
**IN THE
COURT OF APPEALS OF MARYLAND**

September Term, 2005

No. 143

LINDA H. LAMONE, *et al.*,

Petitioners,

v.

MARIROSE JOAN CAPOZZI, *et al.*,

Respondents.

On Appeal from the Circuit Court for Anne Arundel County
(Ronald A. Silkworth, Judge)
Pursuant to a Writ of Certiorari to the Court of Special Appeals

RECORD EXTRACT

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CIRCUIT COURT FOR ANNE ARUNDEL COUNTY
 Robert P. Duckworth
 Clerk of the Circuit Court
 7 Church Circle
 Post Office Box 71
 Annapolis, MD 21404-0071
 (410)-222-1420, TTY for Deaf: (410)-222-1429
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08/16/06

Case Number: 02-C-06-115807 DJ
 Date Filed: 08/01/2006
 Case Time Stds: 01/28/08
 Status: Open/Active
 Case Flag: Appeal
 Judge Assigned: To Be Assigned,
 Location :
 CTS Start : 08/01/06 Target : 01/28/08

Marirose Joan Capozzi, Et Al Vs State Of Maryland, Et Al

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
Previous Related Circuit Case	17-C-06-011767
Case Folder ID	C06115807V02

INVOLVED PARTIES.

Type Num	Name (Last, First, Mid, Title)	Addr Str/End	Pty. Disp. Addr Add/Upd
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		Party ID: 1554427	
	Mail: 206 North Lake Court	08/01/06	08/01/06 CDW
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DEF	002 Lamone, Linda H		08/01/06 CDW

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Appear: 08/01/2006

CALENDAR EVENTS

Date	Time	Fac	Event Description	Text SA	Jdg Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec			
08/08/06	09:00A	3F	Injunction Hearing		RAS	01 /01	SR BAO
			Held/Concluded 08/14/06 E R.Silkworth	Y			
Stenographer(s): Tape Recorder							

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JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign	Date	Removal	RSN
TBA To Be Assigned,	J		08/01/06		

DOCUMENT TRACKING

Num/Seq	Description	Filed	Party	Jdg Ruling	Closed	User ID/ Entered
<u>15-203</u> 0001000	Original Papers and Certified Copy of Docket Entries from Queens Anne County	08/01/06	000	TBA		CDW CDW 08/01/06
<u>26-91</u> 0002000	Transmittal Notice Issued	08/01/06	000	TBA		CDW
<u>92-94</u> 0003000	Verified Complaint for Declaratory/Injunctive Relief	08/01/06	PLT001	TBA	08/01/06	08/01/06
<u>92-94</u> 0003000	Attorney Appearance Filed M A Figinski	08/01/06	PLT001	TBA	08/01/06	08/01/06
<u>95-98</u> 0004000	Plaintiff's Motion for Summary Judgment	08/01/06	PLT002	TBA		CDW
<u>95-98</u> 0004000	Attorney Appearance Filed M A Figinski	08/01/06	PLT002	TBA	08/01/06	08/01/06
<u>95-98</u> 0005000	Motion for TRO and Preliminary Injunction	08/01/06	PLT003	TBA		CDW
<u>95-98</u> 0005000	Attorney Appearance Filed M A Figinski	08/01/06	PLT003	TBA	08/01/06	08/01/06
0006000	Attorney Appearance Filed Christopher R West	08/01/06	PLT001	TBA	08/01/06	08/01/06
0007000	Attorney Appearance Filed Christopher R West	08/01/06	PLT002	TBA	08/01/06	08/01/06
0008000	Attorney Appearance Filed Christopher R West	08/01/06	PLT003	TBA	08/01/06	08/01/06
0009000	Attorney Appearance Filed Michael D Berman	08/01/06	DEF001	TBA	08/01/06	08/01/06
0010000	Attorney Appearance Filed Michael D Berman	08/01/06	DEF002	TBA	08/01/06	08/01/06
0011000	Attorney Appearance Filed Michael D Berman	08/01/06	DEF003	TBA	08/01/06	08/01/06
<u>204-209</u> 0012000	Transmittal Notice Sent to Queen Anne's County Circuit Court with A.A. County Case Number	08/01/06	000	TBA		CDW CDW 08/01/06

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Num/Seq	Description	Filed	Party	Jdg	Ruling	Closed	User ID/ Entered
<u>210</u>	0013000 Notice of Discovery (Request for Admission of Facts and Genuiness of Documents)	08/02/06	DEF001	TBA			DMB 08/04/06
<u>211</u>	0014000 Notice of Discovery (Request for Production of Documents)	08/02/06	DEF001	TBA			DMB 08/04/06
<u>212</u>	0015000 Notice of Discovery (Interrogatories)	08/02/06	DEF001	TBA			DMB 08/04/06
<u>215-220</u>	0016000 Defendant's Motion to Dismiss Complaint Filed by DEF003-Maryland State Board Of Elections, DEF002-Lamone	08/04/06	DEF003	TBA			LGJ LGJ 08/04/06
<u>221-245</u>	0017000 Defendants' Motion for Extension of Time to respond to Plaintiffs' Motion for Summary Judgment Filed by DEF003-Maryland State Board Of Elections, DEF002-Lamone	08/04/06	DEF003	TBA			LGJ LGJ 08/04/06
<u>246-321</u>	0018000 Defendant's Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order Filed by DEF002-Lamone, DEF003-Maryland State Board Of Elections	08/04/06	DEF002	TBA		08/04/06	LGJ 08/04/06
<u>328-329</u>	0019000 Defendants' Request for Hearing on Opposition to Plaintiffs' Motion for Temporary Restraining Order Filed by DEF003-Maryland State Board Of Elections, DEF002-Lamone	08/04/06	DEF003	TBA			LGJ LGJ 08/04/06
<u>331</u>	0020000 Case Information Sheet Filed Filed by DEF003-Maryland State Board Of Elections, DEF002-Lamone	08/04/06	DEF003	TBA			LGJ 08/04/06
<u>332-334</u>	0021000 Correspondence from Attorney Figinski to Judge Manck Re: Transmittal Notice	08/07/06	PLT001	TBA		08/09/06	ADH 08/09/06
<u>380-397</u>	0022000 Memorandum Opinion (out of order) (Copies to all parties)	08/11/06	000	RAS			DMB 08/11/06
<u>398-399</u>	0023000 Order with regard to Chapter 61 of the 2006 Laws (Copies to all parties)	08/11/06	000	RAS		08/11/06	DMB 08/11/06
<u>407-412</u>	0024000 Defendant's Unopposed Motion for Stay Pending Appeal (out of order)	08/11/06	DEF001	TBA			DMB 08/11/06
<u>413</u>	0025000 Order Granting Stay Pending Appeal (Copies to all parties)	08/11/06	000	RAS		08/11/06	DMB BAO 08/11/06
<u>336-337</u>	0026000 Correspondence from Atty Figinski to Judge Manck re: schedule established by Judge Silkworth.	08/08/06	000	TBA			BAO 08/14/06 08/14/06

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Num/Seq	Description	Filed	Party	Jdg	Ruling	Closed	User ID/ Entered
0027000 <u>379</u>	Hearing Sheet Case called for Hearing on Injunctive Relief in Open Court before Judge Ronald A. Silkworth. Counsel present and heard. Counsel established open issues before the Court today: 1) Plaintiff's motion for Temporary Restraining Order/Preliminary Injunction; (2) Plaintiff's Motion for Summary Judgment (3) Defendant's Motion to Dismiss (4) Issue of Laches Doctrine (5) Verified Complaint for Declaratory and Injunctive Relief. Counsel (Berman) made proffer regarding Laches. Court accepted proffer. Court heard oral argument on Issue of Laches. Court placed Findings on the record-Laches Doctrine does not apply and does not bar the Plaintiff's claim. Case is to proceed on merits. Court granted Motion to Dismiss as to State of Maryland - only. Opening Statements. Court heard oral arguments on request for Injunctive Relief. Closing arguments. Court held matter under advisement. Court retained file and exhibits.	08/08/06	000	RAS			BAO 08/14/06
0028000	Hearing Sheet signed as Order of Court (Copies mailed to Attys Figinski, West and Berman).	08/14/06	000	RAS		08/14/06	BAO BAO 08/14/06
0029000 <u>338-363</u>	Plaintiffs' Trial Memorandum (out of order)	08/08/06	000	TBA			BAO BAO 08/14/06
0030000 <u>364-375</u>	Proffer of Evidence	08/08/06	000	TBA			BAO 08/14/06
0031000 <u>376-378</u>	Affidavit of Lisa Lucas	08/08/06	000	TBA		08/14/06	BAO 08/14/06
0032000	*****Exhibits in Civil Vault*****	08/14/06	000	TBA			BAO 08/14/06
0033000 <u>400-401</u>	Notice of Appeal to COSA filed by Michael D. Berman, (Office of the Atty. Gen.) (Copies to Judge Silkworth and Jean Bowman). PHC given at counter. 3406 - duplicate entry of hearing sheet deleted	08/11/06	DEF001	TBA			SB SB 08/14/06
0035000 <u>402-404</u>	Notice of Appeal to COA, filed by the office of the Atty. Gen, Michael D. Berman (Copies to Judge Silkworth and Jean Bowman).	08/14/06	DEF001	TBA			SB SB 08/15/06
0037000 <u>414</u>	Faxed copy of Writ of Certiorari: (case due 08/21/06 to COA)	08/16/06	000	TBA			SB 08/16/06
0038000 <u>415-416</u>	Faxed Copy of Order issued at the Court of Appeals: ORDERED: that the petition granted, a writ shall issue, and that the COA case number is No. 143 September Term, 2005, and that the extract and briefs be due by 8/17/06 & 8/23/06, and that the case shall be set for argument on 8/25/06.	08/16/06	000	TBA		08/16/06	SB 08/16/06

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Num/Seq	Description	Filed	Party	Jdg Ruling	Closed	User ID/ Entered
0039000	Original Pleadings sent to COA, including 2 Volume of Pleadings, 1 Volume of transcript dated 8/08/06 and Exhibits: Plaintiff's exhibits 1,2 & 3 (3 folded charts). By BWA Courier 8/17/06.	08/16/06	000	TBA		SB 08/16/06

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
18DT	18 Day Tickle	OPEN	08/22/06	18	yes	no	MMOT	D	016	000
18DT	18 Day Tickle	OPEN	08/22/06	18	yes	no	MMOT	D	017	000
18DT	18 Day Tickle	OPEN	08/22/06	18	yes	no	DRHR	D	019	000
60DT	60 Day Tickle	OPEN	09/30/06	60	yes	no	DMIS	D	012	000
SLTR	Set List For Trial	CANCEL	08/01/06	0	yes	no	DTRF	D	001	000

ACCOUNTING SUMMARY**NON-INVOICED OBLIGATIONS AND PAYMENTS**

Date	Rcpt/Initials	Acct	Desc	Debit	Credit	Method
08/01/06		106	Solicitor	10.00	.00	
08/01/06		106	Solicitor	10.00	.00	
BALANCE:		20.00				

ESCROW DEPOSITS AND DISBURSEMENTS - 114 Escrow Crt of Special Appeals

Date	Rcpt/Initials	Deposit	Disbursement	Balance
08/15/06	200600014288/SB	50.00	.00	50.00

02-C-06-115807 Date: 08/16/06 Time: 10:26

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CASE FOLDER HISTORY

Date	Time	Type	User	Location	Clerk	Reason
08/11/06	12:21 PM	Transfer	CD	Civil Departmen	LC2	
08/04/06	3:34 PM	Transfer	JSC	Judge Silkworth	GDH	
08/04/06	3:20 PM	Created		Clerk employee	GDH	Case Folder Crea
08/04/06	2:45 PM	Created		Clerk employee	LGJ	Case Folder Crea
08/01/06	12:47 PM	Transfer	JSC	Judge Silkworth	CDW	

MARIROSE JOAN CAPOZZI *
206 North Lake Court *
Stevensville, Maryland 21666 *

and *

BETTYE B. SPEED *
128 Eareckson Lane *
Stevensville, Maryland 21666 *

and *

CHARLES W. CARTER, SR. *
117 Winchester Avenue *
Grasonville, Maryland 21638 *

Plaintiffs *

v. *

STATE OF MARYLAND *
c/o Attorney General of Maryland *
200 St. Paul Place *
Baltimore, Maryland 21202 *

and *

LINDA H. LAMONE, in her capacity as *
Administrator of the Maryland State Board *
of Elections *
151 West Street *
Suite 200 *
Annapolis, Maryland 21401 *

and *

MARYLAND STATE BOARD OF *
ELECTIONS *
151 West Street *
Suite 200 *
Annapolis, Maryland 21401 *

Defendants *

IN THE

CIRCUIT COURT

OF

QUEEN ANNE'S COUNTY

Civil Action No.: 17-C-06-011767

* * * * *

**VERIFIED COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Marirose Joan Capozzi, Bettye B. Speed and Charles W. Carter, Sr., by and through M. Albert Figinski and Christopher R. West, their attorneys, as undersigned herein, sue the State of Maryland, Linda Lamone, in her capacity as Administrator of the Maryland State Board of Elections and the Maryland State Board of Elections and say:

1. As a matter of introduction, this suit is brought pursuant to Title 3, Subtitle 4 of the Courts Article, Annotated Code of Maryland and Rules 15-501, et seq., challenging the validity of Chapter 5 of the 2006 Laws of Maryland. As shall be more specifically set forth in this and companion pleadings, Chapter 5 and portions of Chapter 61 of the 2006 Laws of Maryland are invalid under the Constitution of Maryland, for that by creating a putative system of “early voting” on five days before the recognized dates for the 2006 primary and general elections, Chapter 5 and portions of Chapter 61 of the 2006 Laws of Maryland contravene, and are invalid under, Article 1, § 1, Article XV § 7 and Article XVII, §§1 and 2, of the Constitution of Maryland.

PARTIES

2. Plaintiff, Marirose Joan Capozzi is a resident and taxpayer in Queen Anne’s County, Maryland and is registered to vote in Election District 4, Precinct 3 of said county.

3. Plaintiff, Bettye B. Speed is a resident and taxpayer in Queen Anne’s County, Maryland and is registered to vote in Election District 4, Precinct 3 of said county.

4. Plaintiff, Charles W. Carter, Sr. is a resident and taxpayer in Queen Anne’s County, Maryland and is registered to vote in Election District 5, Precinct 2 of said county.

5. The Defendants are: (a) the State of Maryland; (b) Linda H. Lamone, in her capacity as the Administrator of the Maryland State Board of Elections; and (c) the Maryland State Board of Elections.

JURISDICTION

6. Plaintiffs are qualified as residents, taxpayers and voters, to sue in this County, and this Court has jurisdiction over the State of Maryland and those other Defendants listed in paragraph 5.

7. Section 3-406, Courts Article, Annotated Code of Maryland, authorizes this Court to construe Chapter 5 and Chapter 61 of the 2006 Laws of Maryland, and Section 3-409, Courts Article, Annotated Code of Maryland, authorizes this Court to grant declaratory relief, including a declaration that said statutes are invalid under the Maryland Constitution. Rules 15-501, et seq. authorizes this Court to grant an injunction upon the terms and conditions justice may require.

VENUE

8. Venue is proper in the Circuit Court for Queen Anne's County; each Defendant regularly does business in Queen Anne's County, specifically the State Administrator of Elections has the duty of supervising the local election boards (including, of course, the Queen Anne's County Board) while the State Board supervises the conduct of elections and monitors local boards (including, of course, the Queen Anne's County Board). Sections 2-102, 2-103, Elections Art. Md. Code. The State Administrator and the State Board, moreover, have asked, and the State has approved, the expenditure of at least \$13 million for "early voting."

GRAVAMEN

9. During its 2005 session, the General Assembly enacted Senate Bill 478 (“Election Law - Early Voting”), providing that, except as provided in Title 9, Subtitle 3 of the Election Law Article (dealing with absentee ballots), a voter may vote in the voter’s assigned precinct on Election Day or, alternatively, may vote in an early voting place on the Tuesday before Election Day, the Wednesday before Election Day, the Thursday before Election Day, the Friday before Election Day or the Saturday before Election Day. Senate Bill 478 may be found at Laws of Maryland 2005, Volume V, pages 3660-3663. A copy of Senate Bill 478 is attached to this Complaint as Exhibit A.

10. Governor Robert L. Ehrlich, Jr. vetoed Senate Bill 478 on May 20, 2005. A copy of the Governor’s veto message may be found at Laws of Maryland 2005, Volume V, pages 3659-3660. A copy of the Governor’s veto message is attached to this Complaint as Exhibit B.

11. On January 17, 2006, the General Assembly overrode the Governor’s veto, thus finally enacting Senate Bill 478. It has been codified as Chapter 5 of the 2006 Laws of Maryland. A copy of Chapter 5 may be found at Laws of Maryland 2006 Advance Sheets, Volume 1, pages 20-22. A copy of Chapter 5 is attached to this Complaint as Exhibit C.

12. In relevant part, the expressed purpose of Chapter 5 purports to be “to allow voters to vote in elections at early voting polling places in the State; specifying the period in which early voting is allowed; requiring the local boards of elections to establish the early voting polling places in each county; requiring the local boards of certain counties to establish at least a certain number of early voting polling places for each primary or general election....”

13. Chapter 5 adds a new Section 10-301.1 to the Election Law Article. Section 10-301.1(a) states, "Except as provided under Title 9, Subtitle 3 of this article [dealing with absentee ballots], a voter shall vote: (1) in the voter's assigned precinct on Election Day; or (2) in an early voting polling place as provided in this Section." Section 10-301.1(b) then provides that the early voting is to begin on the Tuesday which is one week before a primary or general election and is to continue on the following Wednesday, Thursday, Friday and Saturday.

14. The 2006 General Assembly also enacted Chapter 61 (HB1368, 2006 Session) in order, *inter alia*, to deal with some of the mechanics of early voting. Chapter 61 was itself vetoed by Governor Robert L. Ehrlich, Jr., but the Governor's veto was overridden on April 10, 2006. A copy of Chapter 61 may be found at Laws of Maryland 2006 Advance Sheets, Volume 1, pages 388-402. A copy of Chapter 61 is attached to this Complaint as Exhibit D.

15. Chapter 61 sets forth the hours of early voting (from 7 a.m. until 8 p.m. each day). For each of seventeen counties, Chapter 61 specifies the single community in each county in which the county is to establish an early voting place. For the six remaining counties and Baltimore City, Chapter 61 specifies in each case, three particular addresses at which early voting places shall be established. Therefore, in the case of seventeen counties, Chapter 61 provides that there will be a single, countywide early voting location, while in the case of the six remaining counties and Baltimore City, Chapter 61 provides that there will be three early voting locations, and Chapter 61 specifies precisely where such early voting locations shall be.

16. The joint effect of Chapter 5 and Chapter 61 is that every voter in Maryland, will be able to vote in every primary and general election on a day other than Election Day and, in most cases, at a location distant from the ward or election district where the voter resides.

17. This purported “early voting” is in derogation of Article I, Section 1 of the Maryland Constitution which specifically provides that a citizen of proper age and registration:

shall be entitled to vote in the ward or election district in which he resides at all elections to be held in this State.

Said provision goes on to provide that “A person once entitled to vote in any election district shall be entitled to vote **there** [emphasis added]” until a new residence is acquired.

18. As noted in ¶ 15, above, Chapters 5 and 61 provide that “early voting” shall occur in specified locations in each county and Baltimore City, not necessarily in the ward or election district in which the voter resides.

19. Furthermore, this purported “early voting” is in derogation of Article XV, Section 7 of the Maryland Constitution, which specifically provides that “all general elections in this State shall be **held** [emphasis added] on the Tuesday next after the first Monday in the month of November, in the year in which they occur.” It is also in derogation of Article XVII, Section 2 of the Maryland Constitution, which specifically provides that “elections by qualified voters for State and county officers shall be **held** [emphasis added] on the Tuesday next after the first Monday of November, in the year nineteen hundred and twenty-six and on the same day in every fourth year thereafter.”

20. As noted in ¶¶ 13 and 15 above, Chapter 5 and Chapter 61 provide that “early voting” for a general election shall commence seven days before the Tuesday next after the first Monday in the month of November and shall continue for the following four days. Thus, by the Saturday before the Tuesday next after the first Monday in the month of November, a measurable percentage of the State’s voters may already have voted, in clear contravention of Article XV, Section 7 and Article

XVII, Section 2 of the Maryland Constitution. According to the Maryland State Election Board's current version of the "Guidelines for the Administration of Early Voting", the early voting estimated turnout is 20% of registered voters. See Affidavit of Joan F. Beck, attached hereto as Exhibit E.

21. Both overrides of the Governor's vetoes, referenced in §§ 11 and 14 above were party-line votes; not a single Republican delegate or state senator voted in favor of either of the overrides. In effect, therefore, the General Assembly of Maryland, in highly partisan fashion, has presumed to alter by legislation the organic law of Maryland, i.e., Article I, Section 1, Md. Const, Article XV, Section 7, Md. Const. and Article XVII, Section 2, Md. Const.

22. It should be noted that since 1918, Article I, Section 3, Md. Const. has provided for absentee voting. Therefore, when the people of Maryland have seen the need to create an exception to the constitutional mandates that general elections occur on a particular date and that voters vote in the ward or election district in which they reside, they have availed themselves of the option of amending the State Constitution to facilitate such an exception. Unfortunately, in the case of Chapters 5 and 61, the General Assembly was so eager to institute early voting in time for the 2006 elections that it simply ignored the contravening sections of the Maryland Constitution.

23. In fact, the imprudent rush to implement early voting in time for the 2006 elections has even resulted in the flagrant violation of the Chapter 5 by the Defendants themselves. Although Chapter 5 explicitly directs the Maryland State Board of Elections "on or before January 1, 2006" to "adopt regulations and guidelines for the conduct of early voting", the "Guidelines" attached to the Affidavit of Joan F. Beck establish that nearly six months passed after January 1, 2006 before such regulations and guidelines were adopted.

24. The partisans in the General Assembly get no succor from Article III, Section 49, Md. Const., because the legislative power to regulate by law the manner of holding elections is limited by its very terms, i.e., (a) the power may not be inconsistent with the Maryland Constitution, in this case, Art. I, Section 1, Md. Const., Art. XV, Section 7, Md. Const. and Art. XVII, Section 2, Md. Const., and (b) § 49 does not, by its terms, provide the authority to legislate the dates of election; said dates of general elections being established by Article XV, Section 7, Md. Const. and Article XVII, Section 1, Md. Const. Indeed, Section 9 of Article XVII provides that Article XVII's provisions take precedence over any inconsistent provisions of the Constitution. Note, moreover, that Section 1 of Article XVII, Md. Const., provides that an election "shall be held only" on a certain date. This provision does not say, as the partisans favoring Chapter 5 of the 2006 Laws of Md. might wish, that votes shall be counted on dates certain; the provision states "HELD."

25. Consequently, Chapter 5 and Chapter 61 of the 2006 Laws of Md. are constitutionally infirm because they are flatly inconsistent with the provisions of Art. I, § 1, Art. XV § 7 and Art. XVII, §§1 and 2, Md. Const.

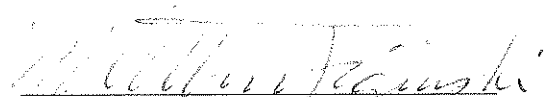
RELIEF

26. In view of the foregoing, as elaborated upon and explicated by the accompanying Points and Authorities, this Court should declare Chapter 5 of the 2006 Laws of Maryland and portions of Chapter 61 of the 2006 Laws of Maryland, insofar as they purport to allow "early voting," as well as any other implementing legislation, unconstitutional and enjoin Defendants, the State of Maryland, Linda H. Lamone and the Maryland State Board of Elections, from implementing in any way said "early voting."

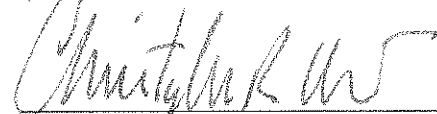
Wherefore, Plaintiffs pray that

1. The relief requested above be GRANTED, by
2. A DECREE that declares that Chapter 5 of the 2006 Laws of Maryland and portions of Chapter 61 of the 2006 Laws of Maryland, insofar as they purport to allow "early voting," as well as any other implementing legislation are unconstitutional; and
3. An injunction enjoining the State of Maryland, Linda H. Lamone and the Maryland State Board of Elections from implementing early voting in Maryland until such time, if ever, as the Constitution of Maryland is amended to allow the General Assembly to provide for a general election to be held other than on the Tuesday next after the first Monday in the month of November and to allow a voter who does not avail himself or herself of the constitutionally-sanctioned right to vote by absentee ballot to vote in a location away from the ward or election district in which the voter resides.

Respectfully submitted,



M. Albert Figinski, Esq.
One Charles Center
100 North Charles Street
Suite 2200
Baltimore, Maryland 21201
(410) 649-8820

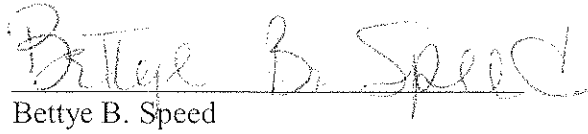


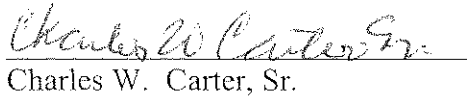
Christopher R. West, Esq.
250 West Pratt Street, 16th Floor
Baltimore, Maryland 21201
(410) 576-4772

VERIFICATION

I hereby affirm under penalties of perjury that the facts set forth in the foregoing Complaint are true to the best of my knowledge, information and belief.


Marirose Joan Capozzi


Bettye B. Speed


Charles W. Carter, Sr.

MEMORANDUM OF POINTS AND AUTHORITIES

Statutory and Constitutional Predicate

Senate Bill 478, Laws of Md. 2005, Volume V, pages 3660-3663, is attached as Exhibit A and is incorporated herein by this reference.

Veto message of Governor Robert L. Ehrlich, Jr. accompanying a veto of Senate Bill 478, Laws of Md. 2005, Volume V, pages 3659-3660, is attached as Exhibit B and is incorporated herein by this reference.

Chapter 5, Laws of Md. 2006 Advance Sheets , Volume I, pages 20-22 (and its "Status report), are attached as Exhibit C and are incorporated herein by this reference.

Chapter 61, Laws of Md. 2006 Advance Sheets, Volume I, pages 388-402 (HB1368 and its "Status" report), are attached hereto as Exhibit D and are incorporated herein by this reference.

Affidavit of Joan F. Beck, attached hereto as Exhibit E and incorporated herein by this reference.

The following provisions of the Maryland Constitution are attached hereto and made are part hereof by this reference:

- Art. 1, § 1 (Exhibit F);
- Art. 1, § 3 (Exhibit G);
- Art. III, § 49 (Exhibit H);
- Art. XV, § 7 (Exhibit I);
- Art. XVII, §§ 1-2 (Exhibit J); and
- Art. XVII, § 9 (Exhibit K)

Laws of Maryland, 2006 Advance Sheets, Volume II, p. 1283-1284 (Exhibit L)

The Plain Words of the Constitution

Article 1, Section 1, plainly states that a qualified citizen “shall be entitled to vote in the ward or election district in which he resides at all elections in this State.” There is nothing in these words that allows a voter to vote elsewhere,¹ except that Article 1, Section 3 allows absentee voting by persons “absent at the time of the election” or “unable to vote personally.”

The statutory framework for early voting is in derogation of these provisions because the statutes, enacted by an override of gubernatorial vetoes on partisan votes, purport to allow a voter to vote away from the ward or election district in which the voter resides, regardless of whether the voter has fulfilled the requirements for absentee voting.

The legislative power to regulate elections, set out in Art. III, § 49, may not be exercised in a fashion which is “inconsistent with this Constitution.” This clearly means the General Assembly may not circumvent the strictures of Art. 1, §1, Md. Const.

Moreover, Art. XV, §7 and Art. XVII, §2 of the Maryland Constitution specifically command that general elections be “held” on certain dates. Art. XVII, §9 further specifies that the provisions of Art. XVII shall prevail over any inconsistent constitutional provision, making Art. III, §49 subservient to Art. XVII.

The Maryland Court of Appeals has repeatedly and consistently held that unambiguous constitutional provisions are to be given their ordinary meaning and given effect as written. See, Bienkowski v. Brooks, 386 Md. 516, 536-7 (2005) (opinion by Eldridge, J.); Brown v. Brown, 287

¹ Indeed, Art. 1, §1 provides clearly that a qualified voter “shall be entitled to vote there” (i.e., in the ward or district in which he resides) “until he shall have acquired a residence in another election district or ward.” See Kemp v. Owens, 76 Md. 235 (1892).

Md. 273, 277-8 (1980) (opinion by Digges, J.); Cohen v. Governor, 255 Md. 5, 16 (1969) (opinion by Barnes, J.); Reed v. McKeldin, 207 Md. 553, 560-1 (1955) (opinion by Delaplaine, J.); Buckholtz v. Hill, 178 Md. 280, 286 (1940) (opinion by Delaplaine, J.); and Norris v. M&CC of Balt., 172 Md. 667, 676 (1937) (opinion by Offutt, J.). See also, Redmond v. Redmond, 123 Md. App. 405, 413-4 (1998).

The Election Case Law

There is no Maryland case which addresses early voting because, prior to 2006, no such notion has been foisted upon the public.

There are, however, a number of Maryland appellate decisions which make clear that the organic law of this State, i.e., the Constitution, may not be altered to allegedly enhance suffrage by legislation.

As recently as 2003, the Court of Appeals stressed that:

the Maryland Constitution sets forth the *exclusive* qualifications and restrictions on the right to vote in the State of Maryland [Emphasis in original.]

Md. Green Party v. Board of Elections, 377 Md. 127, 152 (2003). This thesis is but a short version of the Court's statement in State Board v. City Board, 342 Md. 586, 599 (1996):

Moreover, **the General Assembly may neither expand nor curtail the qualifications necessary to vote.** See, *e.g.*, Langhammer v. Munter, 80 Md. 518, 527, 31 A. 300, 301-302 (1895) ("But whatever may be done, no restrictions can be imposed that will require other or different qualifications for voting, than those prescribed by the first Article of the Constitution of the State"); Southerland v. Norris, 74 Md. 326, 328, 22 A. 137, 137 (1891) ("These qualifications [for voting in Maryland], fixed by the organic law, can neither be enlarged nor curtailed by the General Assembly").[Emphasis supplied].

The General Assembly ignored this impediment in creating early voting. As stated, the legislature cannot expand qualifications because they are fixed by the Constitution. And, by allowing voting outside the ward or district where a voter is registered, the legislature has certainly expanded the qualifications.

The fact that absentee voting has long been permissible in Maryland elections does not call into question this thesis because absentee voting is explicitly recognized and authorized by the Maryland Constitution as an exception to the general rule. Since 1918, Article I, Section 3, Md. Const. has provided for absentee voting. Therefore, when the people of Maryland have seen the need to create exceptions to the constitutional mandates relating to voting, they have availed themselves of the option of amending the State Constitution to facilitate such exceptions.

Chapters 5 and 61 directly violate the venerable holding in Kemp v. Owens, 76 Md. 235 (1892) - - a voter cannot lawfully vote where he does not reside. Accord: Southerland v. Norris, 74 Md. 326 (1891), which refused to create an exemption from residence in Calvert County for a “voter” who worked at the navy-yard and lived in the District of Columbia.

