaration of Rights, contemplated and looked hard at this First Amendment issue. For some reason, it helped.

But in the end, I resolved that an injunction does in a tremendous amount, not only to Commissioner Coates, but to the folks she represents. It mutes their voice, it takes

them out of the hiring process, that is, there is also more difficulty in this when one realizes that the constituents that she represents, that an election occurred less than a year ago and no one knew of the PRA, or that it even existed, or that the Sergeant report existed.

Enjoining a person after a party, a body, has adopted a report showing that she has discriminated, is protected, and more than goes to the issue of whether an injunction should be issued.

As Mr. Levy and Mr. May point out in their brief to the Appellate Court, "Being a public official does limit one's speech in many ways."

I can relate that as a judge, as to my speech, political or otherwise, it is limited. I can't say certain things, I can't express opinions, I can't do certain things in my life.

And as well, a commissioner can't do certain things. Here, Commissioner Coates and all the commissioners are the supervisor of the county administrator. In dealing with him or any county administrator, they are called to achieve a high standard. The highest of standards are standards of no discrimination, workplace safety, workplace peace, workplace

harmony. These are high standards, and they are especially important in this day and age.

So, I do not find that the issuance of an injunction violates Commissioner Coates's First Amendment rights. And furthermore, she does still possess many rights, many First Amendment rights in this matter from them.

Which leads me to where I have to look at is to whether or not an injunction should be granted? In issuing a temporary or permanent injunction, all the parties agree that the factors are the same. Now, whether they cite different cases or not, all parties do, and they are pretty standard.

The likelihood of that the plaintiff will succeed on the merits;

The balance of convenience determined by whether greater injury would be done to the defendant by granting the injunction that would result from its refusal;

Whether the plaintiff will suffer irreparable harm or injury unless the injunction is granted;

And four, the public interest.

If there is anybody that needs the one case that seemed to be cited most by everybody, it is the East Side Vending Distributors vs. Pepsi Bottling Group. That is a 2006 case.

But those standards and those factors have been in existence for a long time by the Maryland Court of Appeals and the Maryland Supreme Court.

So, in analyzing this case, I have to look at, one, the likelihood that the plaintiff will succeed on the merits. Unlike many cases that come before the Court, here, the court has the investigation given by a member of the bar, by all accounts a very well respected member of the bar, Attorney Bernadette Sergeant.

This report supports a finding by this Court that there certainly is the likelihood that the plaintiff will succeed on the merits in these allegations. So, I do find that that factor has been met.

The balance of convenience, determining whether greater injury would be done to the defendant by granting the injunction than would result from its refusal. As I have said in the temporary, and I have said many times on the bench, this is the one that is hard for me. It's a hard one to grab.

And I think other members of the bench have the same difficulty. I am not speaking for them, but I am speaking because I have spoken with many members of the bench.

The Court determines that there would be no convenience in allowing Commissioner Coates to cast the deciding vote to terminate County Administrator Belton. She would inevitably trigger an expensive and distracting lawsuit against the Board for employment discrimination. I do find that this factor has been met by the plaintiff.

Three, whether the plaintiff will suffer irreputable injury unless an injunction is granted. Well, Belton easily would suffer irreparable injury into a job that he, by all standards, likes and enjoys, and has stayed with it despite this acrimony.

The Court finds that the restraining order needs to be in place, as the county is responsible for its employment policy. And if the respondent Commissioner Coates remains as process, she places the county in a great financial peril and could place all three plaintiffs with irreparable injury.

Further, to allow Commissioner Coates the ability to fire County Administrator Belton, adds irreparable injury to

Commissioner Stewart and Commissioner Bowling as they will be, the replacement would be tainted, or have a difficulty there. That is a more forward-thinking operation and not the primary premise, or the reason for the court finding that.

Lastly, public interest. What could be said more than the policy of every government that I know of in this great land we call the United States, that racial discrimination should not be tolerated. This is more than adequately appropriate here, made from there.

Finally, let me just say this. Justice is a balance. It requires us to do things at time we do not want to do, or sometimes but we have to do. I have, the Court has resisted making this decision at times because of the strong belief in the separation of powers. That is the judicial, the executive, and the legislative branch.

I feel strongly about that. It is well written in our Constitution. When I raise my right hand, that is one of the things I swear that I will uphold, is both the federal and the Maryland State Constitution. The Maryland State Constitution is what is at issue here, is the separation and they are found in our Declaration of Rights.

I would be less than candid if I did not reveal that my days, and I think I have said this on the bench, and I don't have any problem saying again, my days as a city councilman, and my belief that municipalities and Maryland counties with less populations, such as Charles County, are the best forms of government.

They are the closest to the people and should be influenced by the people, not by outside entities, such as the Court, or given state mandates from the Maryland General Assembly in Annapolis.

I have spoken, this has been a difficult case. It has been difficult, I don't have any problem saying that. That doesn't relieve me of any duty or any obligation. I take these freely and voluntarily. And I said yes when they asked me to do this.

So, I know this I has been difficult. It is one of those cases that is difficult and will have lasting effects.

Lastly, a directive that I need to make. Therefore, for these reasons, the Court grants the plaintiff's request for a permanent injunction.

Now, as I have done in all cases, I turn to the plaintiff, and in this matter, Mr. Levy, Mr. May, and Mr.

Marcus. I think Mr. May, may be the one that has to do this to work, but I am going to ask you to submit an order for me to sign within ten days.

Counsel, I believe ten days to submit the order is reasonable, but I can be persuaded that more time should be granted.

Madam Clerk, kindly show that the Court grants the permanent injunction; order to be submitted by plaintiffs within, unless I hear otherwise, Counsel Levy, May, and Marcus. Is ten days sufficient, Mr. Levy, Mr. May, and Mr. Marcus?

ATTORNEY LEVY (ZOOM): It is, Your Honor. I just want clarification. Did the Court enter a permanent as opposed to a preliminary injunction?

JUDGE GREEN (ZOOM): The permanent, yeah.

ATTORNEY LEVY (ZOOM): Okay, thank you. And I am sure ten days is adequate. We will make sure that Ms. Tadros has an opportunity to review before we submit it.

JUDGE GREEN (ZOOM): Yeah, kindly don't, you don't need to send it to me on that, but then if finally, Mr. May I am kind of really speaking to you, because I know you are the, sorry about that, but I think that is the—

ATTORNEY LEVY (ZOOM): No, he is doing all the work, you've got that right, Your Honor.

JUDGE GREEN (ZOOM): Alright, so, but make sure we—

ATTORNEY PERRY (ZOOM): No objection.

JUDGE GREEN (ZOOM): Yeah, and send it to me, to my two emails, okay? There is a reason for that, but I am not going to say it in public. But I think the lawyers know that. Okay, are there any further questions?

ATTORNEY LEVY (ZOOM): No, Your Honor. I just want to, I'm sure I speak for all counsel and the parties, thank you for the care and attention that you have devoted to this case. I think it has been a difficult matter and a unique matter for everyone involved. And we appreciate the seriousness you—

JUDGE GREEN (ZOOM): Well, you know, I mean, you all did that. And to Commissioner Coates's attorneys, you did a great job. You made me think a lot. And there were many, many nights I came back up to my room here and thought this through, I read some cases, did some things. Everybody was well represented in this matter.

So, I don't always say that, but I will in this. So, I know it is disappointing to be on one side. I was a lawyer

once, and I was a lawyer recently, so I know where it's at, so I speak to that.

And so with that, the court will conclude, unless Madam Clerk has anything, or anybody else has anything that they wish me to take up? I greatly appreciate your courtesy to me and allowing me a few days to think this thing through further.

I will send, Counsel, in a few minutes, my notes that have the citations on them. I don't really particularly think you are going to need those to do the order, but there may be one or two that aren't, were not common knowledge to you all during our thing, okay? Thank you, God bless.

ATTORNEY LEVY (ZOOM): Thank you, Your Honor.

JUDGE GREEN (ZOOM): Thank you, take care.

ATTORNEY TADROS (ZOOM): Thank you, Your Honor.

ATTORNEY MARCUS (ZOOM): Thank you, Your Honor.

JUDGE GREEN (ZOOM): Madam Clerk, we will conclude these matters, and we will leave that from there okay? Thanks.

[Crosstalk - inaudible.]

[Off the record - 3:43:59.]

CERTIFICATE OF TRANSCRIPTIONIST

I, Neca Rocco, do hereby certify that the foregoing transcription was reduced to typewriting via digital recording provided to me; that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were transcribed; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action. Any mistakes or omissions were due to the quality of the CD and not for any other purposes.

Neca Rocco

Neca Rocco
Transcriptionist

EXHIBIT C

Thomasina Coates v. Charles County Board of Commissioners, et al., No. 1623, September Term, 2023. Opinion by Nazarian, J.

PERMANENT INJUNCTIONS – STANDING – MARYLAND UNIFORM DECLARATORY JUDGMENT ACT

The Maryland Uniform Declaratory Judgment Act confers standing if a plaintiff meets one of the three statutory standing requirements set forth in Md. Code (1974, 2020 Repl. Vol.), §§ 3-401, 3-406 of the Courts & Judicial Proceedings Article and if declaratory relief will serve to terminate the controversy between the parties.

PERMANENT INJUNCTIONS – STANDING – MARYLAND UNIFORM DECLARATORY JUDGMENT ACT

Declaratory relief under the Maryland Uniform Declaratory Judgment Act is an appropriate vehicle for resolving disputes among and between government bodies, especially where the conflict stands to impair the government's ability to function or perform its essential duties.

PERMANENT INJUNCTIONS – COMMON LAW STANDING – ELECTED OFFICIALS

Individual commissioners of code county board of commissioners had common law standing to seek declaratory and injunctive relief against board and its members based on plaintiff commissioners' direct interest in protecting the integrity of the board, preserving public and employee confidence in their ability to govern effectively, and upholding their oath to execute federal, state, and county laws faithfully and to govern in the interests of their constituents.

PERMANENT INJUNCTIONS – POLITICAL QUESTION – LOCAL GOVERNMENT

Code county board of commissioners' duty to govern in compliance with its prior administrative decisions, rules of procedure, and state and federal law, board's impending breach of that duty, and circuit court's ability to grant declaratory and injunctive relief rendered controversy between individual board members capable of judicial resolution.

PERMANENT INJUNCTIONS – POLITICAL QUESTION – EXPRESS POWERS ACT

The Express Powers Act's commitment of the power to appoint, remove, and discipline county officers extends to the local legislative body, not individual commissioners. Accordingly, the circuit court could decide whether defendant commissioner had the authority to remove board's county administrator without offending the political question doctrine. Md. Code (2013, 2013 Repl. Vol.), §§ 10-303(b)–(c), 12-107(b) of the Local Government Article.

PERMANENT INJUNCTION – POLITICAL QUESTION – LOCAL GOVERNMENT

Indicia of political question not present where code county board of commissioners authorized plaintiff commissioners to seek declaratory relief from circuit court, plaintiffs sued to enforce board's administrative decision, and court kept issue of injunctive relief focused on defendant commissioner's authority to vote, rather than that of the board.

PERMANENT INJUNCTION – PROMPT AND REMEDIAL ACTION – LOCAL GOVERNMENT

Code county board of commissioners had administrative authority to take prompt and remedial action on matters affecting county administrator's employment, making board's personnel decision enforceable via injunction.

PERMANENT INJUNCTION – PROMPT AND REMEDIAL ACTION – EMPLOYMENT DISCRIMINATION

The question of whether a plaintiff is an "employee" entitled to protection under Title VII of the Civil Rights Act of 1964 rather than an "appointee on the policy making level" depends on the extent to which plaintiff's position is entrusted with extensive decision making authority and discretionary power. *See* 42 U.S.C. § 2000e(f).

PERMANENT INJUNCTION – PROMPT AND REMEDIAL ACTION – EMPLOYMENT DISCRIMINATION

County administrator for code county board of commissioners is an "employee" under Title VII of the Civil Rights Act of 1964 where administrator's powers are mostly executive,

county administrator position does not play a role in formulating public policy for the county, and board has not entrusted administrator with decision making authority or discretionary power on high-impact issues of public interest and importance. *See* 42 U.S.C. § 2000e-2(a).

EVIDENCE – RELEVANCE – ABUSE OF DISCRETION

When adjudicating a preliminary injunction, a circuit court does not abuse its discretion by focusing the scope of evidentiary proceedings on future, rather than past, acts, and rendering evidentiary rulings to that effect.

ATTORNEY CLIENT PRIVILEGE – WAIVER – LOCAL GOVERNMENT

Plaintiff commissioners could not waive attorney-client privilege on behalf of code county board of commissioners by attaching privileged, investigative report to their civil complaint where board received legal advice from outside attorney-investigator it retained and would have had to waive the privileged confidential communications it received.

Circuit Court for Charles County
Case No. C-08-CV-23-000002

REPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1623

September Term, 2023

THOMASINA COATES

v.

CHARLES COUNTY BOARD OF COMMISSIONERS, ET AL.

Nazarian,
Friedman,
Zic,

JJ.

Opinion by Nazarian, J.

Filed: June 30, 2025

At its core, this is a story about governance. In a closed session, the Board of County Commissioners for Charles County (the "Board") voted to take Prompt and Remedial Action ("PRA") restricting the conduct of Commissioner Thomasina O. Coates based on the findings of an independent investigation into County Administrator Mark Belton's personnel complaint against her. After resuming its meeting in open session, the Board amended its Rules of Procedure (the "Rules") to include a policy statement prohibiting commissioners from engaging in "intimidating and disruptive workplace behaviors" against each other or county employees, including discrimination, harassment, defamation, or bullying. The amendment established a human resources process for any county employee alleging workplace mistreatment by a commissioner.

Two-and-a-half years later, Commissioner Coates tried to cast the deciding Board vote to fire Mr. Belton. Commissioners Gilbert O. Bowling, III, and Amanda M. Stewart objected to the validity of any Board action that included her vote. The Board authorized Commissioners Stewart and Bowling (the "Commissioners") to bring a civil action seeking a declaratory judgment on Commissioner Coates's authority to vote on Mr. Belton's employment in light of the PRA. The Commissioners did so, and after nine months of litigation, the Circuit Court for Charles County issued a permanent injunction in their favor. The order prohibited the Board from taking any action to rescind, amend, or modify the PRA or to rescind the amendment to the Rules with a vote that included Commissioner Coates. She appeals that judgment, and we affirm the circuit court's decisions and analysis in all respects. As a procedural matter, we vacate the dismissal of Commissioner Coates's counterclaim for declaratory judgment and remand for entry of a declaratory judgment

consistent with the circuit court's findings and conclusions as affirmed by this opinion.

I. BACKGROUND

Charles County operates under code home rule and is governed by a board of five county commissioners—a president, a vice president, and three district commissioners—elected at large to four-year terms. The Board conducts business during regular and special meetings where it votes in open (public) or closed (non-public) session on matters raised by motion. The Board passes local laws on "legislative days" after first holding a public hearing or information session, and it has adopted Rules for conducting its internal affairs. The Board president functions as the lead executive officer and works closely with the county administrator, who functions as the chief administrative officer of the county and manages the day-to-day operations of county government and all county staff. The Board can appoint and terminate the county administrator by majority vote, but it cannot hire or fire any other county employee.

A. Personnel Complaints and Investigation

On January 8, 2019, the Board—then made up of President Reuben B. Collins, II, Vice President Bobby Rucci, Commissioners Stewart and Bowling, and Commissioner Coates—entered into an agreement to employ Mr. Belton as county administrator. About five months later, Mr. Belton complained to the county human resources director that Commissioner Coates had sent him hostile and abusive emails and had made disparaging remarks about him to county employees, county residents, and state officials. After Mr. Belton's complaint against Commissioner Coates, she filed a human resources complaint against him alleging racial discrimination.

