Testimony of Jim Michaels
before the Montgomery County Council
July 26, 2022

My name is Jim Michaels and I'm testifying to oppose the Charter Review Commission's proposal on what should happen when conflicting Charter amendments are on the ballot and both are approved.

Although my views are based on my experience as a member of the Democratic Central Committee's 2020 Ballot Questions Committee, the opinions I express today are purely my own.

I agree it's better to have a rule for how these conflicts are resolved. But the Commission's proposal is a rule that cannot ensure conflicts are resolved to adopt a Charter Amendment that a majority of voters favor.

The fundamental flaw is that the Commission's rule treats the two conflicting ballot questions as if they're a single, multiple-choice question that asks voters to specify if they prefer A, or B, or neither.

But that's not what actually happens when we have multiple questions.

Because any voter can approve both questions, we can't actually determine if the question receiving the most approval votes was actually favored by a majority.

My written testimony provides a numerical example showing how the Commission's rule could misconstrue what voters actually favor.

Voter approval of conflicting proposals could mean that some voters did not understand the conflict. Other voters could have voted for "change" without having a preference on which change is made.

That is why some authorities hold that if conflicting questions are approved, neither can be given effect – unless some law or the ballot question itself dictates the outcome.

We should do our best to ensure Charter amendments are actually favored by the majority, and the current proposal would not do that.

In 2020, we had two pairs of conflicting ballot questions and, in both cases, voters expressed their preference by approving one and rejecting the other. Highly effective voter education efforts were instrumental in achieving that result. But that might not always be the case.

We can increase certainty now, by adopting the rule that when conflicting measures are approved, neither one is given effect.

And going forward, we can consider other options, such as reformatting conflicting questions as a single question to make it easier to determine what the voters favor.

Appendix Attached

Appendix

<u>Example</u>:

This example illustrates how the rule proposed by the Charter Review Commission could result in the adoption of a Charter Amendment that is not favored by the majority of voters.

Assume the Commission's proposed rule is adopted and conflicting questions A and B appear on the ballot in a general election where there are 50,000 voters and the vote tally is:

Question A
Yes: 20,050 (50.1%)
No: 19,950 (49.9%)

Question B
Yes: 20,000 (66.7%)
No: 10,000 (33.3%)

The Commission's proposed rule would declare that Question A was approved and Question B was rejected because A received more approval votes. But now consider this as a situation where 2,000 people who voted "Yes" on Question A also voted "Yes" on Question B, either because they did not understand the conflict or because they voted to maximize the likelihood of effecting a change without expressing any preference between the two options. That would mean only 18,050 voters actually favored A over B, while only 18,000 voters favored B.

The Commission's proposed rule would declare A to be favored by the majority even though a larger number actually opposed A (19,950) than the number who preferred it (18,050). And a far fewer number opposed B (10,000) than opposed A (19,950). Knowing that 2,000 voters voted "Yes" on both questions and did not actually express any preference would convince me that the 18,050 voters who actually preferred A did not represent the preference of the majority of the 40,000 to 50,000 voters who participated. While the rule proposed by the Commission purports to follow the majority, it does not actually do so.