Federal law does not affect the analysis presented. In Sandusky County Democratic Party v. Blackwell, 387 F.3d 565, 568 (6th Cir. 2004), the court wrote:

we hold that ballots cast in a precinct where the voter does not reside and which would be invalid under state law for that reason are not required by HAVA to be considered legal votes.

In other words, state law prevails on election matters; consequently, a finding that “early voting” (as adopted by the General Assembly in Ch. 5, 2006 Laws of Md.) is repugnant to Maryland’s Constitution is not affected by Federal law. Blackwell specifically recognized that the “advantages

of” required precinct voting “are significant and numerous,” 387 F.3d at 569.² Regardless, the point is that, for purposes of this action, the Court need only decide what the Maryland Constitution restricts; there is no federal issue.

Maryland taxpayers have been recognized as having standing to challenge Maryland statutes on constitutional grounds. See, e.g., Boitnott v. M&CC of Balt., 356 Md. 226, 234 (1999), State v. Burning Tree, 315 Md. 254, 291 (1984); Murray v. Comptroller, 241 Md. 383, 391 (1966). In Norris v. M&CC of Balt., 172 Md. 667 (1937), a taxpayer was unquestioned in challenging a resort to voting machines despite the provision in Art. 1, §1, Md. Const. that votes be by “ballot.”³ Norris thus substantiates the standing of Plaintiffs in this case.

The appropriated amount subject to taxpayer challenge in Norris was \$1,250,000, a total dwarfed by the amount appropriated to fund early voting. The 2006 Budget Bill appropriating State funds for FY2007, beginning July 1, 2007, created a “State Reserve Fund,” Y01A02.01,

² The Court in Blackwell saw the advantages as:

[required precinct voting] caps the number of voters attempting to vote in the same place on election day; it allows each precinct ballot to list all of the votes a citizen may cast for all pertinent federal, state and local elections, referenda, initiatives and levies; it allows each precinct ballot to list only those votes a citizen may cast making ballots less confusing; it makes it easier for election officials to monitor votes and prevent election fraud; and it generally puts polling places in closer proximity to voter residence.

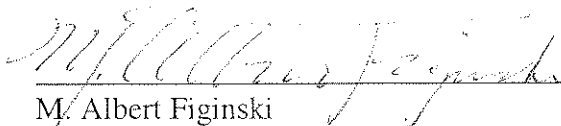
³As a matter of substance, Norris does not impair Plaintiffs’ argument because, unlike the word “ballot” in Norris, the terms “ward” and “election district” have not been the object of movable definition - “ward” and “election district” are clearly-understood terms which are used in election parlance today in the same way they have always been used. Moreover, Norris never addressed the issue of “early voting” in derogation of Art. XV, §7 and Art. XVII, §2 which specify that a general election be “HELD” on a particular day, not on a range of days selected at the whim of the General Assembly.

“Dedicated Purpose Account” to be “available immediately. . . to provide funds for additional costs associated with early voting as set forth in Chapter 5 of the 2006 Session.” The appropriated amount was \$13,377,408. Additionally, to fund “other costs associated with a voting system,” there was a separate appropriation of \$28,597,770. Laws of Maryland, 2006 Advance Sheets, Volume II, p. 1283-1284, attached hereto as Exhibit L.

CONCLUSION

Article I, Section 1, Article XV, Section 7, and Article XVII, Section 1, 2 & 9 have been contravened by the legislative enactments purporting to authorize “early voting.” These unconstitutional enactments should be declared invalid under Maryland law.

Respectfully submitted


M. Albert Figinski

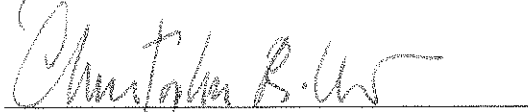

Christopher R. West

Exhibit A

parties, candidates, and advocacy groups to appoint poll watchers and challengers to observe the conduct of the election. We only allow absentee ballots to be used by those with valid reasons that would prohibit their attendance at the polls. All of these factors create a delicate balance between protecting voters' rights while recognizing the State's obligation to protect against voter fraud.

Senate Bill 478 upsets this delicate balance without providing additional safeguards to protect against voter fraud. In fact, it is an invitation for greater voter fraud in the State. It places a new burden on political parties, candidates, and advocacy groups to appoint poll watchers on the early voting days when such resources are already scarce. The absence of poll watchers and challengers on voting days diminishes the ability to monitor the voter identification process. Those states that administer early voting programs have strict voter identification procedures, such as requirements to produce a photo identification card, but the Maryland General Assembly has rejected more stringent voter identification procedures for more than a decade.

Moreover, there is a lack of consensus among the State's election officials about early voting in Maryland. Even though members of the State Board of Elections expressed severe reservations regarding Senate Bill 478, the State Administrator testified in favor of the bill before the General Assembly. Minutes from the February 2005 meeting of the State Board of Elections indicate that members questioned the policy of moving forward with early voting at this time because the Board had not studied the process, and the legislation did not provide a cohesive plan for implementation. In addition, the Maryland Association of Elections Officials opposed the legislation.

While I believe early voting may be an appropriate election technique in Maryland, it should only be implemented after a thorough study and with the full support of Maryland's election leaders. Please be assured that the Administration is committed to instilling public confidence in elections and ensuring that all Marylanders have the opportunity to cast a ballot and have their ballot counted. To this end, I will appoint a commission to examine and evaluate the election law bills passed this session and make recommendations concerning our State's election process. I am confident such a commission will develop policies and procedures assuring that fair and accurate elections take place within the State.

For the above stated reasons, I have vetoed Senate Bill 478.

Very truly yours,
Robert L. Ehrlich, Jr.
Governor

Senate Bill No. 478

AN ACT concerning

Election Law - Early Voting

FOR the purpose of establishing a process to allow voters to vote in elections at early voting polling places in the State; specifying the period in which early voting is allowed; ~~specifying criteria and procedures to guide the State Administrator of Elections in setting the number and location of early voting polling places for~~

~~each election; granting authority to certain entities to select early voting polling places; establishing that each local board of elections has the final authority to select the geographic locations for certain early voting polling places; requiring the local boards of elections to establish the early voting polling places in each county; requiring the local boards in certain counties to establish at least a certain number of early voting polling places for each primary or general election; requiring the Governor to allocate certain resources to implement this Act; requiring the State Board of Elections to adopt certain regulations and guidelines by a certain date; making certain provisions of law applicable to early voting; and generally relating to early voting in elections in the State.~~

BY adding to

Article - Election Law
Section 10-301.1
Annotated Code of Maryland
(2003 Volume and 2004 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article - Election Law

10-301.1.

(A) EXCEPT AS PROVIDED UNDER TITLE 9, SUBTITLE 3 OF THIS ARTICLE, A VOTER SHALL VOTE:

- (1) IN THE VOTER'S ASSIGNED PRECINCT ON ELECTION DAY; OR
- (2) IN AN EARLY VOTING POLLING PLACE AS PROVIDED IN THIS SECTION.

(B) EACH EARLY VOTING POLLING PLACE SHALL BE OPEN FOR VOTING:

- (1) BEGINNING THE EIGHTH DAY TUESDAY BEFORE A PRIMARY OR GENERAL ELECTION THROUGH THE FRIDAY SATURDAY BEFORE THE ELECTION; AND
- (2) 8 HOURS EACH DAY DURING THE PERIOD SPECIFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION, INCLUDING EACH SATURDAY AND SUNDAY.

~~(C) (1) WITH THE ADVICE OF THE LOCAL ELECTION DIRECTOR, THE STATE ADMINISTRATOR SHALL SET THE NUMBER OF EARLY VOTING POLLING PLACES THAT EACH LOCAL BOARD MUST ESTABLISH.~~

~~(2) (I) THE GEOGRAPHIC LOCATION OF EARLY VOTING POLLING PLACES SHALL BE SELECTED IN EQUAL PROPORTIONS BY:~~

- ~~(I) 1. THE PRINCIPAL MAJORITY POLITICAL PARTY; AND~~
- ~~(II) 2. THE PRINCIPAL MINORITY POLITICAL PARTY; AND~~

~~2. THE LOCAL BOARD BASED ON THE RECOMMENDATION OF RECOGNIZED NONPRINCIPAL POLITICAL PARTIES AND OTHER PUBLIC INTEREST GROUPS.~~

~~(H) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH, EACH LOCAL BOARD HAS THE FINAL AUTHORITY TO SELECT THE GEOGRAPHIC LOCATIONS FOR THE NUMBER OF EARLY VOTING POLLING PLACES DESIGNATED BY THE STATE ADMINISTRATOR FOR THAT COUNTY.~~

~~(G) IF THE NUMBER OF POLLING LOCATIONS EARLY VOTING POLLING PLACES SET BY THE STATE ADMINISTRATOR FOR A LOCAL BOARD IS NOT EQUALLY DIVISIBLE BY THREE:~~

~~(4) THE NUMBER OF GEOGRAPHIC LOCATIONS SELECTED BY THE PRINCIPAL PARTIES SHALL BE EQUAL, AND~~

~~(H) THE NUMBER OF GEOGRAPHIC LOCATIONS SELECTED BY THE LOCAL BOARD SHALL BE LESS THAN, BY NO MORE THAN TWO, THE NUMBER SELECTED BY ONE PRINCIPAL PARTY.~~

~~(C) (1) EACH LOCAL BOARD SHALL ESTABLISH THE EARLY VOTING POLLING PLACES IN ITS COUNTY.~~

~~(2) (1) IN THE FOLLOWING COUNTIES, THE LOCAL BOARD SHALL ESTABLISH AT LEAST THREE EARLY VOTING POLLING PLACES FOR EACH PRIMARY OR GENERAL ELECTION:~~

- ~~1. ANNE ARUNDEL;~~
- ~~2. BALTIMORE CITY;~~
- ~~3. BALTIMORE COUNTY;~~
- ~~4. HARFORD;~~
- ~~5. HOWARD;~~
- ~~6. MONTGOMERY; AND~~
- ~~7. PRINCE GEORGE'S.~~

~~(1) IN EACH COUNTY OTHER THAN A COUNTY SPECIFIED IN SUBPARAGRAPH (1) OF THIS PARAGRAPH, THE LOCAL BOARD SHALL ESTABLISH AT LEAST ONE EARLY VOTING POLLING PLACE FOR EACH PRIMARY OR GENERAL ELECTION.~~

~~(4) (3) POLLING PLACES ESTABLISHED BY A LOCAL BOARD UNDER THIS SECTION SHALL MEET THE REQUIREMENTS OF § 10-101 OF THIS TITLE.~~

~~(H) IF A LOCAL BOARD CANNOT ESTABLISH A POLLING PLACE IN THE GEOGRAPHIC LOCATION REQUESTED UNDER THIS SUBSECTION, THE REQUESTING ENTITY MAY MAKE ANOTHER REQUEST.~~

(D) (1) A VOTER MAY VOTE AT ANY EARLY VOTING POLLING LOCATION PLACE IN THE VOTER'S COUNTY OF RESIDENCE.

(2) THE LOCAL BOARD SHALL ENSURE THAT EVERY BALLOT STYLE USED IN THE COUNTY FOR THE ELECTION IS AVAILABLE AT THE EARLY VOTING POLLING LOCATIONS PLACES.

(E) ON OR BEFORE JANUARY 1, 2006, THE STATE BOARD SHALL ADOPT REGULATIONS AND GUIDELINES FOR THE CONDUCT OF EARLY VOTING.

(F) ANY PROVISION OF THIS ARTICLE THAT APPLIES TO ELECTION DAY ALSO SHALL APPLY TO EARLY VOTING.

SECTION 2. AND BE IT FURTHER ENACTED, That the Governor shall allocate the resources required to implement the requirements of this Act, including any gift received by the State for the purposes of this Act under § 2-201 of the State Finance and Procurement Article, or, except for federal funds received by the State to implement the requirements of the Help America Vote Act 2002, any federal or other funds or grant received by the State in accordance with federal and State law for the purposes of this Act by fiscal year 2007 and each fiscal year thereafter.

SECTION 2-3. AND BE IT FURTHER ENACTED, That this Act shall take effect October June 1, 2005.

May 26, 2005

The Honorable Thomas V. Mike Miller, Jr.
President of the Senate
State House
Annapolis, MD 21401

Dear Mr. President:

In accordance with Article II, Section 17 of the Maryland Constitution, today I have vetoed Senate Bill 486 - *Higher Education - University of Maryland University College - Governing Authority*.

This bill clarifies that the University College is a State agency and a constituent institution of the University System of Maryland. The bill also permits a custodian to deny inspection of any part of specified public records that relate to the competitive position of the College with respect to other providers of educational services.

House Bill 96, which was passed by the General Assembly and signed by me, accomplishes the same purpose. Therefore, it is not necessary for me to sign Senate Bill 486.

Very truly yours,
Robert L. Ehrlich, Jr.
Governor

Exhibit B

~~11-404.1~~ 11-404.1(b)(1)(iv) of the Health Occupations Article to any individual who is currently a therapeutically certified optometrist until July 1, 2006.

SECTION 4. AND BE IT FURTHER ENACTED, That the State Board of Examiners in Optometry shall certify a licensed optometrist as a therapeutically certified optometrist prior to the license renewal date if the optometrist completes the requirements of § 11-404.1 of the Health Occupations Article, as enacted by this Act, prior to the license renewal date, by November 30, 2005, the State Board of Examiners in Optometry, in consultation with and subject to the approval of the State Board of Physicians, shall adopt a collaborative practice protocol for the administration and prescription of topical steroids by therapeutically certified optometrists under § 11-404.2 of the Health Occupations Article as enacted by this Act.

SECTION 5. AND BE IT FURTHER ENACTED, That the State Board of Examiners in Optometry and the State Board of Physicians shall each report, in accordance with § 2-1246 of the State Government Article, to the Senate Education, Health, and Environmental Affairs Committee and the House Health and Government Operations Committee by June 1, 2008, on issues related to the practice of optometry under this Act. Each report shall suggest changes to §§ 11-404.1 and 11-404.2 of the Health Occupations Article to improve the quality of and access to care or to enhance the scope of practice of optometry in the State.

~~SECTION 5.~~ 6. AND BE IT FURTHER ENACTED, That this Act shall take effect July 1, 2005.

May 20, 2005

The Honorable Thomas V. Mike Miller, Jr.
President of the Senate
State House
Annapolis, MD 21401

Dear Mr. President:

In accordance with Article II, Section 17 of the Maryland Constitution, today I have vetoed Senate Bill 478 – *Election Law – Early Voting*.

Senate Bill 478 requires the local boards of elections to establish early voting polling places for a five-day period beginning eight days prior to Election Day and have them in operation for eight hours each day. Under this program, a voter may cast a ballot at any early voting location in the voter's county of residence. On early voting days, the local boards of elections are responsible for ensuring that every ballot style used in the county for the election is available at the early polling places.

Maryland has a national reputation as a state with a rich history of voter fraud. Over the years, the General Assembly has carefully crafted an election process that includes numerous safeguards to protect against voter irregularities. We require most voters to personally appear at their own election precinct on a single day, Election Day. On that day, we appoint representatives of the political parties as election judges to conduct the balloting process at the polls. We also allow representatives of political

parties, candidates, and advocacy groups to appoint poll watchers and challengers to observe the conduct of the election. We only allow absentee ballots to be used by those with valid reasons that would prohibit their attendance at the polls. All of these factors create a delicate balance between protecting voters' rights while recognizing the State's obligation to protect against voter fraud.

Senate Bill 478 upsets this delicate balance without providing additional safeguards to protect against voter fraud. In fact, it is an invitation for greater voter fraud in the State. It places a new burden on political parties, candidates, and advocacy groups to appoint poll watchers on the early voting days when such resources are already scarce. The absence of poll watchers and challengers on voting days diminishes the ability to monitor the voter identification process. Those states that administer early voting programs have strict voter identification procedures, such as requirements to produce a photo identification card, but the Maryland General Assembly has rejected more stringent voter identification procedures for more than a decade.

Moreover, there is a lack of consensus among the State's election officials about early voting in Maryland. Even though members of the State Board of Elections expressed severe reservations regarding Senate Bill 478, the State Administrator testified in favor of the bill before the General Assembly. Minutes from the February 2005 meeting of the State Board of Elections indicate that members questioned the policy of moving forward with early voting at this time because the Board had not studied the process, and the legislation did not provide a cohesive plan for implementation. In addition, the Maryland Association of Elections Officials opposed the legislation.

While I believe early voting may be an appropriate election technique in Maryland, it should only be implemented after a thorough study and with the full support of Maryland's election leaders. Please be assured that the Administration is committed to instilling public confidence in elections and ensuring that all Marylanders have the opportunity to cast a ballot and have their ballot counted. To this end, I will appoint a commission to examine and evaluate the election law bills passed this session and make recommendations concerning our State's election process. I am confident such a commission will develop policies and procedures assuring that fair and accurate elections take place within the State.

For the above stated reasons, I have vetoed Senate Bill 478.

Very truly yours,
Robert L. Ehrlich, Jr.
Governor

Senate Bill No. 478

AN ACT concerning

Election Law - Early Voting

FOR the purpose of establishing a process to allow voters to vote in elections at early voting polling places in the State; specifying the period in which early voting is allowed; ~~specifying criteria and procedures to guide the State Administrator of Elections in setting the number and location of early voting polling places for~~

Exhibit C

CHAPTER 5

(Senate Bill 478)

AN ACT concerning

Election Law - Early Voting

FOR the purpose of establishing a process to allow voters to vote in elections at early voting polling places in the State; specifying the period in which early voting is allowed; ~~specifying criteria and procedures to guide the State Administrator of Elections in setting the number and location of early voting polling places for each election; granting authority to certain entities to select early voting polling places; establishing that each local board of elections has the final authority to select the geographic locations for certain early voting polling places; requiring the local boards of elections to establish the early voting polling places in each county; requiring the local boards in certain counties to establish at least a certain number of early voting polling places for each primary or general election; requiring the Governor to allocate certain resources to implement this Act; requiring the State Board of Elections to adopt certain regulations and guidelines by a certain date; making certain provisions of law applicable to early voting; and generally relating to early voting in elections in the State.~~

BY adding to

Article - Election Law
Section 10-301.1
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(2003 Volume and 2004 Supplement)

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(2) IN AN EARLY VOTING POLLING PLACE AS PROVIDED IN THIS SECTION.

(B) EACH EARLY VOTING POLLING PLACE SHALL BE OPEN FOR VOTING:

(1) BEGINNING THE ~~EIGHTH DAY~~ TUESDAY BEFORE A PRIMARY OR GENERAL ELECTION THROUGH THE ~~FRIDAY~~ SATURDAY BEFORE THE ELECTION; AND

(2) 8 HOURS EACH DAY DURING THE PERIOD SPECIFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION, ~~INCLUDING EACH SATURDAY AND SUNDAY.~~

~~(C) (1) WITH THE ADVICE OF THE LOCAL ELECTION DIRECTOR, THE STATE ADMINISTRATOR SHALL SET THE NUMBER OF EARLY VOTING POLLING PLACES THAT EACH LOCAL BOARD MUST ESTABLISH.~~

~~(2) (I) THE GEOGRAPHIC LOCATION OF EARLY VOTING POLLING PLACES SHALL BE SELECTED IN EQUAL PROPORTIONS BY:~~

~~(i) 1. THE PRINCIPAL MAJORITY POLITICAL PARTY, AND~~

~~(ii) 2. THE PRINCIPAL MINORITY POLITICAL PARTY, AND~~

~~3. THE LOCAL BOARD BASED ON THE RECOMMENDATION OF RECOGNIZED NONPRINCIPAL POLITICAL PARTIES AND OTHER PUBLIC INTEREST GROUPS.~~

~~(II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH, EACH LOCAL BOARD HAS THE FINAL AUTHORITY TO SELECT THE GEOGRAPHIC LOCATIONS FOR THE NUMBER OF EARLY VOTING POLLING PLACES DESIGNATED BY THE STATE ADMINISTRATOR FOR THAT COUNTY.~~

~~(3) IF THE NUMBER OF POLLING LOCATIONS EARLY VOTING POLLING PLACES SET BY THE STATE ADMINISTRATOR FOR A LOCAL BOARD IS NOT EQUALLY DIVISIBLE BY THREE:~~

~~(i) THE NUMBER OF GEOGRAPHIC LOCATIONS SELECTED BY THE PRINCIPAL PARTIES SHALL BE EQUAL, AND~~

~~(ii) THE NUMBER OF GEOGRAPHIC LOCATIONS SELECTED BY THE LOCAL BOARD SHALL BE LESS THAN, BY NO MORE THAN TWO, THE NUMBER SELECTED BY ONE PRINCIPAL PARTY.~~

~~(C) (1) EACH LOCAL BOARD SHALL ESTABLISH THE EARLY VOTING POLLING PLACES IN ITS COUNTY.~~

~~(2) (I) IN THE FOLLOWING COUNTIES, THE LOCAL BOARD SHALL ESTABLISH AT LEAST THREE EARLY VOTING POLLING PLACES FOR EACH PRIMARY OR GENERAL ELECTION:~~

- ~~1. ANNE ARUNDEL;~~
- ~~2. BALTIMORE CITY;~~
- ~~3. BALTIMORE COUNTY;~~
- ~~4. HARFORD;~~
- ~~5. HOWARD;~~
- ~~6. MONTGOMERY; AND~~
- ~~7. PRINCE GEORGE'S.~~

(II) IN EACH COUNTY OTHER THAN A COUNTY SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE LOCAL BOARD SHALL ESTABLISH AT LEAST ONE EARLY VOTING POLLING PLACE FOR EACH PRIMARY OR GENERAL ELECTION.

(4) ~~(I)~~ (3) POLLING PLACES ESTABLISHED BY A LOCAL BOARD UNDER THIS SECTION SHALL MEET THE REQUIREMENTS OF § 10-101 OF THIS TITLE.

~~(H) IF A LOCAL BOARD CANNOT ESTABLISH A POLLING PLACE IN THE GEOGRAPHIC LOCATION REQUESTED UNDER THIS SUBSECTION, THE REQUESTING ENTITY MAY MAKE ANOTHER REQUEST.~~

(D) (1) A VOTER MAY VOTE AT ANY EARLY VOTING POLLING LOCATION PLACE IN THE VOTER'S COUNTY OF RESIDENCE.

(2) THE LOCAL BOARD SHALL ENSURE THAT EVERY BALLOT STYLE USED IN THE COUNTY FOR THE ELECTION IS AVAILABLE AT THE EARLY VOTING POLLING LOCATIONS PLACES.

(E) ON OR BEFORE JANUARY 1, 2006, THE STATE BOARD SHALL ADOPT REGULATIONS AND GUIDELINES FOR THE CONDUCT OF EARLY VOTING.

(F) ANY PROVISION OF THIS ARTICLE THAT APPLIES TO ELECTION DAY ALSO SHALL APPLY TO EARLY VOTING.

SECTION 2. AND BE IT FURTHER ENACTED, That the Governor shall allocate the resources required to implement the requirements of this Act, including any gift received by the State for the purposes of this Act under § 2-201 of the State Finance and Procurement Article, or, except for federal funds received by the State to implement the requirements of the Help America Vote Act 2002, any federal or other funds or grant received by the State in accordance with federal and State law for the purposes of this Act by fiscal year 2007 and each fiscal year thereafter.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ June 1, 2005.

Enacted January 17, 2006.


CHAPTER 6

(House Bill 622)

AN ACT concerning

Elections - Absentee Voting on Demand

FOR the purpose of eliminating the circumstances that are required to exist for a voter to qualify for voting by absentee ballot; altering the methods for receiving and submitting an application for an absentee ballot; and generally relating to voting by absentee ballot.

									
2005 Regular Session bill information current as of December 15, 2005 - 10:48 p.m.									
Sponsors	Title	Synopsis	History	Sponsor List	Subjects	Statutes	Documents	Another Session	Another Bill

SENATE BILL 478

File Code: Elections
Crossfiled with: HOUSE BILL 1046

Sponsored By:

Senators Miller, Conway, Currie, Dyson, Exum, Frosh, Garagiola, Green, Hogan, Hollinger, Middleton, and Ruben

Entitled:

Election Law - Early Voting

Synopsis:

Establishing a process to allow voters to vote in elections at early voting polling places in the State; specifying the time period in which early voting is allowed; requiring local boards of elections to establish the early voting polling places in each county; requiring the local boards in specified counties to establish at least a specified number of early voting polling places for each primary or general election; requiring the Governor to allocate specified resources to implement the Act; etc.

History by Legislative Date**Senate Action**

2/4 First Reading Education Health and Environmental Affairs

2/9 Hearing 2/24 at 1:00 p.m.

3/17 Favorable with Amendments Report by Education Health and Environmental Affairs

3/18 Favorable with Amendments
Laid Over (Senator Hooper) Adopted

3/19 Favorable with Amendments
Special Order 3/22 (Senator Mooney) Adopted

3/20 Favorable with Amendments Report Adopted
Floor Amendment (Senator Mooney) Rejected (14-33)
Second Reading Passed with Amendments

3/22 Third Reading Passed (35-12)

4/7 Senate Refuses to Concur - House Amendments
Senate Requests House Recede

Conference Committee Appointed ...
Senators Dyson, Pinsky, and Hollinger

4/9

Conference Committee Report Adopted
Third Reading Passed (34-9)
Passed Enrolled

House Action

3/23

First Reading Ways and Means

3/30

Hearing 4/6 at 1:00 p.m.

4/8

Favorable with Amendments Report by Ways and Means

4/3

Favorable with Amendments Report Adopted
Floor Committee Amendment Adopted
Special Order next session (Delegate Hixson) Adopted

4/4

Floor Amendment (Delegate Cluster) Adopted
Floor Amendment (Delegate Parrott) Rejected
Second Reading Passed with Amendments

4/5

Third Reading Passed with Amendments (84-51)

4/8

House Refuses to Recede
Conference Committee Appointed ...
Delegates Patterson, Cardin, and Ross

4/9

Motion vote previous question (Delegate Moe) Adopted
Conference Committee Report Adopted
Third Reading Passed (84-50)

Action after passage in Senate and House

5/20

Governor vetoed - Policy

1/11/2006

Senate - Motion Special Order until 1/12 Adopted

1/12/2006

Senate - Motion Special Order until later today (Senator Hollinger) Adopted
Senate - Motion override the Governors veto
Senate - Veto overridden (31-16)

1/17/2006

House - Motion override the Governors veto
House - Veto overridden (95-45)

Became law per Maryland Constitution, Ch 5 of 2006 Session

Sponsored by:

Senator Thomas V. Mike Miller, Jr., District 27
Senator Joan Carter Conway, District 43
Senator Ulysses Currie, District 25

[Senator Roy P. Dyson, District 29](#)
[Senator Nathaniel Exum, District 24](#)
[Senator Brian E. Frosh, District 16](#)
[Senator Rob Garagiola, District 15](#)
[Senator Leo E. Green, District 23](#)
[Senator Patrick J. Hogan, District 39](#)
[Senator Paula C. Hollinger, District 11](#)
[Senator Thomas M. Middleton, District 28](#)
[Senator Ida G. Ruben, District 20](#)

Bill indexed under the following Subjects:

[APPROPRIATIONS](#)
[BALLOTS](#)
[COUNTIES -see also- CHARTERED COUNTIES; CODE COUNTIES](#)
[ELECTIONS -see also- BALLOTS; CAMP FINANC; POL CANDS; VOTING](#)
[ELECTIONS SUPERVISORS](#)
[ELECTIONS, STATE BOARD OF](#)
[RULES AND REGULATIONS](#)
[VOTING -see also- BALLOTS; ELECTIONS](#)

Bill affects the following Statute:

Election Law
 (10-301.1)

Documents:

Bill Text (Displayed in PDF Format): [First Reading](#), [Third Reading](#), [Enrolled](#)

Fiscal Note (Displayed in PDF Format): [Available](#)

Amendments (Displayed in WordPerfect 8 Format):

Senate

Number: 124735/01 ([WordPerfect](#) / [PDF](#)) Offered on: March 21, 2005 at: 8:35 p.m. Status: Adopted
 Number: 463520/01 ([WordPerfect](#) / [PDF](#)) Offered on: March 22, 2005 at: 1:02 p.m. Status: Rejected

House

Number: 455762/01 ([WordPerfect](#) / [PDF](#)) Offered on: April 8, 2005 at: 12:43 p.m. Status: Adopted
 Number: 553826/01 ([WordPerfect](#) / [PDF](#)) Offered on: April 8, 2005 at: 7:29 p.m. Status: Adopted
 Number: 723326/01 ([WordPerfect](#) / [PDF](#)) Offered on: April 8, 2005 at: 7:30 p.m. Status: Rejected
 Number: 795962/01 ([WordPerfect](#) / [PDF](#)) Offered on: April 8, 2005 at: 12:44 p.m. Status: Adopted

Conference Committee Documents (Displayed in WordPerfect 8 Format):

Report Number: 033425/1 ([WordPerfect](#) / [PDF](#)) Offered on: April 11, 2005 at: 11:48 p.m. Status: Adopted

Amendment Number: 033320/1 ([WordPerfect](#) / [PDF](#)) Offered on: April 11, 2005 at: 11:50 p.m. Status: Incomplete

Roll Call Votes (Legislative dates are shown):

Senate

March 20, 2005: Floor Amendment (Mooney) {463520/1 Rejected (14-33)}
 March 22, 2005: Third Reading Passed (35-12)

April 9, 2005: Third Reading Passed ([34-9](#))
House
April 5, 2005: Third Reading Passed ([84-51](#))
April 9, 2005: Third Reading Passed ([84-50](#))

Top	Sponsors	Title	Synopsis	History	Sponsor List	Subjects	Statutes	Documents	Another Session	Another Bill
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Exhibit D

OFFICE OF GOVERNOR, LIEUTENANT GOVERNOR, ATTORNEY GENERAL, COMPTROLLER, OR MEMBER OF THE GENERAL ASSEMBLY, ENGAGE IN THE FOLLOWING ACTIVITIES:

(I) SOLICITING OR TRANSMITTING A POLITICAL CONTRIBUTION FROM ANY PERSON, INCLUDING A POLITICAL COMMITTEE;

(II) SERVING ON A FUND-RAISING COMMITTEE OR A POLITICAL COMMITTEE;

(III) ACTING AS A TREASURER FOR A CANDIDATE OR OFFICIAL OR AS TREASURER OR CHAIR OF A POLITICAL COMMITTEE;

(IV) ORGANIZING OR ESTABLISHING A POLITICAL COMMITTEE FOR THE PURPOSE OF SOLICITING OR TRANSMITTING CONTRIBUTIONS FROM ANY PERSON; OR

(V) FORWARDING TICKETS FOR FUND-RAISING ACTIVITIES, OR OTHER SOLICITATIONS FOR POLITICAL CONTRIBUTIONS, TO A POTENTIAL CONTRIBUTOR.

(2) THIS SECTION DOES NOT PROHIBIT A MEMBER OF THE BOARD OF REGENTS FROM:

(I) MAKING A PERSONAL POLITICAL CONTRIBUTION;

(II) INFORMING ANY ENTITY OF A POSITION TAKEN BY A CANDIDATE OR OFFICIAL; OR

(III) ENGAGING IN OTHER ACTIVITIES NOT SPECIFICALLY PROHIBITED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

~~(3) THIS SECTION DOES NOT APPLY TO A MEMBER OF THE BOARD OF REGENTS WHO IS A CANDIDATE WITH RESPECT TO THE MEMBER'S OWN CAMPAIGN.~~

(3) A MEMBER OF THE BOARD OF REGENTS MAY NOT BE A CANDIDATE FOR A PUBLIC OFFICE WHILE SERVING ON THE BOARD.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2006.