The Board had retained an outside investigator, Bernadette Sargeant, to investigate a separate discrimination complaint filed by a county employee against the Board, Mr. Belton, and his staff.[1] Ms. Sargeant had served previously as counsel to the Ethics Committee of the United States House of Representatives, and the Board and Mr. Belton's staff held her in high regard. The scope of her services expanded to include investigating the personnel complaints between Mr. Belton and Commissioner Coates.

After interviewing seven people and reviewing at least 137 documents, Ms. Sargeant produced an investigative report detailing her factual findings and conclusions (the "Report"). Based on "overwhelming" support, the Report concluded that Commissioner Coates had subjected Mr. Belton to an abusive hostile work environment and that Mr. Belton had suffered from Commissioner Coates's disparaging comments about him to county employees, county residents, and state officials. The Report referenced "strong direct evidence" of her racial biases and flagged failures by the Board which, together, increased potential liability exposure for the county:

> [Commissioner Coates's] infractions were so open and flagrant and recognized by the Board. Both Human Resources and the Board President tried to address [Commissioner Coates's] abusive tone and approach regarding [Mr. Belton] but their efforts failed and the conduct escalated and continued. It also appears likely that it was known to other commissioners that [Commissioner Coates] was making defamatory statements about [Mr. Belton] publicly in the community. Finally, and perhaps most troubling in terms of liability exposure, is the fact that when efforts to get [Commissioner Coates] to improve her behavior failed, [Mr. Belton] was approached about resigning.

[1] Ms. Sargeant's investigation found that the employee's claims weren't substantiated.

Further, the investigation concluded that Commissioner Coates's discrimination allegations against Mr. Belton were unsubstantiated. President Collins read a copy of the Report and arranged to have Ms. Sargeant present her findings to the Board on June 9, 2020.

B. June 9, 2020 Board Meeting

At its regular meeting on June 9, 2020, the Board voted to enter closed session "to seek legal advice pertaining to personnel matters and investigations." The meeting included all commissioners, Ms. Sargeant, County Attorney Wesley Adams, and the Board's outside labor counsel, Eric Paltell. The commissioners received an executive summary of the Report, and Ms. Sargeant presented her investigative findings to the Board. After she received and answered the Board's questions, the county attorney and outside counsel advised the Board.

President Collins, an attorney experienced in employment law, stated that he felt the Board had "no other choice . . . but to adopt prompt and remedial measures necessary to protect" the county and individual commissioners. By a 4-1 vote, the Board passed a motion to take the prompt and remedial action by restricting Commissioner Coates's conduct and authority relative to Mr. Belton:

> that [Commissioner Coates] be excluded from having any input in any decision making, performance evaluation, contract negotiation or any other employment decision regarding Mark Belton, additionally, that [Commissioner Coates] will only communicate policy initiatives and staff requests through the Commissioner President or Vice-President and that she will refrain from directing, contacting, emailing, or calling the County Administrator directly.

Commissioner Coates voted against the Board's PRA.

The Board returned to open session to consider an amendment of its Rules which, until then, had not included a policy protecting county employees from discrimination, harassment, or bullying by commissioners. The proposed amendment to the Rules established a complaint process for county employees claiming to be aggrieved by a commissioner and an internal protocol for managing complaints and investigations. Under the amendment, related investigative findings would be presented to the Board in closed session, and any Board action would require the unanimous support of all commissioners not subject to the complaint. The amendment set forth available remedial actions including, for example, "public censure and/or suspension of the Commissioner's pay for one or more 30-day periods." And the amendment further proscribed retaliatory action by a commissioner against someone who complained in good faith against them. By a 4-1 vote, the Board amended its Rules; Commissioner Coates voted against the amendment.

The PRA did not include an expiration date and would remain shielded from the public for two-and-a-half years. During that time, the Board didn't take further action relative to the PRA or the amended Rules and Commissioner Coates didn't attempt to invalidate, rescind, or modify the PRA.

C. December 13, 2022 Board Meeting

In November 2022, the voters of Charles County re-elected Commissioners Collins, Stewart, Bowling, and Coates, and elected a new member, Commissioner Ralph E. Patterson to the Board. The Board's first public meeting after the election took place on December 13, 2022. The evening before the meeting, President Collins added the topic of

Mr. Belton's employment to the agenda for a closed meeting discussion.

In the closed meeting, Commissioners Stewart and Bowling objected to Commissioner Coates's participation in any discussion or vote on Mr. Belton's employment in light of the PRA. President Collins questioned the ongoing effect of the PRA under a newly composed Board. Then Commissioners Collins, Patterson, and Coates attempted to pass a motion firing Mr. Belton. Commissioners Stewart and Bowling voted against the motion and contested the legality of the Board's vote due to the PRA. Both the county attorney and outside counsel participated and advised the Board. The county attorney cautioned that the body had acted against his legal advice and the advice of outside counsel and that he considered the vote invalid and illegal. He advised the Board to place Mr. Belton on administrative leave until January 10, 2023, which it did by unanimous vote. With that vote, the Board also authorized Commissioners Stewart and Bowling to bring a declaratory judgment action against Commissioners Coates, Collins, and Patterson to determine Commissioner Coates's authority to vote on Mr. Belton's employment.

D. Litigation

On December 30, 2022, the Commissioners brought a Verified Complaint for Temporary Restraining Order ("TRO"), Permanent Injunction, and Declaratory Judgment[2] in the Circuit Court for Charles County against Commissioners Coates, Collins, and

[2] Counts I and II of the complaint asked for declaratory judgment and injunctive relief, respectively. Count III petitioned for a writ of mandamus and/or prohibition as an alternative to injunctive relief. Count IV asked the court to declare that the defendants aided, abetted, or attempted to commit a discriminatory act.

Patterson and the Board. Commissioner Coates filed a counterclaim seeking a declaratory judgment that Mr. Belton had been removed by the Board on December 13, 2022. Mr. Belton intervened as a party plaintiff, without objection.

On January 24, 2023, the circuit court dismissed the case against Commissioners Patterson and Collins and kept the Board in the case as a party. The court issued a TRO enforcing the PRA on February 15. From there, the parties proceeded to discovery. On August 14, 2023, the Board moved the circuit court to quash foreign subpoenas Commissioner Coates had obtained from the D.C. Superior Court and issued to Ms. Sargeant and her law firm, Stinson, LLC. The court granted the Board's motion and quashed both subpoenas on September 7. On September 13, 2023, the court denied Commissioner Coates's motion to compel the deposition testimony of County Attorney Adams.

After several motion hearings and rulings, a full-day evidentiary hearing on the plaintiffs' preliminary injunction, and closing arguments, the circuit court entered its final judgment on October 17, 2023. The court terminated the TRO and granted a permanent injunction enforcing the PRA. The court enjoined Commissioner Coates and the Board from taking any action to rescind, amend, or otherwise modify the PRA or to rescind the June 9, 2020 amendment to the Board's Rules with a vote that includes Commissioner Coates. And it dismissed Counts III and IV of the Commissioners' complaint and Commissioner Coates's counterclaim. Commissioner Coates noted her appeal of the order that day.

II. DISCUSSION

Commissioner Coates raises six issues on appeal,[3] which we consolidate and recast:

[3] Commissioner Coates listed her Questions Presented as:

1. Did the trial court err, as a matter of law, in entering an injunction (the "Injunction") that, among other things, permanently bars a commissioner on the Charles County Board of County Commissioners from participating in a vote to terminate the employment of the County Administrator?
2. Was the evidence sufficient to support the entry of the Injunction?
3. Did the trial court abuse its discretion in denying Coates' Motion to Compel?
4. Did the trial court abuse its discretion in granting the Motion to Quash?
5. Did the trial court abuse its discretion in precluding the admission of exhibits and sustaining objections to testimony relevant to her defenses?
6. Did the trial court err in dismissing Coates' counterclaim?

The Commissioners listed the following Questions Presented:

1. Did the circuit court err in concluding that injunctive relief enforcing the PRA was appropriate and necessary to prevent irreparable injury to Appellee Commissioners, the Board, County Administrator Belton, and Charles County after "overwhelming" evidence established that Appellant had racially discriminated against Belton and that Appellant intended to do so in the future by voting to terminate his employment?
2. Did the circuit court abuse its discretion when it denied Appellant's requests for expansive and irrelevant discovery to collaterally attack the PRA and the underlying investigation that revealed "overwhelming" evidence of Appellant's discrimination, where Appellant admittedly

Continued . . .

(1) whether the circuit court erred or abused its discretion when it entered the permanent injunction and dismissed Commissioner Coates's counterclaim; and (2) whether the court abused its discretion when it granted the Board's motion to quash her foreign subpoenas, ruled as it did on the admission of exhibits and objections during the parties' preliminary injunction hearing, and denied her motion to compel the county attorney's deposition testimony.

"An injunction is 'a writ framed according to the circumstances of the case commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience.'" *El Bey v. Moorish Sci. Temple of Am., Inc.*, 362 Md. 339, 353 (2001) (*quoting Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 394 (2000)). Ordinarily, the decision to grant an injunction falls within the sound judgment of the circuit court, which we review for abuse of discretion. *County Comm'rs for Carroll Cnty. v. Forty W. Builders, Inc.*, 178 Md. App. 328, 397 (2008) (*citing*

"took no action to" challenge the PRA for more than two years?

3. Did the circuit court abuse its discretion when it dismissed Appellant's counterclaim alleging that Belton had been terminated by a vote of the Board on December 13, 2022, when the uncontroverted evidence established that no official vote occurred?

The Board stated the Questions Presented as:

1. Did the trial court abuse its discretion in denying Appellant's Motion to Compel?
2. Did the trial court abuse its discretion in granting the Board's Motion to Quash?

Mr. Belton adopted the Commissioners' Questions Presented.

Maryland Comm'n on Hum. Rels. v. Downey Commc'ns, Inc., 110 Md. App. 493, 521 (1996)); *see also Tyler v. Sec'y of State*, 230 Md. 18, 20 (1962). A permanent injunction, however, is a final adjudication on the legal merits of the movant's claims, *see State Comm'n on Hum. Rels. v. Talbot Cnty. Det. Ctr.*, 370 Md. 115, 135–36 (2002) (*citing El Bey*, 362 Md. at 354), and we determine first whether the court's conclusions were "'legally correct under a de novo standard of review.'" *Floyd v. Balt. City Council*, 241 Md. App. 199, 208 (2019) (*quoting Johnson v. Francis*, 239 Md. App. 530, 542 (2018)).

We also consider the legal correctness of a decision to dismiss a party's claim. *Higginbotham v. Pub. Serv. Comm'n of Md.*, 171 Md. App. 254, 264 (2006). And we review rulings on motions to compel discovery, motions to quash subpoenas, and the admission of evidence for abuse of discretion. *See Maryland Bd. of Physicians v. Geier*, 225 Md. App. 114, 143 n.19 (2015) (discovery motions), *reconsideration denied in part and granted in part*, 451 Md. 526 (2017); *Floyd*, 241 Md. App. at 207 (motions to quash subpoenas); *Sail Zambezi, Ltd. v. Md. State Highway Admin.*, 217 Md. App. 138, 155 (2014) (admission of evidence).

A. The Circuit Court Permanently Enjoined Commissioner Coates Appropriately Because She Did Not Have The Authority To Vote On Mr. Belton's Employment After June 9, 2020.

Commissioner Coates raises eight arguments to challenge the circuit court's permanent injunction in favor of the Commissioners and Mr. Belton. *First*, she claims that the appellees lacked standing to bring suit against her and the Board. *Second*, she asserts that the court's dismissal of Count IV of the Commissioners' complaint undermined the purpose of the injunction. *Third*, she argues that the political question doctrine barred the

court from adjudicating their claims. *Fourth*, she maintains that the Board enacted the PRA invalidly or *ultra vires*. *Fifth*, she claims that the PRA and the injunction violated the First Amendment to the Constitution of the United States. *Sixth*, she asserts that Mr. Belton's claims under state and federal discrimination laws weren't actionable because he is a "high-level political appointee" rather than an "employee" of the Board. *Seventh*, she argues that the PRA was an unlawful bill of attainder. And *eighth*, she maintains that there wasn't enough evidence to warrant an injunction. We hold that the circuit court did not err legally or abuse its discretion when it entered a permanent injunction against Commissioner Coates and the Board.

1. The Commissioners had statutory and common law standing based on their direct interests in enforcing the PRA and the Rules and in preserving public confidence in the integrity of their office.

First, Commissioner Coates asserts that the Commissioners lacked standing to bring this lawsuit because they didn't suffer an injury from her actions. She argues further that because the complaint alleged that her conduct gave rise to an actionable discrimination claim against the county, Mr. Belton and the Commissioners should have exhausted administrative remedies under employment discrimination laws before seeking judicial relief.

The appellees counter that their complaint is grounded in the Declaratory Judgment Act, which confers standing independently. As sources of standing, the Commissioners point as well to their obligations to implement the county code, specifically its anti-discrimination employment policy, and to ensure the administration of county affairs in

compliance with the PRA and anti-discrimination laws. They claim a legitimate interest in supervising Mr. Belton without interference from Commissioner Coates's discriminatory animus. And Mr. Belton asserts that he's not required to exhaust administrative remedies here because the Commissioners didn't bring an employment discrimination claim against Commissioner Coates or the Board.

The circuit court found that the Commissioners' right and duty to protect themselves, their colleagues, and the county from violating the law conferred standing to sue Commissioner Coates and the Board. As support for its conclusion, the court pointed to the Board's vote authorizing the Commissioners to bring a private cause of action and decided that Mr. Belton had standing because his job was at risk. Because standing is a legal conclusion, we assess the circuit court's decision *de novo*, without deference, to determine whether it was correct. *Green v. Comm'n on Jud. Disabilities*, 247 Md. App. 591, 601 (2020).

Declaratory relief can issue only for justiciable disputes. *See Harford Cnty. v. Schultz*, 280 Md. 77, 85–86 (1977) (holding no justiciable controversy where county asked for declaration that its own acts were unconstitutional). A dispute is justiciable "'when there are interested parties asserting adverse claims'" based on a slate of facts that have transpired and from which "'a legal decision is sought or demanded.'" *Reyes v. Prince George's Cnty.*, 281 Md. 279, 288 (1977) (*quoting* 1 W. Anderson, *Actions for Declaratory Judgments* 67 (2d ed. 1951)). Within the "'umbrella of justiciability'" is the requirement that plaintiffs have standing to bring a lawsuit. *Pizza di Joey, LLC v. Mayor of Balt.*, 470 Md. 308, 343 (2020) (*quoting State v. G & C Gulf, Inc.*, 442 Md. 716, 720 n.2 (2015)). In

Maryland, "'cause-of-action'" standing is sufficient for justiciability, *State Ctr., LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 502 (2014) (*quoting Kendall v. Howard Cnty.*, 431 Md. 590, 593 (2013)), and we look at whether a plaintiff is "'entitled to invoke the judicial process in a particular instance.'" *See id.* at 502 (*quoting Kendall*, 431 Md. at 593).

Standing can be grounded in different injuries, interests, or authorities. *See, e.g.*, *Reed v. McKeldin*, 207 Md. 553, 558 (1955) ("a taxpayer may invoke the aid of a court of equity to restrain the action of a public official or administrative agency when such an action is illegal or *ultra vires* and may injuriously affect the taxpayer's rights and property"); *State Ctr.*, 438 Md. at 519–20 (property owners have standing to challenge certain agency decisions if they have been "specially harmed" in a way different from the general public); *Greater Towson Council of Cmty. Ass'ns v. DMS Dev., LLC*, 234 Md. App. 388, 409 (2017) (a party to an administrative proceeding who is aggrieved by an agency decision has standing to seek judicial review of decision). One basis for standing is a private right of action. *See State Ctr.*, 438 Md. at 517.