Enacted April 10, 2006.

CHAPTER 61

(House Bill 1368)

AN ACT concerning

Election Law - Voter Bill of Rights

FOR the purpose of requiring a local board of elections to establish, under certain

circumstances, a separate precinct to serve certain institutions of higher education; requiring each institution at which a precinct is established to provide certain facilities and services to the local board; requiring that local boards, when establishing early voting polling places, select sites that are consistent with certain guidelines and regulations established by the State Board of Elections; requiring certain polling places to be equipped with a certain computer device; requiring the Governor to allocate certain resources to implement the requirements of this Act; requiring the Governor to appropriate sufficient funds to reimburse the counties for a certain portion of certain expenditures; requiring the State Administrator of Elections to ensure that selected sites for early voting have adequate infrastructure to accommodate certain computer devices; requiring early voting polling places to be open for voting during certain hours; specifying certain early voting polling sites; providing for certain alternate sites to be selected under certain circumstances; requiring the State Board and the local boards to engage in certain voter outreach activities regarding early voting prior to each primary and general election; requiring the Governor to include certain funds in the annual budget for a certain purpose; providing that certain powers and duties assigned to the State Board shall be exercised in accordance with an affirmative vote of a supermajority of the members of the Board; requiring local boards of elections to administer voter registration and absentee balloting for certain facilities in accordance with procedures established by the State Board; establishing and altering certain powers and duties of local boards of elections, the election directors of local boards, and the State Administrator of Elections; authorizing the State Administrator to file suit for injunctive relief under certain circumstances; authorizing a registered voter or applicant for registration to file suit for injunctive relief under certain circumstances; authorizing the State Administrator to take certain disciplinary actions and make interim appointments under certain circumstances; requiring certain local boards to adopt certain regulations; requiring the regulations to be adopted, reviewed, and approved before the local board may take certain actions; placing certain restrictions on the alteration of precinct boundaries and polling place locations; placing certain restrictions on the removal of registered voters from the registry and on the rejection of voter registration applications; requiring the issuance of certain reports and the Internet publication of certain lists; providing for the application of certain provisions of this Act only to jurisdictions that meet certain criteria; providing for the termination of certain provisions of this Act; generally relating to the powers and duties of election boards, local election directors, and the State Administrator of Elections; requiring the State Administrator of Elections and the Office of the Attorney General to review and report on issues related to election day voter registration; making this Act an emergency measure; and generally relating to a voter bill of rights.

BY repealing and reenacting, with amendments,

Article - Election Law

Section 2-303(a) and 10-302

Section 2-102, 2-103, 2-202(b), 2-206, 2-301, 2-303(a), 3-501, and 10-302

Annotated Code of Maryland
(2003 Volume and 2005 Supplement)

BY repealing and reenacting, with amendments,

Article – Election Law

Section ~~10-301.1(e)(1)~~ 10-301.1(b) and (c)

Annotated Code of Maryland

(2003 Volume and 2005 Supplement)

(As enacted by Chapter 5 of the Acts of the General Assembly of 2006)

BY adding to

Article – Election Law

Section 2-202.1

Annotated Code of Maryland

(2003 Volume and 2005 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – Election Law

2-102.

(a) The State Board shall manage and supervise elections in the State and ensure compliance with the requirements of this article and any applicable federal law by all persons involved in the elections process.

(b) In exercising its authority under this article and in order to ensure compliance with this article and with any requirements of federal law, the State Board shall:

- (1) supervise the conduct of elections in the State;
- (2) direct, support, monitor, and evaluate the activities of each local board;
- (3) have a staff sufficient to perform its functions;
- (4) adopt regulations to implement its powers and duties;
- (5) receive, and in its discretion audit, campaign finance reports;
- (6) appoint a State Administrator in accordance with § 2-103 of this subtitle;
- (7) maximize the use of technology in election administration, including the development of a plan for a comprehensive computerized elections management system;
- (8) canvass and certify the results of elections as prescribed by law;

(9) make available to the general public, in a timely and efficient manner, information on the electoral process, including a publication that includes the text of this article, relevant portions of the Maryland Constitution, and information gathered and maintained regarding elections;

(10) subject to §§ 2-106 and 13-341 of this article, receive, maintain, and serve as a depository for elections documents, materials, records, statistics, reports, certificates, proclamations, and other information prescribed by law or regulation;

(11) prescribe all forms required under this article; and

(12) serve as the official designated office in accordance with the Uniformed and Overseas Citizens Absentee Voting Act for providing information regarding voter registration and absentee ballot procedures for absent uniformed services voters and overseas voters with respect to elections for federal office.

(C) THE POWERS AND DUTIES ASSIGNED TO THE STATE BOARD UNDER THIS ARTICLE SHALL BE EXERCISED IN ACCORDANCE WITH AN AFFIRMATIVE VOTE BY A SUPERMAJORITY OF THE MEMBERS OF THE STATE BOARD.

2-202.

(b) Each local board, in accordance with the provisions of this article and regulations adopted by the State Board, shall:

(1) oversee the conduct of all elections held in its county and ensure that the elections process is conducted in an open, convenient, and impartial manner;

(2) pursuant to the State Personnel and Pensions Article, or its county merit system, whichever is applicable, appoint an election director to manage the operations and supervise the staff of the local board;

(3) maintain an office and be open for business as provided in this article, and provide the supplies and equipment necessary for the proper and efficient conduct of voter registration and election, including:

(i) supplies and equipment required by the State Board; and

(ii) office and polling place equipment expenses;

(4) adopt any regulation it considers necessary to perform its duties under this article, which regulation shall become effective when it is filed with and approved by the State Board;

(5) serve as the local board of canvassers and certify the results of each election conducted by the local board;

(6) establish and alter the boundaries and number of precincts in accordance with § 2-303 of this title, and provide a suitable polling place for each precinct, and assign voters to precincts;

(7) provide to the general public timely information and notice, by publication or mail, concerning voter registration and elections;

(8) make determinations and hear and decide challenges and appeals as provided by law;

(9) (i) aid in the prosecution of an offense under this article; and

(ii) when the board finds there is probable cause to believe an offense has been committed, refer the matter to the appropriate prosecutorial authority; [and]

(10) maintain and dispose of its records in accordance with the plan adopted by the State Board under § 2-106 of this title; AND

(11) ADMINISTER VOTER REGISTRATION AND ABSENTEE VOTING FOR NURSING HOMES AND ASSISTED LIVING FACILITIES IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE STATE ADMINISTRATOR, SUBJECT TO THE APPROVAL OF THE STATE BOARD.

2-303.

(a) (1) [As] SUBJECT TO PARAGRAPH (2) OF THIS SECTION, AS it deems it expedient for the convenience of voters, a local board may:

[(1)] (I) create and alter the boundaries for precincts in the county;

[(2)] (II) designate the location for polling places in any election district, ward, or precinct in the county; and

[(3)] (III) combine or abolish precincts.

(2) (I) EXCEPT AS PROVIDED UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH, A LOCAL BOARD SHALL ESTABLISH A SEPARATE PRECINCT ON CAMPUS OR WITHIN ONE-HALF MILE OF THE CAMPUS TO SPECIFICALLY SERVE A PUBLIC OR PRIVATE INSTITUTION OF HIGHER EDUCATION IF THE LOCAL BOARD DETERMINES THAT AT LEAST 500 STUDENTS, FACULTY, AND STAFF WHO ATTEND OR WORK AT THE INSTITUTION ARE REGISTERED VOTERS IN THE PRECINCT IN WHICH THE INSTITUTION IS LOCATED.

(II) IF, IN ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH, A POLLING PLACE IS ESTABLISHED AT AN INSTITUTION OF HIGHER EDUCATION THAT RECEIVES STATE FUNDS, THAT INSTITUTION SHALL:

1. PROVIDE WITHOUT CHARGE TO THE LOCAL BOARD A FACILITY FOR USE AS A POLLING PLACE THAT MEETS ALL APPLICABLE REQUIREMENTS UNDER THIS ARTICLE AND AS ESTABLISHED BY THE STATE BOARD; AND

2. PROVIDE ASSISTANCE TO THE LOCAL BOARD IN RECRUITING ELECTION JUDGES TO STAFF THE POLLING PLACE.

(III) A LOCAL BOARD MAY NOT BE REQUIRED TO ESTABLISH A SEPARATE PRECINCT AS PROVIDED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IF THERE IS AN ESTABLISHED PRECINCT WITHIN ONE-HALF MILE OF THE PUBLIC OR

PRIVATE INSTITUTION OF HIGHER EDUCATION'S CAMPUS THAT SERVES THE VOTERS WHO ATTEND OR WORK AT THE PUBLIC OR PRIVATE INSTITUTION OF HIGHER EDUCATION.

10-301.1.

(e) ~~(1) (i)~~ Each local board shall establish the early voting polling places in its county.

~~(ii) EXCEPT AS PROVIDED IN SUBPARAGRAPH (iii) OF THIS PARAGRAPH, WHEN ESTABLISHING THE EARLY VOTING POLLING PLACES, THE LOCAL BOARD SHALL, CONSISTENT WITH THE GUIDELINES AND REGULATIONS ESTABLISHED BY THE STATE BOARD:~~

~~1. SELECT A SITE IN THE COUNTY THAT IS GEOGRAPHICALLY CENTRAL AND EASILY ACCESSIBLE SEAT, IF ONLY ONE LOCATION IS BEING USED IN THE COUNTY, OR~~

~~2. SELECT SITES FROM RECOMMENDATIONS PROVIDED BY THE CHAIRMEN OF THE LOCAL CENTRAL COMMITTEES OF THE RECOGNIZED POLITICAL PARTIES, IF MULTIPLE LOCATIONS ARE USED IN THE COUNTY SELECT:~~

~~A. ONE SITE LOCATED IN THE COUNTY SEAT FOR EACH COUNTY,~~

~~B. AT LEAST ONE SITE LOCATED AT A COMMUNITY COLLEGE IN THE COUNTY, AND~~

~~C. ANY ADDITIONAL SITES IN THE COUNTY ONLY FROM THE RECOMMENDATIONS OF THE CHAIRMEN OF THE LOCAL CENTRAL COMMITTEES OF THE RECOGNIZED POLITICAL PARTIES.~~

~~(iii) IN BALTIMORE CITY, THE LOCAL BOARD SHALL, CONSISTENT WITH THE GUIDELINES AND REGULATIONS ESTABLISHED BY THE STATE BOARD, ESTABLISH EARLY VOTING POLLING PLACES AT:~~

~~1. MORGAN STATE UNIVERSITY,~~

~~2. COPPIN STATE UNIVERSITY, AND~~

~~3. THE DUBURNS RECREATION CENTER.~~

(b) Each early voting polling place shall be open for voting:

(1) beginning the Tuesday before a primary or general election through the Saturday before the election; and

(2) [8 hours each day] DURING THE HOURS BETWEEN 7 A.M. AND 8 P.M. during the period specified under paragraph (1) of this subsection.

(c) (1) [Each] AS PROVIDED IN THIS SUBSECTION, EACH local board shall establish the early voting polling places in its county.

(2) (i) In the following counties, the local board shall establish [at least] three early voting polling places for each primary or general election AS SPECIFIED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH:

1. Anne Arundel;
2. Baltimore City;
3. Baltimore County;
4. Harford;
5. Howard;
6. Montgomery; and
7. Prince George's.

(ii) 1. [In] EXCEPT FOR CHARLES COUNTY, IN each county other than a county specified in subparagraph (i) of this paragraph, the local board shall establish [at least] one early voting polling place for each primary or general election IN THE COUNTY SEAT.

2. IN CHARLES COUNTY, THE EARLY VOTING POLLING PLACE SHALL BE ESTABLISHED IN WALDORF.

(III) EARLY VOTING POLLING PLACES SHALL BE ESTABLISHED AT THE LOCATIONS SPECIFIED IN THIS SUBPARAGRAPH FOR THE FOLLOWING COUNTIES:

1. ANNE ARUNDEL COUNTY:
 - A. BROOKLYN PARK SENIOR CENTER
202 HAMMONDS LANE
BALTIMORE, MD 21225;
 - B. WEST COUNTY LIBRARY
1325 ANNAPOLIS ROAD
ODENTON, MD 21114; AND
 - C. AMERICAN LEGION POST #141
1707 FOREST DRIVE
ANNAPOLIS, MD 21401;
2. BALTIMORE CITY:
 - A. MORGAN STATE UNIVERSITY
1700 E. COLD SPRING LANE
BALTIMORE, MD 21251;
 - B. COPPIN STATE UNIVERSITY
2500 NORTH AVENUE
BALTIMORE, MD 21216; AND

- C. DU BURNS RECREATION CENTER
1301 S. ELLWOOD AVENUE
BALTIMORE, MD 21224;
- 3. BALTIMORE COUNTY:
 - A. RANDALLSTOWN LIBRARY
8604 LIBERTY ROAD
RANDALLSTOWN, MD 21133;
 - B. TOWSON UNIVERSITY
8000 YORK ROAD
TOWSON, MD 21252; AND
 - C. ESSEX LIBRARY
1110 EASTERN BOULEVARD
ESSEX, MD 21221;
- 4. HARFORD COUNTY:
 - A. ABERDEEN BRANCH LIBRARY
21 FRANKLIN STREET
ABERDEEN, MD 21001;
 - B. HARFORD COUNTY GOVERNMENT BUILDING
212 SOUTH BOND STREET
BEL AIR, MD 21014; AND
 - C. JOPPA BRANCH LIBRARY
655 TOWNE CENTER DRIVE
JOPPA, MD 21085;
- 5. HOWARD COUNTY:
 - A. EAST COLUMBIA LIBRARY (OWEN BROWN)
6600 CRADLEROCK WAY
COLUMBIA, MD 21045;
 - B. MILLER BRANCH LIBRARY
9421 FREDERICK ROAD
ELLCOTT CITY, MD 21042; AND
 - C. SAVAGE BRANCH LIBRARY
9525 DURNESS LANE
LAUREL, MD 20723;
- 6. MONTGOMERY COUNTY:
 - A. GERMANTOWN PUBLIC LIBRARY
12900 MIDDLEBROOK ROAD
GERMANTOWN, MD 20874;

- B. SILVER SPRING PUBLIC LIBRARY
8901 COLESVILLE ROAD
SILVER SPRING, MD 20910; AND
- C. ROCKVILLE CITY HALL
111 MARYLAND AVENUE
ROCKVILLE, MD 20850; AND
- 7. PRINCE GEORGE'S COUNTY:
 - A. UPPER MARLBORO LIBRARY
14730 MAIN STREET
UPPER MARLBORO, MD 20772;
 - B. HARMONY HALL REGIONAL CENTER
10701 LIVINGSTON ROAD
FORT WASHINGTON, MD 20744; AND
 - C. HYATTSVILLE PUBLIC LIBRARY
6530 ADELPHI ROAD
HYATTSVILLE, MD 20872.

(3) IF THE STATE ADMINISTRATOR DETERMINES, OR A LOCAL ELECTION DIRECTOR NOTIFIES THE STATE ADMINISTRATOR, THAT A SITE SPECIFIED UNDER THIS SUBSECTION CANNOT BE USED TO ACCOMMODATE EARLY VOTING, THE STATE ADMINISTRATOR SHALL SELECT ANOTHER SITE, PROXIMATE TO THE SITE REJECTED, THAT IS ACCESSIBLE TO VOTERS.

(4) BEGINNING 30 DAYS PRIOR TO EACH PRIMARY AND GENERAL ELECTION, THE STATE BOARD AND EACH LOCAL BOARD SHALL UNDERTAKE STEPS TO INFORM THE PUBLIC ABOUT EARLY VOTING AND THE LOCATION OF EARLY VOTING POLLING PLACES IN EACH COUNTY, INCLUDING A SERIES OF PUBLIC SERVICE MEDIA ANNOUNCEMENTS, MAILINGS TO ALL REGISTERED VOTERS, AND OTHER EFFORTS.

~~(3)~~(5) Polling places established by a local board under this section shall meet the requirements of § 10-101 of this title.

10-302.

(A) In a timely manner for each election, the local board shall provide for the delivery to each polling place the supplies, records, and equipment necessary for the conduct of the election.

(B) (1) EACH POLLING PLACE SHALL BE EQUIPPED WITH A COMPUTER DEVICE THAT CONTAINS A RECORD OF ALL REGISTERED VOTERS IN THE COUNTY AND THAT IS CAPABLE OF BEING NETWORKED TO OTHER POLLING PLACE COMPUTER DEVICES.

(2) THE STATE ADMINISTRATOR SHALL ENSURE THAT A SITE SELECTED FOR EARLY VOTING HAS ADEQUATE INFRASTRUCTURE TO ACCOMMODATE THE COMPUTER DEVICES REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article - Election Law

2-103.

(a) There is a State Administrator of Elections.

(b) The State Administrator shall:

(1) be appointed by the State Board, with the advice and consent of the Senate of Maryland, and serve at the pleasure of the State Board;

(2) receive a salary as provided in the State budget;

(3) as provided in the State budget, employ and supervise:

(i) a deputy administrator, who shall serve as State Administrator in the event the State Administrator resigns, becomes disabled, or dies, pending the appointment of a successor State Administrator; and

(ii) pursuant to the State Personnel and Pensions Article, other staff of the State Board;

(4) supervise the operations of the local boards AND, IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION, INITIATE A LEGAL ACTION TO ENJOIN THE ACTIONS OF A LOCAL BOARD OR THE ELECTION DIRECTOR OF A LOCAL BOARD;

(5) perform all duties and exercise all powers that are assigned by law to the State Administrator or delegated by the State Board;

(6) implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list;

(7) provided the State Board is fully constituted with five duly confirmed members, be subject to removal by the affirmative vote of four duly confirmed members of the State Board for incompetence, misconduct, or other good cause except that:

(i) prior to removal, the State Board shall set forth written charges stating the grounds for dismissal and afford the State Administrator notice and an ample opportunity to be heard; and

(ii) subsequent to a valid vote for removal by at least four duly confirmed members of the State Board, the State Administrator is authorized to continue to serve until a successor is appointed and confirmed by the Senate of Maryland; and

(8) be the chief State election official.

(C) (1) THE STATE ADMINISTRATOR MAY FILE SUIT IN A COURT OF COMPETENT JURISDICTION TO ENJOIN A LOCAL BOARD OR ITS ELECTION DIRECTOR FROM VIOLATING ANY PROVISION OF THIS ARTICLE OR OF A REGULATION, GUIDELINE, OR PROCEDURE ADOPTED UNDER THIS ARTICLE.

(2) A REGISTERED VOTER OR AN APPLICANT FOR VOTER REGISTRATION MAY PETITION THE STATE ADMINISTRATOR TO FILE A SUIT UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(3) A VOTER OR APPLICANT WHO HAS PETITIONED UNDER PARAGRAPH (2) OF THIS SUBSECTION MAY FILE THE SUIT FOR INJUNCTIVE RELIEF IF THE STATE ADMINISTRATOR DECLINES OR FAILS TO FILE SUIT:

(I) WITHIN 10 BUSINESS DAYS AFTER THE PETITION IS SUBMITTED; OR

(II) DURING THE PERIOD THAT IS LESS THAN 20 DAYS BEFORE AN ELECTION, WITHIN 3 BUSINESS DAYS AFTER THE PETITION IS SUBMITTED.

[(c)] (D) Before taking office, the appointee to the office of State Administrator shall take the oath required by Article I, § 9 of the Maryland Constitution.

2-202.1.

(A) EACH LOCAL BOARD SHALL ADOPT REGULATIONS RELATING TO:

(1) PROCEDURES TO BE FOLLOWED BY THE BOARD UNDER § 3-301 OF THIS ARTICLE IN DETERMINING WHETHER AN APPLICANT IS QUALIFIED TO BECOME A REGISTERED VOTER; AND

(2) PROCEDURES TO BE FOLLOWED BY THE BOARD IN ADMINISTERING TITLE 3, SUBTITLE 3 OF THIS ARTICLE, INCLUDING:

(I) PROCEDURES AND TIMETABLES FOR OBTAINING, RECEIVING, AND PROCESSING INFORMATION ABOUT VOTERS' CHANGES OF ADDRESS OR CHANGES IN ELIGIBILITY STATUS; AND

(II) PROCEDURES AND TIMETABLES FOR REMOVING VOTERS FROM THE VOTER REGISTRY.

(B) NOTWITHSTANDING § 2-202 OF THIS SUBTITLE, BEFORE A LOCAL BOARD, OR AN EMPLOYEE OF THE BOARD, ALTERS PRECINCT BOUNDARIES OR ALTERS THE LOCATION OF A POLLING PLACE, THE LOCAL BOARD SHALL:

(1) ISSUE PUBLIC NOTICE OF THE PROPOSED ALTERATION AT LEAST 90 DAYS BEFORE THE DATE OF THE ELECTION TO WHICH THE ALTERATION WOULD APPLY;

(2) ACCEPT PUBLIC COMMENTS ON THE PROPOSED ALTERATION;

(3) SUBMIT THE PROPOSED ALTERATION, AND ANY COMMENTS RECEIVED, TO THE STATE ADMINISTRATOR FOR THE STATE ADMINISTRATOR'S REVIEW; AND

(4) RECEIVE THE APPROVAL OF THE STATE ADMINISTRATOR

2-206.

(A) Subject to the requirements of this article and the policies and guidance of the local board, the election director [may]:

- (1) MAY appoint the employees of the local board;
- (2) MAY train judges of election;
- (3) MAY give notice of elections;
- (4) MAY, upon the request of an elderly or disabled voter whose polling place is not structurally barrier free, provide an alternate polling place to the voter;
- (5) MAY issue voter acknowledgment notices and voter notification cards;
- (6) MAY receive certificates of candidacy;
- (7) MAY verify nominating petitions;
- (8) MAY receive and maintain campaign finance reports;
- (9) MAY, in consultation with the local board, conduct the canvass following an election; [and]
- (10) subject to § 9-306 of this article, MAY process and reject absentee ballot applications;

(11) SHALL PUBLISH ON AN INTERNET WEBSITE, NOT LATER THAN 30 DAYS BEFORE THE CLOSE OF REGISTRATION PRIOR TO AN ELECTION, A LIST OF ANY PROPOSED DELETIONS OF REGISTRANTS FROM THE VOTER REGISTRY; AND

(12) SHALL ENSURE THAT THERE IS AT LEAST ONE WORKING VOTING MACHINE OR DEVICE FOR EVERY 200 REGISTERED VOTERS AT EACH POLLING PLACE.

(B) THE ELECTION DIRECTOR SHALL MAKE REGULAR PUBLIC REPORTS, ON A SCHEDULE DETERMINED BY THE STATE ADMINISTRATOR, REGARDING:

- (1) THE NUMBER AND TYPES OF VOTER REGISTRATION APPLICATIONS RECEIVED;
- (2) THE NUMBER OF VOTER REGISTRATION APPLICATIONS ACCEPTED AND REJECTED; AND
- (3) THE REASONS THE APPLICATIONS WERE REJECTED.

2-301.

(a) This section applies to:

- (1) a member of the State Board;
- (2) a regular or substitute member of a local board;
- (3) the State Administrator;

(4) an employee of the State Board or of a local board, including the election director of a board;

(5) counsel appointed under § 2-205 of this title; and

(6) an election judge.

(b) (1) An individual subject to this section may not, while holding the position:

(i) hold or be a candidate for any elective public or political party office or any other office created under the Constitution or laws of this State;

(ii) use the individual's official authority for the purpose of influencing or affecting the result of an election; or

(iii) except as provided in paragraph (2) of this subsection, as to any candidate or any matter that is subject to an election under this article:

1. be a campaign manager;

2. be a treasurer or subtreasurer for a campaign finance entity; or

3. take any other active part in political management or a political campaign.

(2) Notwithstanding paragraph (1)(iii) of this subsection, an election judge may engage in the activities of a political campaign, except:

(i) while performing official duties on election day; and

(ii) by serving as a campaign manager for a candidate or as the treasurer for a campaign finance entity.

(C) IF THE STATE ADMINISTRATOR DETERMINES THAT AN INDIVIDUAL IS IN VIOLATION OF THIS SECTION, THE STATE ADMINISTRATOR:

(1) SHALL SUSPEND THE INDIVIDUAL FROM DUTY UNTIL THE COMPLETION OF THE NEXT ELECTION; AND

(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, MAY MAKE AN INTERIM APPOINTMENT TO ENSURE THE ORDERLY ADMINISTRATION OF THIS ARTICLE.

3-501:

(A) An election director may remove a voter from the statewide voter registration list only:

(1) at the request of the voter, provided the request is:

(i) signed by the voter;

(ii) authenticated by the election director; and

(iii) in a format acceptable to the State Board or on a cancellation notice provided by the voter on a voter registration application;

(2) upon determining, based on information provided pursuant to § 3-503 of this subtitle, that the voter is no longer eligible because:

(i) the voter is not qualified to be a registered voter as provided in § 3-102(b) of this title; or

(ii) the voter is deceased; or

(3) if the voter has moved outside the State, as determined by conducting the procedures established in § 3-502 of this subtitle.

(B) AN ELECTION DIRECTOR MAY NOT REMOVE A VOTER FROM THE LIST IN ACCORDANCE WITH SUBSECTION (A)(2) OR (3) OF THIS SECTION DURING THE PERIOD THAT:

(1) BEGINS 30 DAYS BEFORE THE CLOSE OF REGISTRATION BEFORE AN ELECTION; AND

(2) ENDS AT THE CLOSE OF THE POLLS ON THE DAY OF THE ELECTION.

SECTION 2- 3. AND BE IT FURTHER ENACTED, That the State Administrator of Elections and the Office of the Attorney General shall:

(1) review the efficacy of, and any legal impediments to, implementing a system of election day voter registration that would allow eligible unregistered voters, commencing with the 2008 primary election, to register and then vote on election day;

(2) (i) consult with local election officials in Maryland to ascertain the impact and assess any administrative challenges associated with implementing a statewide system of election day voter registration in this State; and

(ii) query election officials in any other states around the country that have implemented statewide election day voter registration about their experiences with such a system;

(3) note any legal impediments to implementing a statewide system of election day voter registration and identify any changes to State statutory or constitutional law that would be required to implement such a system;

(4) estimate the additional cost to the State and to the counties to implement a system of election day voter registration; and

(5) on or before December 31, 2006, submit a report of its findings and recommendations to the Governor, and, in accordance with § 2-1246 of the State Government Article, to the General Assembly.

~~SECTION 3. AND BE IT FURTHER ENACTED, That the Governor shall allocate the resources required to implement the requirements of this Act, including any gift received by the State for the purposes of this Act under § 2-201 of the State Finance and Procurement Article, and except for federal funds received by the State~~

~~to implement the requirements of the Help America Vote Act of 2002, any federal or other special funds or grant received by the State in accordance with federal and State law for the purposes of this Act.~~

~~SECTION 4. AND BE IT FURTHER ENACTED, That in fiscal year 2008, the Governor shall appropriate sufficient funds to reimburse each county at a rate of 50% of the total expenditures made during fiscal year 2007 to implement early voting, including expenditures made for the purchase of electronic poll books.~~

~~SECTION 4. AND BE IT FURTHER ENACTED, That the regulations required to be adopted by a local board of elections under § 2-202.1(a) of the Election Law Article, as enacted by Section 2 of this Act, must be submitted to, reviewed by, and approved by the State Administrator of Elections before the local board:~~

~~(1) denies any application for registration on or after the effective date of this Act; or~~

~~(2) removes any voter from the registration list on or after the effective date of this Act.~~

~~SECTION 5. AND BE IT FURTHER ENACTED, That Sections 2 and 4 of this Act shall apply only to jurisdictions of the State in which, based on data from the 2000 Decennial Census:~~

~~(1) less than 60 percent of the population lives in owner-occupied dwellings; and~~


~~(2) the median income is less than \$40,000 per year.~~

~~SECTION 6. AND BE IT FURTHER ENACTED, That the Governor shall include each year in the State budget sufficient State general funds to implement the requirements of § 10-302(b) of the Election Law Article.~~

~~SECTION 7. AND BE IT FURTHER ENACTED, That Sections 2, 4, and 5 of this Act shall remain effective until the end of June 30, 2008 and, at the end of June 30, 2008, with no further action required by the General Assembly, Sections 2, 4, and 5 of this Act shall be abrogated and of no further force and effect.~~

~~SECTION 4, 5, 8. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2006 is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.~~

Enacted April 10, 2006.

2006 Regular Session bill information current as of June 6, 2006 - 7:40 p.m.										
	Sponsors	Title	Synopsis	History	Sponsor List	Subjects	Statutes	Documents	Another Session	Another Bill

HOUSE BILL 1368

CHAPTER NUMBER: 61
EMERGENCY BILL
File Code: Elections
Crossfiled with: SENATE BILL 712

Sponsored By:

Delegates Patterson, Hixson , Cardin, King, McKee, Ross, Bozman, C. Davis, Goodwin,
Gordon, Healey, Heller, Howard, Kaiser, Marriott, Ramirez, Rosenberg, and Conroy

Entitled:

Election Law - Voter Bill of Rights

Synopsis:

Requiring local boards of elections to establish specified precincts at specified institutions of higher education; requiring the institutions to provide specified facilities and services to the local board; requiring that local boards, when establishing early voting polling places, select sites that are consistent with specified criteria established by the State Board of Elections; requiring specified polling places to be equipped with a specified computer device; etc.