Under the Maryland Uniform Declaratory Judgments Act (the "Act"), a county, any of its units, or an individual can pursue resolution of "any question of . . . validity arising under . . . [an] administrative rule or regulation . . . and obtain a declaration of rights, status, or other legal relations under it." Md. Code (1974, 2020 Repl. Vol.), §§ 3-401, 3-406 of the Courts & Judicial Proceedings Article ("CJP"). The Act is "remedial," aims "to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations," and must be "liberally construed and administered." CJP § 3-402. A circuit

court may grant a declaratory judgment "if it will serve to terminate the uncertainty or controversy giving rise to the proceeding," CJP § 3-409(a), and if one of the following circumstances also applies:

> (1) An actual controversy exists between contending parties;
>
> (2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or
>
> (3) A party asserts a legal relation, status, right, or privilege and this is challenged or denied by an adversary party, who also has or asserts a concrete interest in it.

CJP § 3-409(a)(1)–(3).

Unlike citizen lawsuits challenging government conduct or decisions, in this case the Board authorized its members to sue each other to resolve an internal governance dispute. From that vote, the Commissioners brought a claim for declaratory relief under the Act and were entitled to do so. They alleged sufficiently the existence of an actual controversy among them, the Board, and Commissioner Coates on the question of whether the latter could vote on Mr. Belton's employment. Their complaint described the Board's attempt to fire Mr. Belton in a vote that included Commissioner Coates and the Commissioners' objections to her authority, which illustrated the antagonistic claims among the parties. By describing the background of the investigation and the terms of the PRA, the complaint demonstrated the imminent risk of litigation against the county if Commissioner Coates were permitted to cast the deciding Board vote to fire Mr. Belton.

Citing *Provident Bank of Maryland v. DeChiaro Ltd. P'ship*, 98 Md. App. 596 (1993), Commissioner Coates claims that the Act does not confer standing generally. *Id.* at

612. In that case, a bank sued a limited partnership over an unpaid million-dollar loan it had made to the partnership. *Id.* at 598–99. The legal controversy over the note was between the bank and the limited partnership. *Id.* A trustee, acting on behalf of a trust that held a 99% ownership interest in the limited partnership as a limited partner, brought a separate legal action against the bank under the Act. *Id.* at 600, 602. The trustee asked the court for a declaratory judgment that the bank's claim against the limited partnership was unenforceable. *Id.* The trustee also asked for injunctive relief stopping the bank from pursuing its claim against the limited partnership and seeking damages against the bank for alleged conspiracy to divert trust assets. *Id.*

On appeal, this Court held that the Act didn't confer standing on the trustee or the trust because the trust had no direct interest in the underlying note, and thus no direct interest in the core dispute between the bank and the limited partnership. *Id.* at 612. Our holding aligned squarely with the text of the Act, which requires an actual controversy between parties, antagonistic claims between parties, or an assertion of a legal right, status, or privilege by a party that is challenged by another who has a concrete interest. *See* CJP § 3-409(a)(1)–(3); *Reyes*, 281 Md. at 289 (holding that taxpayers challenging a bond issue in a collusive lawsuit had concrete interest, conferring standing under CJP § 3-409).

This case differs substantially from *Provident Bank*. Here, the Commissioners brought an action for equitable relief against Commissioner Coates and the Board because they all were participants in this internal governance dispute. They aren't bringing an independent action from the outside or looking to tack claims onto a controversy between two other parties. All the commissioners had a direct interest in enforcing the Board's

decisions and rules and in protecting the integrity of the offices they hold. *Provident Bank* might apply if a constituent had sued the Board under the Act seeking a declaration on Commissioner Coates's authority. In that situation, however, the Act would not empower the constituent to bring that claim unless they met one of the three statutory standing requirements. *See* CJP § 3-409(a)(1)–(3).

Our Supreme Court has held that declaratory relief is an appropriate vehicle for resolving intra- and inter-governmental disputes. In *Liss v. Goodman*, 224 Md. 173 (1960), members of the Baltimore City Council sued members of the Baltimore City Board of Estimates seeking a declaratory judgment to define their respective powers relative to budgetary matters. *Id.* at 175. The city charter mandated that the board prepare lists of budget item appropriations each year, combine them into a proposed ordinance, and certify and publish the ordinance before transmitting it to the council, convening in a special session. *Id.* at 176. The council had the power to reduce the amounts of certain appropriations but couldn't increase the amounts or insert new appropriation items. *Id.* This structure led to friction between the two bodies. *Id.*

The city solicitor ruled that the council could not reject the board's ordinance or return it once the ordinance had been transmitted. *Id.* at 176–77. The city solicitor also ruled that the board could not recall its own ordinance to supplement or amend it. *Id.* The council asserted a right to reject or return the board's ordinance and voted unanimously to seek declaratory judgment from the circuit court on this question. *Id.* at 177–78. On appeal, the board asserted that there was no actual controversy between the parties, and no antagonistic claims indicating imminent litigation, and that the council had no concrete

interest. *Id.* at 175–76. Our Supreme Court disagreed, recognizing that each governmental body had "a legitimate interest in determining the extent of their respective powers," and concluding that their interests were sufficiently concrete under the Act. *Id.* at 177. The Court decided that the controversy was live and that relief under the Act was necessary to resolve an internal dispute of public magnitude:

> The Council has asserted a right to reject or return the ordinance when submitted. To do so in the closing days of the [fiscal] year without a prior adjudication might well cause an impasse and seriously affect the City's financial needs and obligations. It would seem to be peculiarly appropriate to have the issue resolved in advance. Other courts have indicated that declaratory relief is appropriate where public agencies are at loggerheads.

Id. at 177–78; *see also Anne Arundel Cnty. v. Ebersberger*, 62 Md. App. 360, 362, 371–72 (1985) (distinguishing *Liss* from homeowners' suit against county ordinance that would have required all community residents to pay for rebuilding and maintaining community pool, where issue did not present "the prospect of annual confrontations between public bodies in which the very operation of government or the security of public obligations may be placed in jeopardy"); *Prince George's Cnty. v. Md.-Nat'l Park & Plan. Comm'n*, 269 Md. 202, 208–09 (1973) (relying on *Liss* to recognize standing and conclude that declaratory relief was proper because the controversy between Commission and County went to the heart of the Commission's ability to carry out its legislative mandate). These cases teach us that the circuit court is an appropriate venue for disputes among and between government bodies, especially where the conflict stands to impair the government's ability to function or perform its essential duties. We reject Commissioner Coates's suggestion

that the Act doesn't confer standing ever, let alone in this case.

The Commissioners also had common law standing to seek declaratory and injunctive relief. Under Maryland common law, standing to bring a judicial action generally depends on whether one is "aggrieved," whether a plaintiff has "an interest such that he or she is personally and specifically affected in a way different from the public generally." *Jones v. Prince George's Cnty.*, 378 Md. 98, 118 (2003) (cleaned up); *see also Kendall*, 431 Md. at 609 (a general citizen claim to the right to have government run lawfully is insufficient to confer standing).

The Commissioners' direct interest in protecting the integrity of their office sets them apart from the general public. As elected officials, they have taken an oath to uphold federal, state, and county laws faithfully and have sworn to govern in the interests of the taxpayers of Charles County. They hold positions of community leadership. Commissioner-led counties like Charles County do challenge some of our base civics class understandings about the role of elected officials—commissioners in these counties fulfill both legislative and executive branch duties in their elected roles, and these overlapping functions can create tensions that they may need outside assistance in resolving. Allowing Commissioner Coates to cast the deciding vote to fire Mr. Belton would have placed the Board in dereliction of its own rules and decisions, actions it took ostensibly to protect county employees from workplace abuse. That situation likely would have damaged public confidence in the integrity of the Board. But it also could have come at a cost to the Commissioners and the citizens' faith in their ability to govern effectively. Like the Board, the Commissioners themselves were at risk of confronting this same crisis of confidence

from county employees. The circuit court recognized correctly that the Commissioners' duties conferred standing to seek equitable relief.

Next, Commissioner Coates argues that the appellees were not properly before the circuit court because they failed to exhaust all administrative remedies available under employment discrimination laws. We agree with her, but only as to Count IV of the Commissioners' complaint for declaratory relief under the Maryland Fair Employment Practices Act ("FEPA"). *See* Md. Code (1984, 2021 Repl. Vol.), §§ 20-606, 20-801 of the State Government Article ("SG").

When a state legislature creates a statutory administrative scheme as the primary redress for challenging a government action, the doctrine of administrative exhaustion requires the aggrieved person to complete that process before turning to the court for relief. *Priester v. Balt. Cnty.*, 232 Md. App. 178, 193 (2017) (citation omitted). The Maryland Commission on Civil Rights (the "Commission") is charged by statute with administering FEPA. *Downey*, 110 Md. App. at 529.[4] If a claim is "grounded entirely" on a FEPA provision, the Commission has primary jurisdiction, and plaintiffs must invoke and exhaust its administrative process before bringing an action in court. *Maryland-Nat'l Cap. Park & Plan. Comm'n v. Crawford*, 307 Md. 1, 25 n.10 (1986).

In Count IV of their complaint, the Commissioners alleged that Commissioner Coates attempted to incite the Board to discriminate against Mr. Belton. They asked the

[4] Before 2011, the Commission was called the Commission on Human Relations. *See* SG § 20-201, Editor's note.

circuit court to declare that her conduct violated SG § 20-801, which states that a person "may not: (1) aid, abet, incite, compel, or coerce any person to commit a discriminatory act; (2) attempt, directly or indirectly, alone or in concert with others, to commit a discriminatory act; or (3) obstruct or prevent any person from complying with [FEPA] or an order issued under [FEPA]." To adjudicate whether Commissioner Coates violated this statutory provision, the court would have had to interpret and apply FEPA, an action that falls within the subject matter expertise of the Commission. *See Downey*, 110 Md. App. at 529 ("'"[W]here the claim is initially cognizable in the courts but raises issues or relates to subject matter falling within the special expertise of an administrative agency," courts should defer to the expertise of the agency.'" (*quoting Consumer Prot. Div. v. Luskin's, Inc.*, 100 Md. App. 104, 113 (1994), *aff'd*, 338 Md. 188 (1995))).

In an ideal world, the circuit court would have dismissed Count IV before deciding the Commissioners' other equitable claims. *See Crawford*, 307 Md. at 18 (when a case involves both an administrative and judicial remedy, and the plaintiff pursues the judicial remedy after starting but not finishing the agency process, trial courts can retain and resume jurisdiction after administrative exhaustion); *see also id.* at 30–31 (holding that when an employee has a specific contractual or statutory cause of action for employment discrimination independent of FEPA, they don't have to invoke the agency process to maintain the independent judicial action). We conclude, however, that this error wasn't fatal to the Commissioners' standing on their other claims because the court never

exercised jurisdiction over Count IV and ultimately dismissed it.[5]

The administrative exhaustion requirement didn't apply to the Commissioners' claims under Counts I, II, and III. Primary agency jurisdiction doesn't apply if the legal issue requiring adjudication does not involve an "'interpretation of a law administered by the agency.'" *Downey*, 110 Md. App. at 529 (*quoting Board of Ed. for Dorchester Cnty. v. Hubbard*, 305 Md. 774, 791 (1986)). In this instance, a "'concurrent judicial remedy may be pursued without . . . invoking and exhausting a statutorily prescribed administrative remedy . . . .'" *Crawford*, 307 Md. at 25 (*quoting Hubbard*, 305 Md. at 791); *see also United Ins. Co. of Am. v. Md. Ins. Admin.*, 450 Md. 1, 35 (2016) (administrative exhaustion not required when "the issues presented by[] a judicial proceeding only tangentially or incidentally concern matters which the administrative agency was legislatively created to

[5] For these reasons we are unpersuaded by Commissioner Coates's argument that dismissal of Count IV negated the purpose of the injunction. Her brief cites *Bodnar v. Brinsfield*, 60 Md. App. 524 (1984), for the proposition that the court dismissed the claim with prejudice and, thus, "effectively found" that Commissioner Coates hadn't attempted to commit a discriminatory act under SG § 20-801. Not so. We read *Bodnar* to hold that when a claim has been heard on the merits and is dismissed, but without clarity on whether the dismissal is with or without prejudice, we presume the dismissal was with prejudice. 60 Md. App. at 538. Conversely, when a claim hasn't been heard on the merits, we presume the dismissal was without prejudice. *Id.* The circuit court didn't adjudicate Count IV on the merits at all. It dismissed the aiding and abetting claim after denying Commissioner Coates's motion for reconsideration and upholding the permanent injunction. Because dismissal of Count IV did not serve to exonerate Commissioner Coates, it had no effect on the injunction's purpose. We also reject the position that Mr. Belton is precluded from ever bringing an employment discrimination claim as a matter that "could have been adjudicated" in this lawsuit. The Commissioners sought declaratory and injunctive relief to enforce the PRA and to prevent Commissioner Coates from retaliating against Mr. Belton (and the Board from letting her). His retaliation claim against her and the county would not have ripened until the court reached its decision.

solve, and do not . . . call for or involve applications of its expertise").

The Commissioners' complaint raised claims for declaratory action under the Act (Count I), for injunctive relief (Count II), and for a writ of mandamus and/or prohibition under CJP § 3-8B-01 (Count III). These claims sought, in various ways, to have the court enforce the PRA, non-FEPA claims that would not come before the Commission. The Commissioners didn't ask the court to review the merits of the Sargeant investigation or otherwise to make any findings of discrimination. Nor did adjudicating their claims require expertise from the Commission in deciding whether a discriminatory act had occurred. The Rules also didn't establish an administrative remedy for addressing internal governance disputes among Board members, nor does the county code. As a result, the Board established an ad-hoc process on December 13, 2022 to address a specific conflict—by a unanimous vote, they authorized the Commissioners to bring an action for declaratory relief. The court found rightly that the doctrine of administrative exhaustion did not preclude it from adjudicating their claims.

Having determined that the Commissioners had standing to bring this lawsuit against the Board and Commissioner Coates, we don't need to consider the standing of other plaintiffs. *See State Ctr.*, 438 Md. at 527 (after concluding that a party has standing to bring an action, we don't usually inquire into "'whether another party on the same side [of the litigation] also has standing'" (*quoting Long Green Valley Ass'n v. Bellevale Farms, Inc.*, 205 Md. App. 636, 652 (2012), *aff'd*, 432 Md. 292 (2013))). Once a party initiates an action for declaratory relief, "a person who has or claims any interest which would be affected by the declaration, shall be made a party," and thus has standing. CJP § 3-405(a).

The declaratory relief at issue in this case would determine whether Commissioner Coates could be the deciding Board vote to fire Mr. Belton, an outcome that would affect his livelihood directly. He moved to intervene as a plaintiff, without objection, and the court granted his motion. We need not discuss his standing any further.

2. The court didn't decide a political question when it adjudicated Commissioner Coates's authority to vote on Mr. Belton's employment after June 9, 2020.

Second, Commissioner Coates argues that enjoining her from voting to remove Mr. Belton was improper under the political question doctrine. The Commissioners counter that the circumstances did not present a political question because the PRA was an administrative act rather than a legislative one. We hold that the court's exercise of jurisdiction did not offend the principle of separation of powers because this case does not involve a political question.

Under the political question doctrine, courts should abstain from deciding matters that fall within the exclusive purview of the elected branches of government. *See Jones v. Anne Arundel Cnty.*, 432 Md. 386, 397 (2013) (*citing Nixon v. United States*, 506 U.S. 224, 252–53 (1993) (Souter, J., concurring)). Maryland courts have embraced a two-part framework for deciding whether an issue presents a nonjusticiable political question. *Smigiel v. Franchot*, 410 Md. 302, 324 (2009) (*citing Lamb v. Hammond*, 308 Md. 286, 293 (1987)). *First*, courts ask "'whether the claim presented and the relief sought are of the type which admit of judicial resolution.'" *Id.* (*quoting Lamb*, 308 Md. at 293). To satisfy this element, courts must decide whether "'the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be

judicially molded.'" *Lamb*, 308 Md. at 293 (*quoting Powell v. McCormack*, 395 U.S. 486, 517 (1969)). *Second*, courts decide whether the government structure renders the issue nonjusticiable due to constitutional separation of powers concerns. *Smigiel*, 410 Md. at 325 (*citing Lamb*, 308 Md. at 293); *see also Nixon*, 506 U.S. at 252–53 (Souter, J., concurring). To answer that question, our courts look for six potential indicators of a political question:

> "[A] textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving [the issue]; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question."

Smigiel, 410 Md. at 325 (*quoting Lamb*, 308 Md. at 293); *see also Jones*, 432 Md. at 397–98 (*quoting Baker v. Carr*, 369 U.S. 186, 217 (1962)).

We conclude *first* that the claims and equitable relief sought in this case were appropriate for judicial resolution. In the first instance, it was the Board, not the court, who determined on June 9, 2020 that Commissioner Coates couldn't vote on any personnel matters involving Mr. Belton or communicate with him directly. The Board retained Ms. Sargeant to conduct an independent investigation into the personnel complaints between them. Ms. Sargeant prepared a report of her investigative findings, which the Board president reviewed, and she presented her findings to the full body in a closed session with Commissioner Coates present. Afterwards, the Board adopted Ms. Sargeant's factual findings that Commissioner Coates had discriminated unlawfully against Mr. Belton and

resolved the matter by amending the Rules and imposing the PRA as a protective measure.

When they filed suit, the Commissioners asked the court to declare in essence that the Board was bound by its own PRA. The Board's duty to govern in compliance with the PRA, its Rules, and state and federal law, its impending breach of that duty on December 13, 2022, and the court's ability to grant declaratory and injunctive relief were all discernible. *See Marbury v. Madison*, 5 U.S. 137, 167 (1803) (where the heads of political departments are assigned a duty by law, and one feels injured by their failure to perform that duty, the person injured may seek legal recourse); *see also Hecht v. Crook*, 184 Md. 271, 280 (1945) ("Courts have the inherent power, through the writ of mandamus [or] by injunction . . . to correct abuses of discretion and . . . illegal . . . or unreasonable acts . . . ."). The role the Board asked the court to play was fully judicial and consistent with other cases where our courts have intervened. *Compare Maryland-Nat'l Cap. Park & Plan. Comm'n v. Crawford*, 59 Md. App. 276, 296–300 (1984) (affirming court's injunction against state agency for failing to follow its own internal rules), *aff'd*, 307 Md. 1 (1986), *with Beasly v. Ridout*, 94 Md. 641, 658–59 (1902) (statute directing judges to appoint members of the board of visitors for county jail was unconstitutional because it made judges an "appointing agency" responsible for nonjudicial functions).

Next, we look for potential indicators of a political question. Our courts apply the doctrine narrowly to the first indicator, a "textually demonstrable constitutional commitment," and will not abstain from reviewing actions that aren't prescribed expressly by the constitutional source of authority. *Jones*, 432 Md. at 400–01; *see also Lamb*, 308 Md. at 291, 303–04 (no political question where state law limited legislative power to judge

member elections and qualifications expressly by granting appeal rights in circuit court).

Commissioner Coates emphasizes that the Express Powers Act, Md. Code (2013, 2013 Repl. Vol.), § 10-303(b)–(c)[6] of the Local Government Article ("LG"), and LG § 12-107(b)[7] commit the power to appoint, remove, and discipline county officers like Mr. Belton to the Board alone. But our Supreme Court rejected this very argument twelve years ago in *Jones v. Anne Arundel County*, 432 Md. 386 (2013). The Court held in that case that an internal dispute about a county council's authority to remove one of its members was not a political question. *Id.* at 389–90, 401. There, a city council member facing a

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[6] The relevant provisions of LG § 10-303 state:

> (b) A county may provide for the appointment and removal of all county officers except those whose appointment or election is provided for by the Maryland Constitution or public general law.
>
> (c) A county legislative body may enact local laws to:
>
> (1) prevent conflicts between the private interests and public duties of county officers and members of the county legislative body;
>
> (2) govern the conduct and actions of all county officers and members of the county legislative body in the performance of their public duties; and
>
> (3) provide for penalties, including removal from office, for a violation of the local laws or any regulations adopted under the local laws.

[7] Section 12-107 of the Local Government Article employs very similar language to § 10-303 of the Express Powers Act. The main difference between them is that § 10-303 permits a county legislative body to enact local laws to prevent conflicts of interest among "county officers and members of the legislative body," LG § 10-303(c)(1), whereas § 12-107 allows the body to enact local laws or regulations to prevent conflicts of interest among "county officers or employees . . . ." LG § 12-107(c)(1).

five-month incarceration period in South Carolina sued the county and its council after the council introduced a bill and resolution to declare his seat vacant due to lack of county residency. *Id.* at 389–90, 392. The council member asked the court to declare that his temporary absence would not be a change in "residence" under the county charter and, thus, would not render his seat vacant. *Id.* at 393–94. The member also brought an action for injunctive and mandamus relief, asking the circuit court to stop the council from declaring his seat vacant and removing him from office. *Id.* at 394. The county and county council argued that removal of a councilmember was a political question that fell within their exclusive purview under the Express Powers Act, which provided that a county could:

> "enact local laws designed to prevent conflicts between the private interests and public duties of any county officers, including members of the county council, and to govern the conduct and actions of all such county officers in the performance of their public duties, and to provide for penalties, including removal from office, for violation of any such laws or the regulations adopted thereunder."

Id. at 395–97 (*quoting* Md. Code (1957, 2011 Repl. Vol.), § 5(Q)(1) of Article 25A (repealed 2013)). The Supreme Court concluded that the issue of the councilmember's removal was not a political question because the act didn't state expressly that the county council was the only arbiter of member qualifications. *Id.* at 401. The Court's reasoning in *Jones* applies here as well. Neither LG § 10-303 nor § 12-107 states expressly that the county alone is charged with removing county officers. And these provisions are not "textually demonstrable constitutional commitment[s]" of their sole authority to do so. *Jones*, 432 Md. at 401.

We note further that the Express Powers Act grants this authority to the local

legislative body, the Board as a body acting as a whole, not to individual commissioners. *See* LG §§ 10-303(c), 12-107(c); *see also River Walk Apartments, LLC v. Twigg*, 396 Md. 527, 547 (2007) (holding that legislative body, not mayor, had express delegated authority to create special fees under Maryland constitution and statute, and local charter). The power of the Board to remove county officers has never been at issue in this case. In their complaint, the Commissioners didn't ask the circuit court to stop the Board from removing Mr. Belton. They asked the court to stop the Board from removing Mr. Belton with a vote that included Commissioner Coates—in other words, to enforce compliance with the PRA.[8] On multiple occasions the court stated that the other four members of the Board could, and should, carry on with the body's work. It made this suggestion during the parties' first motion hearing:

> [COUNSEL FOR PRESIDENT COLLINS]: the Court should not enjoin the Commission from having a conversation about whether the PRA is still valid or still needed and that the censured Commissioner should be allowed to — should be allowed to be — to partake in that conversation.
>
> [THE COURT]: But everything I hear here is we're still at the same spot . . . meaning, if I hear Counsel for the censured Commissioner, she says the vote would be three to two —

[8] In her brief, Commissioner Coates contends that courts cannot enjoin a legislator or a legislature from voting, citing two Maryland authorities as support—*Maryland-National Capital Park & Planning Commission v. Randall*, 209 Md. 18 (1956), and *Maryland Committee for Fair Representation v. Tawse*, 228 Md. 412 (1962). Neither case helps her. Again, the plaintiffs didn't call on the circuit court to enjoin the Board from taking a legislative or executive action—they asked the court to enforce the body's own action against a member after it determined that she should be excused from voting. As we explain further below, the Board acted within its authority when it excused Commissioner Coates from voting on matters pertaining to Mr. Belton's employment.

* * *

> isn't the cleaner way to let the people, let, remove the censured Commissioner, let the political body work as it would, albeit that they would be a two to two [vote] and maybe they work something out, maybe they don't.

And restated this view during the final motion hearing:

> [COUNSEL FOR COMMISSIONER COATES]: [I]f [Commissioner Coates] was able to vote on [the PRA], and she votes again, whether it is to rescind (inaudible) —
>
> [THE COURT]: But she can't vote, that is the part. . . . I recognize that [a vote on the PRA] is more than likely two and two, meaning you've got Patterson and Collins, two, and you've got Bowling and Stewart, two, (inaudible) okay? And those four can do what they want to do, I have said that from moment one of the ruling.

The circuit court understood its role and stayed within it. And we decline to hold that this case—which is about Commissioner Coates's authority to vote on Mr. Belton's employment—somehow presents a political question based on the full Board's statutory authority to remove county officers.

We have considered the remaining elements of the political question framework and remain unconvinced that this case oversteps. The Act, Maryland Rules, Charles County Code, the Rules, and the PRA all endowed the circuit court with the necessary standards to adjudicate the Commissioners' claims for equitable relief. No political decision or initial policy determination constrained the court from deciding the issues. *See Gresham v. Balt. Police Dep't.*, 261 Md. App. 723, 740–41, *cert. denied*, 489 Md. 159 (2024) (plaintiffs' attempt to invalidate a memorandum of understanding between the Baltimore Police Department and Johns Hopkins University revealed their true problem with the General

Assembly's policy judgment to create a police department in the university rather than an issue with statutory compliance or implementation).

Finally, a political question may be present when a court is asked to take an action that would undermine a coordinate branch of government. In *Smigiel v. Franchot*, 410 Md. 302 (2009), the Supreme Court considered whether an internal legislative dispute presented a political question. *Id.* at 304–09, 325. During an extraordinary session of the General Assembly, the Senate President and the Speaker of the House of Delegates consented to extend their adjournment so the House could finish working on five bills. *Id.* at 306–07. A House Member asked the House Parliamentarian whether the extension of adjournment violated the Maryland constitution, which required consent between the chambers for any adjournment lasting more than three days. *Id.* at 307–08. The House Parliamentarian rejected the member's challenge. *Id.* at 309. The member filed a complaint for declaratory judgment and injunctive relief in circuit court, which the court dismissed. *Id.*

On appeal, the House Member argued that consent to extend adjournment for more than three days requires consent from the House, sitting as a full legislative body, rather than the Speaker of the House. *Id.* at 321. Because the Senate had obtained consent from the Speaker, the Member asked the court to invalidate legislation passed during the extended legislative session. *Id.* at 321–22. The Supreme Court declined, holding that the issue was nonjusticiable as a political question because the House Member was asking the Court to tell the General Assembly how to follow its own consent rule. *Id.* at 325–26. The Court decided that weighing in on that question would fail to respect a coordinate branch of government and that the case concerned an internal procedural issue that the General

Assembly should resolve. *Id.*

This case didn't put the circuit court in the position to disrespect the Board. In *Smigiel*, the House Member asked the court to override the House Parliamentarian's ruling and invalidate the General Assembly's legislation based on the member's interpretation of the internal process required by the Maryland constitution. *Id.* at 321–22. Here, the Commissioners didn't ask the court to invalidate a decision, policy, or law that the Board had enacted. To the contrary, the Commissioners asked the court to enforce the Board's actions in the form of the PRA. When it came to voting, the court's focus remained on Commissioner Coates. The court didn't take the position that the Board's four other members couldn't vote on whether to fire Mr. Belton, rescind the PRA, or amend the Rules if they wanted to. And it would be illogical to conclude that the circuit court's involvement would undermine or disrespect the Board where the body voted unanimously to invoke the court's assistance with resolving this dispute. This case does not bear the indicia of a political question, and the court's legal conclusion to that effect was correct.

3. The Board had the administrative authority to take prompt remedial action to resolve personnel disputes involving its county administrator, making the PRA a proper subject of injunction.

Third, Commissioner Coates claims that the circuit court erred as a matter of law when it accepted the PRA as a valid exercise of the Board's administrative power and entered an injunction enforcing it. She contends that the PRA could not have been an administrative action because the Board didn't use it to implement another law already in force and effect. Alternatively, she argues that even if the PRA was an administrative

action, it was an unlawful basis for injunction because it was arbitrary and capricious. The Commissioners respond that personnel decisions are administrative acts because they are specific to the person involved. They argue that the Board used the PRA to apply federal, state, and local non-discrimination laws to Commissioner Coates. We hold that the Board had the administrative authority to take prompt and remedial action on matters affecting the county administrator's employment and, therefore, the PRA it took on June 9, 2020 can be enforced by an injunction.

Both parties suggest that the appropriate test for distinguishing between a county board's legislative and administrative actions is whether the action creates new law (legislative) or executes a law already in effect (administrative). The Supreme Court has used this test to make sense of nuanced actions taken by a county board that were not obviously administrative or legislative in nature. In *City of Bowie v. County Commissioners for Prince George's County*, 258 Md. 454 (1970), for example, a charter county board adopted a bond resolution to build an airport without public notice or hearing, and the Court had to decide whether the body had acted in an executive or legislative capacity. *Id.* at 458, 461. After the bond resolution, the board adopted a confirming resolution that ratified and approved both the bond resolution and another resolution that had accepted a specific buyer's offer to purchase. *Id.* at 459. Because the bond resolution could look like a legislative action at first blush, the Court turned to a "recognized test" to discern when a municipal ordinance is, in fact, legislative:

> "A recognized test for determining whether a municipal ordinance is legislative and so subject to referendum, or whether it is executive or administrative and is not, is whether

> the ordinance is one making a new law-an enactment of general application prescribing a new plan or policy-or is one which merely looks to or facilitates the administration, execution or implementation of a law already in force and effect."

Id. at 463 (*quoting Scull v. Montgomery Citizens League*, 249 Md. 271, 282 (1968)). Applying that test, the Court concluded that the board's adoption of the bond resolution effectuated a statutory mandate, rather than creating a new law, and, thus, amounted to an administrative or executive action. *Id.* at 461.

In *Queen Anne's Conservation, Inc. v. County Commissioners of Queen Anne's County*, 382 Md. 306 (2004), the Court had to decide whether the remedy available to a conservation group was immediate judicial review of the county board's action as a "local legislative body," or appeal of the board's administrative action through the established agency process. *Id.* at 318–20. The action at issue was the county board's approval and execution of a Development Rights and Responsibilities Agreement ("DRRA") with a prospective developer after a series of public hearings. *Id*. at 308, 312–18. Using the same test, the Court determined that initially the county commissioners had acted legislatively by passing an ordinance allowing DRRAs in the county, but that as to a particular DRRA, the body's statutory role of accepting the developer's petition, holding public hearings on it, and executing the DRRA was administrative. *Id.* at 326–27. In both *City of Bowie* and *Queen Anne's Conservation*, the test helped the Court decipher local actions that included or involved seemingly legislative actions.

Although we acknowledge that this test is one way of figuring out whether a county board's actions are administrative, we don't accept the broad premise that a board's action

only counts as "administrative" if it implements or enforces a "law already in force and effect." An action also can be administrative when it is "[o]f, relating to, or involving the work of managing a company or organization," *Administrative*, *Black's Law Dictionary* (11th ed. 2019), or is "[a] decision or an implementation relating to the government's executive function or a business's management." *Administrative Action*, *Black's Law Dictionary* (11th ed. 2019). Code county commissioners function as directors of a corporation, LG § 9-403, and board actions to establish internal protocols, adopt and implement bylaws governing board conduct, approve board meeting minutes, or make personnel decisions are quintessentially administrative, even if they don't implement or enforce laws that are binding on the greater public. *See, e.g.*, Md. Code (1975, 2014 Repl. Vol.), § 2-109(a)(1) of the Corporations & Associations Article ("CA") (after accepting articles of incorporation, directors must adopt bylaws); CA § 2-110(a) (bylaws may contain provisions "for the regulation and management of the affairs of the corporation"); CA § 1-101(q)(3) (1975, 2014 Repl. Vol., 2024 Cum. Supp.) (an internal corporate claim is one "[a]rising under the charter or bylaws of the corporation"); *see also Anastasi v. Montgomery Cnty.*, 123 Md. App. 472, 491 (1998) (if agency fails to follow administrative procedures affecting an individual's rights and obligations, then procedures have the force and effect of law and agency action is invalid); *Board of Sch. Commr's of Balt. City v. James*, 96 Md. App. 401, 421 (1993) ("[A]n agency's failure to follow mere 'internal administrative procedures' does not require reversal of an agency's action unless the complaining party can show substantial prejudice."). As the Court noted in *City of Bowie*, many functions of county commissioners are administrative or executive in nature. 258

Md. at 461.