History by Legislative Date

House Action

2/10 First Reading Ways and Means
2/15 Hearing 2/22 at 1:00 p.m.
3/13 Favorable with Amendments Report by Ways and Means
3/14 Favorable with Amendments
Special Order 3/16 (Delegate Hixson) Adopted
3/16 Favorable with Amendments Report Adopted
Floor Committee Amendment
Special Order 3/17 (Delegate O'Donnell) Adopted
3/17 Floor Committee Amendment Adopted
Floor Committee Amendment Adopted
Floor Amendment (Delegate O'Donnell) Rejected (50-85)
Second Reading Passed with Amendments
3/19

Motion vote previous question (Delegate Minnick) Adopted
Third Reading Passed (96-43)

3/27

House Refuses to Concur - Senate Amendments
House Requests Senate Recede
Conference Committee Appointed ...
Delegates Hixson, Patterson, and Ross

3/29

Motion vote previous question (Delegate Zirkin) Adopted
Conference Committee Report Adopted (94-43)
Third Reading Passed (94-43)
Passed Enrolled

4/5

Motion vote previous question (Delegate Moe) Adopted

Senate Action

3/21

First Reading Education Health and Environmental Affairs

3/26

Favorable with Amendments Report by Education Health and Environmental Affairs
Favorable with Amendments
Laid Over (Senator Stoltzfus) Adopted

3/27

Favorable with Amendments
Committee Amendment Adopted
Special Order later today (Senator Kittleman) Adopted
Favorable with Amendments Report Adopted
Second Reading Passed with Amendments

3/28

Third Reading Passed with Amendments (30-17)

3/29

Senate Refuses to Recede
Conference Committee Appointed ...
Senators Hollinger, Dyson, and Conway
Motion Special Order 4/3 (Senator Harris) Rejected (17-30)
Conference Committee Report Adopted (28-4)
Third Reading Passed (28-3)

Action after passage in House and Senate

4/7

Governor vetoed - Policy

4/8

Veto overridden in House (93-45)

4/10

Veto overridden in Senate (30-17)
Became Law per Maryland Constitution, Chapter 61

Sponsored by:

Delegate Obie Patterson, District 26
Delegate K. Bennett Bozman, District 38B
Delegate Jon S. Cardin, District 11
Delegate Mary A. Conroy, District 23A
Delegate Clarence Davis, District 45
Delegate Marshall T. Goodwin, District 40

Delegate Michael R. Gordon, District 17
Delegate Anne Healey, District 22
Delegate Henry B. Heller, District 19
Delegate Sheila E. Hixson, District 20
Delegate Carolyn J. B. Howard, District 24
Delegate Anne R. Kaiser, District 14
Delegate Nancy J. King, District 39
Delegate Salima Siler Marriott, District 40
Delegate Robert A. McKee, District 2A
Delegate Victor R. Ramirez, District 47
Delegate Samuel I. Rosenberg, District 41
Delegate Justin D. Ross, District 22

Bill indexed under the following Subjects:

ANNE ARUNDEL COUNTY
APPROPRIATIONS
ASSISTED LIVING -see also- GROUP HOMES
ATTORNEY GENERAL
BALTIMORE CITY
BALTIMORE COUNTY
BOUNDARIES
CHARLES COUNTY
CIVIL ACTIONS -see also- SMALL CLAIMS
COMPUTERS -see also- ELECTRONIC COMMERCE; ELECTRONIC GOVMNT.
COUNTIES -see also- CHARTERED COUNTIES; CODE COUNTIES
ELECTIONS -see also- BALLOTS; CAMP FINANC; POL CANDS; VOTING
ELECTIONS SUPERVISORS
ELECTIONS, STATE BOARD OF
ELECTRONIC GOVERNMENT
EQUIPMENT -see also- MOTOR VEHICLE EQUIPMENT
GOVERNOR
HARFORD COUNTY
HIGHER EDUCATION -see also- COMM COLLEGES; MED SCHOOLS; etc.
HOWARD COUNTY
LOCAL GOVERNMENT MANDATES
MONTGOMERY COUNTY
NOTICES
NURSING HOMES -see also- CONTINUING CARE; LONG TERM CARE
POLITICAL COMMITTEES
PRINCE GEORGE'S COUNTY
PUBLIC INFORMATION
RECORDS -see also- LAND RECORDS; VITAL RECORDS
REGISTRATION -see also- MOTOR VEHICLE REGISTRATION
REPORTS
RULES AND REGULATIONS
STATE UNIVERSITIES AND COLLEGES
SUNSET
VOTING -see also- BALLOTS; ELECTIONS

Bill affects the following Statutes:

Election Law
 (2-102 , 2-103 , 2-202 , 2-202.1 , 2-206 , 2-301 , 2-303 , 3-501 , 10-301.1 , 10-302)

Documents:

Bill Text (Displayed in PDF Format): [First Reading](#), [Third Reading](#), [Enrolled](#)

Fiscal Note (Displayed in PDF Format): [Available](#)

Amendments (Displayed in WordPerfect 8 Format):**House**

Number: 155669/01 ([WordPerfect / PDF](#)) Offered on: March 17, 2006 at: 11:24 a.m. Status: Adopted
 Number: 465167/01 ([WordPerfect / PDF](#)) Offered on: March 17, 2006 at: 11:29 a.m. Status: Adopted
 Number: 505160/01 ([WordPerfect / PDF](#)) Offered on: March 16, 2006 at: 10:19 a.m. Status: Adopted
 Number: 583826/01 ([WordPerfect / PDF](#)) Offered on: April 4, 2006 at: 4:53 p.m. Status: Adopted
 Number: 923027/01 ([WordPerfect / PDF](#)) Offered on: March 17, 2006 at: 11:30 a.m. Status: Rejected

Senate

Number: 514030/01 ([WordPerfect / PDF](#)) Offered on: March 29, 2006 at: 11:04 a.m. Status: Adopted

Conference Committee Documents (Displayed in WordPerfect 8 Format):

Report Number: 563423/1 ([WordPerfect / PDF](#)) Offered on: March 31, 2006 at: 3:09 p.m. Status: Adopted

Amendment Number: 583826/1 ([WordPerfect / PDF](#)) Offered on: March 31, 2006 at: 12:48 p.m. Status: Adopted

Roll Call Votes (Legislative dates are shown):**House**

March 17, 2006: Floor Amendment (ODonnell) {923027/1 Rejected ([50-85](#))

March 19, 2006: Third Reading Passed ([96-43](#))

March 29, 2006: Conference Committee Report Adopted ([94-43](#))

March 29, 2006: Third Reading Passed ([94-43](#))

Senate

March 28, 2006: Third Reading Passed ([30-17](#))

March 29, 2006: Motion Special Order until 4/3 (Harris) Rejected ([17-30](#))

March 29, 2006: Conference Committee Report {563423/1 Adopted ([28-4](#))

March 29, 2006: Third Reading Passed ([29-3](#))

April 6, 2006: Motion limit debate (McFadden) Adopted ([32-15](#))

Top	Sponsors	Title	Synopsis	History	Sponsor List	Subjects	Statutes	Documents	Another Session	Another Bill
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Exhibit E

MARIROSE JOAN CAPOZZI *

and *

BETTYE B. SPEED *

and *

CHARLES W. CARTER, SR. *

Plaintiffs *

v. *

STATE OF MARYLAND *

and *

LINDA H. LAMONE, in her capacity as
Administrator of the Maryland State Board
of Elections *

and *

MARYLAND STATE BOARD OF
ELECTIONS *

Defendants *

IN THE

CIRCUIT COURT

OF

QUEEN ANNE'S COUNTY

Civil Action No.: 17-C-06-011767

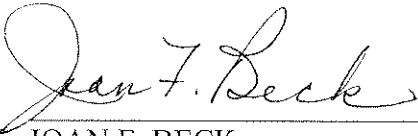
* * * * *

AFFIDAVIT OF JOAN F. BECK

I, Joan F. Beck, hereby declare under the penalties of perjury that I am over eighteen (18) years of age and am competent to testify from personal knowledge to the foregoing facts:

1. I am one of the five members of the Maryland State Board of Elections.
2. One of our responsibilities this year has been to develop statewide standards to govern the administration of early voting.

3. I am attaching to this Affidavit the most current version of the draft "Guidelines for the Administration of Early Voting".



JOAN F. BECK

Guidelines for the Administration of Early Voting

Section 1. Dates and Times

- 1.1 Early voting begins the Tuesday before the election and runs through the Saturday before the election as follows:
- A. Primary Election – 9/5 through 9/9
 - B. General Election – 10/31 through 11/4
- 1.2 For these 5 days, the locations must be open from 7AM to 8PM

Section 2. Early Voting Sites

- 2.1 Location of early voting sites
- A. Largest Counties sites are statutorily assigned (HB 1368)
 - 1. If the election director determines that the site cannot be used due to space, accessibility, parking, or lack of availability, an alternative site in a proximate location shall be identified and referred to the State Administrator.
 - 2. The State Administrator shall determine whether to move the site based on the local election director's recommendation, which must include an explanation of why the designated site cannot be used and information on the suggested alternative site and why it is the most appropriate location.
 - B. 16 Counties – sites must be located in county seat
 - C. Charles County – site must be in Waldorf
- 2.2 Each early voting location shall have:
- A. Sufficient space to accommodate the number of voting units and the expected voter turnout;
 - B. Telephones that can be used by election judges to communicate with the local election office (this requirement can be waived if cell phones are available at the early voting site);
 - C. Data lines that the SBE CIO determines are sufficient for electronic poll book networking.
 - D. Availability for 5 days from 7AM to 8PM, including a Saturday;
 - E. Room for electioneering and exit polling; and
 - F. Sufficient parking for early voters.
- 2.3 Other considerations – Whenever possible, the early voting site shall be:
- A. Accessible by public transportation;
 - B. Easy for voters to locate;
 - C. Easy to enter and exit by car.
- 2.4 Accessibility
- A. Each early voting location shall be accessible for voters with disabilities.
 - B. The State Accessibility Questionnaire shall be completed and submitted to the State Board for review prior to each election.

2.5 Security

- A. Eight weeks before early voting begins, the election director shall submit an early voting security plan for approval to the SBE Chief Information Systems Security Officer (CISSO).
- B. The plan shall describe in detail how the election director plans to keep voting equipment and provisional ballots and supplies secure during the hours of early voting and during overnight hours, including:
 - 1. A description of each entrance to the room (including windows) and how the entrance is locked and secured;
 - 2. Who has a copy of the key(s) to the room;
 - 3. What types of building security already exists at the site (such as alarms, cameras, and guards); and
 - 4. Additional security measures that will be taken.
- C. The CISSO may require additional security measures to be taken.

Section 3. Estimated Voter Turnout

3.1 The early voting estimated turnout is 20 percent of registered voters.

3.2 The election day estimated turnout is 80 percent of registered voters.

Section 4. Number of voting units.

4.1 The number of voting units per early voting location shall be determined as follows:

Based on 20% of registered voters, one voting unit per 200 registered voters, divided by the number of days of early voting (5) and, in counties where there are multiple early voting locations, divided by the number of locations (3).

4.2 The local board may reduce the number of units by up to 10%.

Section 5. Election Judges

5.1 Use of Staff

- A. While it is permissible for LBE staff to serve as election judges, they must be able to fully dedicate themselves to that task. Staff cannot conduct their normal office assignments and serve as judges at the same time.
- B. Staff should serve in an advisory capacity - especially for the following:
 - 1. Set up each morning
 - 2. Closing each day – including assuring proper security procedures are being followed
 - 3. Ending the election
- C. Number of Judges
 - 1. At least 4 judges are required for every polling place pursuant to §10-201 of the Election Law Article;
 - 2. Split shifts are prohibited for chief judges but may be considered for other judges;
 - 3. In order to assure bi-partisanship, two election judges of differing parties should be assigned to each electronic poll book;

4. Two chief judges must be appointed;
5. One election judge must be appointed and serve as a provisional voting judge; and
6. Voting unit judges sufficient to oversee the number of voting units assigned to the early voting site must be appointed (one to five ratio is recommended).

5.2 The rate of pay for early voting judges must be at least the same rate paid for election day.

5.3 Training and Materials

- A. Each local election director shall provide specialized early voting training for chief judges.
- B. The State Administrator may develop a specialized Judge's Manual for Early Voting.

Section 6. Precinct Register and VACs

6.1 E-Poll Books will replace precinct registers and VACs

- A. Electronic poll books in each early voting site will be networked to one another.
- B. In the 7 counties with three early voting sites, a real-time network among the electronic poll books in the three sites will be established. To ensure that the network will work, each county, with the assistance of the SBE CIO and the electronic poll book vendor, shall test the connectivity at least two weeks before the election.
- C. Electronic poll books will be networked to a central server at SBE to upload early voting information every night.

6.2 Voter Access Cards

- A. The electronic poll books will encode voter access cards.
- B. Back up encoders shall be sent to the early voting sites.

Section 7. Voting System

7.1 Each voting unit used for early voting shall be loaded with every ballot style necessary for the county.

7.2 Memory Cards

- A. Throughout early voting one memory card shall be used per voting unit for the five-day period.
- B. The following procedures shall be established for election judges to follow in order ensure the security of the memory card and secrecy of the election results.
 1. Each night the judge will turn off the voting units without ending the election or printing a Total Report.
 2. After turning off the voting unit at the end of the night, the voting unit shall be re-sealed with tamper tape.

7.3 During early voting, voting units will be securely stored:

- A. At the early voting site; or
- B. In the LBE office or warehouse if the early voting site is in the same facility.

7.4 Ending the election

- A. At the end of the early voting period, election judges will be instructed to end the election in a manner that turns off the unit but does not produce a Totals Report.
- B. The memory card shall be removed and transported back to the election office on the final night of early voting.
- C. The election director shall inventory memory cards to ensure all have been returned and secure the memory cards until 8PM on election day.
- D. Tabulation of the early voting memory cards may not begin until 8PM on election day.

Section 8. Canvassing and Reporting

8.1 Reporting of Early Voting Results

- A. When unofficial election day results are reported (after the close of voting), early voting results will be combined and reported with election day results.
- B. After the post election 100% Verification, election results shall be reported as follows:
 - 1. Early voting report
 - 2. Election day report
 - 3. Combined report

Section 9. Public Information

9.1 Mass Communication

- A. The State Administrator shall develop an information sheet about early voting, including its applicability for voters and the dates, times, and locations at which it will occur.
- B. The State CIO shall post the information sheet on the SBE website and the each local election directors shall link to the information sheet from their respective websites. The State Administrator and local election directors shall make the information sheet available for distribution to media contacts and any other mass distribution opportunities.

- 9.2 Direct Communication with Voters - Prior to both the Primary and General election, a notice shall be created and sent to each registered voter that includes early voting information regarding applicability and the dates, times and locations at which it will occur. The specimen ballot may be used for this notification.

Exhibit F

Article - I - Elective Franchise

[Next] [Another Article]

§ 1.

All elections shall be by ballot. Every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which he resides at all elections to be held in this State. A person once entitled to vote in any election district, shall be entitled to vote there until he shall have acquired a residence in another election district or ward in this State.

[Next] [Another Article]

Exhibit G

Article - I - Elective Franchise

[\[Previous\]](#) [\[Next\]](#) [\[Another Article\]](#)

§ 3.

The General Assembly of Maryland shall have power to provide by suitable enactment for voting by qualified voters of the State of Maryland who are absent at the time of any election in which they are entitled to vote and for voting by other qualified voters who are unable to vote personally and for the manner in which and the time and place at which such absent voters may vote, and for the canvass and return of their votes.

[\[Previous\]](#) [\[Next\]](#) [\[Another Article\]](#)

Exhibit H

Article - III - Legislative Department

[\[Previous\]](#) [\[Next\]](#) [\[Another Article\]](#)

§ 49.

The General Assembly shall have power to regulate by Law, not inconsistent with this Constitution, all matters which relate to the Judges of election, time, place and manner of holding elections in this State, and of making returns thereof.

[\[Previous\]](#) [\[Next\]](#) [\[Another Article\]](#)

Exhibit I

Article - XV - Miscellaneous

[Previous] [Another Article]

§ 7.

All general elections in this State shall be held on the Tuesday next after the first Monday in the month of November, in the year in which they shall occur.

}}

[Previous] [Another Article]

Exhibit J

Article - XVII - Quadrennial Elections

[Next] [Another Article]

§ 1.

The purpose of this Article is to reduce the number of elections by providing that all State and county elections shall be held only in every fourth year, and at the time provided by law for holding congressional elections, and to bring the terms of appointive officers into harmony with the changes effected in the time of the beginning of the terms of elective officers. The administrative and judicial officers of the State shall construe the provisions of this Article so as to effectuate that purpose. For the purpose of this Article only the word "officers" shall be construed to include those holding positions and other places of employment in the state and county governments whose terms are fixed by law, but it shall not include any appointments made by the Board of Public Works, nor appointments by the Governor for terms of three years.

[Next] [Another Article]

Article - XVII - Quadrennial Elections

[\[Previous\]](#) [\[Next\]](#) [\[Another Article\]](#)

§ 2.

Except for a special election that may be authorized to fill a vacancy in a County Council under Article XI-A, Section 3 of the Constitution, elections by qualified voters for State and county officers shall be held on the Tuesday next after the first Monday of November, in the year nineteen hundred and twenty-six, and on the same day in every fourth year thereafter.

[\[Previous\]](#) [\[Next\]](#) [\[Another Article\]](#)

Exhibit K

Article - XVII - Quadrennial Elections

[Previous] [Another Article]

§ 9.

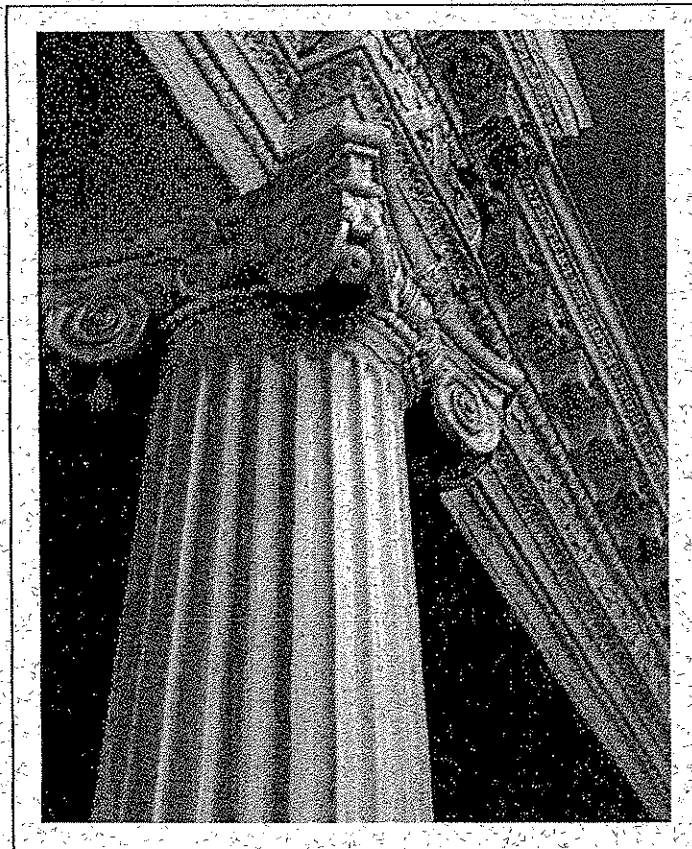
In the event of any inconsistency between the provisions of this Article and any of the other provisions of the Constitution, the provisions of this Article shall prevail, and all other provisions shall be repealed or abrogated to the extent of such inconsistency.

}}

[Previous] [Another Article]

Exhibit L

LAWS
- OF -
MARYLAND



2006
ADVANCE SHEETS
VOLUME II

LAWS
OF THE
STATE OF MARYLAND

ENACTED

At the Session of the General Assembly Begun and Held in the
City of Annapolis on the Eleventh Day of January 2006
and Ending on the Tenth Day of April 2006

VOLUME II

(F) A CLASS B ~~(TRD)~~ (B. W. L.) (TCRD) LICENSE ISSUED UNDER THIS SECTION MAY NOT BE TRANSFERRED FROM THE LOCATION OF ITS ISSUANCE OR BE CONVERTED INTO ANY OTHER CLASS OF LICENSE.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect June 1, 2006. It shall remain effective for a period of 3 years and 7 months and, at the end of December 31, 2009, with no further action required by the General Assembly, this Act shall be abrogated and of no further force and effect.

Approved April 25, 2006.

CHAPTER 216

(Senate Bill 110)

Budget Bill

(Fiscal Year 2007)

AN ACT for the purpose of making the proposed appropriations contained in the State Budget for the fiscal year ending June 30, 2007, in accordance with Article III, Section 52 of the Maryland Constitution; and generally relating to appropriations and budgetary provisions made pursuant to that section.

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That subject to the provisions hereinafter set forth and subject to the Public General Laws of Maryland relating to the Budget procedure, the several amounts hereinafter specified, or so much thereof as shall be sufficient to accomplish the purposes designated, are hereby appropriated and authorized to be disbursed for the several purposes specified for the fiscal year beginning July 1, 2006, and ending June 30, 2007, as hereinafter indicated.

PAYMENTS TO CIVIL DIVISIONS OF THE STATE

A15O00.01 Disparity Grants	
General Fund Appropriation	109,450,400
A18R00.01 Security Interest Filing Fees	
General Fund Appropriation	3,125,000
A19S00.01 Retirement Contribution - Certain	
Local Employees	
General Fund Appropriation	1,843,023

DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

10. T00G00.02 Office of Tourism Development

To become available immediately upon passage of this budget to supplement the appropriation for fiscal year 2006 to provide funds for the National Congress of Christian Education to be held in Baltimore on June 19-23, 2006.

Object .12 Grants, Subsidies and Contributions

150,000

General Fund Appropriation, provided that these funds are contingent upon an opinion from the Office of the Attorney General confirming that the funding is constitutional.

150,000

STATE RESERVE FUND

11. Y01A02.01 Dedicated Purpose Account

To become available immediately upon passage of this budget to supplement the appropriation for fiscal year 2006 to provide funds for additional costs associated with early voting as set forth in Chapter 5 of the 2006 Session that may occur in FY 2006 or FY 2007.

Object .08 Contractual Services
Object .11 Equipment - Additional
Object .12 Grants, Subsidies and Contributions

100,000
12,196,408
1,081,000
13,377,408

General Fund Appropriation, provided that \$11,508,908 of this appropriation for e-poll books is contingent upon certification of the e-poll books by the State Board of Elections under Section 9-102 of the Election Law Article.

13,377,408

12. Y01A02.01 Dedicated Purpose Account

To become available immediately upon passage of this budget to supplement the

appropriation for fiscal year 2006, to ~~provide funds to lease an optical scan voting system with the capacity to provide an accessible voter-verified paper audit trail, including voting units that are accessible to persons with disabilities; and to fund other costs associated with a voting system that may occur in FY 2006 or FY 2007.~~

Further provided that \$19,978,492 of this appropriation (\$10,189,246 general funds, \$9,789,246 special funds) is contingent on the enactment of SB 713/HB 244 or other legislation requiring the replacement of the existing touch-screen voting system to allow for accessible voter-verified paper audit trails or a modification to the State's existing touch-screen voting system, and may only be used for the purposes as provided in SB 713/HB 244 or other legislation as described above.

Object .02 Technical and Special Fees	400,000
Object .08 Contractual Services	2,435,000
Object .12 Grants, Subsidies and Contributions	<u>25,762,770</u>
	28,597,770

General Fund Appropriation 14,498,885

Special Fund Appropriation 14,098,885

MARIROSE JOAN CAPOZZI *

and *

BETTYE B. SPEED *

and *

CHARLES W. CARTER, SR. *

Plaintiffs *

v. *

STATE OF MARYLAND *

and *

LINDA H. LAMONE, in her capacity as
Administrator of the Maryland State Board
of Elections *

and *

MARYLAND STATE BOARD OF
ELECTIONS *

Defendants *

* * * * *

IN THE
CIRCUIT COURT

OF
QUEEN ANNE'S COUNTY

Civil Action No.: 17-C-06-011767

PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs, Marirose Joan Capozzi, Bettye B. Speed and Charles W. Carter, Sr., by their counsel, M. Albert Figinski and Christopher R. West, pursuant to Rule 2-501, Md. Rules, hereby move for Summary Judgment on their Complaint. In support thereof, Plaintiffs state as follows:

1. There are no genuine dispute as to the material facts relating to the claims set forth in Plaintiffs' Complaint, and Plaintiffs are entitled to judgment as a matter of law.

2. The grounds for this Motion are more fully set forth in the accompanying Memorandum in Support of this Motion for Summary Judgment, attached hereto.

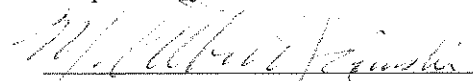
3. The Verified Complaint for Declaratory and Injunctive Relief presents no disputed issue of material fact; it is a straight forward, direct, challenge to the statutory enactment of so-called early voting procedures. Said statutes contravene the Maryland Constitution, as explained in some detail in said Complaint and particularly amplified by the Points and Authorities filed with the Verified Complaint. This is an action raising constitutional issues on matters of law, i.e., statutory enactments and constitutional provisions, for which there are no justiciable factual issues.

WHEREFORE, Plaintiffs respectfully request that this Court grant Plaintiffs' Motion for Summary Judgment, and:

1. Declare that Chapter 5 of the 2006 Laws of Maryland and portions of Chapter 61 of the 2006 Laws of Maryland, insofar as they purport to allow "early voting," as well as any other implementing legislation are unconstitutional;

2. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Respectfully submitted,



M. Albert Figinski, Esq.

One Charles Center

100 North Charles Street

Suite 2200

Baltimore, Maryland 21201

(410) 649-2000



Christopher R. West, Esq.

250 West Pratt Street, 16th Floor

Baltimore, Maryland 21201

(410) 539-5040

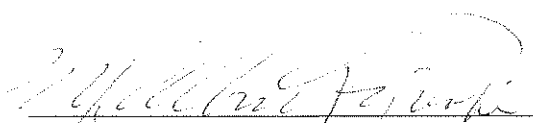
Points and Authorities

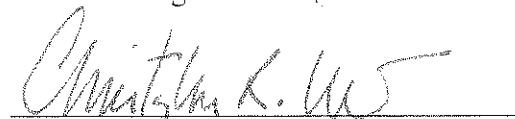
Plaintiffs, by this reference incorporate herein as if set forth in full, the Memorandum of Points and Authorities which was included with, and appended to, the Verified Complaint for Declaratory and Injunctive Relief.

Summary relief here is particularly appropriate, see, Salisbury Beauty Schools v. State Board, 268 Md. 32, 46 (1973) (where the pleadings and motion presented the court with “a concrete and specific issue” of law, summary judgment was properly rendered on the constitutionality of the legislative provision that was challenged).

Also, note that Kelly v. Marylanders for Sports Sanity, Inc. 310 Md. 437 (1987), Bayne v. Sec’y of State, 283 Md. 560 (1989), and Village Square v. Retail Ltd. P’ship, 77 Md. App. 552 (1989) all decided constitutional issues summarily. Pure questions of law, raised by summary judgment, may surely be addressed. Presbyterian U. Hosp. v. Wilson, 99 Md. App. 305, 315 (1994), aff’d, 337 Md. 541, 549 (1995).

Respectfully submitted,


M. Albert Figinski


Christopher R. West

MARIROSE JOAN CAPOZZI *

and *

BETTYE B. SPEED *

and *

CHARLES W. CARTER, SR. *

Plaintiffs *

v. *

STATE OF MARYLAND *

and *

LINDA H. LAMONE, in her capacity as
Administrator of the Maryland State Board
of Elections *

and *

MARYLAND STATE BOARD OF
ELECTIONS *

Defendants *

* * * * *

IN THE
CIRCUIT COURT

OF

QUEEN ANNE'S COUNTY

Civil Action No.: 17-C-06-011767

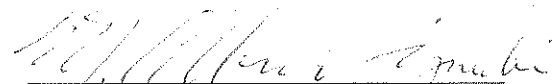
**MOTION FOR A TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION**

Plaintiffs, Marirose Joan Capozzi, Bettye B. Speed and Charles W. Carter, Sr., by their attorneys, M. Albert Figinski and Christopher R. West, as undersigned, pursuant to Maryland Rules 15-501 through 15-505, hereby move for a Temporary Restraining Order and Preliminary Injunction. The grounds for the Motion are more particularly set forth in the accompanying Verified Complaint for Declaratory and Injunctive Relief, its Memorandum of Points and Authorities and the


Memorandum of Points and Authorities attached hereto, the contents of which are fully incorporated herein by this reference pursuant to Rule 2-203(d).

WHEREFORE, the Plaintiffs respectfully request that a Temporary Restraining Order and appropriate injunctive relief be granted.

Respectfully submitted,



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100 North Charles Street
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Baltimore, Maryland 21201
(410) 649-8820



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Baltimore, Maryland 21201
(410) 576-4772

Attorneys for Movants

MEMORANDUM OF POINTS AND AUTHORITIES

For decades, the decision in State Dept. of Health v. Baltimore County, 281 Md. 548 (1977) has been looked to for the “factors” that guide preliminary injunctive relief. There, 281 Md. at 554, the Court listed the following factors to determine relief: (1) likelihood of success on the merits, (2) the “balance of convenience,” (3) irreparable injury and (4) the public interest. Recently, the Court

of Special Appeals, in DMF Leasing, Inc. v. Budget Rent-a Car, 161 Md. App. 640, 648 (2005), discussed these four criteria and held that they are:

not like elements of a tort [citation omitted]. The four factors are simply that, *factors*, designed to guide trial judges in deciding whether a preliminary should be issued. [Emphasis in original.]

In further amplification, the intermediate appellate court produced a lengthy footnote, 161 Md. App. at 648, n. 3, which was appended to the assertion that there were “some suggestions to the contrary.” The substantive discussion in the footnote recognized the distinction between injunctive actions between private litigants and those where government entities are involved. The elaboration stated, in pertinent part:

[In cases in which government entities were involved], the Court of Appeals expressly adopted a theory that when government interests are at stake, fewer than all four factors will apply, and trial courts exercising their traditional equity powers, have broader latitude than when only private interests are involved, *See, e.g., State Dep’t of Health*, 281 Md. at 557-7 Under the Court of Appeals holdings, then, . . . when government entities are involved, courts have discretion to disband with a vigorous application of all four factors.

This analysis draws support from a careful reading of Fogel v. H&G Restaurant, Inc. 337 Md. 441 (1995). There, the Court noted and stressed the four factors, but emphasized as most important, the likelihood of success on the merits, 337 Md. at 455-6. As well, the Court asserted, 337 Md. at 456-7:

in litigation between governmental and private parties, or in cases in which injunctive relief directly impacts governmental interests, the Court is not bound by strict requirements of traditional equity developed in private litigation [Citation omitted.] We have also acknowledged that “courts of equity may, and frequently do, go much farther both to give and withhold relief than they are accustomed to do when only private interests are involved.” Space Aero Products Co., Inc. v. R.E. Darling Co., Inc. 283 Md. 93, 128 . . . cert den., 382 U.S. 843 . . . (1965)

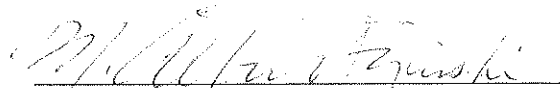
This exposition of the vagaries of injunctive adjudication means, at least, that determination of the constitutional issues, presented here in the Verified Complaint and argued in the Memorandum of Points and Authorities accompanying the Verified Complaint, are the ultimate and pervasive dispositive “factor.” That determination is not fact driven; it arises directly from the statutes and their constitutional bars. Early voting contravenes the clear constitutional provisions. As shown in the Memorandum accompanying the Verified Complaint, there will be ultimate success on the merits warranting injunctive relief now.

Irreparable injury means that money damages are not a true balm, see, State Comm. on Human Rel. v. Talbot County Detention Center, 370 Md. 115, 140 (2002). Damages are no remedy for this charged constitutional error.

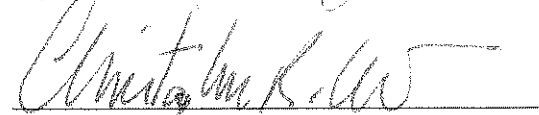
The public interest, moreover, can only mean upholding the constitutional provisions.

The Court should exercise its equity powers and grant the equitable relief prayed.

Respectfully submitted



M. Albert Figinski



Christopher R. West

THE CIRCUIT COURT FOR QUEEN ANNE'S COUNTY

MARIROSE JOAN CAPOZZI, et al.

*

vs.

*

CIVIL #06-11767

STATE OF MARYLAND, et al.

*

* * * * *

MEMORANDUM and ORDER

This matter was before the Court for hearing on July 26, 2006 on defendants' motion for transfer of venue. The case originated with the filing of a verified complaint for declaratory and injunctive relief on July 17, 2006 by three (3) residents of Queen Anne's County against the State of Maryland, Linda H. Lamone, in her capacity as Administrator of the Maryland State Board of Elections ("Administrator") and the Maryland State Board of Elections. The business address of the Administrator and the Maryland State Board of Elections is in Anne Arundel County, and Linda H. Lamone resides in Anne Arundel County, according to her affidavit.