We don't need to use this test, however, because the administrative nature of the PRA is obvious. The Board adopted the PRA in response to a specific personnel problem involving allegedly illegal conduct and took that measure to restrain specific conduct. It pertained directly to the Board's management of its own members as it made county personnel decisions. Moreover, the Board's Rules authorized the body to restrict a member's ability to vote. The Rules provide that "[b]oard members may be excused from casting a vote for reasons such as a perceived or actual conflict of interest, or for other reasons where . . . the County Attorney believe[s] voting would be inappropriate." After Ms. Sargeant presented her factual findings to the Board, both the county attorney and outside counsel[9] advised the body to restrain Commissioner Coates from voting on any employment matter pertaining to Mr. Belton. The Board followed that legal advice and excused Commissioner Coates from voting, as the Rules permitted. The Board's action also was consistent with its personnel policy on equal employment opportunity. *See* Charles County, Md., Code § 148-1 (1981) (affirmative action policy statement); *Id.* § 148-3 (statement of legal mandates under anti-discrimination laws). Under these circumstances, we are comfortable classifying the PRA as an administrative action and

[9] Mr. Paltell served as the Board's outside counsel for employment matters. At the preliminary injunction hearing, Commissioner Stewart testified that he is one of the Board's trusted attorneys and that he and County Attorney Adams spoke to the Board about liability exposure after Ms. Sargeant presented her findings. Commissioner Collins testified that Mr. Paltell billed the county for his services in preparing and advising on the PRA and that he and County Attorney Adams had worked together to advise the Board.

reject the view that it isn't simply because the Board also has powers as a legislative body. *See 2BD Assocs. Ltd. P'ship v. Cnty. Comm'rs for Queen Anne's Cnty*, 896 F.Supp. 528, 532 (D. Md. 1995) ("[A]n official with title of legislator does not receive absolute immunity for actions that are administrative in nature, and conversely, an official whose title is that of an executive will receive absolute immunity for actions which are legislative in nature.").[10]

The Board had the administrative authority to vote on and adopt the PRA. An employer can take prompt and adequate remedial action to defend its organization from liability for hostile work environment claims. *See* Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a) ("Title VII"); *Franovich v. Hanson*, 687 F.Supp.3d 670, 686 (D. Md. 2023) (adopting "'an effective anti-harassment policy is an important factor in determining whether [an employer] exercised reasonable care' to prevent discrimination or retaliation" (*quoting Smith v. First Union Nat'l Bank*, 202 F.3d 234, 244 (4th Cir. 2000))); *Hammoud v. Jimmy's Seafood, Inc.*, 618 F.Supp.3d 219, 235 (D. Md. 2022) ("A hostile

[10] Having agreed with the circuit court that the PRA was an administrative action, we decline Commissioner Coates's invitation to hold that the court erred in not recognizing the PRA as an unconstitutional bill of attainder, which would be legislative. *See, e.g.*, *Hammond v. Frankfeld*, 194 Md. 487, 490 (1950) (defining a bill of attainder as a "condemnation or punishment by legislative action without trial or judicial determination"); *Shub v. Simpson*, 196 Md. 177, 185, 194–95 (1950) (review of challenge to Subversive Activities Act as an unlawful bill of attainder); *Anderson v. Baker*, 23 Md. 531, 604 (1865) (describing bills of attainder as "special Acts of the Legislature, inflicting capital or other punishments upon persons supposed to be guilty of an offence, without any conviction in the ordinary course of judicial proceedings"); *United States v. Brown*, 381 U.S. 437, 442 (1965) ("[T]he Bill of Attainder Clause was intended . . . as an implementation of the separation of powers, a general safeguard against legislative exercise of the judicial function, or more simply—trial by legislature.").

work environment may be imputed to a defendant if the plaintiff engaged in protected activity sufficient to put the defendant on notice of a violation of Title VII and the defendant did not 'respond with remedial action.'" (*quoting E.E.O.C. v. Sunbelt Rentals, Inc.*, 521 F.3d 306, 319 (4th Cir. 2008))); *Manikhi v. Mass Transit Admin.*, 360 Md. 333, 345–46 (2000) (a principal issue in assessing liability for hostile work environment claims is whether the employer's officials had actual or constructive notice of the unlawful conduct and failed to protect the employee from it). And prompt remedial action is an effective way to protect an organization. *See Spicer v. Va. Dept. of Corr.*, 66 F.3d 705, 711 (4th Cir. 1995) (if an employer's prompt and remedial action stops the complained of conduct, "liability must cease as well").

On this record, there is no dispute that on June 9, 2020, Ms. Sargeant put the Board on actual notice of her investigative conclusion that Commissioner Coates had subjected Mr. Belton to a hostile work environment motivated by racial animus. Nor is there any dispute that the Board responded by adopting the PRA for the purpose of limiting Commissioner Coates's interactions with Mr. Belton and her authority to influence the terms, conditions, or future of his employment for the county. The Board has an employment relationship with the county administrator—the administrator literally is the only officer in county government that the body can hire and fire.

Commissioner Coates takes the position, however, that Mr. Belton is not an "employee" entitled to protection under state and federal employment laws, but instead is a "political appointee." She contends, therefore, that the circuit court erred in finding an injunction necessary to avoid the irreparable harm of Mr. Belton bringing an actionable

retaliation claim against Charles County and the Board.

To answer the question of whether a person is an "employee" covered by Title VII, we examine its statutory language, legislative history, federal case law, and the circumstances of the case. *See Curl v. Reavis*, 740 F.2d 1323, 1327 (4th Cir. 1984).[11] Title VII defines an "employee" as "an individual employed by an employer . . . ." 42 U.S.C. § 2000e(f). Admittedly, that sentence sounds somewhat circular, but for our purposes what matters is that the definition excludes elected officials and high-level officers working closely with them to conduct their official duties:

> [T]he term "employee" shall not include any person elected to public office . . . by the qualified voters . . . or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office.

Id.[12] In essence, the exception to employee status includes four categories of people. *See id.*; *see also Curl*, 740 F.2d at 1328; *Gregory v. Ashcroft*, 501 U.S. 452, 484–85 (1991) (White, J., concurring in part). The "common usage of the term 'policy making level' refers to high level officials who play an active role in formulating or implementing governmental objectives." *Reardon v. Herring*, 191 F.Supp.3d 529, 538 (E.D. Va. 2016).

When Congress first passed Title VII, the definition of "employee" didn't contain

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[11] Because there are no reported opinions from our courts on the issue of employee status under Title VII or FEPA, we have consulted federal case law for guidance on the statutory exception.

[12] FEPA's definition of "employee" mirrors the language in Title VII, excluding "appointee[s] on the policy making level . . . ." *See* SG § 20-601(c)(2)(ii).

any exceptions. *See* Civil Rights Act of 1964, Pub. L. No. 88-352, § 701, 78 Stat. 241, 255 (1964).[13] During a Senate discussion of H.R. 1746, the Equal Employment Opportunities Enforcement Act, H.R. 1746, 92nd Cong. (1971), a bill that would amend Title VII, a question arose about whether Title VII would limit a governor's ability to appoint cabinet officials and hire personal aides from a preferred political party. *See* S. Rep. No. 92-415, at 11 (1971). The committee reviewing the Senate version of the bill assured that it didn't intend to prohibit appointments on that basis, only those motivated by unlawful discrimination. *Id.* The concern broadened to include how the bill would intrude on state sovereignty by dictating whom governors, county sheriffs, or other state officials could or could not hire. *See* 117 Cong. Rec. 38,402 (1971); 118 Cong. Rec. 308–11 (1972). The Senate discussed the possibility of amending the bill to exclude elected officials, their personnel, and staff "at the top decision-making levels in the executive and judicial branch" from the reach of Title VII more expressly. 118 Cong. Rec. 1,838 (1972).

Senator Ervin introduced amendment no. 888 to modify the definition of "employee" by excluding staff hired to advise on the exercise of the constitutional or legal

[13] Title VII also didn't include state and local governments in the definition of "employer." *See* Civil Rights Act of 1964, Pub. L. No. 88-352, § 701, 78 Stat. 241, 255 (1964). Congress extended Title VII protections to state and local government employees in 1972. *See* Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, § 2, 86 Stat. 103, 103 (1972); H.R. Rep. No. 92-238, at 18 (1971) ("The Constitution is as imperative in its prohibition of discrimination in state and local government employment as it is in barring discrimination in Federal jobs."); *see id*. at 19 ("The Constitution has recognized that it is inimical to the democratic form of government to allow the existence of discrimination in those bureaucratic systems which most directly affect the daily interactions of this Nation's citizens.").

powers of the elected official's office. *Id.* at 4,095. The amendment sought to exclude the elected official and their advisor but not the personnel who executed the advice. *Id.* at 4,096–97. During debate of the amendment, the body agreed that the exclusion should focus on individuals in a close working relationship with the elected official:

> [Senator Williams]: [T]he purpose of the amendment, to exempt from coverage those who are chosen by the Governor or the mayor or the county supervisor, whatever the elected official is, and who are in a close personal relationship and an immediate relationship with him. Those who are his first line of advisers. Is that basically the purpose of the Senator's amendment?
>
> [Senator Ervin]: . . . I feel that those elected officials who are legal advisers or who are personal assistants or legal advisers, as to how he should exercise his constitutional, legal rights and responsibilities, should also be exempt. That is the purpose of the amendment, yes.
>
> [Senator Williams]: That is my understanding. As to the degree, certainly it would cover those who are in a Governor's cabinet, his cabinet officers. They would be included in the group of personal assistants; is that not correct?
>
> [Senator Ervin]: That is what is intended by this amendment, plus his immediate legal advisers, because no Governor today can get along and discharge the many duties imposed upon him by his office without having someone to lean on for advice, counsel, and so forth.

Id. at 4,492–93. The Senate passed a slightly modified version of amendment no. 888. *Id.* at 4,494. When H.R. 1746 emerged from the conference committee, the exception had broadened to include appointees with policymaking authority. *See* S. Rep. No. 92–681, at 15 (1972); Equal Opportunity Act of 1972, Pub. L. No. 92-261, § 2, 86 Stat. 103, 103 (1972); 118 Cong. Rec. 7, 567 (1972). The conference managers submitted a joint

statement of their thinking relative to the policymaking exception:

> It is the intention of the conferees to exempt elected officials and members of their personal staffs, and persons appointed by such elected officials as advisors or to policymaking positions at the highest levels of the departments or agencies of State or local governments, *such as cabinet officers, and persons with comparable responsibilities at the local level. It is the conferees intent that this exemption shall be construed narrowly*.

S. Rep. No. 92–681, at 15–16 (1972) (emphasis added); H. Rep. No. 92–899, at 15–16 (1972).

The Fourth Circuit has resolved an employee's status relative to "personal staff" but not the "policymaking" exception. *See, e.g.*, *Curl*, 740 F.2d at 1328; *Brewster v. Barnes*, 788 F.2d 985, 989–90 (4th Cir. 1986) (evaluating identical language in the Equal Pay Act ("EPA") to decide whether the statutory definition of "employee" excluded female correctional officer); *see also Marburger v. Upper Hanover Twp.*, 225 F.Supp.2d 503, 510 (E.D. Pa. 2002) (looking to case law analyzing the EPA, Title VII, and other anti-discrimination laws with similar statutory definition of "employee" to decide whether plaintiff was excepted from EPA coverage). As a result, we turn to other federal courts for guidance in this area.

In *Reardon v. Herring*, 191 F.Supp.3d 529 (E.D. Va. 2016), the United States District Court for the Eastern District of Virginia explored the legislative history of the policymaking exception and three distinct approaches that have been adopted by the United States Court of Appeals for the Seventh, Second, and Eighth Circuits. *Id.* at 538–40. The Seventh Circuit interprets the exception broadly, to cover a position that "'authorizes,

either directly or indirectly, meaningful input into governmental decision-making on issues where there is room for principled disagreement on goals or their implementation.'" *Id.* at 539 (*quoting Americanos v. Carter*, 74 F.3d 138, 141 (7th Cir. 1996)); *see Opp v. Off. of State's Att'y of Cook Cnty.*, 630 F.3d 616, 619 (7th Cir. 2010).[14] The Second Circuit has decided that the exclusion applies only to appointees that "'normally work closely with and [are] accountable to the official who appointed them.'" *Reardon*, 191 F.Supp.3d at 539 (*quoting Butler v. New York State Dep't of Law*, 211 F.3d 739, 748 (2d Cir. 2000)). The Eighth Circuit has employed an intermediate approach where the question of whether one is an appointee on the policymaking level depends on "the extent to which the plaintiff's position is 'entrusted with extensive decisionmaking authority and discretionary power[.]'" *Id.* at 540 (*quoting Gregory v. Ashcroft*, 898 F.2d 598, 603 (8th Cir. 1990), *aff'd*, 501 U.S. 452 (1991)). In the Eighth Circuit, factors that can assist the inquiry include "'whether the [appointee] has discretionary, rather than solely administrative powers'" and "'whether the [appointee] formulates policy.'" *Id.* (*quoting Gregory*, 898 F.2d at 604).[15]

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[14] The Seventh Circuit uses this test to evaluate an employee's status under both Title VII and First Amendment patronage dismissal claims. *See Americanos*, 74 F.3d at 144 ("[W]e have held that 'the reasons for exempting the office from the patronage ban apply with equal force to the requirements of the [Age Discrimination in Employment Act ("ADEA")] [and Title VII].'" (*quoting Heck v. City of Freeport*, 985 F.2d 305, 310 (7th Cir. 1993))); *Opp*, 630 F.3d at 620 (declining to distinguish between how plaintiffs could be "policymakers" under the First Amendment and the ADEA).

[15] In the Eighth Circuit, another possible factor is whether the appointee "'serves at the pleasure of the appointing authority . . . .'" *Reardon*, 191 F.Supp.3d at 540 (*quoting Gregory*, 898 F.2d at 604). But the Fourth Circuit has not been persuaded on the relevance of this factor, *see Curl*, 740 F.2d at 1328 (a property interest in employment is not a condition precedent to bringing a Title VII claim (*citing Lewis v. Blackburn*, 734 F.2d 1000, 1004 (4th Cir. 1984))), so we don't weigh that factor in our analysis.

Reardon adopted the intermediate approach because of its consistency with Title VII's statutory text, alignment with congressional intent, and ability to consider particular circumstances flexibly:

> [T]he Eighth Circuit's approach is consistent with the ordinary meaning of the statutory text and follows logically from the plain language of the statute, by examining not whether an appointee is a policymaker, but rather, whether an appointee is "on the policymaking level." Under this framework, whether an appointee actually "makes policy" is a factor to be considered, but the fact that an appointee does not "make policy" in the traditional sense is not dispositive. . . . [The Eighth Circuit's] commonsense focus on the appointee's decision-making authority and whether the appointee's position is one that actually influences formulation of policy necessarily guides courts toward results that stay true to the clear and well-documented congressional intent that the exception be very narrowly construed. . . . [T]he Eighth Circuit's test is flexible and appropriately sensitive to the fact-specific nature of this inquiry, without leading to conflation with, or consumption of, either of the surrounding statutory exceptions, which exempt an elected official's personal staff and immediate legal advisers from . . . coverage.

Id. at 540 (citations omitted).

We agree that the intermediate approach responds most directly to the statutory language and legislative history of Title VII.[16] The expansive scope of the Seventh Circuit's approach conflicts with Congress's intent that the exception be narrowly

[16] Although the Fourth Circuit has not yet spoken on the appropriate test for assessing whether the policymaking exception applies, the United States District Court for the District of Maryland answered this question in *Bynum v. Martin*, No. GJH-16-2067, 2016 WL 7468050 (D. Md. Dec. 27, 2016). Finding *Reardon* instructive, the Court applied the Eighth Circuit test to a Title VII claim, concluding ultimately that the plaintiff was not an "appointee on the policymaking level" under Title VII and FEPA. *Id.* at *3–5. The opinion is not binding precedent but has persuasive value here. *See* Md. Rule 1-104(b).

construed. The Second Circuit's focus on whether a person works closely with, or is accountable to, the appointing official opens the exception up to a wide range of positions and, essentially, compresses "personal staff," "immediate advisors," and "appointees" into one group. From Title VII's legislative history—particularly the exchanges between Senator Ervin and Senator Williams and the changes made to H.R. 1746 during conference committee—we know that Congress created the exception with four discrete groups of people in mind.[17] For these reasons, we will apply the Eighth Circuit test to consider the extent to which the Board entrusted Mr. Belton, as County Administrator, with extensive decision-making authority and discretionary power.

A review of the Charles County Code reveals that the county administrator acts primarily as an administrative vessel for the Board's programs and policy priorities and has little discretionary power on policy matters. For example, the Board has an affirmative action policy regarding its commitment to Equal Employment Opportunity ("EEO") and anti-discrimination laws and has adopted an Affirmative Action Plan ("AAP"). Charles County, Md., Code § 148-1 (1981). Although the Board has overall responsibility for implementing the AAP, it has delegated those responsibilities to the personnel officer/EEO

[17] We notice, too, that the flexibility of the Eighth Circuit's test happens to align with the fact-dependent assessments favored by the Fourth Circuit in its consideration of the personal staff exception. *See Curl*, 740 F.2d at 1328 ("Whether [plaintiff] is to be treated as a member of the Sheriff's personal staff requires a careful examination of the nature and circumstances of her role in the Sheriff's Department."); *Brewster*, 788 F.2d at 990 (assessing whether the personal staff exception applies is a "case-by-case inquiry"); *United States v. Gregory*, 818 F.2d 1114, 1117 (4th Cir. 1987) (the personal staff exception requires a careful examination of the facts of the case).

coordinator. *Id.* §§ 148-1(E), 148-5(B). The county administrator's duties in this area are to provide positive management direction for accomplishing and implementing the Board's policy objectives, supervise the EEO coordinator, and analyze all related data. *Id.* § 148-5(A). As another example, the Board's policy on standards of workplace conduct provides that disciplinary action may be necessary to ensure efficient government operation and that "[f]air discipline for proper cause, which treats all employees alike, is essential." Charles County, Md., Code § 197-14 (1983). The county administrator's role in implementing that policy is to approve virtually all disciplinary actions before they can be taken by a department head or supervisor. *Id.* § 197-15. One more example is the county's establishment of a voluntary deferred compensation plan, where the county administrator has the authority to execute individual participation agreements with employees, act as plan administrator, and otherwise implement the program. Charles County, Md., Code §§ 162-1, 162-2 (1980). Although these actions necessarily involve day-to-day decision making, they are predominantly administrative, like many of the county administrator's functions. *See, e.g.*, Charles County, Md., Code § 197-2 (1972) (receive monthly employee attendance records from department heads); *Id.* § 197-4(D) (forward requests for exception to annual leave policy to Board for special action); Charles County, Md., Code § 97-1(B) (1989) (assign duties to Department of Planning and Growth Management, Department of Public Facilities, and Department of Utilities). The testimony of Commissioner Stewart and President Collins at the preliminary injunction hearing also portrayed the county administrator position as administrative:

[COMMISSIONER STEWART]: [W]hen we set our goals and

> objectives for the county, we give those to the county administrator, and then the county administrator's job is to work with staff over the four years to enact our goals and objectives.
>
> * * *
>
> The county administrator is responsible for the administrative running of the county, daily. The county administrator is also responsible for working with the county commissioners and understanding and setting our goals and objectives for the four years . . . .
>
> * * *
>
> [PRESIDENT COLLINS]: [The county administrator's] responsibilities are administratively leading the county. . . Employment matters, decisions associated with the day to day operations.

Indeed, the administrative core of the county administrator's duties is evident from the position's description in Mr. Belton's employment contract with the Board:

> The County Administrator shall be the Chief Administrative Officer of Charles County Government . . . to be responsible to the County for the management of all county affairs that are placed in Employee by charge of law and the County Commissioners' Rules of Procedure adopted January 8, 2019 . . . including but not limited to responsibility for the daily planning, directing and reviewing of all operations within the County; providing overall supervision of department actions, personnel matters, budgetary and fiscal procedures and routine administrative actions in accordance with policies and procedures as authorized and directed by the Charles County Commissioners.

As described in the Rules, the administrator's duties, while far reaching, demanding, and extensive, do not involve the formulation of public policy and are, first and foremost, administrative:

> The County Administrator . . . is responsible to the Board of

> Commissioners for the day to day management and operation of Charles County Government. The County Administrator reports directly to the Commissioner President for day-to-day operations. . . . The County Administrator will attend all Board of Commissioners meetings and shall have no vote.
>
> The County Administrator manages County Government and executes and implements the directives, initiatives and policies of the Board of Commissioners . . . . The County Administrator supervises the administration of all departments, offices, or agencies of the county . . . . The County Administrator is authorized to act, and is responsible for, all personnel actions . . . .
>
> * * *
>
> The County Administrator will prepare and submit to the County Commissioners . . . the County's Annual Budget to achieve the Commissioners' Goals and Objectives and implement the final approved budget. In addition, the County Administrator will report on all fiscal, operational and administrative activities of the County . . . .
>
> The County Administrator shall be appointed by majority vote of the Board of Commissioners and chosen by the Board . . . *solely on the basis of executive and administrative qualifications* . . . .

(Emphasis added).

As the county's chief administrative officer, the county administrator naturally must exercise discretion when managing day-to-day operations. According to the Charles County Code, the county administrator chairs a three-member grievance board for employees and sits on a nine-member board that hears claims for disability retirement income for employees of the sheriff's office. Charles County, Md., Code § 197-23(A) (1983); Charles County, Md., Code § 210-27(A)–(B) (1997). The county administrator attempts to resolve disputes. *See* Charles County, Md., Code § 271-6(H) (1982) (resolve

senior citizens club disputes referred by Director of Aging Services and, if necessary, advance to the Board); Charles County, Md., Code § 27-2(E) (2003) (resolve expense reimbursement disputes between fiscal director and commissioner or refer to Board for resolution); Charles County, Md., Code § 203-2(A)(1) (2023) (resolve procurement specification disputes between fiscal director and department). The officer's exercise of discretion largely involves internal affairs or, in some instances, the referral of enforcement actions. *See* Charles County, Md., Code § 203-1(R) (2023) (county administrator can take administrative action or refer matter to county attorney when put on notice that procurement policies or procedures have been violated); Charles County, Md., Code § 226-13(E) (2015) (county administrator can conduct informal hearing on alleged franchisee violation prior to revocation; if matter isn't resolved, then franchisee can request Board hearing).

The county administrator's inward-focused duties stand in sharp contrast with the Board's public-facing role and extensive policymaking power, authority, and obligations:

> 1) To adopt an Annual Budget to fund the operations of Charles County Government and associated County Agencies;
>
> 2) To adopt and update the County's Land Use Plan and Zoning Ordinances . . . and to serve as an appeal board as required.
>
> 3) To oversee development and land use issues by reviewing the Annual Report of the Planning Commission and meeting annually with the Charles County Planning Commission in open session.
>
> 4) To deliver services to citizens, maintain and construct county infrastructure, facilities, parks, and all County

> properties and amenities, in a fiscally responsible manner . . . .
>
> 5) To serve as the Charles County Board of Health by protecting the public health through funding of the Health Department and oversight of the Charles County Health Officer;
>
> 6) To protect the safety and welfare of the Charles County citizens by funding and supporting the Charles County Sheriff's Office.
>
> 7) To fund the Charles County Board of Education . . . .
>
> 8) To accept assignments and to serve on Boards, Commissions, Task Forces and Committees . . . .
>
> 9) To establish Commissioners' Goals and Objectives as the basis for the operation of Charles County Government to include the associated budgetary and policy related decisions . . . .

See also LG §§ 10-102(b), 10-301 *et seq*. At his deposition, President Collins described the Board as "the policy makers for Charles County government [who] decide on the budget, which sets those resources that are necessary in operating government. That includes making decisions as it relates to public safety, public education, [and] road improvements . . . ."

On the record before us, the Board has not delegated any policy authority to the county administrator. The administrator's powers are mostly executive, and the position does not play a role in formulating public policy for the county. The Board has not entrusted the county administrator with the kind of high-level responsibilities that an appointee on the policymaking or cabinet level would possess—*i.e.*, decision making authority and discretionary power on high-impact issues of public interest and importance. *See Gregory*,

501 U.S. at 453. Mr. Belton is, therefore, an "employee" under Title VII and the Board had a legal obligation to take remedial action when it became aware of Ms. Sargeant's investigative conclusion that he had been subjected to a hostile work environment by Commissioner Coates on account of his race.

Lastly, Commissioner Coates asks us to hold that the PRA (and necessarily, the injunction) are invalid under the First Amendment to the Constitution of the United States. Her arguments hinge on the position that the PRA was a legislative action. But because we have determined that the PRA was an administrative action rather than a law enacted by the Board, a First Amendment analysis is unnecessary. *See* U.S. Const. amend. I ("Congress shall make no law . . . abridging the freedom of speech . . . ."); *see also Nevada Comm'n on Ethics v. Carrigan*, 564 U.S. 117, 125–26 (2011) (rejecting notion that a state's recusal rules violate legislator's first amendment rights and holding that "[r]estrictions on legislators' voting are not restrictions on legislators' protected speech").

4. The evidence of record sustained sufficiently the circuit court's findings in favor of entering a permanent injunction.

Fourth, Commissioner Coates claims that even if the permanent injunction was proper as a matter of law, there was insufficient evidence to warrant its entry. More specifically, she contends that there wasn't enough evidence for the court to find that the balance of potential harm weighed in the appellees' favor, that the appellees would suffer irreparable harm, or that an injunction would be in the public interest.

A circuit court weighs four factors to decide whether a preliminary injunction is appropriate: (1) the plaintiff's likelihood of succeeding on the merits of their claim; (2) the

"'balance of convenience,'" meaning whether the defendant would suffer more injury from granting an injunction than would result from its denial; (3) whether the plaintiff will suffer irreparable injury if relief isn't granted; and (4) the public interest. *Ehrlich v. Perez*, 394 Md. 691, 707–08 (2006) (*quoting Department of Transp., Motor Vehicle Admin.*, *v. Armacost*, 299 Md. 392, 404–05 (1984)). If we were reviewing a court's decision to grant a preliminary injunction, we would consider whether the judge "'exercised sound discretion in examining [these] four factors . . . .'" *Id.* at 707 (*quoting LeJeune v. Coin Acceptors, Inc.*, 381 Md. 288, 300 (2004)). In this case, however, the factors don't guide our review because the court's final judgment was a permanent injunction that adjudicated the merits of the appellees' claims. *See Talbot Cnty.*, 370 Md. at 135–36 (*citing El Bey*, 362 Md. at 354).

A preliminary injunction is an injunction "granted after opportunity for a full adversary hearing on the propriety of its issuance but before a final determination of the merits of the action." Md. Rule 15-501(b). A court cannot enjoin a party preliminarily without first giving notice to all parties and an opportunity for a "full adversary hearing" on whether a preliminary injunction should issue. Md. Rule 15-505(a). The rules empower the court to consolidate a trial on the merits with the preliminary injunction hearing "before or after commencement of [that] hearing," as long as jury rights remain preserved. Md. Rule 15-505(b). Importantly, the court can grant an injunction "at any stage of an action and at the instance of any party or on its own initiative" on "the terms and conditions justice may require." Md. Rule 15-502(b); *see also* Md. Rule 15-501(a) (defining "injunction" as "an order mandating or prohibiting a specified act").

On December 30, 2022, the Commissioners filed a complaint asking the circuit court to issue a "Temporary Restraining Order, Permanent Injunction, and Declaratory Judgment, or, Alternatively, Writ of Mandamus and/or Prohibition." On February 15, 2023, the court entered the temporary restraining order.[18] And on September 8, and 18, 2023, the court heard the evidence and the parties' closing arguments for and against entry of a preliminary injunction. *See* Md. Rule 15-505(a).

On September 21, 2023, the court convened an oral opinion hearing to announce its ruling on the issue of "whether or not a permanent injunction should be granted." The court addressed Commissioner Coates's legal arguments, analyzed each of the requisite factors—likelihood of success on the merits, balance of convenience, irreparable harm, and the public interest—and concluded by "grant[ing] the plaintiff's request for a permanent injunction." The Commissioners' counsel asked the court to clarify its intention to issue a permanent, rather than preliminary injunction, which it affirmed. No parties objected. Commissioner Coates followed up with a motion for reconsideration to change the ruling to a preliminary injunction, and the court heard that motion on October 13, 2023.

At the motion hearing, Commissioner Coates argued that additional discovery was necessary for the court to decide the merits of the appellees' claims. She asked to be heard on her counterclaim for a declaratory judgment that the Board had, in fact, terminated Mr. Belton's employment on December 13, 2022. She argued that the Commissioners' claims

[18] The parties consented to waive the time requirement for the merits hearing. *See* Md. Rule 15-504(c).

for mandamus relief and request for declaratory judgment that Commissioner Coates had violated SG § 20-801 remained outstanding.[19] And she objected to the lack of advance notice that the evidentiary hearing would be for a permanent, rather than a preliminary, injunction.

In response, the Commissioners argued that modifying the ruling would prolong litigation unnecessarily at great expense to county taxpayers. They emphasized that the evidence submitted to the court supported a permanent injunction fully and that a second merits hearing would be redundant, that Commissioner Coates hadn't identified other discoverable evidence that could make a difference in the outcome given the court's conclusion that the PRA was enforceable, and that Commissioner Coates had adequate notice that their complaint sought a permanent injunction and that there would be an evidentiary hearing on the merits of that request. As to Commissioner Coates's counterclaim, the Commissioners argued that the court had disposed of her claim—seeking a declaration that the Board had fired Mr. Belton in December 2022—implicitly when it ruled that the PRA was enforceable because even if a vote had occurred, it would have been illegal. The Commissioners maintained that there was nothing left for the court to decide and that the permanent injunction was a sound exercise of the court's discretion.

The only specific discovery need Commissioner Coates identified during the hearing was her interest in taking Commissioner Stewart's deposition. And the circuit court

[19] In Count IV of their complaint, the Commissioners alleged that Commissioner Coates tried to incite the Board to discriminate against Mr. Belton on December 13, 2022, in violation of FEPA.

noted that Commissioner Stewart had testified at the evidentiary hearing and had been subjected to cross-examination. The court dismissed the appellees' remaining claims at their request and considered Commissioner Coates's arguments for conducting discovery and adjudicating her counterclaim at length. The court decided that a judgment declaring that the Board had terminated Mr. Belton's employment on December 13, 2022 would be irreconcilable with its finding that the PRA barred Commissioner Coates from taking that vote. The court opined as well that such a judgment would conflict with the evidence in the record. President Collins testified that no vote had been taken, and the Board's meeting minutes showed that the body tried to fire Mr. Belton. The legality of that vote was challenged, and the Board responded by voting to place Mr. Belton on administrative leave and to authorize the Commissioners to bring the present suit. Seeing no reason to change the permanent injunction, the court denied Commissioner Coates's motion for reconsideration and dismissed her counterclaim.