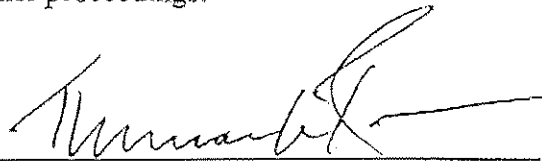
Defendants assert that venue is in Anne Arundel County, and that the transfer is mandatory. Plaintiffs assert that the matter of venue, under these facts, is discretionary. The fact that the State of Maryland is a named defendant is, as defendants suggest, irrelevant. From this Court's standpoint, the issue of venue in this case is one vested to the Court's discretion. In any event, based upon the Court's ruling, whether venue in this case [in Anne Arundel County] is mandatory does not need to be reached. Furthermore, whether or not witnesses testify in subsequent proceedings does not change the Court's opinion that this case should be heard, promptly, in Anne Arundel County. The defendants and their offices are located there. Clearly, it is not only the most convenient forum, it is the proper venue for this suit under the statute and serves the interests of justice. *Annotated Code of Maryland, Courts and Judicial Proceedings Article, §6-201.*¹ It is clear that, under §6-201 (a) or (b) (other than as to the State of Maryland), Anne Arundel County would be the single venue applicable to all defendants,

¹ Plaintiffs suggest that the case is based exclusively on legal arguments, while defendants suggest that facts (potentially through testimony) must be considered prior to any determination of injunctive relief.

and it is where Linda H. Lamone resides. The additional venue and exceptions to the general rule prescribed in §§6-202 and 6-203 respectively do not afford plaintiffs any basis on which to have this civil suit heard in the court where they reside.

Having reviewed the file, the pleadings of the parties, and arguments of counsel, it is this 28 day of July, 2006, by the Circuit Court for Queen Anne's County

ORDERED, that the Clerk, promptly, shall transfer this matter to the Circuit Court for Anne Arundel County for further proceedings.



Thomas G. Ross
Judge

July 28, 2006

MARIROSE JOAN CAPOZZI, <i>et al.</i> ,	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
STATE OF MARYLAND, <i>et al.</i> ,	*	ANNE ARUNDEL COUNTY
Defendants.	*	CASE NO.: 02-C-06-115807

* * * * *

DEFENDANTS’ MEMORANDUM IN OPPOSITION
TO PLAINTIFFS’
MOTION FOR TEMPORARY RESTRAINING ORDER

Now come the defendants, the State of Maryland, the State Board of Elections, and Linda H. Lamone, as State Administrator of Elections in her official capacity (collectively, “SBE”), by J. Joseph Curran, Jr., Attorney General of Maryland, Michael D. Berman, Deputy Chief of Civil Litigation, and, Kathryn M. Rowe, Assistant Attorney General, their attorneys, and, in reply to plaintiffs’ motion for a temporary restraining order, state as follows:

TABLE OF CONTENTS

I. SUMMARY OF ARGUMENT. 2

II. FACTS, DESCRIPTION OF STATUTES, AND LEGISLATIVE HISTORY. . . 5

III. DUE TO PLAINTIFFS’ INORDINATE DELAY IN COMMENCING THIS ACTION, COUPLED WITH THE RESULTING PREJUDICE TO VOTERS, EMPLOYERS, AND SBE THAT ACCRUED IN THE INTERIM, THE PLAINTIFFS’ CLAIMS ARE BARRED BY THE DOCTRINE OF LACHES. . . 8

IV. A TEMPORARY RESTRAINING ORDER CAN BE ENTERED AGAINST A STATE ENTITY ONLY IN LIMITED CIRCUMSTANCES. 17

Pages 2-56 of Defendants' Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order intentionally omitted in accordance with Rule 8-501(c) (memorandum of law not to be included in record extract unless it has independent legal significance).

MARIROSE JOAN CAPOZZI, *et al.*,

Plaintiffs,

v.

STATE OF MARYLAND, *et al.*,

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* QUEEN ANNE'S COUNTY
* CASE NO.: 17-C-06-11767

* * * * *

AFFIDAVIT OF ROSS GOLDSTEIN

I, the undersigned, state as follows:

1. I am over 18 years of age, a citizen of Maryland, and have personal knowledge of the facts contained herein.

2. I am the Deputy Administrator of the Maryland State Board of Elections ("SBE") and have acted in that capacity since the fall of 2004. I began my employment with SBE in 1998, when I was appointed Deputy Director of the Division of Candidacy and Campaign Finance.

3. I have been responsible for the implementation of early voting at SBE since February 16, 2006, when Senate Bill 478 (2005 Session) became law pursuant to Article II, §17(d) of the Maryland Constitution after the General Assembly overrode the Governor's veto of this bill on January 17, 2006. House Bill 1368 (2006 Session), which also relates to early voting, passed both houses as emergency legislation as of March 29, 2006, and became effective immediately on April 10, 2006 pursuant to Article II, §17(d), when the General Assembly overrode the Governor's veto. SBE began implementing House Bill 1368 immediately on April 10, 2006.

4. SBE and the local boards of election have been engaged in numerous activities in connection with early voting implementation, including:

- selecting early votes sites;
- purchasing electronic pollbooks;
- creating training materials for local election staff and election judges;
- developing Guidelines for Early Voting and a regulation; and
- developing procedures for loading multiple ballot styles onto voting units.

5. Purchasing of electronic pollbooks has required an initial commitment of \$2.5 million in State funds for 200 units to be used in connection with early voting. SBE's contract with Diebold Election Systems, Inc. ("DESI") provides for the delivery of additional units at the same price. SBE has recently entered into a contract modification with DESI for the delivery of 5300 more units for an additional \$16,040,609. This modification is pending before the Board of Public Works for its meeting scheduled for July 26, 2006.

6. Should the Court hold a hearing on early voting implementation, all of the relevant records and key personnel are located at SBE's offices at 150 West Street in Annapolis. Traveling to Queen Anne's County for a hearing would cause my staff to lose valuable time that would otherwise be spent preparing for the elections beginning September 5, 2006, which is less than two months away.

7. Should the Court delay early voting implementation, such an order would severely compromise our ability to prepare for the elections. The election milestone dates are time-sensitive. For example, if we are unable to purchase and test the electronic pollbooks in

accordance with our schedule, our ability to assure that only registered voters cast ballots will be jeopardized.

8. Linda H. Lamone, Administrator, resides and is employed in Anne Arundel County.

9. Prior to elections, a considerable number of lawsuits are often filed against SBE, ranging from ballot access issues, referendum issues, voting machine issues, etc. If the Administrator and SBE personnel are amenable to suit from Allegheny to Worcester Counties, their ability to perform election-related functions will be, at a minimum, diminished.

11. Since April 10, 2006, SBE has moved forward with implementation of early voting. Public funds were expended or committed between the time that the early voting bills became law and the time that this lawsuit was commenced on July 17, 2006. Public resources have been used for training of election personnel for early voting. Additionally, during that period, SBE has commenced a program of voter education regarding early voting. If an injunction is entered, SBE would be required to re-educate voters, at substantial cost and risk of confusion.

12. All SBE personnel (except one) are located in Annapolis, where they are heavily committed to preparing for a primary election that is less than two months away. SBE personnel are currently: engaged in ballot definition, design, and certification; early voting preparation, including implementation of electronic poll books and development of training materials; preparing to conduct parallel testing of voting machines; oversight of voter

registration activity; oversight of the implementation of a new Statewide uniform voter registration system, including serving as a resource for local users, addressing implementation issues, and general project management; oversight of the petition certification process, pending the outcome of ongoing litigation; spending 100 hours in discovery pursuant to Court order in the electronic voting lawsuit; responding to requests for information from candidates, the press, voters, and the public, supporting local boards of election; continuing the development of uniform procedures, guidelines, regulations, and forms; certifying ballot questions; coordinating the reprint of the Election Law article of the Code; reviewing and approving election judge's manuals; compiling and procuring items to make polling places accessible for election days; monitoring vote outreach activities; evaluating election judge's training; responding to the U.S. Election Assistance Commission's Inspector General's audit; working with the data platform and website conversion; updating the security, procedures, and policy guide; working with other state and local agencies on election day security and disaster recovery plans; continuing network upgrades; working on Campaign Finance Reports and Contributor Disclosure Reports; and, processing of waiver of late fee requests.

13. Diverting election personnel will interfere with these processes.

14. If SBE is to respond to plaintiffs' assertion that the General Assembly acted in a "highly partisan" fashion when it enacted early voting, it will require that SBE personnel offer evidence that shows that early voting will ameliorate hardships on employers and

employees and that approximately 35 states have passed either early voting or absentee voting laws. The evidence to rebut those allegations is located in Anne Arundel County.

15. Plaintiffs' Complaint at ¶23, asserts that the alleged untimely promulgation of regulations and guidelines demonstrates that plaintiffs are entitled to relief. If SBE is required to present factual evidence on this issue, that evidence will be presented through SBE personnel who are employed in Anne Arundel County. SBE will explain, through SBE employees, the process that was followed.

16. It is now July 24, 2006. The primary elections will be held on September 12, 2006. The general elections will be held on November 7, 2006. SBE has a number of tasks to perform between now and September 12. It has to process all of the "bread and butter" election matters, such as petitions, ballot preparation, programming of election machines, security issues, etc. It must also deploy new electronic voting machines in Baltimore City. SBE is involved in training election judges and preparing absentee ballots. It has been, and remains, heavily involved in preparing for early voting. There are many statutory tasks that SBE must accomplish within statutorily-prescribed deadlines. SBE personnel are responsible, efficient, and hard-working. SBE's resources, however, are not unlimited. Every hour taken away from working on election-related tasks threatens to interfere with time-sensitive election preparation. SBE personnel should not be diverted unnecessarily.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.



Ross Goldstein
July 24, 2006
Executed in Maryland

MARIROSE JOAN CAPOZZI, *et al.*,

Plaintiffs,

v.

STATE OF MARYLAND, *et al.*,

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* CASE NO.: 02-C-06-115807

* * * * *

DEFENDANTS' MOTION TO DISMISS COMPLAINT

Now come the defendants, the State of Maryland, the State Board of Elections, and Linda H. Lamone, as State Administrator of Elections in her official capacity (collectively, "SBE"), by their attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Michael D. Berman, Deputy Chief of Civil Litigation, and, for a motion to dismiss the Complaint, state as follows:

1. The State of Maryland is not properly a party to this action. Plaintiffs admitted, in open court during the transfer of venue hearing in the Circuit Court for Queen Anne's County, that the State of Maryland was not a proper defendant. A transcript has been ordered, but not yet prepared. The State of Maryland moves to dismiss all claims against it, for reasons set forth more fully in the Motion for Transfer of Venue, incorporated herein, in light of plaintiffs' admission, and based on the points and authorities cited below.

2. For reasons set forth more fully in defendants' Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order, incorporated herein, all of the defendants move to dismiss the complaint, cause, and action, because plaintiffs have failed to state a claim upon which relief may be granted.

3. When the General Assembly enacted the Early Voting Laws, it did so under its plenary power. That power is almost absolute, except as limited by the Constitution. As set forth more fully in the accompanying memorandum, there is no constitutional limit that precludes early voting legislation.

STATE OF MARYLAND'S¹
MEMORANDUM OF POINTS AND AUTHORITIES

1. *Davis v. State*, 183 Md. 385 (1944)(State may not be sued without its consent and Declaratory Judgment Act did not modify sovereign immunity).

2. *Jackson v. Millstone*, 369 Md. 575, 590 (2002)(noting that State retains sovereign immunity and that relief may be obtained from State officials, but not from State itself).

3. *Glover v. Glendening*, 376 Md. 147-48 (2001)(same).

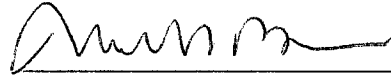
4. *Stern v. Board of Regents*, 380 Md. 691, 725 (2004).

Wherefore, the State of Maryland, State Board of Elections, and Linda H. Lamone, Administrator, in her official capacity, move pursuant to Rule 2-322(b) and Rule 2-321(c) to dismiss the Complaint, cause, and action.

¹ SBE and Ms. Lamone rely on the memorandum in opposition to the motion for a temporary restraining order. The State of Maryland relies on that memorandum and, additionally, on the motion for transfer of venue, the transcript of the hearing on that motion (which has been ordered, but not prepared), and the authorities cited in this memorandum of points and authorities.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland



MICHAEL D. BERMAN
Deputy Chief of Civil Litigation
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202
Voice: (410) 576-6345
Facsimile: (410) 576-6955

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of August, 2006, a copy of the foregoing Defendants' Motion to Dismiss Complaint and proposed Order was hand-delivered to M. Albert Figinski, Esquire, One Charles Center, 100 N. Charles Street, Suite 2200, Baltimore, MD 21201 and Christopher R. West, Esquire, 250 West Pratt Street, 16th Floor, Baltimore, MD 21201, attorneys for Plaintiffs.



Michael D. Berman

MARIROSE JOAN CAPOZZI, <i>et al.</i> ,	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
STATE OF MARYLAND, <i>et al.</i> ,	*	ANNE ARUNDEL COUNTY
Defendants.	*	CASE NO.: 02-C-06-115807

* * * * *

DEFENDANTS' MOTION FOR EXTENSION OF TIME
TO RESPOND TO
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Now come the defendants, the State of Maryland, the State Board of Elections, and Linda H. Lamone, as State Administrator of Elections in her official capacity (collectively, "SBE"), by J. Joseph Curran, Jr., Attorney General of Maryland, and Michael D. Berman, Deputy Chief of Civil Litigation, their attorneys, and, for a motion for extension of time to respond to plaintiffs' motion for summary judgment, state as follows:

1. Plaintiffs filed this action on July 17, 2006, challenging the early voting laws. SB 478 (2005 Session), Chapter 5, Laws of Maryland 2006, became law on February 16, 2006. HB 1368 (2006 Session), Chapter 61, Laws of Maryland 2006, became law on April 10, 2006. Thus, Plaintiffs delayed five months in bringing this lawsuit.

2. Plaintiffs have requested a temporary restraining order and preliminary injunction. Their request for a TRO will be heard on August 8, 2006. Defendants have filed their opposition to that request. This Motion does not impact on the TRO proceeding.

3. Rule 2-501(d) provides that, if the Court is satisfied from the affidavit of a party opposing a motion for summary judgment that the facts essential to justify the opposition

cannot be set forth for the reasons stated in the affidavit, the Court may deny the motion or may order a continuance to permit discovery to be conducted, or may enter any other order that justice requires.

4. The Rule 2-501(d) Affidavit of Ross Goldstein, Deputy Administrator of the Maryland State Board of Elections, is attached to this motion. That affidavit demonstrates that the facts essential to justify the opposition to plaintiffs' summary judgment motion cannot be set forth until after plaintiffs respond to defendants' outstanding discovery requests. Defendants' timely interrogatories, request for production of documents, and request for admission of facts and genuineness of documents are attached to the affidavit as Exhibits A, B, and C.

5. Under the holding of *Basiliko v. Royal National Bank of N.Y.*, 263 Md. 545, 547 (1971), where there are timely-filed, unanswered discovery requests for discoverable information, a court should postpone consideration of a summary judgment motion until the discovery is answered.

6. All of the defendants have moved to dismiss the case. *See* Defendants' Motion to Dismiss Complaint. The State of Maryland has, for example, asserted that the claims against it are barred by sovereign immunity, a point conceded by plaintiffs in the Circuit Court for Queen Anne's County proceeding on a venue motion in this case. (The transcript has been requested, but has not yet been transcribed.) The defendants should not be compelled to respond to a summary judgment motion unless and until the plaintiffs survive the motion to

dismiss. *See, e.g.*, Md. Rule 2-321(c)(when a motion to dismiss is filed, it automatically extends the time for filing an answer).

7. There is no need to expedite plaintiffs' motion for summary judgment. Plaintiffs have requested, and the Court will conduct, a hearing on plaintiffs' motion for a temporary restraining order on August 8, 2006. If plaintiffs are entitled to any expedited consideration, they will receive it at that time.

8. Given the extreme delay by plaintiffs in bringing this action, they cannot colorably demand expedited action. "[A] long delay in seeking relief indicates that speedy action is not required." *Quince Orchard Valley Citizens' Assoc., Inc. v. Hodel*, 872 F.2d 75, 80 (4th Cir. 1989)(where plaintiffs' delay was six months, whatever "irreparable harm Plaintiffs face. . . is very much the result of their own procrastination"). In short, equity demands that those who challenge government actions do so "with haste and dispatch." *Id.* Laches applies with additional force in the electoral context because a party seeking to challenge an election has an express duty to act promptly. As the Court of Appeals noted in a recent election case: "Ross's unjustified delay must be juxtaposed against *his duty to petition for redress without delay* when the election approaches. . . ." *Ross v. State Board of Elections*, 387 Md. 649, 669 (2005)(emphasis added)(citation omitted). Plaintiffs breached their duty to petition without delay and, therefore, should not be heard to assert that others must respond without delay, when such an assertion prejudices the responding party.

9. There will be no prejudice to plaintiffs if this motion is granted. Defendants - - and the citizens of Maryland - - will be prejudiced if this motion is denied.

Wherefore, the defendants request that the time within which they must reply to plaintiffs' motion for summary judgment be extended to a date that is thirty days after the close of discovery, said date to be established by routine scheduling order.

RESPECTFULLY SUBMITTED,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

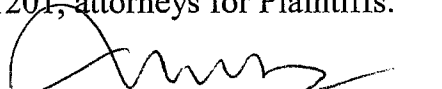


MICHAEL D. BERMAN
DEPUTY CHIEF OF CIVIL LITIGATION
ASSISTANT ATTORNEY GENERAL
200 ST. PAUL PLACE
BALTIMORE, MARYLAND 21202
410-576-6345

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of August, 2006, a copy of the foregoing Defendants' Motion for Extension of Time to Respond to Plaintiffs' Motion for Summary Judgment was hand delivered to M. Albert Figinski, Esquire, One Charles Center, 100 N. Charles Street, Suite 2200, Baltimore, MD 21201 and Christopher R. West, Esquire, 250 West Pratt Street, 16th Floor, Baltimore, MD 21201, attorneys for Plaintiffs.



Michael D. Berman

MARIROSE JOAN CAPOZZI, *et al.*,

Plaintiffs,

V.

STATE OF MARYLAND, *et al.*,

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* CASE NO.:

* * * * *

RULE 2-501(d) AFFIDAVIT

I, the undersigned, state as follows:

1. I am over 18 years of age, a citizen of Maryland, and have personal knowledge of the facts contained herein.

2. I am the Deputy Administrator of the Maryland State Board of Elections (“SBE”) and have acted in that capacity since the fall of 2004. I have been employed by SBE since 1998, when I was appointed Deputy Director of the Division of Candidacy and Campaign Finance.

3. I am told that Rule 2-501(d) provides:

If the court is satisfied from the affidavit of a party opposing a motion for summary judgment that the facts essential to justify the opposition cannot be set forth for reasons stated in the affidavit, the court may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be conducted or may enter any other order that justice requires.

4. I have reviewed a copy of the plaintiffs’ complaint, motion for summary judgment, and motion for a temporary restraining order. I have also reviewed the defendants’ Interrogatories, Request for Production of Documents, and Request for Admission of Facts, which are attached to this affidavit as Exhibits A, B, and C. I have reviewed a copy of

defendants' Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order. Because that pleading is being filed with the Court, I am not attaching a copy of it to this affidavit.

5. It appears to me from reviewing the items described in ¶4 that facts essential to justify the opposition to the motion for summary judgment cannot be set forth until after discovery responses are received.

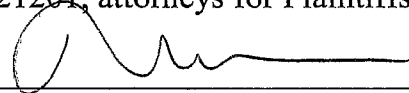
I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true to the best of my knowledge, information, and belief..



Ross Goldstein
August 3, 2006
Executed in Maryland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of August, 2006, a copy of the foregoing Affidavit was served, by hand delivery on M. Albert Figinski, Esquire, One Charles Center, 100 N. Charles Street, Suite 2200, Baltimore, MD 21201 and Christopher R. West, Esquire, 250 West Pratt Street, 16th Floor, Baltimore, MD 21201, attorneys for Plaintiffs.



Michael D. Berman

Exhibit A

MARIROSE JOAN CAPOZZI, *et al.*,

Plaintiffs,

V.

STATE OF MARYLAND, *et al.*,

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* CASE NO.: N/A

* * * * *

INTERROGATORIES

TO: Plaintiffs

FROM: Defendants

INSTRUCTIONS

Pursuant to Rule 2-421, you are required to answer the following interrogatories within 30 days or within the time otherwise required by court order or by the Maryland Rules:

(a) In accordance with Rule 2-421(b), your response shall set forth the interrogatory, and shall set forth the answer to the interrogatory "separately and fully in writing under oath" or "shall state fully the grounds for refusal to answer any interrogatory."

The response shall be signed by you. (Standard Instruction (a).)

(b) Also in accordance with Rule 2-421(b), your answers "shall include all information available to you "directly or through agents, representatives, or attorneys."

(Standard Instruction (b).)

(c) Pursuant to Rule 2-401(e), these interrogatories are continuing. If you obtain further material information before trial you are required to supplement your answers promptly. (Standard Instruction (c).)

(d) If pursuant to Rule 2-421(c), you elect to specify and produce business records of yours in answer to any interrogatory, your specification shall be in sufficient detail to enable the interrogating party to locate and identify the records from which the answer may be ascertained. (Standard Instruction (d).)

(e) If you perceive any ambiguities in a question, instruction, or definition, set forth the matter deemed ambiguous and the construction used in answering. (Standard Instruction (e).)

DEFINITIONS

In these interrogatories, the following definitions apply:

(a) **Document** includes a writing, drawing, graph, chart, photograph, recording, and other data compilation from which information can be obtained, translated, if necessary, through detection devices into reasonably usable form. (Standard General Definition (a).)

(b) **Identify, identity, or identification**, (1) when used in reference to a natural **person**, means that **person's** full name, last known address, home and business telephone numbers, and present occupation or business affiliation; (2) when used in reference to a **person** other than a natural **person**, means that **person's** full name, a description of the nature of the **person** (that is, whether it is a corporation, partnership, etc. under the definition of **person** below), and the **person's** last known address, telephone number, and principal

place of business; (3) when used in reference to any **person** after the **person** has been properly **identified** previously means the **person's** name; and (4) when used in reference to a **document**, requires you to state the date, the author (or, if different, the signer or signers), the addressee, and the type of **document** (e.g. letter, memorandum, telegram, chart, etc.) or to attach an accurate copy of the **document** to your answer, appropriately labeled to correspond to the interrogatory. (Standard General Definition (b).)

(c) **Person** includes an individual, general or limited partnership, joint stock company, unincorporated association or society, municipal or other corporation, incorporated association, limited liability partnership, limited liability company, the State, an agency or political subdivision of the State, a court, and any other governmental entity. (Standard General Definition (c).)

(d) **Early Voting Law** means the statutes challenged in your pleadings.

INTERROGATORIES

1. **Identify each person**, other than a **person** intended to be called as an expert witness at trial, having discoverable information that tends to support a position that you have taken or intend to take in this action, including any claim for damages, and state the subject matter of the information possessed by that **person**. (Standard General Interrogatory No. 1.)
2. **Identify each person**, who is not identified in Answer No. 1 or 3, who has information that refers or relates to the enactment or purposes of the Early Voting Law.

3. **Identify** each **person** whom you expect to call as an expert witness at trial, state the subject matter on which the expert is expected to testify, state the substance of the findings and opinions to which the expert is expected to testify and a summary of the grounds for each opinion, and attach to your answers any written report made by the expert concerning those findings and opinions. (Standard General Interrogatory No. 2.) As used in this interrogatory, the word “trial” includes any evidentiary hearing in this matter.
4. If you intend to rely upon any **documents** or other tangible things to support a position that you have taken or intend to take in the action, including any claim for damages, provide a brief description, by category and location, of all such **documents** and other tangible things, and **identify** all **persons** having possession, custody, or control of them. (Standard General Interrogatory No. 3.)
5. Itemize and show how you calculate any economic damages claimed by you in this action, and describe any non-economic damages claimed. (Standard General Interrogatory No. 4.)
6. State the date and/or dates on which you learned that the Early Voting Law had been enacted as law.
7. State why you waited from the date or dates supplied in Answer to Interrogatory No. 1, until July 17, 2006, to commence this lawsuit.
8. State the facts on which you rely to support your contention that the Early Voting Law irreparably injures you.

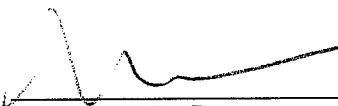
9. If you contend that the Early Voting Law compels you, or anyone else, to vote early, state the facts on which you rely to support your contention.
10. If you contend that the Early Voting Law compels you, or anyone else, to vote in a specific location, state the facts on which you rely to support your contention.
11. State the facts on which you rely to support your contention that the Early Voting Laws do not further the public interest.
12. State each of your residential addresses for the past three years, specifying the date on which that address became your residence.
13. State the facts on which you rely to support the allegation, made in ¶8 of your Complaint, that the State Administrator and State Board of Elections have asked, and the State has approved, the expenditure of at least \$13 million for early voting.
14. State how much of the \$13 million to which you refer in ¶8 of your Complaint has been spent to implement early voting.
15. State the meaning of the words “election” and “elections.”
16. State the meaning of the word “held.”
17. Describe all steps that the defendants, or any of them, have taken to implement the Early Voting Law, providing the dates on which those steps were taken.
18. If you contend that the Early Voting Law does not make voting more convenient for voters, state the facts on which you rely to support your contention.

19. If you contend that the Early Voting Law will not reduce the lines at polling places on September 12, 2006, and November 7, 2006, state the facts on which you rely to support your contention.
20. If you contend that a reasonable estimated turnout for early voting is other than 20% of the registered voters, state the facts on which you rely to support your contention.
21. State the facts on which you rely to support the contention, made in ¶21 of your Complaint, that the General Assembly acted in a “highly partisan” fashion.
22. State the facts on which you rely to support the contention, made in ¶24 of your Complaint, that “partisans” favor Chapter 5 of the 2006 Laws of Maryland.
23. State the facts on which you rely to support the contention, made in ¶23 of your Complaint, that there was an “imprudent rush” to implement early voting.
24. State the facts on which you rely to support the contention, made in ¶23 of your Complaint, that there was a flagrant violation of the Early Voting Law by defendants, or by some of them.
25. Describe all conversations that you had with Ms. Joan F. Beck, and/or other members of the State Board of Elections, that refer or relate to the Early Voting Laws and/or affidavits to be submitted in connection with this lawsuit.
26. State whether you asked Ms. Joan F. Beck to explain the reason or reasons why “nearly six months passed after January 1, 2006 before such regulations and guidelines were adopted,” as alleged in ¶23 of your Complaint.

27. If you contend that the Early Voting Law expanded or curtailed the qualifications necessary to vote, state the facts upon which you rely to support your contention.

RESPECTFULLY SUBMITTED,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL



MICHAEL D. BERMAN
DEPUTY CHIEF OF CIVIL LITIGATION
200 ST. PAUL PLACE
BALTIMORE, MARYLAND 21202
410-576-6345

ATTORNEYS FOR DEFENDANTS

MARIROSE JOAN CAPOZZI, *et al.*,

Plaintiffs,

V.

STATE OF MARYLAND, *et al.*,

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* CASE NO.: N/A


* * * * *

NOTICE OF SERVICE OF DISCOVERY

I HEREBY CERTIFY that on this 1ST day of August, 2006, a copy of the foregoing Defendants' Interrogatories to Plaintiffs was served, by facsimile and by first-class mail, postage prepaid on M. Albert Figinski, Esquire, One Charles Center, 100 N. Charles Street, Suite 2200, Baltimore, MD 21201, and Christopher R. West, Esquire., 250 West Pratt Street, 16th Floor, Baltimore, MD 21201, attorneys for Plaintiffs, together with a copy of this Notice of Service.

RESPECTFULLY SUBMITTED,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL



Michael D. Berman
Deputy Chief of Civil Litigation
William F. Brockman
Assistant Attorneys General
200 St. Paul Place
Baltimore, Maryland 21202
410-576-6345/7055

Attorneys for Defendants

Exhibit B

MARIROSE JOAN CAPOZZI, *et al.*,

Plaintiffs,

V.

STATE OF MARYLAND, *et al.*,

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* CASE NO.: N/A

* * * * *

REQUEST FOR PRODUCTION OF DOCUMENTS

TO: Plaintiffs

FROM: Defendants

INSTRUCTIONS

Pursuant to Rule 2-422, you are requested to file, within the time prescribed by the Maryland Rules, a written response to each of the following requests and to produce those documents for inspection and copying on the 31st day of August, 2006, at 10 o'clock a.m., and from day to day thereafter, until completed, in the offices of the State Board of Elections, located at 151 West Street, Suite 200, Annapolis, MD 21401, or such other location as is mutually convenient.

(a) In accordance with Rule 2-422(c), your written response "shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is refused, in which event the reasons for refusal shall be stated. If the refusal relates to part of an item or category, the part shall be specified."

(b) In accordance with Rule 2-422(d), the documents shall be produced "as they are kept in the usual course of business", or you "shall organize and label them to correspond with the categories in the request."

(c) Pursuant to Rule 2-422(a), these requests encompass all items within your "possession, custody or control."

(d) Pursuant to Rule 2-401(c), these requests are continuing in character so as to require you to promptly amend or supplement your response if you obtain further material information.

(e) If in responding to these requests you encounter any ambiguity in construing any request, instruction or definition, set forth the matter deemed ambiguous and the construction used in responding.

DEFINITIONS

As used in these requests, the following terms are to be interpreted in accordance with these definitions:

(a) In accordance with Rule 1-202(o), the term "person" includes any individual, joint stock company, unincorporated association or society, municipal or other corporation, the State, its agencies or political subdivisions, any court, or any other governmental entity.

(b) The terms "you" or "your" include the person(s) to whom these requests are addressed, and all of that person's agents, representatives or attorneys.

(c) In accordance with Rule 2-422(a), the terms "document" or "documents" includes all "writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, translated, if necessary, by [you] through detection devices into reasonably usable form."

(d) The term "communication" means any written utterance, notation, or statement of any nature whatsoever, by and to whomsoever made, including, but not limited to, correspondence, conversations, agreements, and other understandings between or among two or more persons and has the broadest meaning permitted by the Maryland Rules of Procedure.

(e) The term "occurrence" or "occurrences" refers to the time, place, events and circumstances referred to in the pleadings, unless otherwise indicated herein. The term "transaction" has the same meaning and both have the broadest meaning permitted by the Maryland Rules of Procedure.

(f) A document is "related to" the affairs or activities, including the financial affairs or activities, of a person, or organization, if it refers to, has been made available to, or in any other way concerns the affairs or activities, including the financial affairs or activities, of that person or organization, either in whole or in part and has the broadest meaning permitted by the Maryland Rules of Procedure.

(g) The present tense includes the past and future tenses. The singular includes the plural, and the plural includes the singular. "All" means "any and all"; "any" means "any and all." "Including" means "including but not limited to." "And" and "or" encompass both

"and" and "or." Words in the masculine, feminine or neuter shall include each of the other genders.

(h) Any document requested is to be reproduced in its entirety, without abbreviation or expurgation, including any attachments thereto, whether referred to in the document or otherwise, and including any enclosures therewith, whether referred to in the document or otherwise.