The circuit court exercised its discretion appropriately. An abuse of discretion is a judgment that is "'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Schade v. Md. State Bd. of Elections*, 401 Md. 1, 34 (2007) (*quoting Jenkins v. City of Coll. Park*, 379 Md. 142, 165 (2003)). The court had sound reasons in this case for consolidating the preliminary injunction hearing with the merits trial. The Board and the Commissioners' core objective was to have the court decide whether Commissioner Coates had the authority to vote on Mr. Belton's employment in December 2022 or, put differently, whether the PRA was binding and effective. Through a series of legal challenges, Commissioner Coates contended that the PRA was never valid and

couldn't be the subject of an injunction (*i.e.*, couldn't be enforced). At the opinion hearing, the court responded to all her legal challenges first, finding ultimately that the Board had the administrative authority to enact the PRA. Then the court found that the PRA remained in effect and enforceable because the body hadn't established an end date for it and had never taken a vote to modify or rescind it. When the circuit court made those findings, it had adjudicated the merits of the appellees' core claims in full and resolved the central controversy between the Board's members completely. Deciding whether interim injunctive relief was appropriate under the four factors was no longer necessary.

The circuit court's action satisfied its obligations under the Maryland Rules. The court provided notice and opportunity for a full adversary hearing on whether an injunction should issue. After a day and a half of hearings, combined with the October 13 motion hearing, the court concluded that further litigation was unnecessary. Courts have the discretion to consolidate a preliminary injunction hearing with a merits trial, Md. Rule 15-505(b), and the rules do not require advance notice of consolidation. The absence of a notice requirement aligns with the court's general power to grant an injunction at "any stage of an action" or "on its own initiative" when justice requires such action. Md. Rule 15-502(b).

The circuit court's judgment on the merits of the appellees' claims for declaratory and injunctive relief relied on sufficient evidence. Again, the heart of the dispute between the parties was whether the PRA barred Commissioner Coates from trying to fire Mr. Belton in December 2022. Apart from the allegations sustaining Commissioner Coates's counterclaim, none of the facts pertaining to the Board's actions on June 9, 2020 and

December 13, 2022 were in dispute. And the evidence adduced at the September hearings established that the Board had not voted to rescind or modify the PRA at any point before December 13, 2022 and that the PRA didn't sunset or terminate on its own. So after reaching its legal conclusions—namely, that the appellees had standing, that the case did not present a political question, that Mr. Belton was an "employee" under federal law, and that the Board possessed the authority to adopt the PRA—and finding that the PRA remained in effect on December 13, 2022, the court had ample evidence to render a final judgment on the appellees' claims.

In the circuit court's view, there was no reason to proceed with adjudicating Commissioner Coates's counterclaim. We agree on the merits, but there is one procedural wrinkle. The court decided that its findings of fact on the appellees' claims precluded any declaratory relief that it could enter in Commissioner Coates's favor and that the relief she sought conflicted with the evidence. Having found that the PRA was binding and in effect on December 13, 2022, the court determined that it couldn't also grant declaratory relief validating a Board vote to fire Mr. Belton that included Commissioner Coates. In other words, the court appeared to conclude that its decision to issue a permanent injunction effectively mooted Commissioner Coates's counterclaim. *See Powell v. Md. Dep't of Health*, 455 Md. 520, 539 (2017) ("A case is moot if 'there is no longer an existing controversy between the parties, so that there is no longer any effective remedy which the court can provide."' (*quoting Mercy Hosp., Inc. v. Jackson*, 306 Md. 556, 561 (1986))). We hold that the circuit court did not err or abuse its discretion when it granted a permanent injunction in the appellees' favor. Even so, the circuit court erred in a narrow procedural

way. Rather than dismissing Commissioner Coates's counterclaim for a declaratory judgment, the court should have entered a declaratory judgment embodying its conclusions that she was not entitled to relief as a result of its findings and conclusions on the Commissioners' claims. *See Broadwater v. State*, 303 Md. 461, 468 (1985). This is resolved easily: as we often do, we vacate the portion of the judgment dismissing Commissioner Coates's counterclaim and remand for entry of a declaratory judgment consistent with the circuit court's original findings and conclusions, as affirmed in this opinion.

B. The Circuit Court's Discovery And Evidentiary Rulings Were Not An Abuse Of Discretion Because Evidence About Whether The Board Should Have Adopted The PRA Was Irrelevant.

In her final arguments, Commissioner Coates suggests that the court stymied her efforts to discover and admit evidence examining the validity of the PRA. More specifically, she argues that the court abused its discretion when it quashed her subpoenas to Ms. Sargeant, rejected evidence she attempted to adduce at the preliminary injunction hearing, and denied her motion to compel County Attorney Adams's deposition testimony.

"[T]he administration of discovery rules is within the sound discretion of the trial judge." *Public Serv. Comm'n of Md. v. Patuxent Valley Conservation League*, 300 Md. 200, 216 (1984). Abuse of that discretion occurs when the court's action isn't tied to "'any guiding rules or principles,'" is irreconcilable with "'the logic and effect of facts and inferences'" before it, or defies fact and logic. *Bord v. Balt. Co.*, 220 Md. App. 529, 566 (2014) (*quoting In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997)). Ultimately, the court is responsible for ensuring that "matters which either are not relevant

or are subject to a privilege are not discoverable." *Patuxent Valley*, 300 Md. at 216.

Under Maryland Rule 5-401, evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Because evidence that isn't relevant isn't admissible, Md. Rule 5-402, "trial judges do not have discretion to admit irrelevant evidence." *State v. Simms*, 420 Md. 705, 724 (2011). When we review discovery and evidentiary rulings on relevance, we apply a *de novo* standard of review to the court's legal conclusion "that the evidence at issue is or is not 'of consequence to the determination of the action.'" *Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 620 (2011) (*quoting Parker v. State*, 408 Md. 428, 437 (2009)); *see J.L. Matthews, Inc. v. Md.-Nat'l Park & Plan. Comm'n*, 368 Md. 71, 93 (2002) (reviewing *de novo* a court's grant of a motion *in limine* based on its interpretation of the scope of condemnation proceedings).

Throughout the proceedings in the circuit court, Commissioner Coates attempted to challenge the integrity of Ms. Sargeant's investigation and the correctness of the Board's decision to adopt the PRA in the first place. From the outset of litigation, the court insisted that it would not review the Board's original findings or the Sargeant investigation. When Commissioner Coates attempted to subpoena Ms. Sargeant and her firm for documents and information related to the investigation, the court rejected this expansion of the issues on relevance grounds:

> The Board's position is that their request for quashing the subpoena's[sic] . . . "represents an ideal opportunity for the Court to reign in what otherwise promises to be further bloating of an already tortured litigation history." The court agrees! The court made this abundantly clear in the hearing on

> January 24, 2023. What has been decided and found is found. We are not going back but forward! To allow discovery down this path is extremely costly and will not reveal material that is relevant to this proceeding which is injunctive relief.

(footnote omitted). When the Commissioners brought their case-in-chief at the evidentiary hearing, the court reinforced its view on relevance, stating "we are not going to attack [the PRA], we are not going to go back, we are going to go forward. Those are my words that I wrote, and that is what we are going to do here." The court allowed Commissioner Coates to conduct a limited cross-examination of witnesses on their recollection of the Board's June 9, 2020 vote, their understanding of the Sargeant investigation, and their interviews with Ms. Sargeant, among other lines of questioning.

We agree with the court's conclusion on relevance. The issue was whether Commissioner Coates had the authority on December 13, 2022 to vote on Mr. Belton's employment in light of the PRA or, put another way, whether the PRA precluded her from taking that vote. Resolving this issue required the court to admit facts establishing whether the Board enacted the PRA, when it did so, whether the PRA included a sunset provision, or whether the Board ever voted to modify or rescind it between June 9, 2020 and December 13, 2022. To be sure, the court would have had to decide the legal question of whether the Board had the authority to take this kind of action at all. But whether the Board *should have* adopted the PRA on June 9, 2020 based on the findings of the Sargeant investigation is a separate legal matter that the court didn't have to adjudicate to resolve the controversy before it, and it was not obligated to admit evidence of any facts bearing on that question.

As the circuit court noted, Commissioner Coates could have brought a civil action to challenge the PRA in 2020. At the evidentiary hearing, she testified that she had private counsel during Ms. Sargeant's investigation and on June 9, 2020, and that her attorney tried to obtain the Board's records so she could challenge the PRA. But she didn't challenge it, and that fact made an impression on the circuit court:

> [COUNSEL FOR COMMISSIONER COATES]: Your Honor, I don't think on the one hand, if I may, you could say that she took no action and really didn't seek to set [the PRA] aside. But on the other hand—
>
> [THE COURT]: I'm looking, when I say no action, I am looking at two things. One, any body public, either the Board of County Commissioners or in this court or some other court. That is what I mean when I say action.
>
> * * *
>
> [T]here is no, no action here. The point is . . . while there are discussions in the government, that is not an action.
>
> Action is a request, a bill, a request, an agenda item request, something along that line. Just talking to another commission member, I don't think is action, okay?
>
> [COUNSEL]: But one, she is not talking to just any commissioner, member, she is talking to the president. And two, she is asking about her appeal rights.
>
> * * *
>
> Well, can we at least proffer that she did ask for an appeal? That way we get a clean record?
>
> [THE COURT]: She didn't appeal
>
> * * *
>
> She didn't ask for an appeal. She didn't put it in writing. . . . She had a conversation with a colleague.

* * *

> [COUNSEL]: Can we at least get [President Collins's] answer on the record? I know the court say[s] it is not relevant about the appeal rights, and then we preserve the record?
>
> [THE COURT]: Sure, go ahead, Counsel.

If Commissioner Coates had brought that claim, a court might have considered whether the Board's decision was "arbitrary, capricious, or discriminatory." *Prince George's Cnty. v. Silverman*, 58 Md. App. 41, 50 (1984); *see id.* at 41, 48 (prospective purchaser of surplus property brought mandamus and declaratory judgment action against county after county council failed to pass resolution approving sale). But instead, she took no action, conducted county business under the PRA for more than two years, and then, after winning re-election, tried to fire Mr. Belton in the Board's first meeting of the new term. The advantage of keeping the PRA shielded from public scrutiny was not lost on the circuit court:

> [THE COURT]: Here is the thing. It was in her best interest that all of that be kept confidential.
>
> * * *
>
> All of these allegations were against your client
>
> * * *
>
> Some of them . . . pretty damaging . . . . So all that stays confidential from June of 2020 all the way up until, arguably, January of 2023, maybe late December of 2022. You get all that benefit, and now all of a sudden you say, "Oh, you didn't do it right, so we get all the benefits of the law."
>
> [COUNSEL FOR COMMISSIONER COATES]: But there is no benefit to her. She was reprimanded—

[THE COURT]: Oh, there was a huge benefit for your client, it was confidential.

[COUNSEL]: It, but what was confidential?

[THE COURT]: The PRA.

* * *

[Y]ou get a great benefit if some allegation is kept quiet before, two years before an election.

[COUNSEL]: Had this allegation come to light, Commissioner Coates could have put her side of the story—

[THE COURT]: Even if it is, now let's assume . . . that it is just an allegation, okay? It remain[s] silent pretty much until after the election in November 2022, correct?

[COUNSEL]: It does remain silent, but then it has [to] come out.

[THE COURT]: Well how did she not get a benefit from that?

[COUNSEL]: Because she could have put it to rest. There are lots of allegations made against politicians all the time.

[THE COURT]: She could have, but she never did. Part of, one of the things that I am wrestling with is in equity, you have to take action. You can't sit on your rights, okay, and then claim foul, okay?

* * *

[COUNSEL]: But, your Honor, she asked Mr. Adams if there was an appeal process, and she will testify about that, as well. You know, to say that she should have spent her own funds running to court to deal with this, I think that puts too much of a burden on her.

Even in 2022, Commissioner Coates didn't plead arbitrariness and capriciousness by the

Board in her counterclaim.[20]

Under these circumstances, we agree that the Sargeant investigation and the Board's action had become water under the bridge and were irrelevant to the question before the court. The forward-focused scope of the proceedings was consistent with the purpose of injunctions, *see El Bey*, 362 Md. at 353 ("[I]njunctive relief is 'a preventative and protective remedy, *aimed at future acts*, and is not intended to redress past wrongs.'" (*quoting Colandrea*, 361 Md. at 395)), and the court drew this boundary correctly.

Lastly, the circuit court's denial of Commissioner Coates's motion to compel was not incorrect legally or an abuse of discretion. Commissioner Coates moved to compel County Attorney Adams's deposition testimony after his counsel asserted the attorney-client privilege in response to most of her questions. She asserted that his counsel had misused the privilege and withheld nonprivileged information, including information already revealed in Ms. Sargeant's investigative report. She argued that the Commissioners waived the attorney-client privilege when they included the report and the language of the PRA as exhibits to their complaint and that the privilege no longer protected any questions

[20] Commissioner Coates cites *Hyson v. Montgomery County Council*, 242 Md. 55 (1966), and *Uhler v. Secretary of Health & Mental Hygiene*, 45 Md. App. 282 (1980), as support for her contention that the PRA was an arbitrary and capricious action. But neither case applies to a personnel action taken by a county board in its executive capacity. On June 9, 2020, the Board didn't adjudicate disputed issues of fact based on an evidentiary record in an adversarial hearing, *see Hyson*, 242 Md. at 64–65, and Commissioner Coates points to no legal authority entitling her to a hearing or administrative appeal to challenge the Board's action. *See Albert v. Pub. Serv. Comm'n*, 209 Md. 27, 36 (1956) (due process doesn't require a hearing unless a state agency acts in a judicial or quasi-judicial capacity).

about the Sargeant investigation and the Board's subsequent adoption of the PRA.[21]

The circuit court issued a memorandum and order of its decision, stating the pleadings and exhibits on which the court relied to reach its conclusions. The court seemed to agree that the county attorney's counsel had asserted the privilege too broadly. Ultimately, however, the court found that many of Commissioner Coates's questions reached matters subject to the privilege, such as confidential conversations with county staff, the engagement of Ms. Sargeant, and retention of outside counsel. *See Harrison v. State*, 276 Md. 122, 152 (1975) (when the subject matter of a question goes to a conversation between attorney and client, the privilege applies). The deposition transcript supports the court's finding.

For guidance on the question of waiver, the circuit court relied on *Haley v. State*, 398 Md. 106 (2007). *See id.* at 110–11 (information given by defendant to his attorney was

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[21] Commissioner Coates's counsel crystallized her client's position on waiver at the deposition:

> [COUNSEL FOR THE BOARD]: [I]s it your position that the attorney-client privilege has been waived as to any and all matters during his entire tenure as the county attorney for Charles County?
>
> [COUNSEL FOR COMMISSIONER COATES]: No. My position is that anything that is at issue in this lawsuit, including the Sargeant investigation, which is really at the heart of this lawsuit, has been waived. So to the extent that there have been any complaints regarding Commissioner Coates, to the extent that Mr. Adams led the charge in initiating the investigation, all communications relating to the investigation, drafts of the report and subsequent communications, including all communications between Mr. Belton and Mr. Adams, I think, undoubtedly have been waived.

privileged "even though the information would later form the basis of his defense at trial"). The court noted the undisputed fact that the Board hadn't voted to waive the attorney-client privilege at any point in the case. Put simply, the court wasn't persuaded by Commissioner Coates's argument that a single commissioner, or even three individual commissioners, could waive the privilege for the county without a deliberation and vote by the full Board. Accordingly, the court disagreed that the Commissioners' submission of the Sargeant report and the PRA with their complaint waived the attorney-client privilege for the Board.

The court was right. The Board retained Ms. Sargeant and would have had to waive the privileged confidential communications among them. *See* Md. Rule 19-301.13(a)–(b) (an attorney employed by an organization represents the entity acting through its constituents, and if a constituent's action is likely to substantially injure the organization, the attorney must act in the best interest of the organization); *City of Coll. Park v. Cotter*, 309 Md. 573, 591 (1987) ("[T]he authority to waive the privilege belongs to the client alone."); *Caffrey v. Dep't of Liquor Control for Montgomery Cnty.*, 370 Md. 272, 303–04 (2002) (county is entitled to assert or waive the attorney-client privilege in Maryland Public Information Act dispute); *Geier*, 225 Md. App. at 152–54 (privilege extends to communications between Board attorneys and Board investigator). Moreover, when a privileged communication has been waived, it begins and ends at the specific communication or information item disclosed. *See Casey v. State*, 124 Md. App. 331, 345–46 (1999) (waiver is limited to the specific confidential conversation that client disclosed to third party); *Harrison*, 276 Md. at 150–51 (general statement isn't enough to waive privilege; client must have revealed the words or subject of his confidential conversation).