(I) Where a document is requested and the answering party claims it cannot be located by reasonable effort, the document and its contents should be described in detail and the present location and custodian of that document should be stated.

(j) If the requested documents are maintained in a file, please produce the file folder together with the documents requested.

(k) If you assert a privilege as to any document, identify the document, identify the privilege, identify each person who has received a copy of it, identify the author, identify the addressees, describe the general subject of the document, and state the basis for the privilege. As used herein, the term "privilege" encompasses the work product doctrine.

(l) To the extent to which they are not inconsistent with the definitions contained herein, the definitions and instructions set forth in the Interrogatories are incorporated by reference herein.

REQUESTS

1. All documents identified in your Answers to the defendants' Interrogatories.
2. All documents sent to, received from, reviewed by, or prepared by, each expert identified in your Answer to defendants' Interrogatory No. 3.
3. All reports of all experts identified in your Answer to defendants' Interrogatory No. 3.
4. All drafts of all reports of all experts identified in your Answer to defendants' Interrogatory No. 3.

5. The most recent resume or curriculum vitae of each expert identified in your Answer to defendants' Interrogatory No. 3.

6. All documents sent to, received from, or prepared by the defendants, or by members of the State Board of Elections, in connection with the Early Voting Law.

7. All documents and statements signed by the defendants, or their members, directors, officers, employees, agents, or representatives.

8. All written or recorded statements of this party or of any agent, representative or employee of this party, concerning the subject matter of this action.

9. All documents that refer or relate to the Early Voting Law.

10. All documents, such as letters, position papers, letters to the editor, that you have written or read concerning early voting.

11. Your voter registration card.

12. All documents, other than dictionaries, that define the terms "election" and/or "elections."

13. All documents that refer to, relate to, or project, the voter turnout for early voting.

14. All documents that refer to, relate to, or project, the waiting time at polling places in Maryland elections.

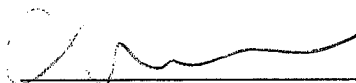
15. All documents that refer or relate to communications between you and any election official on the subject of early voting.

16. All drafts of all documents produced in response to the foregoing requests.

17. All non-identical copies of documents produced in response to the foregoing requests.

RESPECTFULLY SUBMITTED,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL



MICHAEL D. BERMAN
DEPUTY CHIEF OF CIVIL LITIGATION
ASSISTANT ATTORNEY GENERAL
200 ST. PAUL PLACE
BALTIMORE, MARYLAND 21202
410-576-6345

ATTORNEYS FOR DEFENDANTS

MARIROSE JOAN CAPOZZI, *et al.*,

Plaintiffs,

V.

STATE OF MARYLAND, *et al.*,

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* CASE NO.: N/A

* * * * *

NOTICE OF SERVICE OF DISCOVERY

I HEREBY CERTIFY that on this 1ST day of August, 2006, a copy of the foregoing Defendants' Request for Production of Documents to Plaintiffs was served, by facsimile and by first-class mail, postage prepaid on M. Albert Figinski, Esquire, One Charles Center, 100 N. Charles Street, Suite 2200, Baltimore, MD 21201, and Christopher R. West, Esquire., 250 West Pratt Street, 16th Floor, Baltimore, MD 21201, attorneys for Plaintiffs, together with a copy of this Notice of Service.

RESPECTFULLY SUBMITTED,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL



Michael D. Berman
Deputy Chief of Civil Litigation
William F. Brockman
Assistant Attorneys General
200 St. Paul Place
Baltimore, Maryland 21202
410-576-6345/7055

Attorneys for Defendants

Exhibit C

MARIROSE JOAN CAPOZZI, <i>et al.</i> ,	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
V.	*	FOR
STATE OF MARYLAND, <i>et al.</i> ,	*	ANNE ARUNDEL COUNTY
Defendants.	*	CASE NO.:N/A
* * * * *		

REQUEST FOR ADMISSION OF FACTS
AND GENUINNESS OF DOCUMENTS

Now come the defendants, by the undersigned, their counsel, and request that the plaintiffs admit the following facts pursuant to Rule 2-424:

1. SB 478 (2005 Session) Chapter 5, Laws of Maryland 2006, became law on February 16, 2006.
2. HB 1368 (2006 Session), Chapter 61, Laws of Maryland 2006, became law on April 10, 2006.
3. Plaintiffs did not commence this action until July 17, 2006.
4. The State Board of Elections (“SBE”) began to implement HB 1368 on April 10, 2006.
5. There are 3,088,984 active voters registered in Maryland.
6. There are 228, 224 inactive voters registered in Maryland.
7. Under the holding of *Gisriel v. Ocean City Bd. Of Supervisors of Elections*, 345 Md. 477 (1997), inactive voters are permitted to vote.
8. The primary election is scheduled for September 12, 2006.

9. The general election is scheduled for November 7, 2006.
10. If interlocutory injunctive relief is entered as requested, SBE must communicate to all registered voters the fact that early voting will not be available.
11. It is not possible, in the time allotted after any interlocutory injunctive relief is entered, for SBE to communicate to all registered voters the fact that early voting will not be available.
12. A voter who is not made aware of the entry of any interlocutory injunctive relief against early voting may lose his or her right to vote.
13. The Early Voting Laws (as that term is defined in defendants' interrogatories) provide voters with the option of choosing to vote at certain locations.
14. The Early Voting Laws (as that term is defined in defendants' interrogatories) provide voters with the option of choosing to vote on certain times.
15. The Early Voting Laws (as that term is defined in defendants' interrogatories) do not compel anyone to vote early.
16. The Early Voting Laws (as that term is defined in defendants' interrogatories) do not compel anyone to take advantage of the options created therein.
17. Many states have some form of early voting legislation.
18. Early voting is convenient to voters.
19. The lawsuit of *Roskelly, et al. v. Lamone, et al.*, No. 141 (Sept. Term 2006) was filed on June 27, 2006.

20. The lawsuit of *Roskelly, et al. v. Lamone, et al.*, No. 141 (Sept. Term 2006) challenged the Early Voting Law.

21. The lawsuit of *Roskelly, et al. v. Lamone, et al.*, No. 141 (Sept. Term 2006) was concluded on July 25, 2006.

22. Plaintiffs could have filed this lawsuit prior to July 17, 2006.

23. Defendants were prejudiced by plaintiffs' delay in filing this lawsuit.

24. Voters were prejudiced by plaintiffs' delay in filing this lawsuit.

25. Employers were prejudiced by plaintiffs' delay in filing this lawsuit.

26. Between April 10, 2006, and July 17, 2006, some voters relied on the Early Voting Law in making their own plans for business trips, vacations, child care, leave requests, and, family functions.

27. Between April 10, 2006, and July 17, 2006, some employers relied on the Early Voting Laws in making their plans.

28. If equitable relief is granted to plaintiffs, that relief may disrupt the plans described in Request No. 26.

29. If equitable relief is granted to plaintiffs, that relief may disrupt the plans described in Request No. 27.

30. Early voting will ameliorate hardships on employers.

31. Early voting will ameliorate hardships on employees.

32. Approximately 20% of American voters voted early in 2004.

33. Exhibit 1 to Defendants' Memorandum¹ in Opposition to Plaintiffs' Motion for Temporary Restraining Order (hereinafter "Exhibit No. __") is genuine and authentic.

34. Exhibit No. 2 is genuine and authentic.

35. Exhibit No. 3 is genuine and authentic.

36. Exhibit No. 4 is genuine and authentic.

37. Exhibit No. 5 is genuine and authentic.

38. Since April 10, 2006, SBE has acted to implement the Early Voting Laws.

39. Since April 10, 2006, SBE has selected and leased early voting sites.

40. Since April 10, 2006, SBE has created early voting training materials.

41. Since April 10, 2006, SBE has developed early voting guidelines.

42. Since April 10, 2006, SBE has expended public resources on early voting.

43. If early voting is enjoined, the expenditures described in Request No. 42 will have been wasted.

44. Since April 10, 2006, SBE has engaged in a program of voter outreach to inform voters of their right to vote early.

45. If early voting is enjoined, the efforts described in Request No. 44 will have been wasted.

46. If early voting is enjoined, SBE must attempt to reeducate voters about the facts that were communicate pursuant to the efforts described in Request No. 44.

¹ The memorandum will be filed on August 4, 2006.

47. SBE personnel are heavily committed to preparing for the September primary election.

48. SBE personnel are heavily committed to preparing for the November general election.


49. Diverting election personnel from the tasks described in Request Nos. 47 and 48 will interfere with the completion of those tasks.

50. The Early Voting Law does not prevent a citizen from voting in the district, precinct, or ward where they reside.

51. Plaintiffs do not intend to vote by absentee ballot in the 2006 elections.

RESPECTFULLY SUBMITTED,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL



MICHAEL D. BERMAN
DEPUTY CHIEF OF CIVIL LITIGATION
WILLIAM F. BROCKMAN
ASSISTANT ATTORNEYS GENERAL
200 ST. PAUL PLACE
BALTIMORE, MARYLAND 21202
410-576-6345/7055

ATTORNEYS FOR DEFENDANTS

MARIROSE JOAN CAPOZZI, *et al.*,

Plaintiffs,

V. ,

STATE OF MARYLAND, *et al.*,

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* CASE NO.: N/A

* * * * *

NOTICE OF SERVICE OF DISCOVERY

I HEREBY CERTIFY that on this 1ST day of August, 2006, a copy of the foregoing Defendants' Request for Admission of Facts and Genuiness of Documents to Plaintiffs was served, by facsimile and by first-class mail, postage prepaid on M. Albert Figinski, Esquire, One Charles Center, 100 N. Charles Street, Suite 2200, Baltimore, MD 21201, and Christopher R. West, Esquire., 250 West Pratt Street, 16th Floor, Baltimore, MD 21201, attorneys for Plaintiffs, together with a copy of this Notice of Service.

RESPECTFULLY SUBMITTED,

J. JOSEPH CURRAN, JR.
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Attorneys for Defendants

MARIROSE JOAN CAPOZZI, et al

*

Plaintiffs

*

IN THE

v.

*

CIRCUIT COURT

STATE OF MARYLAND

*

OF

and

*

ANNE ARUNDEL COUNTY

LINDA H. LAMONE, in her capacity as
Administrator of the Maryland State Board
of Elections

*

Civil Action No.:02-C-06-115807

and

*

MARYLAND STATE BOARD OF
ELECTIONS

*

*

Defendants

*

*

* * * * *

PLAINTIFFS' TRIAL MEMORANDUM

Marirose Joan Capozzi, Bettye B. Speed and Charles W. Carter, Sr., by and through M. Albert Figinski and Christopher R. West, their attorneys, respectfully submit this memorandum in order to address some of the legal issues expected to arise at the hearing in this case, scheduled for Tuesday, August 8, 2006, and, at the outset, **incorporate by reference the points and authorities included in the memoranda filed with Plaintiffs' pleadings.**

I. SUMMARY OF RELEVANT FACTS

During its 2005 session, the General Assembly enacted Senate Bill 478 ("Election Law - Early Voting"), providing that, except as provided in Title 9, Subtitle 3 of the Election Law Article (dealing with absentee ballots), a voter may vote in the voter's

Pages 2-26 of Plaintiffs' Trial Memorandum intentionally omitted in accordance with Rule 8-501(c) (memorandum of law not to be included in record extract unless it has independent legal significance).

MARIROSE JOAN CAPOZZI, <i>et al.</i> ,	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
STATE OF MARYLAND, <i>et al.</i> ,	*	ANNE ARUNDEL COUNTY
Defendants.	*	CASE NO.: 02-C-06-115807

* * * * *

PROFFER OF EVIDENCE

Now come the defendants and proffer that they could offer evidence proving the following facts. Plaintiffs assert that some or all of the following facts are irrelevant and the parties agree that the plaintiffs' objection is preserved for all purposes. Plaintiffs, however, authorize the defendants to represent that plaintiffs agree that there is no need for the defendants to offer proof of the following facts through witnesses or documents on August 8, 2006.

1. SB 478 (2005 Session), Chapter 5, Laws of Maryland 2006, became law on February 16, 2006.
2. HB 1368 (2006 Session), Chapter 61, Laws of Maryland 2006, became law on April 10, 2006.
3. SBE began implementing HB 1368 immediately on April 10, 2006. *See* Affidavit of Ross Goldstein.
4. Plaintiffs filed suit on July 17, 2006.
5. The primary election is set for September 12, 2006 and early voting for that election is due to begin on September 5th and end on September 9.

6. The general election is set for November 9th and early voting for that election is due to begin on October 31st and end on November 4.

7. There are 3,088,984 active voters registered and 228,224 inactive voters registered. Inactive voters are constitutionally permitted to vote. *Gisriel v. Ocean City Bd. of Supervisors of Elections*, 345 Md. 477, 503 (1997), *cert. denied*, 522 U.S. 1053 (1998).

8. The Guidelines that govern early voting are attached to the affidavit of Ms. Joan F. Beck and provide that the early ballots will not be tallied until the day specified in the Constitution. When the early voting period is over, the election judges are to turn off the voting machines in a way that does not produce a totals report. Guidelines 7.4A. The memory cards are then to be transported to the local election office, where they are inventoried to ensure that they are all there. Guidelines 7.4B and C. The votes may not be tabulated, however, until 8 p.m., on election day, which is when tabulation begins on votes cast that day. Guidelines 7.4D. The early voting results are to be combined and reported with the election day results in the unofficial election day results. Guidelines 8.1A. After verification, they are to be reported both separately and as a combined result. Guidelines 8.1B.

9. After April 10, 2006, SBE commenced voter outreach to explain to voters the option of early voting. SBE has posted early voting information on its website, spoken to groups about early voting, and has done several news interviews with local media to publicize early voting. Subsequent to April 10, 2006, and prior to July 17, 2006, some voters may have decided to rely on the Early Voting Laws in making their own plans for business

trips, vacations, child care, leave requests, family functions, etc., and these plans may be disrupted if early voting is not available.

10. In addition to SBE, local boards of election have taken and are taking a number of steps to educate voters and prepare for early voting. For example, Wicomico County has run a public service announcement about early voting on the local cable access channel, hired elections judges, and scheduled a training session. It has leased an early voting site. Harford County has conducted outreach visits and informed persons requesting absentee ballots that there is another option. It has given speeches at organizational meetings about early voting. It is in the process of hiring election judges. Washington County has commenced voter outreach and hiring election judges. Anne Arundel County has been speaking with voters about early voting and is scheduled or has gone to Heron Point retirement community to discuss this topic. It has conducted poll worker training and set up schedules for workers on early voting. Montgomery County will send a mass mailing to voters between August 4 and 7. Montgomery County has leased early voting sites in county buildings and has expended approximately \$72,100. Frederick County is beginning its outreach program. It, like others, has a link on its web site to SBE's early voting web site. Training of election judges for early voting began this week in Frederick County. Other local boards have also acted to implement early voting.

11. In the event of a restraining or other injunctive order, SBE believes it must attempt to tell everyone who planned to vote between September 5 and September 9, and/or October 31 through November 4, that they cannot do so. That process creates a real risk of

voter confusion and error. There is, and can be, no guarantee that this will be accomplished, despite SBE's best efforts to comply with any Court order. Nor can there be any assurance that voters will be able to rearrange their schedules.

12. If SBE's efforts to contact 3.3 million or more people in approximately one month (the period from the date of any equitable relief until September 4, 2006) are unsuccessful, a voter unable to vote on election day who relied on the early voting statute may lose his or her right to vote, other than through an absentee ballot.

13. SBE has approved early voting sites selected by local boards, purchased electronic poll books, created training materials, developed guidelines and a regulation, and developed procedures for loading ballot styles onto early voting units. *See* Affidavit of Ross Goldstein. Public funds were expended before the plaintiffs filed suit. For example, and not by way of limitation, election judges' manuals have been created and some voting sites have been networked. Public resources have also been used for training of election personnel for early voting. *See id.* Some of these resources will have been wasted if a TRO is entered. Additionally, during the period prior to filing of this lawsuit, SBE commenced a program of voter outreach regarding early voting. *See id.*

14. SBE personnel are heavily committed to preparing for a primary election that is less than five weeks away. *See* Affidavit of Ross Goldstein. SBE personnel are currently engaged in: ballot definition, design, and certification; early voting preparation, including implementation of electronic poll books and development of training materials; preparation to conduct parallel testing of voting machines; oversight of voter registration activity;

oversight of the implementation of a new Statewide uniform voter registration system, including serving as a resource for local users, addressing implementation issues, and general project management; spending 100 hours in discovery pursuant to Court order in the electronic voting lawsuit; responding to requests for information from candidates, the press, voters, and the public; supporting local boards of election in similar activities; continuing the development of uniform procedures, guidelines, regulations, and forms; certifying ballot questions; coordinating the mandatory reprint of the Election Law article of the Code; reviewing and approving election judge's manuals; compiling and procuring items to make polling places accessible for election days; monitoring vote outreach activities; evaluating election judge's training; responding to the U.S. Election Assistance Commission's Inspector General's audit; working with the data platform and website conversion; updating the security, procedures, and policy guide; continuing network upgrades; working on Campaign Finance Reports and Contributor Disclosure Reports; and processing of waiver of late fee requests. *See id.*

15. Diverting election personnel from the tasks described in the preceding paragraph will interfere with these processes. *See id.*

16. If early voting is not available, some of the public funds that have been expended will have been wasted.

17. Under the early voting statutes, plaintiffs can continue to vote on election day at their usual polling place.

18. The early voting statutes do not compel the plaintiffs - - or anyone else - - to vote early, or to vote outside of their ward or district.

19. Plaintiffs, themselves, are completely free to vote in their ward or district on the date of the primary election, September 12, and the date of the general election, November 7. No one is compelling them to vote early or at a different location.

20. The early voting statutes permit a voter to cast a ballot, prior to election day, at a specified location or locations.

21. The early voting statutes make elections more convenient to some voters by giving those voters the option of a flexible voting schedule.

22. Early voting provides busy voters with the option of choosing the day on which they will vote.

23. The Early Voting Laws provide voters an option that allows them to choose to vote at certain locations during a five-day period before the date of the election.

24. The Early Voting Laws are not compulsory. If they choose to do so, voters may ignore early voting and vote on the traditional voting day in their usual ward or district.

25. The Early Voting Laws offer an option of an additional voting time and location.

26. Voters will vote early only if they find it more convenient to do so.

27. The early voting statutes will reduce lines on election day.

28. Voters and others, such as employers, have made plans for early voting.

29. According to one survey, approximately 20% of the National population voted early.

30. *Roskelly, et al. v. Lamone, et al.*, No. 141 (Md. Ct. Apl. Sept. Term 2006), was filed on *June 27, 2006*, and it has proceeded through the trial court to the Court of Appeals, where it was concluded by final decision on July 25, 2006. The *Roskelly* plaintiffs were able to commence their challenge to early voting long before the current plaintiffs, even though the *Roskelly* plaintiffs (unlike the present plaintiffs) had to circulate and submit referendum petitions.

31. One Maryland employer, as quoted in THE DAILY RECORD, has stated: “We’re open seven days a week. If [an employee’s] day off doesn’t coincide with Election Day, sometimes its difficult for them to make it. . . . People have busy schedules. A number of them don’t vote just because it isn’t convenient.”

32. The Maryland Chamber of Commerce views early voting as beneficial to its members. “It gives another option for the traveling business person. . . .” This statement is part of the legislative history of the Early Voting Laws.

33. The Service Employees International Union supported the early voting bill, stating: “[O]ur members work irregular hours or multiple shifts and often do not have access to private transportation, thus making standard voting procedures cumbersome.” This statement is part of the legislative history of the Early Voting Laws.

34. The Commissioners of Carroll County noted that early voting would make voting “more accessible. . . .” This statement is part of the legislative history of the Early Voting Laws.

35. The Montgomery County Board of Elections noted that early voting would reduce lines on election day. This statement is part of the legislative history of the Early Voting Laws.

36. The League of Women Voters noted that early voting would provide voters with greater flexibility and choice, stating: “The increased number of citizens who work more than one job, who work at a location far from their home and thus their polling place, or whose long working day begins and ends with the delivery and retrieval of children from day care arrangements requires that our system of voting allow flexibility to accommodate those citizens who wish to vote but are prevented from doing so by the requirement that they vote during a 13 hour period in the middle of a work week.” This statement is part of the legislative history of the Early Voting Laws.

37. EL §10-315(a) provides the circumstances under which an employee may be entitled to a two-hour absence from work in order to vote. A low-paid service worker who lives in Baltimore City, is employed in Towson, and who commutes by bus may be hard-pressed to vote within a two-hour period.

38. Some voters do not vote in primary or general elections on election day because the date and time of the elections is inconvenient for them.

39. Plaintiffs allege that the General Assembly engaged in allegedly “partisan” activity in enacting the early voting laws. Compl. ¶¶21, 24.

40. The same voter identification procedures will be applied at early voting as are applied as if the voter appeared on September 12 or November 7.

41. Electronic poll books record the identification of early voters.

42. Under SBE's Guidelines, electronic voting machines will be programmed with the proper ballot styles and list the proper choices.

43. If early voting is unavailable, SBE will have to deploy additional voting machines to handle the increased number of voters on the day of the primary election and the day of the general election.

44. Defendants would call an expert who they proffer would make the following statements:

a. Early voting provides a secret and independent voting experience to blind and visually impaired voters, while those voters would need the assistance of another person to mark and mail an absentee ballot.

b. Early voting provides a secret and independent voting experience to manually impaired voters, who, depending on the severity of their impairment, might need the assistance of another person to mark and mail an absentee ballot.

c. Early voting does not present security issues inherent in absentee ballots, such as loss in the mail, stray marks, and, late posting.

d. While early voting provides voters with a "second chance" to correct overvotes and undervotes, absentee balloting does not.

e. Overvoting and undervoting is a problem in elections.

45. SBE did not promulgate Guidelines while the first early voting bill was subject to a veto.

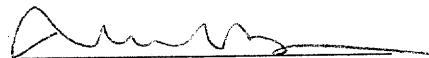
46. Early voting has been publicized on web sites, such as SBE's web site, and the sites of the League of Women Voters and the American College of Emergency Physicians.

Wherefore, the defendants request that the Court accept this unopposed proffer and dispense with any and all requirements for proof by the defendants through testimony or

documents.

Respectfully submitted,

J. JOSEPH CURRAN, JR.
Attorney General of Maryland



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Attorneys for Defendants

APPROVED and ENTERED
this ____ day of August, 2006.

Judge, Circuit Court for
Anne Arundel County

MARIROSE JOAN CAPOZZI, *et al.*,

Plaintiffs,

V.

STATE OF MARYLAND, *et al.*,

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* CASE NO.: 02-C-06-115807

* * * * *

NOTICE OF SERVICE OF DISCOVERY

I HEREBY CERTIFY that on this 7th day of August, 2006, a copy of the foregoing Proffer of Evidence was served, by facsimile on M. Albert Figinski, Esquire, One Charles Center, 100 N. Charles Street, Suite 2200, Baltimore, MD 21201, and Christopher R. West, Esquire, 250 West Pratt Street, 16th Floor, Baltimore, MD 21201, attorneys for Plaintiffs, together with a copy of this Notice of Service.

RESPECTFULLY SUBMITTED,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL



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Attorneys for Defendants

MARIROSE JOAN CAPOZZI, <i>et al.</i> ,	*	IN THE
Plaintiffs,	*	CIRCUIT COURT
v.	*	FOR
STATE OF MARYLAND, <i>et al.</i> ,	*	ANNE ARUNDEL COUNTY
Defendants.	*	CASE NO.: 02-C-06-115807
* * * * *		

AFFIDAVIT OF LISA LUCAS

I, the undersigned, state as follows:

1. I am over 18 years of age, a citizen of Maryland, and have personal knowledge of the facts contained herein.
2. I am employed as a patient transporter at Greater Baltimore Medical Center (“GBMC”) in Towson, Maryland.
3. I live on West Coldspring Lane in the Park Heights neighborhood of West Baltimore, in Baltimore City.
4. As a patient transporter at GBMC, my work schedule varies and is typically set two weeks in advance. I generally work five eight-hour shifts per week. While my present shift is from 6:30 to 3:00, it can vary each time a new schedule is posted. Additionally, I am sometimes required to work additional, unscheduled shifts if a co-worker is absent or if there are additional staffing demands.
5. Many of the hospital workers at GBMC, like many nurses and technicians, work 12- or 16-hour shifts.

6. I rely on public transportation to commute to work; this requires one bus transfer in each direction. My commuting time ranges from 40 minutes to 90 minutes each way.

7. I have four children between the ages of one and 11 years old. Dropping them off at daycare before work and picking them up afterwards generally adds an additional twenty minutes both before and after work.

8. Because of the variation in my work schedule, the length of my shifts, and the distance between my home and work, it can be difficult to make reliable plans to attend my local polling place during the hours when the polls are open.

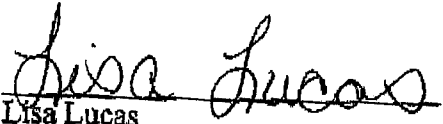
9. At the time of the 2002 gubernatorial election, I was employed in a different position at GBMC, with shifts that were not predictable. On Election Day that year, I arrived at the polling place just after it had closed and was unable to vote, despite leaving for the polling place directly after returning home.

10. Since July 24, 2006, I have been working as a canvasser for the Service Employees International Union (SEIU), Local 1199, United Healthcare Workers East, which is the collective bargaining unit that represents me in my position at GBMC. As a canvasser, I have been going door-to-door in Baltimore City and Baltimore County, conducting voter registration drives and encouraging people to vote. Through this process, I have become aware of the early voting option, and I have informed others about it.

11. I plan to vote at an early voting site in the upcoming primary and general elections so that I can participate in get-out-the-vote efforts on September 12 and November

7. Those efforts may take place in counties other than Baltimore City or in the City, but distant from my polling place.

I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true.



Lisa Lucas

August 7, 2006

Executed in Maryland

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

- - - - - x
 :
 MARIROSE JOAN CAPOZZI, et al., :
 :
 Plaintiffs, :
 v. : Civil No. C-2006-115807
 :
 STATE OF MARYLAND, et al., :
 :
 Defendants. :
 :
 - - - - - x Annapolis, Maryland

August 8, 2006

MOTIONS HEARING

WHEREUPON, proceedings in the above-entitled matter commenced.

BEFORE: THE HONORABLE RONALD A. SILKWORTH, Judge

APPEARANCES:

FOR THE PLAINTIFFS:

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Keynote: "----" indicates inaudible in the transcript.

1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 THE COURT: Good morning. Have a seat, please.

4 We will call the case of Capozzi versus State of
5 Maryland, et al., C-2006-115807. Counsel, identify yourselves,
6 please.

7 MR. FIGINSKI: For the plaintiffs, Your Honor,
8 Albert Figinski and Christopher West.

9 MR. BERMAN: Good morning, Your Honor. For the
10 defendants, Michael Berman.

11 MR. BROCKMAN: And Will Brockman.

12 THE COURT: Okay. Are you all ready to proceed?

13 MR. FIGINSKI: Yes, sir.

14 THE COURT: All right. First of all, I am not sure
15 if you have any order of issues you wish to take. Perhaps we
16 could start by having you all outline for me what are all of
17 the pending motions, so that I have a clear list of everything
18 that is pending. And then we will go from there.

19 MR. FIGINSKI: What is pending, Your Honor, from the
20 plaintiffs' standpoint, is a motion for summary judgment and a
21 motion for injunctive relief. In order to address those
22 matters, pursuant to the phone conversation between Your Honor
23 and counsel on Friday, I think we proposed to have the
24 plaintiffs address the defendants' issues of laches and the
25 defendants' issues regarding the inability of Your Honor to

1 grant injunctive relief because of convenience, et cetera.

2 And our argument in short, Your Honor, is that we
3 stand here before you raising constitutional issues only. The
4 issues before Your Honor, simply stated, is whether the two
5 statutes that we have challenged, which allow early voting,
6 passed constitutional muster under Article 1, Section 1, of the
7 Constitution of Maryland, and Article 15, Section 7, of the
8 Constitution of Maryland, and Article 17, Sections 1, 2, and 9,
9 of the Constitution of Maryland.

10 Now pursuant to the conversation on Friday,
11 yesterday the State, excuse me, the defendants presented by fax
12 to me and, I think, to Your Honor a proffer of what they would
13 prove if they had the opportunity to do it. And I think that
14 proffer, they can speak for themselves, but I think that
15 proffer goes to the question both of laches and injunctive
16 relief.

17 Now that document became a proffer, rather than a
18 stipulation, because there were certain things within that
19 proffer that the plaintiffs believed, and continue to believe,
20 are either irrelevant or immaterial or both or have impossible
21 issues of hearsay. Nevertheless, the State will proffer --
22 excuse me again -- the defendants will proffer the -- there are
23 factual issues, rather than putting on testimony. So that I
24 believe it would be appropriate for Your Honor to allow the
25 plaintiffs to begin this proceeding by arguing that you need

1 not be concerned with laches and that you may grant injunctive
2 relief.

3 I would propose to do that. I would propose to
4 argue, as well, that Article 1, Section 1, controls the case.
5 And I would ask Your Honor to hear from my colleague, Mr. West,
6 with respect to Articles 15 and 17. That's where we see t his
7 case, Your Honor.

8 THE COURT: So it is your position that there is
9 really no factual dispute. And the issues that the Court has
10 to decide are purely legal issues.

11 MR. FIGINSKI: That's correct, Your Honor.

12 THE COURT: Okay. Well, let me throw this out then.
13 When I first set this hearing, it was my understanding, perhaps
14 I was mistaken, that, because of the nature of the issues and
15 the need to get this resolved promptly and the obvious
16 considerations for appeal, that this matter was being set today
17 for a hearing what I thought was on the merits. We had a
18 conference call the other day because, in looking at the
19 motions and pleadings, it became apparent to me that that
20 wasn't the consensus.

21 Now I think this Court has authority to consolidate
22 the merits with -- so we could spend an awful lot of time
23 talking about TROs and preliminary injunctions and all that.
24 But if in fact there is -- and this is what I want you both to
25 address. If in fact the issues here are legal issues and there

1 are no issues in dispute -- although subject to your commentary
2 about the proffer, why should I not, in accordance with the
3 rules, hear the merits this morning?

4 MR. FIGINSKI: We would urge Your Honor to do that.

5 MR. BERMAN: Your Honor, may we be heard?

6 THE COURT: You may, but one second.

7 MR. BERMAN: Certainly.

8 THE COURT: Specifically, I am referring to Rule 15-
9 505(b), which provides for consolidation with trial on the
10 merits. And it says, "Before or after commencement of the
11 hearing on the preliminary injunction, the Court may order that
12 a trial on the merits be advanced and consolidated with the
13 preliminary injunction hearing so long as any right to trial by
14 jury is preserved."

15 Well, we don't have a right to a trial by jury here.
16 So I'll hear from you.

17 MR. BERMAN: Your Honor, Michael Berman for the
18 defendants.

19 We are here on a very expedited matter. We received
20 the plaintiff's trial memorandum at 3:00 o'clock yesterday,
21 which gives us no opportunity to respond to their trial
22 memorandum.

23 Just on a housekeeping matter, there is -- our memo
24 was filed on Friday, the plaintiffs' memo on Monday.
25 Yesterday, informal copies of the Lucas affidavit and the

1 proffer were faxed to chambers. And both of those have been
2 filed with Your Honor's court clerk this morning.

3 We would submit to Your Honor that there is really
4 no advantage and no reason to consolidate the hearing today,
5 whether it be on the TRO or a preliminary injunction or both,
6 with the hearing on the merits. Whatever ruling Your Honor
7 makes today is an appealable ruling, we would submit,
8 particularly if it is a preliminary injunction ruling.

9 There are issues that we believe the State is
10 entitled to go into, factual issues. And there are legal
11 issues. We would like the opportunity to file a brief in
12 response to their Schaeffer argument. We have never had that
13 opportunity. And given time on the merits, there might be a
14 different resolution than on this expedited, hasty matter.

15 Counsel -- and I appreciate the professionalism and
16 courtesies that have been shown by opposing counsel. They have
17 been very pleasant a professional to deal with. But this case
18 has gone forward -- bear with me one moment, please, Your
19 Honor -- at a speed that is unbelievable.

20 In an election case called Socialist Labor Party
21 versus Rhodes, 290 Fed.Sup. 983, the Court noted that there had
22 been a constitutional violation by Ohio's election laws. And
23 the Court said, "However, with respect to printing names on the
24 ballot, relief is going to be denied." And the Court said,
25 "We again emphasize we are confronted with two lawsuits hastily

1 conceived and submitted to the Court on pleadings, briefs, and
2 oral arguments. We are asked to go through the Ohio election
3 laws declaring such as we deem inappropriate to plaintiff's
4 purposes to be unconstitutional and, in any event, award them
5 ballot position irrespective of the remaining election laws.
6 We're expected to hastily decide these cases involving
7 important constitutional questions and grant the relief that
8 should come only from the legislature against a deadline of two
9 to four weeks. The Court noted that the Socialist Party had
10 ample time to raise its challenge earlier."

11 We would submit that going to the merits at this
12 point would respectfully be improper. The rule does give the
13 Court discretion to consolidate, but we don't know how this
14 case is going to, if I can speak colloquially, shake out in the
15 end. And we would suggest that --

16 THE COURT: Well, what's going to shake out the -- I
17 mean, I'm not sure I know what you're talking about. If, in
18 fact, I conclude that the issues in this case really are legal
19 issues and that Mr. Figinski is right, there is no real factual
20 dispute, forget the issue of laches for a moment, then what
21 else can shake out? I mean, it looks to me as if you all have
22 on both sides done a fine job in briefing your respective legal
23 arguments. So what can shake out with reference to legal
24 arguments?

25 MR. BERMAN: Your Honor, there is a twofold

1 response. What can shake out with response to legal arguments
2 is, in the plaintiffs' trial memorandum served at roughly 3:00
3 o'clock yesterday afternoon -- and I don't criticize him.
4 We're all rushing. That's the best they could do and that's
5 fair -- they raised a number of legal issues. They go back to
6 history of 1860. They brief the Schaeffer case. We have never
7 been granted the opportunity to brief that.

8 They cite a whole bunch of dictionary definitions.
9 Okay? I got that at 3:00 o'clock. When I went home last
10 night, I didn't have the 20 dictionaries they have. I looked
11 up the one that's online, and there are four definitions. They
12 only gave Your Honor one. And the fourth definition supports
13 us. We think on a matter that is this important on the merits,
14 we should be entitled to have enough time to read their brief
15 and respond to it.

16 Secondly, on the question of facts, as Your Honor is
17 aware from Friday's conference, we respectfully disagree. Your
18 Honor will rule how Your Honor rules. We think that, for
19 example, we are entitled to develop facts showing the impact of
20 a ruling on elections. We're entitled to develop facts showing
21 the reason for plaintiffs' delay, that we are entitled to show
22 prejudice.

23 Balance of convenience is an injunctive element
24 regardless. And that is, we respectfully submit, factual.
25 What damage will there be to them if a -- and I'm not talking

1 permanent, not preliminary, now -- if a permanent injunction is
2 denied? What damage do they have versus what damage if it's
3 granted? Irreparable injury. Whose irreparable injury and
4 what? We believe that we are entitled to factually ask the
5 plaintiffs what irreparable injury will you, plaintiff, suffer
6 from this statute?

7 And we think that for two reasons it would not be --
8 three reasons -- it would not be appropriate to consolidate.
9 First of all, this case can go to the Court of Appeals
10 immediately after Your Honor rules without consolidation.
11 Consolidation is not going to stop it, or the lack of
12 consolidation is not going to preclude an immediate appeal.

13 Two, these are important legal issues. There were
14 new arguments raised yesterday at 3:00 o'clock. They may
15 prevail on preliminary relief; they may not prevail on
16 preliminary relief. But as to final relief, we should be
17 entitled to at least have the opportunity to brief the issues
18 that they raised yesterday.

19 And three, for all the reasons that we have all
20 talked about a number of times, including Friday's conference,
21 we believe that we can show there are factual issues. And the
22 decision of the Court of appeals on a preliminary injunction or
23 TRO might eliminate that question.

24 So we would respectfully oppose consolidation of the
25 final permanent injunction with today's proceeding.

1 Thank you, Your Honor.

2 THE COURT: Mr. Figinski?

3 MR. FIGINSKI: Mr. Berman, Your Honor, said that
4 I've been pleasant during these proceedings. That's a term
5 that is rarely used with respect to me. And I thank him for
6 it. However, what the State, excuse me, what the defendants
7 have been talking about, about facts and inconvenience,
8 frankly, Your Honor, is the biggest sandstorm that has ever
9 been launched in a courtroom. If this statute is
10 unconstitutional because the legislature had no power to enact
11 it without a constitutional amendment, then it doesn't matter
12 how convenient it may be some voter to vote early.

13 Now, Your Honor, I can only draw on my own
14 experience. In 1980, there was a lot of folks in Baltimore
15 City who wanted to have rent control. They got an initiative
16 going, and they put rent control on the ballot. We challenged
17 that. The case went to the Court of Appeals. The case is
18 Cheeks versus Sedlair. It's decided in 1980. And it was
19 decided after the initiative had passed. So what we had in
20 Cheeks versus Sedlair was the citizenry of Baltimore saying "We
21 like this." But the Court of Appeals of Appeals said, "You
22 can't do it that way. It violates Article 11(a) of the
23 Maryland Constitution. And the initiative is void."

24 Now there is a possibility, Your Honor, that
25 somebody sitting out there who's running for office couldn't

1 wait until this election is over and then have the Court of
2 Appeals rule. We brought this case here to get it done before
3 that can happen.

4 THE COURT: Well, what would be more convenient or
5 inconvenient, to have it resolved now on an -- or, as you
6 posit, someone after the election filing this? Because you're
7 saying you could not even have filed this. And after the
8 election is over, then a challenge could have been raised.

9 MR. FIGINSKI: If the words of Judge Karwacki are
10 correct in the Schaeffer case -- I have that here, sir.
11 Schaeffer is 338 Md. 75 at page 8. There was a question of
12 laches. And the Court drew a distinction -- Your Honor, did
13 you by any chance receive by fax our memo yesterday?

14 THE COURT: Yes.

15 MR. FIGINSKI: Because we spelled this out in that
16 memo. But what the Court said very clearly is that where it
17 challenges to a statute that's intrinsically void, which is
18 what we are arguing, then laches doesn't apply.

19 Now Ross v. State, which is a more recent case,
20 decided in 2005 --

21 THE COURT: Judge Battaglia's case.

22 MR. FIGINSKI: Judge Battaglia's case -- in a
23 footnote adopt Karwacki's language. Now, Your Honor, I don't
24 know how I can say it better than to tell you that -- I hate to
25 draw this analogy. But there are four cases that have gone to

1 the Court of Appeals of Maryland to interpret Article 3,
2 Section 29, of the Constitution, which bars the legislature
3 from enacting a bill with two subjects. Those four cases are
4 Porten Sullivan at 318 Md. 387; State versus Prince George's in
5 329 Md. 68; Migdal versus State, 358 Md. 308; and Delmarva
6 Power, 371 Md. 356.

7 And not -- the issue was, did the statute contain
8 two subjects? And the Court focused on whether the bill
9 contained two subjects, not whether either bill was good, bad,
10 or indifferent, convenient or inconvenient.

11 MR. BERMAN: Your Honor, may we be heard on this
12 housekeeping matter? I don't want to interrupt Mr. Figinski,
13 but I think we have gotten far afield from Your Honor's
14 question.

15 THE COURT: One second.

16 Mr. Figinski, do you think you are far afield?

17 MR. FIGINSKI: I'm sorry, Your Honor. I'm trying to
18 be pleasant in this case. And I think they're making it
19 increasingly more difficult. I am not far afield, Your Honor.
20 I am directly on point.

21 THE COURT: I think I understand what your argument
22 is. What your argument is, that the two cases you have cited
23 say that, with reference to laches, if in fact the defect, as
24 you are alleging, is inherent, this is an inherent defect, and
25 this enactment is unconstitutional, then laches does not apply.

1 All of the cases that the other side, as I read, cited were
2 cases that involved people who challenged their position on the
3 ballot or a defect in the process.

4 Let me hear from this side.

5 MR. FIGINSKI: One last and I will sit down, Your
6 Honor. I agree with your statement, Your Honor. I would urge
7 that we get to the merits of the case as quickly as possible,
8 because this is an issue of law, not fact.

9 Thank you.

10 THE COURT: Okay.

11 MR. BERMAN: Your Honor's opening question was, what
12 is before the Court today? And that is what I mean by we are a
13 little bit far afield, Your Honor, not that Mr. Figinski's
14 argument is inappropriate at the right time.

15 What do we have right now? We have a motion for a
16 TRO. We have a motion for a preliminary injunction. We have a
17 motion for summary judgment. We have the defendant's motion to
18 dismiss. That is respectfully the entire court file to
19 verified complaint seeking a permanent injunction. So there
20 are four separate things being requested, three by the
21 plaintiff, one by us. TRO, preliminary injunction, summary
22 judgment, and dismissal.

23 I would like to argue the laches issue. And I would
24 like to argue the constitutional issues. My request from the
25 Court today is, I'll join Mr. Figinski. Let's argue then. And

1 at the end of the argument, the Court can decide whether, as
2 the Court said on Friday's telephone conference, whether it is
3 going to decide on the TRO, whether it's going to decide on
4 preliminary injunction, whether it's going to rule on summary
5 judgment, whether it's going to rule on the motion to dismiss,
6 and whether it's going to grant final relief. At the end of
7 the argument, the Court will have heard everything and can make
8 an informed decision.

9 I would suggest right now that the plaintiffs, as
10 movant, argue their request for relief, and that they argue it
11 from A to Z. They can argue it from TRO through final
12 injunction, and that we then have the opportunity to argue our
13 defense. We'll argue laches. We'll meet them on their
14 constitutional issues. And we'll argue our case. And they can
15 then do their reply. And the Court grants us sur reply, we'll
16 do that. And the Court can then decide: Am I going to deny or
17 grant the TRO? Am I going to deny or grant the preliminary
18 injunction?

19 I would submit to the Court, based on my experience
20 and research, each one is immediately appealable or subject to
21 cert to the Court of Appeals. The Court can also decide at
22 that point whether it believes summary judgment is ripe. We
23 contend it's not. Whether our motion to dismiss should be
24 granted, even though they haven't responded to it, and whether
25 to consolidate this proceeding with the final hearing on the

1 merits.

2 But I would suggest that that is the -- we could
3 spend hours wrangling over what we've wrangled over. And I
4 don't think we are going to get anywhere until Your Honor hears
5 what we have to say on the issues.

6 THE COURT: Okay. All right. Well, why don't we
7 begin then by hearing -- I will hear from you on the issue of
8 laches.

9 MR. FIGINSKI: You want to hear from me?

10 THE COURT: Well --

11 MR. FIGINSKI: Your Honor, I will be delighted to
12 talk about laches.

13 THE COURT: -- whatever order you wish to raise.
14 Now it is my understanding that you wish to present your
15 proffer. Mr. Figinski told me, and I have received the fax,
16 which you intended to do, but I'm not sure if -- I don't know
17 what you intend to do with that, other than what he
18 represented. So how would you like to proceed on the issue of
19 declaratory, I mean on the issue of the laches?

20 MR. BERMAN: Your Honor, the proffer goes to laches,
21 balance of convenience, and public interest. What we would ask
22 on the proffer is that the Court accept the proffer as a waiver
23 of the need and accept the Lucas affidavit and the Goldstein
24 affidavit as a waiver of the need to put witnesses on the stand
25 and introduce documents. The plaintiffs may raise any

1 objections that they may want on relevance, as we've said;
2 that's reserved. But that there is an agreement that we don't
3 need to call anybody.

4 And with that, we are prepared to argue the laches
5 issue. It will take us a maximum of ten minutes to argue the
6 laches issue. Let Mr. Figinski do his response. We could do
7 any quick replay, and the Court could decide whether laches
8 applies as a matter of law or as a matter of fact.

9 THE COURT: Okay. Mr. Figinski, do you accept the
10 proffer, subject to whatever --

11 MR. FIGINSKI: I think it's wholly, most of it, with
12 the exception of the paragraphs that say that the bill was
13 enacted on a certain -- I think it's the first seven
14 paragraphs. The rest of it, I suggest and urge is wholly
15 objectionable on the basis of materiality. But that, we don't
16 get to on -- well, let them argue their laches. I object to
17 their introduction of any evidence other than on the --
18 whatever legal arguments they have with respect to the
19 constitutional provisions that are at issue. And I will answer
20 them on laches when you wish.

21 THE COURT: All right. I will accept your proffer.
22 I will hear from you on laches.

23 MR. BERMAN: I'm sorry. I did not hear the end of
24 Your Honor said. Your Honor said --

25 THE COURT: I accept your proffer. I will hear from

1 you on laches.

2 MR. BERMAN: Thank you, Your Honor.

3 Your Honor, let me first address the legal issue
4 raised by plaintiffs, does it bar the constitutional claim. We
5 say that it does. They say it does not under Schaeffer as
6 applied in Ross. Let's take a couple of hypotheticals. Let's
7 say that the legislature in the year 1860 passed a statute that
8 said women can't vote. A woman born in the year 2000 would not
9 be barred by laches. We concede that.

10 That is not the factual situation here. We are here
11 in an election case.

12 Let's take another hypothetical. Early voting for
13 the general election is due in October 31 through November 5, I
14 believe, the general election being November 7. Let's assume
15 that on October 31 voters are lined up at the polls ready to
16 vote. And plaintiffs, who have less professional counsel and
17 less of a public spirit than these plaintiffs, wait until
18 October 31 at 9:00 a.m. And they come in, and they file for a
19 restraining order saying the legislature never had the power to
20 enact these bills.

21 We would submit that the Schaefer court, the case
22 they rely on, Judge Karwacki's opinion, which was not an
23 election case -- Schaeffer involved a municipal statute where
24 they hadn't published the right notice. And someone waited
25 four years to challenge it. The Schaeffer case could not

1 reasonably be interpreted to mean that on October 31, 2006,
2 while the voters are at the polls for early voting, that
3 someone can come in and restrain and enjoin it and not be
4 barred by laches.

5 Ross was a case, I did the Ross case. In Ross,
6 Mr. Ross knew before the election that Ms. Branch, her campaign
7 finance committee, had allegedly not filed reports. Mr. Ross
8 waited until the election was conducted, and then he brought
9 his challenge. And the Court of Appeals rejected it.

10 A case means no more than the facts it has decided
11 on. That is basic stare decisis, basic precedence. The Ross
12 case had no factual application to this case. Mr. Ross was not
13 challenging the validity of the campaign finance laws. he was
14 not challenging the constitutionality of the campaign finance
15 laws. He was saying Ms. Branch's campaign finance committee
16 didn't comply with the law, and he is entitled to an
17 injunction.

18 So any language in Ross about laches and challenges
19 is factually distinguishable from this case. Again, would the
20 Ross court -- we pose a rhetorical question -- would the Ross
21 court seriously have said that on October 31, 2006, as the
22 voters are wrapped around for early voting, wrapped around the
23 polling sites, that it's not too late to challenge early
24 voting?

25 Elections are a different animal, because there is

1 complex machinery that is in place and because the rights of
2 non-parties are inherently involved. One thing that the Ross
3 court did consider, Your Honor, is the prejudice to the
4 electorate. If Mr. Ross could wait until the election passed
5 and challenge it, the electorate would have to come out and
6 vote again. And in election cases, respectfully, the Court
7 should consider a factor that doesn't exist in other cases and
8 didn't exist in Schaeffer.

9 Now, the plaintiffs assert that no statute can stand
10 if it's unconstitutional. And the answer to that is they're
11 wrong. They're just plain wrong. Reynolds versus Simms, the
12 United States Supreme Court, we cited it, it said even if a
13 legislative apportionment scheme is improper, unconstitutional,
14 it may be too late to grant equitable remedies. The Supreme
15 Court said the Court has to consider the delay by the
16 plaintiffs, the mechanics of an imminent election, the impact
17 on the election, and that the Court may withhold relief, even
18 if there is a constitutional violation.

19 The Socialist Party case that I read the excerpt
20 from to Your Honor, the Court found a violation of the Ohio, a
21 constitutional violation by the Ohio laws. And they said the
22 Socialist Party could have brought this case earlier, and they
23 didn't. And they're barred. And you can't make the Court wade
24 through the Ohio election laws and the hastily, ill-conceived,
25 not ill-conceived, a hastily presented lawsuit.

1 Now, legally we contend that -- where we differ from
2 the plaintiffs is the plaintiffs say laches never applies to an
3 allegation that a statute is inherently unconstitutional. And
4 we say that under Reynolds v. Simms, in the election context,
5 there is a different standard.

6 Factually, where are we with laches? Well, first of
7 all, the plaintiffs waited from February 10 to July 17 to
8 challenge the first early voting law. And they waited from
9 April 10 to July 17 to challenge the second early voting law.
10 The Ross-Kelly plaintiffs had to circulate referendum
11 petitions, which these plaintiffs didn't have to do. And they
12 were able to file by June 27. They were able to challenge the
13 same laws three or four weeks earlier than these plaintiffs.

14 So we have passage of time. During that passage of
15 time, we have prejudice. First of all, the train has left the
16 station. I am not going to go through the proffer. Your Honor
17 has read it. It's pretty straightforward. The State Board of
18 Elections has publicized early voting. Local boards of
19 election have publicized early voting. The Lucas affidavit
20 shows that unions have publicized early voting. The
21 stipulation shows that the American College of Emergency
22 Physicians has publicized early voting. The train has left the
23 station. Voters have been told: You can vote early.

24 Secondly, it's too late to turn the ship of state
25 around. Early voting is due to begin on September 5 for

1 primaries and October 31 for the general election. There are
2 3.3 million registered voters in Maryland. If the Court denies
3 injunctive relief, what will happen is that early voting will
4 go forward. If the Court grants injunctive relief here today,
5 what happens in terms of laches and turning the ship of state
6 around?

7 Well, first of all, voters have been told in
8 websites, from Ms. Lamone appearing on WBAL, from
9 Mr. Goldstein, the deputy administrator appearing in public
10 places, from local boards, voters have been told by the State
11 of Maryland, by this government, by the State Board of
12 Elections and the local board of elections: You can vote
13 early.

14 If this Court enters an injunction, we think that
15 the state board has a duty, and we think, frankly, the Court
16 would order us, to try to communicate to the voters and tell
17 them, oops, there's been a mistake; you don't have that right
18 anymore.

19 What assurance is there that we can get to 3.3
20 million voters in less than four weeks, so that none of those
21 voters, so all those voters know they cannot show up on
22 September 5 and September 6 and October 31 and November 1 and
23 November 2? There is no assurance. That is real prejudice.
24 And it is prejudice -- Your Honor could have the hardest heart
25 towards the State Board of Elections. I'm not saying that Your

1 Honor does, but you could. It's prejudice to voters.

2 That was a factor in Ross, where the Court of
3 Appeals applied laches in the election context. What happens
4 to the voter, the hypothetical voter, who shows up on September
5 5 planning to vote, get in his or her car and drive to
6 California that morning for a family function? That voter
7 doesn't get the word that early voting is canceled. They show
8 up on September 5. There's a locked door. There's no polling
9 place. And they have no ability to vote.

10 Statutorily, to get an absentee ballot at the last
11 minute, they have to show up at the offices of the local board
12 of election under Title 9-302 or something, the absentee
13 ballot, they have to show up at the offices of the local board
14 of election in person or through an agent and get an absentee
15 ballot. If they're going to California, they can't do that.
16 That person may lose their right to vote. And that's not an
17 extreme hypothetical.

18 The State Board of Elections will also be
19 prejudiced, as will local boards of election. There have been
20 tremendous efforts made while the plaintiffs sat inactive,
21 while they could have filed a lawsuit, to implement early
22 voting.

23 These facts go to both, and I'm going to focus
24 solely on laches. These go both to the prejudice in laches.
25 They also go to balance of convenience in the injunctive relief

1 factor.

2 But on laches, public resources have been expended
3 while the plaintiffs sat silent. And if an injunction is
4 granted, more public resources must be expended to notify 3.3
5 million voters. And finally, respectfully, there could be a
6 reversal in the Court of Appeals that requires everything to be
7 redone.

8 Your Honor, on laches we would submit, we are happy
9 to address the merits after the plaintiffs make their merits
10 argument. On laches, we would submit that the Schaeffer case
11 is not an election case. The Schaeffer case is not an election
12 case. The Ross case was an election case. However, it was a
13 completely different set of facts. It was not a challenge to a
14 statute. It was not a constitutional challenge. It was a
15 challenge saying Ms. Branch's campaign finance committee didn't
16 comply with the law. That's it.

17 We do not think, as a matter of law, that the Court
18 of Appeals has held that laches never bars an election
19 challenge. In fact, the Court of Appeals has applied laches in
20 the Ross case to an election challenge. And Reynolds versus
21 Simms, the Supreme Court decision saying consider the impact on
22 the election and the mechanics on the election, is a full and
23 complete answer to the legal argument presented by the
24 plaintiffs.

25 Thank you, Your Honor.

1 THE COURT: Thank you very much.

2 Mr. Figinski?

3 MR. FIGINSKI: May I proceed, Your Honor?

4 THE COURT: You may.

5 MR. FIGINSKI: The Schaeffer case together with the
6 Ross case footnote, in my view, are determinative. In response
7 to that, the State has said that there are a couple things that
8 you have to take into consideration. One of them is Reynolds
9 versus Simms. Now I haven't looked at the Reynolds versus
10 Simms in 40 years. But if I remember Reynolds versus Simms
11 correctly, it was the case that the Supreme Court said that the
12 Senate situation was not the same in the states as it was in
13 the United States government context. And consequently, the
14 states had to reapportion on one man/one vote under Baker
15 versus Carr in Reynolds versus Simms.

16 Your Honor, what Reynolds versus Simms did was leave
17 in place a system that had grown up in the states over about
18 180 years. And if an injunction is granted in this case, all
19 that would be left in place is what has been done in Maryland
20 ever since we went away from voice voting to ballot voting. We
21 would go back to voting on election. So I don't think Reynolds
22 versus Simms is at all apposite.

23 More relevantly, Your Honor, they say they want to
24 brief this case, but they give you not a single Maryland
25 authority supporting their position that Schaeffer, as

1 embellished by Ross in its footnote, is somehow inapplicable.
2 And then they say, Your Honor, that the train has left the
3 station.

4 I want you to put that comment, Your Honor, in
5 juxtaposition with the argument made at page 42 of the State's,
6 excuse me, the defendants' memorandum. Because at page 42,
7 they conjure up two 40-year-old cases to argue that Article 1,
8 Section 1, of the Maryland Constitution does not apply to
9 primary elections. Now if they're right, we're not fighting a
10 September deadline, we're fighting a November deadline because,
11 clearly, Article 15 and Article 17 deal with general elections.

12 More particularly, Your Honor, I am not agreeing
13 that Article 1, Section 1, does not apply to primary elections.
14 There are two cases that are out there that seem to say that.
15 But the Suessmann case, which Mr. Berman argued, S-u-e-s-s-m-a-
16 n-n, versus Lamone, 383 Md. 697, decided November 17, 2004, is
17 intriguing on this Article 1, Section 1, issue. In Suessmann,
18 they were fighting over what members of a party could vote for
19 judges in a primary election. The Court held that they
20 couldn't. But it was a divided court.

21 Judge Cathell in his concurring opinion and Judge
22 Bell, joined by Judge Eldridge in dissent, said that Article 1,
23 Section 1, does apply to the election that was before them, a
24 primary election. So what we have, at least three judges of
25 the Court of Appeals who disagree with their argument on page

1 42 of their submission filed Friday. The train has not left
2 station. Schaeffer is good law. And the poor person who shows
3 up at the polling place in 17 counties will show up at the
4 election board and can get an absentee ballot.

5 And the easy remedy for anybody else is to station
6 somebody and give them an absentee ballot, because the law --
7 it is now possible to get an absentee ballot, even though you
8 are not going to be absent from the state.

9 Your Honor, there is no real answer to Schaeffer, as
10 interpreted by Ross. And we submit that the laches argument is
11 nothing more than a hobgoblin in this case. We submit further
12 that when we get to the issue of convenience and the issue of
13 an injunction, I will say more. But when the State puts on the
14 table a single Maryland case that says you're denied an
15 injunction even though the statute is unconstitutional, I will
16 applaud them. I'll get Mr. West to help me gather my stuff.
17 And we'll walk out that door. They can't do it, because, Your
18 Honor, it doesn't exist. Let us get to the merits, please.

19 Thank you for hearing me.

20 THE COURT: Counsel?

21 MR. BERMAN: With the Court's permission briefly on
22 rebuttal, Your Honor. I will focus solely on laches. The
23 plaintiffs argue that some poor voter can show up at the
24 election, at the early voting site, and if no one's there, they
25 can go to the election board. How nice a solution. The

1 plaintiffs can wait five months to file their lawsuit and tell
2 a voter who does exactly what the government has told that
3 voter to do, that that voter should then turn around, take more
4 time, have a more inconvenient experience, go to their election
5 board, and so forth.

6 The plaintiffs argue we can station someone at the
7 early voting site that is no longer functional. Well, there
8 are some problems with that. 9-305(c), a late application for
9 an absentee ballot, you have to get the application at the
10 local board, not at an early voting site. The state board
11 doesn't have people, and the local boards don't have people, to
12 sit around for five days at an empty early voting site passing
13 out absentee ballots because the plaintiffs decided they
14 weren't going to file a timely lawsuit.

15 Mr. Figinski says we haven't cited any Maryland case
16 that says that laches applies in this case. And he is correct.
17 We cited the Supreme Court. We cited a bunch of lower courts
18 that applies to the Supreme Court. And he's correct. And the
19 reason is because no plaintiff has waited this long to make a
20 constitutional challenge. Stare decisis, the basic concept of
21 precedent, is a case means no more than the facts that it is
22 decided on. Neither Schaeffer nor Ross were decided on facts
23 that parallel this case.

24 Schaeffer waited four years to challenge municipal
25 statute. Ross waited until after the election to say that the

1 Branch campaign finance committee failed to comply with the
2 statute. There is no case on point where a voter waited until
3 the eve of an election to challenge it.

4 Now the plaintiffs realize they have a problem, and
5 they are trying to backpedal off the primary election. Okay?
6 They sued saying early voting is unconstitutional as to the
7 primary and the general election. And now they're saying,
8 well, the train may not have left the station, because we may
9 be wrong on the primary election. They are wrong
10 constitutionally, and we'll get to that on the merits. The
11 Constitution doesn't apply to primary and doesn't bar early
12 voting. But they've sued based on it. Even as to the general
13 election, the train has left the station.

14 It is virtually impossible to contact all voters and
15 advise them, all 3.3 million people, and advise them that they
16 cannot show up between October 31 and November 5 for early
17 voting. And we would submit that if even one of those voters,
18 even one, is disenfranchised or inconvenienced because the
19 plaintiffs sat on their laches for five months or 14 weeks,
20 whichever date the Court choose to select, that is wrong. And
21 we would submit that a court of equity should, and in fact
22 must, consider that fact. And under Reynolds v. Simms consider
23 the mechanics of an imminent election and the impact on the
24 election.

25 THE COURT: And when do you think they should

1 have -- when would have been timely? What would have been the
2 last -- when should they have filed this challenge?

3 MR. BERMAN: First of all, the first bill went into
4 effect on February 10. That bill could have been challenged in
5 the month of February. The second bill went into effect on
6 April 10. At that point in time, it really became critical
7 because the boards began implementing the law, whether the
8 deadline was April 11 or April 12 or April 15, I don't have a
9 calendar and I don't know what a Saturday and a Sunday is.
10 But --

11 THE COURT: Well, wouldn't you have been in the same
12 position if they had -- let's say they had started in April.
13 Wouldn't they have been -- aside from -- let's see. They did
14 file in July . So we're talking about arguably two-and-a-half
15 to three months. So -- and you're suggesting that, of course,
16 the train has to get on the tracks and move, and then it takes
17 an awful long time to do what you need to do to get voters --
18 so how is this two to three month delay -- wouldn't the State
19 have started the train rolling anyway back in April?

20 MR. BERMAN: Your Honor, the State might have
21 started the train rolling, but it might have started it rolling
22 in a different way. If -- we would suggest that the critical
23 date is February 10, and they could have filed suit on February
24 11, 12, 13, 14, 15, whatever reasonable time after that. If
25 the Court were inclined to look at the April 10, the second

1 early voting statute, and if suit had been filed, let's say,
2 within three or four or five or six days after that, the State
3 would have gone forward with implementation, but it might have
4 gone forward in a different manner.

5 For example, the State might have done its internal
6 preparation but not started voter outreach, not done public
7 announcement, not gone out and told voters. The State might
8 even have sent out press releases: Don't count on early voting
9 yet. Who knows? I can't say what hypothetically would have
10 happened.

11 THE COURT: Well, let me ask you this, these are
12 complicated matters. It almost sounds like you're suggesting
13 that the plaintiff should have acted instantaneously. Now
14 obviously, there are complicated issues, complicated for you
15 all. Certainly the plaintiffs had to secure counsel and do
16 whatever researched they needed to do to get involved. I mean,
17 isn't there a certain amount of time that they should be
18 entitled to do that?

19 MR. BERMAN: Your Honor --

20 THE COURT: I mean, you're suggesting they should
21 have done it February 10, as soon as the bill was signed.

22 MR. BERMAN: It's interested because Mr. Figinski
23 has -- the plaintiffs have spent the entire lawsuit arguing
24 about how simple this is. It's just a pure question of law.
25 The answer is, Your Honor, the Court of Appeals in Ross said a

1 person challenging an election has a duty, an obligation, to do
2 it promptly. Now what is prompt? I can't tell Your Honor it's
3 one day or five days. I can't tell Your Honor how long it
4 takes to counter a complaint. I can't tell Your Honor if
5 Mr. West or Mr. Figinski had a wedding or a funeral or a
6 personal obligation that would extend the deadline by three
7 extra days. I can't pin it down. But I can say that waiting
8 until July 17 is too long.

9 Plaintiffs file lawsuits quickly in many contexts.
10 The Ross-Kelly plaintiffs, Ross-Kelly, which is in the
11 stipulation or the proffer, Ross-Kelly challenged the same
12 laws. Those plaintiffs had to circulate referendum petitions
13 and get thousands of signatures. And they were able to file
14 suit by June 27, not July 17.