Ultimately, the court didn't find that the county attorney's deposition was necessary or appropriate based on its review of the exhibits presented and the deposition testimony that had been provided by Commissioner Coates and President Collins. Because Commissioner Coates had other evidentiary sources from which she could draw facts relevant to her defense, and because the primary aim of her deposition and motion to compel was to elicit information about the Sargeant investigation and the Board's reasons for imposing the PRA—testimony that would have been privileged and touched on issues that were irrelevant—we conclude that the court's ruling was well-reasoned, logical, and a sound exercise of discretion. *See Bord*, 220 Md. App. at 566.

We hold that the court's quashing of Commissioner Coates's subpoenas and evidentiary rulings were reasonable because they kept the case focused on the existing controversy between the parties. And the court did not abuse its discretion when it denied Commissioner Coates's motion to compel additional testimony from the county attorney.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED IN PART, VACATED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. APPELLANT TO PAY COSTS.

EXHIBT D

Employment Agreement
between
The Charles County Commissioners
and
Mark J. Belton

Introduction

This Agreement, is made and entered into on this 8th day of January, 2019, by and between the County Commissioners for Charles County, Maryland a body corporate and politic (hereinafter the "Employer") and Mark J. Belton, (hereinafter the "Employee"), both of whom agree as follows:

Section 1: Term
A. This agreement shall remain in full force and effect commencing February 4, 2019, and continuing until Employee separates from service as provided in Sections 10 and12 of this Agreement.

Section 2: Duties and Authority
Employer agrees to employ Mark J. Belton as County Administrator. The County Administrator shall be the Chief Administrative Officer of Charles County Government (hereinafter the "County") to be responsible to the County for the management of all county affairs that are placed in Employee by charge of law and the County Commissioners' Rules of Procedure adopted January 8, 2019, , including but not limited to responsibility for the daily planning, directing and reviewing of all operations within the County; providing overall supervision of department actions, personnel matters, budgetary and fiscal procedures and routine administrative actions in accordance with policies and procedures as authorized and directed by the Charles County Commissioners. Employee will give best efforts to execute the duties of the County Administrator.

Section 3: Compensation
A. Base Salary: Employer agrees to pay Employee an annual base salary of $210,000.00 payable in installments in accordance with the Employer's usual payroll schedule.

B. This agreement shall be automatically amended to reflect any salary adjustments that are authorized by The Charles County Commissioners.

C. Employer will consider providing Employee with an increase in salary for performance after consideration of Employee's annual written performance review under the provisions of Section 13 of this Agreement on or before Employee's anniversary date that these terms are in effect. Employee's salary shall also be adjusted for any cost of living adjustments that are granted to all employees of the County, but in no event shall Employee be paid less than the salary set forth in Section 3.

Section 4: Benefits

A. Employer agrees to provide for health, hospitalization, surgical, vision, dental and comprehensive medical insurance benefits for Employee and his dependents equal to that which is provided to all other employees of the County.

B. Employer agrees to provide and to make the required premium payments for long-term disability coverage on behalf of Employee.

C. Employer shall pay the amount of premium due for term life insurance up to one-and a half times (1.5x) Employee's annual base salary, not to exceed $250,000. Employee shall name the beneficiary of the life insurance policy. Additionally, Employer will pay Employee's deduction for an additional two times (2x) of supplemental life insurance not to exceed $400,000. Employee is responsible for completing the applicable paperwork for additional life insurance and Employer will not be held responsible if the Employee fails to do so.

D. Employee is entitled to any other standard benefits available to other employees of the County that may now exist or be made available during the term of this Agreement .

E. Employee shall be eligible for those benefits provided in the Personnel Policy and Procedures Manual except for Chapters 4, 5, 9, 10, 11, 12, 14, 15 and 16. In the event of a conflict between this Agreement and provisions of the Personnel Policy and Procedures Manual not explicitly deemed inapplicable, this Agreement shall control and govern the rights and obligations of the parties.

Section 5: Annual and Sick Leave

A. Upon commencing employment and in lieu of accruing annual leave under the provisions of Chapter 17 of the Personnel Policy and Procedures Manual, Employee shall be credited with thirty (30) days of annual leave. Employee shall then be credited with thirty (30) days of annual leave on each anniversary of employment thereafter. All unused annual leave shall accrue and roll over after each anniversary to be used by Employee or paid out as defined under Section 11. Any annual leave over 450 hours will roll into sick leave on December 31st of each year of employment.

B. Upon commencing employment, Employee shall accrue one (1) day of sick leave per month without limit. Employee will be credited for accumulated unused sick leave from prior employment not to exceed 450 hours.

C. In the event that Employee's employment is terminated, either voluntarily or involuntarily, Employee shall be compensated for all accrued annual leave and floating holidays as provided for in Section 10.

Section 6: Vehicle Allowance

Employee's duties require use of an automobile to be mutually agreed upon and provided at the Employer's expense. The County will provide Employee with an assigned high-efficiency hybrid or similar SUV or sedan to be agreed upon by Employee and Employer. The County take home vehicle will be for commuter and

professional use to conduct business on behalf of or in furtherance ofCounty business. The County will be responsible for associated operational, maintenance, and insurance costs. Professional and commuter use includes incidental personal use as may be necessary and practical from time to time. This includes, but is not limited to, picking up and dropping off of family members to and from work-related events.

Section 7: Retirement

A. Employee is required to enroll in the Charles County Pension Plan and to make the required four percent (4%) of base salary as the employee contribution to the Pension Plan. In addition to Employer's payment to the County retirement system, and recognizing time necessary to vest inEmployer's retirement system, Employer agrees to budget and pay an amount equal to five (5)% of Employee's base salary directly into a designated deferred compensation plan of Employee's choice for the benefit of Employee.

Section 8: General Business Expenses and Professional Development

A. Employer agrees to pay for professional dues and subscriptions of Employee necessary for full participation in national, regional, state and local associations and organizations necessary for Employee's continued professional growth and advancement, and for the good of Employer. Employer recognizes that certain expenses of a non-personal but job-related nature is incurred by Employee, and agrees to reimburse or pay said general expenses. Such expenses may include meals where Employee is discussing County business or conducting or participating in social events of various organizations when representingEmployer. Such expenditures are subject to state and County ethics and purchasing policies. The Director of Fiscal and Administrative Services (DFAS) is authorized to disburse such monies upon the receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.

B. Employer agrees to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the MACo (Maryland Association of Counties) Annual Conferences, state league of municipalities, the ICMA (International City/County Management Association) annual and regional conferences, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.

C. Employer agrees to pay for tuition, registration fees, and travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer. Employee and Employer will agree on a process for advance approval of such professional development expenses that exceed $250 per event, requires overnight travel, or requires absence from the office for more than one-half day.

D. Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs and organizations. Accordingly, Employer agrees to pay for the reasonable membership fees and/or dues to enable the Employee to become an active member in local/regional civic clubs and organizations.

E. Technology: Employer shall provide Employee with the use of a desktop, tablet and/or laptop computer, software, e-mail, cell phone or an allowance to cover the cost of a cell phone/smart phone (or similar device) required for Employee to perform the job and to maintain communication with the County Commissioners and County Staff.

F. Sections A. through E. of Section 8 above will be subject to annual appropriations and applicable Employer expense policies. The Director of Fiscal and Administrative Services is authorized to disburse such monies upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits, submitted in accordance with Employer's policies relating thereto.

Section 9: Personnel Authority

Neither Employer nor any individual County Commissioner shall direct or request the appointment of any person to, or removal from, office byEmployee or any ofEmployee's subordinates, or any manner take part in the appointment or removal of officers and employees in the administrative services of the County with the exception of the Assistant to the Commissioner President position. Except for the purpose of inquiry, Employer and its members shall deal with the administration through Employee and neitherEmployer nor any member thereof shall give orders or directives to any subordinates ofEmployee, either publicly or privately.

Section 10: Termination
For the purpose of this Agreement, termination shall occur:

A. If a majority of the County Commissioners, acting as Employer,votes to terminate Employee during a duly authorized meeting of the governing body held in accordance with Section 3-305(b) of the General Provisions Article of the Annotated Code of Maryland (Open Meetings Act).

B. If Employee resigns following a request to resign made by the majority of the County Commissioners.

C. Without notice at any time because of (a) professional malfeasance, (b) breach of the public trust, (c) theft in office, (d) conviction of a crime of moral turpitude, or (e) any other act or evidence of gross official misconduct.In that event, Employee hereby agrees to forfeit any and all claims of rights, interests or entitlements that may have accrued under this term of employment at any time. Employee further hereby releases

Employer from any and all obligations or responsibilities to Employee in that regard, including, without limitation, any claim for severance pay or benefits. Notwithstanding the foregoing, Employee shall be suspended without pay upon charges of a felony offense until such time as said charges are fully adjudicated or the matter is otherwise resolved. If terminated pursuant to Section 11 (C), Employee is not eligible to be compensated for accrued annual leave and floating holidays, but shall be entitled to any retirement benefits earned, subject to the terms of the Charles County Pension Plan.

Section 11: Severance

Employee is entitled to Severance Pay and benefits as described in Section 11(A) and (B) if employment is terminated pursuant to Section 10(A) or (B). Employee is not entitled to said Severance Pay nor benefits if employment is terminated pursuant to Section 10(C).

A. Employer shall provide Severance Pay equal to nine (9) months salary at the rate of pay in effect at the time of termination. Employee is entitled to one (1) additional month of Severance Pay for every year of employment completed under this Agreement, not to exceed twelve (12) months Severance Pay. This Severance Pay shall be paid in a lump sum unless otherwise agreed to by Employer and Employee.

Employee shall also be compensated for accrued annual leave and floating holidays up to a maximum of 337.5 hours per the Personnel Policy and Procedures Manual.

B. Employer shall pay Employee's share of the costs to continue the benefits described in Section 4 as Severance Benefits for a period of nine (9) months following the date of termination, or until such time as the category of benefits are available through Employee's new employer, whichever comes first. Employee is entitled to one (1) additional month of Severance Benefits for every year of employment completed at the time of termination, not to exceed twelve (12) months.

Section 12: Resignation

In the event that Employee voluntarily resigns his position with Employer, Employee shall provide the Employer with not less than thirty (30) days advance written notice of resignation pursuant to Section 19 (below), unless the parties agree otherwise. Benefits and wages shall continue in full force and effect until such time as the resignation is effective.

Section 13: Performance Evaluation

Employer shall annually review the performance of Employee subject to a process, form, criteria, and format for the evaluation, which shall be mutually agreed upon by the Employee and Employer. The evaluation process, at a minimum, shall include the opportunity for both parties to: (1) Conduct a formulary session where both parties meet first to discuss goals and objectives of both for the upcoming twelve (12) month period, and after the first year the past twelve (12) month period; (2) following the formulary discussion, prepare a written evaluation of the goals and objectives for the past and upcoming twelve (12) month period, (3) meet and discuss the evaluation of these goals

and objectives, and (4) present a written summary of the evaluation results within 30 days of the evaluation meeting.

Unless Employer expressly requests otherwise in writing, the evaluation of the Employee shall be at all times conducted in executive session of the County and shall be considered confidential to the extent provided by law. Nothing herein shall prohibit Employer or Employee from sharing the content of the evaluation with their respective counsel.

Section 14: Hours of Work

It is expected that Employee will typically work during normal Charles County Government office hours. However, it is recognized that Employee must devote a great deal of time outside those normal office hours on business for Employer. Accordingly, and to that end, Employee may establish his own work schedule, subject to reasonable direction by Employer. Employee is not eligible for overtime or paid compensatory hours.

Section 15: Outside Activities

The employment provided for by this Agreement shall be Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to Employer and the community, upon prior notice to and approval of Employer, Employee may elect to accept limited teaching, consulting or other business opportunities as long as such arrangements do not interfere with or cause a conflict of interest with Employee's responsibilities pursuant to this Agreement, subject to the written approval of Employer. In addition to Chapter 13 of the Personnel Policy and Procedures Manual, Employee's Activities shall be governed by the Charles County Code of Ethics (Ethics Laws) as set forth in Chapter 170 of the Charles County Code, and as amended from time to time. Employee shall be bound by all opinions and rulings of the Charles County Ethics Commission. Any existing private consulting contracts or services at the time of appointment for employment shall be terminated on or before February 4, 2019 unless otherwise expressly authorized in writing by Employer.

Section 16: Moving and Relocation Expenses

A. Employee agrees to establish residence within Charles County, within twelve (12) months of the effective date of this Agreement, and shall thereafter maintain a residence within Charles County during the course of employment with the County. This time period may be extended due to unforeseen or extraordinary circumstances, if agreed to by Employer in writing.

B. In order to accommodate Employee's relocation to Charles County, Employer will pay the cost of temporary lodging or housing, and for the relocation of home and personal goods within twelve (12) months of the effective date of this Agreement, payable against receipts, and not to exceed Eight Thousand Five Hundred Dollars ($8,500.00) total for all expenses in this section.

C. The Employer shall pay Employee's tax liability, if any, on all Employer provided benefits for relocation and housing.

Section 17: Indemnification

Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of and arising out of the course and scope of Employee's duties as County Administrator, or resulting from the exercise of judgment or discretion in connection with the performance of the duties or responsibilities of the County Administrator, unless the act or omission involved willful or wanton conduct, and to the extent such defense, harmlessness or indemnification is not in conflict with any other provision of law. Legal representation, provided by Employer for Employee, shall extend until a final determination of the legal action including any appeals brought by either party. The Employer shall indemnify employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorneys' fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his duties and occurring within the course and scope of his employment, and to the extent such indemnification is not in conflict with any provision of law. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

In the event a case is filed in the Court of this State against the County for actions arising out of, or in connection with, the performance of authorized and legal duties as the County Administrator, Employer agrees to pay Employee's reasonable litigation expenses to the extent such expenses are not in conflict with any provision of law, including travel expenses, throughout the pendency of any litigation to which the Employee is a party or witness. Such expense payments shall continue beyond Employee's service to the Employer as long as the litigation is pending.

Section 18: Other Terms and Conditions of Employment

The Employer, upon agreement with Employee, may provide for such other terms and conditions of employment as it may determine from time to time relating to the performance and duties of the Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Charles County Code or other applicable law. Notwithstanding the above, no modifications or extensions of this Agreement shall be valid unless the same shall be in writing and executed by all parties to this agreement.

Section 19: Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

EMPLOYER:	EMPLOYEE:
Charles County Commissioners c/o County Attorney 200 Baltimore Street La Plata, MD 20646	Mark J. Belton 530 Almond Drive Luray, VA 22835

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 20: General Provisions

A. Integration. This Agreement sets forth and establishes the entire understanding between Employer and Employee relating to the employment of Employee by Employer. This Agreement supersedes all prior agreements, contracts, representations, warranties, promises, covenants, arrangements, communications, and understandings, oral or written, express or implied, between or among the parties with respect to employment of Employee by Employer. Any prior discussions or representations by or between the parties arerendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this Agreement. Such amendments shall be incorporated and made a part of this Agreement.

B. Binding Effect. This Agreement shall be binding on Employer and Employee as well as their heirs, assigns, executors, personal representatives and successors in interest.

C. Effective Date. This Agreement shall become effective on February 4, 2019.

D. Severability. The invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if both parties subsequent to the expungement or judicial modification of the invalid provision have executed them.

E. Governing Law. This Agreement shall be governed by the laws of the State of Maryland.

Adopted and approved by The Charles County Commissioners on this ____day of _____, 2019.

<SIGNATURE PAGE TO FOLLOW>

ATTEST:

Clerk to the Commissioners

Reuben B. Collins, II, Esq., President
Charles County Commissioners

Witness:

Mark J. Belton