15 These plaintiffs had to read three constitutional
16 provisions and type of a complaint, according to them, because
17 Mr. Figinski stood up here at this very table and said "You
18 just read the Constitution and I win."

19 THE COURT: Well, in the legal world, though, is
20 there really a significant difference between complicated legal
21 issues and research between June 27 and July 17? Isn't that
22 almost, I mean, in the grand scheme of things, almost at the
23 same time? Certainly it's 20 days apart, but, I mean, it's
24 pretty fast. I mean, it's pretty close to the time that the
25 Ross-Kelly plan was filed.

1 MR. BERMAN: I'm not saying that June 27 would have
2 been timely for this challenge.

3 THE COURT: Oh, okay. You think the Ross-Kelly --

4 MR. BERMAN: I'm saying that the evidence is that a
5 prudent attorney could have filed at least by June 27. I'm not
6 conceding that that would have been timely for this lawsuit,
7 Your Honor.

8 But secondly, Your Honor, as the Court looks into
9 this courtroom and looks at the two litigants here, the Court
10 respectfully needs a third eye looking out at the electorate,
11 because the Court is the protectorate of the electorate and the
12 election. And the bottom line is, if delay by the plaintiffs
13 injures those voters in any way, if it takes away the vote of
14 one of them, if one service employer, one janitor, one
15 healthcare worker, one nurse, one lawyer, one doctor, one
16 corporate executive loses their vote because they delayed,
17 that's wrong. That's where we say laches occurs.

18 Whether they had to file suit on April 11 -- let me
19 back up and look at it the other way, Your Honor. It was no
20 secret that the early voting law was going through the
21 legislature. April 10 was when the veto was overridden. The
22 bill was passed before that. And it was introduced before
23 that. The plaintiffs didn't learn about it on April 10. They
24 were not justified in waiting until April 10 to go get a lawyer
25 and to challenge this lawsuit. They knew it was coming for two

1 reasons.

2 One, the February 10 law was in effect. And two, it
3 was in every newspaper that this law was being introduced,
4 vetoed, overridden. So I would submit they could have filed by
5 April 11. And they should have. They should have gotten their
6 lawyers early. They should have colloquially gotten their
7 ducks in line and be ready to go. And that would have avoided
8 prejudice to the voters.

9 Thank you, Your Honor.

10 THE COURT: Okay. I will ask Mr. Figinski --

11 MR. FIGINSKI: Yes, sir.

12 THE COURT: -- how come you all didn't file -- well,
13 I'll ask the question: How come you didn't file sooner than
14 July 17?

15 MR. FIGINSKI: That's when the plaintiffs had hired
16 us and we were ready to file. I'll tell Your Honor a story
17 about that, if you care to hear it. I mentioned the Cheeks
18 versus Sedlair case in 1980. There were a lot of people in
19 Baltimore that wanted rent control. There were a lot of people
20 in Baltimore that didn't want rent control. I thought it was
21 unconstitutional to do it by initiative.

22 I made a mistake. I filed the suit in proper
23 person. Others later joined me. Some people say that because
24 I was right constitutionally, but wrong politically, I no
25 longer sit where you sit. I sit out here. But in the 26 years

1 since then, Your Honor, I've been down this road many times.
2 And I do not file suits in my own name anymore. I wait for
3 clients. And when I have clients, I file them. And I file it
4 promptly.

5 You know, this whole discussion is reminiscent of
6 another thing, Your Honor. They have the temerity to suggest
7 to you the Ross-Kelly case. Well, what was the Ross-Kelly case
8 all about? It was Ms. Lamone sending a 10-day letter to
9 Mr. Ross-Kelly while he was on vacation, so he didn't get it.
10 And he therefore didn't file a response to their claim that his
11 challenge to the -- what do you call that stuff?

12 THE COURT: Referendum?

13 MR. FIGINSKI: -- the referendum. It was a time
14 deadline. Nothing more. The Ross-Kelly people were plenty
15 willing to collect the signatures. She kept turning them down.
16 This is a -- the smokescreen and sandstorm that the defendants
17 have put out here, Your Honor, just is reprehensible. Let's
18 please get to the merits, Your Honor.

19 THE COURT: Okay.

20 MR. BERMAN: May I clarify very briefly, Your Honor?

21 THE COURT: You may.

22 MR. BERMAN: Your Honor, we are not casting any
23 dispersions on Mr. Figinski or Mr. West as counsel. We are
24 saying as a matter of law the plaintiffs the delayed. We are
25 not asserting, and have never asserted, anything that would

1 support an assertion that Mr. Figinski should have filed this
2 suit pro se or in proper person or anything else.

3 Thank you, Your Honor.

4 THE COURT: Okay. I'm going to step down a minute
5 and take a look at a couple of these cases. And then I'll be
6 right back. I did want to ask you one thing, though. One
7 issue that maybe we can resolve was the motion to dismiss the
8 State of Maryland. Is that, Mr. Figinski, is that --

9 MR. FIGINSKI: I have no problem with your
10 dismissing the State of Maryland, Your Honor. But if -- is
11 that all your motion says? The motion goes beyond that, Your
12 Honor. The motion goes beyond that to dismiss the entire
13 complaint.

14 Now let me make a point on that. Since they have
15 offered additional "facts" and argument beyond the complaint,
16 they have turned that motion by operation of the rules into a
17 summary judgment request. So we have here -- we'll agree that
18 the State should go.

19 THE COURT: Okay. That was my only question.

20 MR. FIGINSKI: But most particularly, Your Honor,
21 the other defendants should stay.

22 THE COURT: Okay.

23 MR. FIGINSKI: And they should be tested on a
24 summary judgment basis, as the rules and the cases clearly
25 establish.

1 THE COURT: Okay. I am going to step down for a few
2 minutes. I'll be right back.

3 THE CLERK: All rise.

4 (Whereupon, a brief recess was taken.)

5 THE CLERK: All rise.

6 THE COURT: Have a seat, please.

7 We are back on the record, Capozzi versus State of
8 Maryland, Linda Lamone, and the Maryland State Board of
9 Elections, C-2006-115807. Counsel, identify yourselves again,
10 please.

11 MR. WEST: Your Honor, Christopher West and Albert
12 Figinski on behalf of the plaintiffs.

13 MR. BROCKMAN: Your Honor, Will Brockman and Michael
14 Berman from the Attorney General's Office on behalf of the
15 defendants.

16 THE COURT: All right. I have had an opportunity to
17 take a look at the cases and just review the issue of laches,
18 review the proffer that was submitted by the State, consider
19 the arguments of counsel, including Mr. Figinski's objections,
20 and all the comments and arguments that were made previously.
21 And I am prepared to rule on the issue of laches.

22 Both parties have cited or discussed the Ross case
23 and the Schaeffer case. And essentially, as the Schaeffer case
24 points out, the defense of laches to the assertion of an
25 equitable remedy, as in this case, is it must be evaluated on a

1 case-by case basis. Essentially, laches is simply the
2 inexcusable delay in pursuing one's right or objection without
3 necessary reference to the duration in asserting and equitable
4 claim.

5 Now even where -- and, of course, there has to be
6 then prejudice the other side. And if, in fact, there was an
7 excusable delay that prejudices the, in this case, the board of
8 elections and the voting process, then it could be a bar to the
9 plaintiffs' claims.

10 Now in reviewing the proffer, Senate bill 478 became
11 the law on February 16. House bill 1368, Chapter 61, became
12 the law on April 10, 2006. And as the proffer indicates, the
13 State Board of Election began implementing house bill 1368
14 immediately on April 10, 2006, citing the affidavit of Ms.
15 Goldstein.

16 In this case, plaintiffs filed their claim or filed
17 their complaint for declaratory relief and request for
18 injunction on July 17, 2006. Well, certainly the earliest that
19 they could have filed would have been February 16, 2006, or
20 they could have filed on April 10, 2006, when House bill 1368
21 became the law.

22 We know from the facts in this case from the proffer
23 that the primary is set for September 12, 2006. Early voting
24 is due to begin on September 5 through September 9. The
25 general election is set for November 9 with early voting set to

1 begin on October 31 to November 4.

2 One of the arguments of the AG's office is that
3 certainly the plaintiff could have/should have contemplated
4 that early voting was coming. The train was on its way. Well,
5 I think certainly the same applies to both sides. I am not
6 persuaded, considering all of the facts set forth in the
7 proffer and the affidavits and the arguments of counsel, that
8 the plaintiffs in this case unreasonably delayed the filing of
9 this complaint.

10 The issues in this case are complicated. And
11 certainly they are important to all sides. But certainly
12 lawsuits don't just happen. They happen when -- of course,
13 they could be filed by self-represented litigants. But that
14 certainly would not be the usual circumstance. I guess it has
15 happened, but in this case that's not what happened.

16 Plaintiffs sought the assistance of Mr. Figinski.
17 In an ideal, perfect world, it would be nice to have as much
18 time as you possibly have, certainly in light of the issues of
19 this case, so that the legal issues can be sorted out. But I
20 can't conclude, and I have no -- I really have nothing but the
21 allegation of delay without any more specific facts that would
22 justify that in fact there could have been something filed
23 earlier.

24 In looking at the time frame and looking at the
25 complexity of the issues, certainly before one files a lawsuit,

1 they just don't happen. You have to do research. You have to
2 generate facts. You have to talk to your client. And I see it
3 is only a matter of a couple of months after the House bill
4 1368 became effective on April 10, 2006, when the plaintiffs
5 filed this complaint. So I cannot conclude that, having filed
6 this complaint on July 17, that the plaintiffs sat on their
7 rights or inexcusably delayed this case.

8 Now, there is no question that the challenge to
9 early voting, as filed by Mr. Figinski's clients, has slowed
10 and, depending upon the result, might even stop the early
11 voting train. But -- in fact, it is true that if the
12 plaintiffs are successful, there certainly may be a loss of
13 resources. I have determined that there has been no
14 inexcusable delay.

15 Even if I were to determine that there had been some
16 delay, and for the sake of argument that it could have been
17 filed earlier, I'm convinced that the train left a long time
18 before April 10 and that the process of early voting is not
19 something that just began on April 10. I am sure that the
20 Board of Elections and Ms. Lamone contemplated, prepared for,
21 was ready to implement, and then began the implementation.

22 If there was any delay, I don't believe that that
23 delay would have stopped the -- or that delay, other than the
24 filing of this lawsuit, would contribute to any significant
25 prejudice. I'm not suggesting that if early voting stops, then

1 the intent of the early voting statute or bill to try to make
2 early voting more convenient for voters, there certainly might
3 be some impact to individual voters. But I have to conclude,
4 in order to bar this claim by laches, that there has been an
5 inexcusable delay by the plaintiffs, that delay resulting in
6 the prejudice to the plaintiffs, or prejudice to the Board of
7 Elections and the voting process.

8 Now if it turns out that early voting doesn't
9 survive, then the train is going to stop or its course is going
10 to be altered. But I don't find that the delay has resulted in
11 any prejudice to the election process in and of itself.
12 Because if early voting doesn't go forward, the primary still
13 does go forward. Voters still have the right to vote on the
14 date of the primary. Voters still have the right to vote on
15 the date of the general election.

16 So would they have lost the benefits and perhaps
17 some convenience, which is apparently the intent of the
18 statute? Yes. But I don't think that the integrity of the
19 election, electoral process, and the primary or the general
20 stage would be affected.

21 For these reasons, this Court concludes that laches
22 does not apply and would not bar the claim of the plaintiff.
23 If, in fact, and as a further and final comment, if I concluded
24 that there was some inexcusable delay, then I think
25 Mr. Figinski's argument and analysis of the two cases that he

1 cites, Schaeffer and Ross, is correct, correct in the sense
2 that laches -- well, let me cite from the case, from Schaeffer.
3 And it is true that in Schaeffer, this case involved a
4 challenge to an ordinance, as opposed to a constitutional
5 question. But in essence, in Schaeffer, the case said that an
6 ordinance that is clearly a usurpation of power can be attacked
7 at any time.

8 Well, it certainly seems to this Court that if in
9 fact the plaintiff is correct that the early voting statute is
10 unconstitutional for the reasons cited, it could be challenged
11 at any time. And that's a substantive challenge. And I don't
12 think that even under those circumstances laches would be a
13 bar.

14 So for all those reasons, I conclude that laches is
15 not a bar to be accident in this case, and we will go forward.

16 Now my inclination at this time is to proceed with
17 the merits of the case, because I don't see that there is any
18 argument, any factual dispute, that relates to the legal issue.
19 Mr. Figinski has raised several legal issues. I don't see any
20 need to delay this case further. I think it's important to the
21 voting process that we do this timely, do it quickly. So I
22 intend to proceed with the merits.

23 We will discuss how you might want to do that. And
24 if it turns out that there is some need for some brief
25 additional time because the argument was raised that we may

1 need some time to address some legal issues, I will consider
2 giving that time. Although the nature of this case is such
3 that it has to be processed quickly. And you all have frankly
4 done a pretty good job to get at this point. And I think
5 we're -- the case is certainly at a posture where it can be
6 resolved, at least certainly can be resolved in this court. I
7 can't speak for the Court of Appeals. But my guess is that
8 they would be able to hear it timely such that this can be
9 resolved even before the early voting primary to start.

10 Okay.

11 MR. BERMAN: Thank you, Your Honor. We of course
12 accept the Court's ruling on the inclination to go to the
13 merits. I would respectfully point out that in ruling on
14 laches, one point that the court said -- and I don't have Your
15 Honor's exact words -- that there was nothing but an allegation
16 of delay without specific facts. And one reason that we again
17 contend that the merits should be delayed is, for instance, our
18 interrogatory number seven asks the plaintiffs to state why
19 they waited from the date or dates supplied, and their answer
20 to interrogatory number one "until July 17," to commence this
21 lawsuit.

22 So we have pending interrogatories that go directly
23 on the merits to one of the issues that Your Honor has just
24 raised. And we would respectfully renew our position that this
25 be solely on the TRO and preliminary injunction.

1 THE COURT: Mr. Figinski?

2 MR. FIGINSKI: I think Your Honor has ruled. I will
3 stand with Your Honor's ruling.

4 THE COURT: Okay. Well, I think -- I hope my ruling
5 has been clear, that I don't find as a matter of fact that, in
6 considering all the facts set forth in the proffer, accepting
7 them, although Mr. Figinski has raised some objections to them,
8 I don't find that there is any evidence to indicate an
9 inexcusable delay. And I don't believe that there could be any
10 facts developed that would suggest that in light of the nature
11 of this, even if one were to determine, for example, that
12 perhaps the plaintiffs could have contacted Mr. Figinski ten
13 days earlier than they did because of some schedule or
14 something like that. That wouldn't change the Court's
15 conclusion at all.

16 I mean, it seems to me that looking at the facts in
17 its entirety in terms of the timing, we're only talking about a
18 couple of months after the last statute became effective. And
19 I just don't see that there is really any factual dispute. I
20 don't see that there could be any facts developed that would
21 suggest that under the circumstances of the facts of this case
22 that they -- they certainly couldn't have filed the lawsuit
23 before it became effective or as the legislature was
24 contemplated it or as the veto was pending.

25 So under those circumstances, I don't think there is

1 any factual -- I don't think that -- I think my ruling stands
2 as stated.

3 Mr. Figinski?

4 MR. FIGINSKI: How does Your Honor wish to proceed
5 now? What I would -- may I make a suggestion?

6 THE COURT: Yes.

7 MR. FIGINSKI: My suggestion would be that we
8 present our arguments as to Article 1, Section 1, of the
9 Constitution and why that is a problem. I can do that. As to
10 Article 17 and 15, I would defer to Mr. West. And I would ask
11 that we be allowed to proceed. Then the defendants can
12 respond. And if need be, we can rebut. That's what I would
13 propose to do, allow me to speak, then allow Mr. West to speak,
14 then allow them to do their argument.

15 Would that be okay?

16 THE COURT: That's okay with me. I would prefer to
17 deal with one issue and hear your argument and then hear the
18 response.

19 MR. FIGINSKI: Okay. Then can we do Article 1,
20 Section 1, and then they can respond to Article 1, Section 1,
21 and then I can rebut to their response?

22 THE COURT: Okay. That's fine.

23 MR. FIGINSKI: Is that okay with you, Mr. Berman?

24 MR. BERMAN: Your Honor, it's fine with, if I may,
25 one tweak. We would like to sort of have a little bit of an

1 opening with an overview that would not be limited to Article
2 1, section 1.

3 THE COURT: Okay. We can do that. Well, let me do
4 this, let me hear your opening statements first. Mr. Figinski,
5 you can make a brief opening. Then I will hear from them, if
6 they wish to make a brief opening. If you don't wish to make
7 one, you don't have to.

8 MR. FIGINSKI: I'll accept that invitation.

9 THE COURT: You will accept that invitation.

10 By the way, I'm sure you all know, I did read your
11 briefs and the trial memorandum. Unless you filed something
12 this morning before I got out here that I haven't seen, if you
13 did, I will read that, too.

14 MR. FIGINSKI: Your Honor, I have a clean copy
15 marked "original" of the trial memo. Should I hand that up to
16 you?

17 THE COURT: Why don't you hand that to Madame Clerk?

18 MR. BERMAN: And we did file an affidavit this
19 morning, Your Honor, of Ms. Lucas.

20 THE COURT: Lucas? Okay.

21 MR. FIGINSKI: Your Honor, I apologize. There are
22 some spelling errors in here. And my eyes just didn't catch
23 them.

24 THE COURT: All right. We'll overlook them, if we
25 notice them.

1 MR. FIGINSKI: If you can, Your Honor, I would
2 appreciate that.

3 THE COURT: All right.

4 MR. FIGINSKI: I assume that Mr. Berman will make
5 his opening, and then I will talk about Article 1.

6 THE COURT: All right.

7 MR. BERMAN: Your Honor, I will be very, very brief.
8 Educators telling us that we learn through hearing things more
9 than one time, but that repetition is the worst way of
10 teaching. Because if you just say the same thing over and over
11 again, people tune out. So educators say that you teach by
12 being redundant, by saying the same thing in a slightly
13 different way. That is what I propose to do very briefly.

14 Early voting is truly no more than a secure absentee
15 ballot which is accessible to blind, visually impaired, and
16 manually impaired voters, as well as voters like Ms. Lucas, who
17 has four kids and a job, who need a flexible schedule. Let me
18 talk for a moment about accessibility.

19 When one votes in person in Maryland, as Your Honor,
20 has seen through your own personal voting experiences, you vote
21 on an electronic voting machine. Those machines have the
22 capability to have headsets for visually impaired voters. And
23 those machines have the capability to have puff sticks, p-u-f-
24 f, for manually impaired voters.

25 So a visually or manually impaired voter gets a

1 secret and independent ballot. They go into the polling place,
2 and they cast their vote by themselves. In fact, Maryland was
3 sued in federal court before we got these machines by blind and
4 visually impaired voters, who said that it was a violation of
5 the Americans with Disabilities Act to make them vote with
6 assistance, when they could get a secret and independent
7 ballot.

8 If these voters do not get to vote early, and if,
9 for instance, a disabled voter is unable to get to the polls on
10 election day, they don't get a secret and independent ballot.
11 Now, plaintiffs seek to deprive these voters, the busy voter,
12 the visually impaired voter, and the manually impaired voter,
13 of a flexible option for no apparent purpose. And the
14 plaintiffs' argument is contrary to -- I'm not going to deal
15 with -- we'll divide up the issues. I'm not going to deal with
16 specific issues, but it's contrary to the spirit of the
17 Maryland Constitution.

18 The Maryland Constitution does not prohibit, and in
19 fact it encourages, flexible, convenient voting. We have gone
20 through the history at length in the memorandum.

21 Now in their trial memorandum at page 22, the
22 plaintiffs raise an interesting issue. They try and
23 distinguish some of the cases that we cite by saying, well,
24 Texas and Tennessee called early voting absentee voting.
25 Different label. And they say magically it became okay,

1 because it was called absentee voting.

2 In fact, 16 states call early voting "no excuse in
3 person absentee voting." Under Article 1, Section 3, of the
4 Maryland Constitution, which has been cited on page 51 of our
5 memo, the General Assembly has the power to provide by suitable
6 enactment for voting by qualified voters, "who are absent at
7 the time of any election in which they are entitled to vote."
8 And the General Assembly can also provide for voting by "other
9 qualified voters who are unable to vote personally," unable to
10 vote personally.

11 Historically, back in 1918, absentee voting was
12 limited to soldiers. Later it was limited to people in
13 hospital beds. And later it was limited to people who were
14 absent from their ward or district. All those limitations have
15 been taken out of Article 1, Section 3.

16 Article 1, Section 3, says "The General Assembly can
17 specify the time and manner of voting for anybody who is unable
18 to vote personally." What we really have here is no excuse in
19 person absentee voting. No excuse, Your Honor, is where -- it
20 comes out of the absentee ballot. It used to be you had to
21 provide the election board with an excuse to get an absentee
22 ballot. I'm going to be away. Now it's no excuse. You simply
23 say I want to vote absentee. So that's the no excuse language.

24 Your Honor, earlier in this case, and Mr. Figinski
25 and I go way back, and we talked in Queen Anne's County on the

1 transcript about sandstorms. And we talked about Muhammad Ali
2 and various other things. So now I feel free to talk about
3 tsunamis.

4 Let's assume that early voting goes forward here in
5 Annapolis. And let's assume there are four days of early
6 voting. And let's assume, say, 15 percent of the electorate
7 takes advantage of those four days. And let's assume there's a
8 tsunami, and it disrupts the election. And we can't have the
9 fifth day of early voting. And we can't have voting on
10 November 7.

11 But let's assume that the State of Board of
12 Elections, fortunately, is able to get the ballots that were
13 cast earlier and take them to high ground and preserve them.
14 Would anyone say there has been an election, because there has
15 been four days of early voting?

16 If the plaintiffs are consistent with their
17 argument, they must say yes, there has been an election.
18 Because if they answer that question no, they lose all three of
19 their constitutional challenges. But would anyone say that
20 yes, there has been an election because 15 percent of the
21 electorate cast ballots that were never counted, never
22 processed, and the remainder of the electorate was unable to
23 vote?

24 The plaintiffs' constitutional arguments do not hold
25 water. Your Honor has said that in this argument we will

1 divide out the three different constitutional arguments that
2 they rely on. And I assume that we will deal with Article 3,
3 Section 49, which plaintiffs basically say doesn't help the
4 State, because there is actually four constitutional
5 provisions.

6 But we would submit that that portion of this
7 argument deals with only one factor that the Court should and
8 must consider, and that is the likelihood of success on the
9 merits, or, if the Court goes to final relief, success on the
10 merits. The Court should still consider public interest,
11 balance of convenience, and irreparable injury.

12 I will not be repetitive. I am trying to be
13 redundant. In irreparable injury, plaintiffs have none. They
14 can vote as usual. Plaintiffs can assert third party rights.
15 And in fact, they are not trying to assert the rights of third
16 parties; they are trying to defeat the rights. They are trying
17 to make, whether it's conscious intent, the thrust of their
18 argument will make voting less convenient for third parties.

19 Public interest. Their whole argument is circular.
20 And unconstitutional law is not in the public interest. In
21 fact, convenient voting is in the public interest. Why do
22 these plaintiffs want to make voting less convenient. They're
23 not alleging vote dilution. They're not alleging anything
24 else. Typically, a voter will come in and say: Hey, State,
25 you've made it too hard to get on the ballot, or, hey, State,

1 by cutting the districts this way, you're diluting my voting
2 power.

3 These plaintiffs aren't making any such assertion.
4 And what we have here, of course, is an emergency statute, at
5 least one emergency statute, enacted by a super majority over a
6 veto.

7 Balance of convenience. Plaintiffs seek to enjoin
8 emergency legislation enacted for the public welfare. They
9 cannot challenge, as the cases we have cited point out, they
10 cannot challenge the emergency declaration. They are not
11 permitted, the Court of Appeals has said, they are not
12 permitted to challenge that finding. They are going to make
13 voting less convenient, where there has been detrimental
14 reliance on their silence. They will hurt people like
15 Ms. Lucas with her four children and her job, who has said, "I
16 have a tough time getting to the polls when they're open."
17 They can vote as usual. The balance of convenience tips
18 markedly.

19 To sort of sum up, plaintiffs seek to enjoin a
20 primary, early voting on a primary, even though they pretty
21 much have orally conceded and pretty much in writing have
22 conceded that not one of the constitutional provisions they
23 cite relates to primary elections. And primary elections
24 didn't exist when the Constitution was adopted.

25 That law colors the remainder of their argument.

1 Plaintiffs seek the extraordinary remedy against a statute
2 involving the fundamental rights of others to vote in a
3 convenient manner regarding an emergency statute enacted to
4 protect the public welfare, which was passed over a veto
5 pursuant to plenary and expressed constitutional powers of the
6 General Assembly. Plaintiffs are asking the third branch of
7 government to step between the other two branches.

8 We will address each of the constitutional arguments
9 sequentially. Mr. Figinski said he would like to start with
10 Article 1, Section 1. That's fine with us. We also have the
11 provision regarding Tuesday as voting day, the Fewer Election
12 Amendment, and the impact of Article 3, Section 49, which says
13 that unless otherwise -- unless inconsistent with the
14 Constitution, the General Assembly can pass laws regarding the
15 time, place, and manner of elections.

16 Thank you, Your Honor.

17 THE COURT: Thank you very much.

18 Mr. Figinski.

19 MR. FIGINSKI: Your Honor, could I amend our process
20 for a second? Because I think I would like to deal with this
21 Article 3, Section 49 as a perhaps opening overview to what you
22 are going to hear later. Before we go to Article 1, before we
23 go to article 15 or we go to Article 17, let's talk about
24 Article 3, Section 49, if it please the Court.

25 THE COURT: Any objection?

1 MR. BERMAN: That's fine, Your Honor.

2 THE COURT: Okay. Mr. Figinski?

3 MR. FIGINSKI: I want Your Honor to take a close
4 look at the section of their brief where they talked about
5 Article 3, Section 49. Article 3, Section 49, Your Honor,
6 says, in effect, it is a grant under the Constitution, through
7 the legislature, to act with respect to elections.

8 On page 23, they have the gall, because that's what
9 it's got to be, Your Honor, I have to stop being pleasant, to
10 italicize matters, time, and place without any focus on what
11 is key in that section. What is key in that section is that
12 it is -- "the General Assembly shall have power to regulate
13 by law, not inconsistent with this Constitution," so that
14 anything that the legislature chooses to do with respect to
15 elections must be looked at through the constitutional
16 prism.

17 They cite a Montgomery County case. And that
18 Montgomery County case stands for the following proposition.
19 Montgomery County, as only Montgomery County can do, decided it
20 could make the election law process better by imposing certain
21 elements to the process that were not in the election code of
22 the state. The Court of Appeals of Maryland says, "Hey, you
23 can't do that because the legislature has plenary power." All
24 that Montgomery County case stands for, Your Honor, is that a
25 local government can't act in derogation of the state law.

1 We don't have that here. It's irrelevant here.

2 So, Your Honor, I think the discussion of Article
3 3, Section 49, should be brief and uncomplicated. All it means
4 is that you've got to test whatever the legislature did with
5 respect to an election law in the prism of Article 1, Section
6 1, Article 15, or Article 17. So I'm going to stop on Article
7 3, Section 49, because it is nothing more than a restraint, a
8 constitutional restraint, upon the legislature.

9 We cited the Benkowski case, Your Honor, Article 4,
10 Section 22, Judge Eldridge writes about that, where that
11 Article 4, Section 22, talks about you can amend the -- statute
12 by law. And Judge Eldridge writes, and we quote it in our
13 memorandum, "It doesn't mean you can change the Constitution."
14 And all we're saying about Article 3, Section 49, is that if
15 the statutes that were enacted violate the Constitution, they
16 cannot stand.

17 I'll sit down. I'll let them argue that it's
18 different than that, and I'll respond.

19 MR. BERMAN: You know what, Your Honor? I still
20 Mr. Figinski pleasant, notwithstanding his disclaimers. He's a
21 good arguer, good lawyer, nice man. And you know what? We
22 actually agree. We really do.

23 I'm not suggesting to you that Article 3, Section
24 49, answers the questions that are before Your Honor. It
25 doesn't. We rely -- well, first of all, in the Montgomery

1 County case, we're not citing it over the facts that
2 Mr. Figinski cited. We rely for the proposition that's at page
3 274 Md. 60 that the intent of Article 3, Section 49, is to give
4 the General Assembly pervasive control over elections. The
5 case said that. It stands for that. That's what we cited it
6 for.

7 The provision says that the General Assembly can
8 regulate the time, place, and manner of elections. That's the
9 language we are relying on. Early voting. No one can argue
10 that early voting doesn't affect the time and place of
11 elections. That's what it does. Now they rely on the language
12 that the General Assembly can do it unless it's "inconsistent
13 with the Constitution."

14 Article 1, Section 3, says if people are "unable to
15 vote," the General Assembly can make laws that permit them to
16 exercise their franchise. The General Assembly has the power
17 to provide by suitable enact "for voting by qualified voters of
18 the State of Maryland, who are absent at the time of any
19 election in which they are entitled to vote, and for voting by
20 other qualified voters who are unable to vote personally and
21 for the manner in which the time and place at which such
22 absent voters may vote and for the canvas and return of such
23 votes."

24 We don't think Article 3, Section 49, and early
25 voting are in any way inconsistent. Article 1, Section 3, on

1 absentee voting authorizes what was done and will address the
2 other three constitutional provisions. What we do assert right
3 now, subject to addressing the other provisions, is that
4 Article 3, Section 49, places a weight on the scale that is
5 before Your Honor, and it's a pretty heavy weight.

6 It expressly says that the General Assembly can
7 regulate the time and place of elections. That is an express
8 recognition of the General Assembly's plenary power. And we
9 think that Article 3, Section 49, puts a heavy weight on the
10 scale in our favor. We agree with Mr. Figinski that because of
11 the inconsistent language, it does not answer the question.

12 Thank you, Your Honor.

13 THE COURT: Mr. Figinski.

14 MR. FIGINSKI: Briefly, Your Honor. Mr. Berman made
15 reference in his opening to some remark that I made about
16 Cassius Clay and Queen Anne's County. And what I said was
17 Cassius, before he became Muhammad Ali, was going into the ring
18 against a challenger. And he asked that challenger, "What's
19 your strategy, Challenger?" And the challenger said, "I'm
20 going to keep away from him." And Cassius Clay remarked, "He
21 can run, but he can't hide."

22 What the defendants have now done is that they have
23 changed what the legislature enacted. Because Article 3,
24 Section 29, of the Maryland Constitution requires all bills to
25 state their purpose. We have attached to our pleadings the

1 bills. You will find them under Exhibit C, as enacted.

2 Chapter 5, which establishes early voting, talks
3 about early voting, doesn't say a word, not a word, about it
4 being no excuse absentee ballot provision. It doesn't say a
5 word about creating secure absentee voting. It says it's
6 creating early voting.

7 Article 1, Section 1, deals with these
8 qualifications and not Article 3, because absentee balloting
9 still requires people to be absent. And people are going to be
10 voting in this state, but not where Article 1, Section 1, says
11 they shall vote. Now only does Chapter 5 says what I said,
12 Your Honor, but Chapter 61, which is Exhibit D, in its very
13 lengthy discussion talks about a voter bill of rights. And you
14 can look until your eyes are tired, and you will find nothing
15 in there about the creation of secure absentee voting or no
16 absentee balloting, no excuse absentee balloting.

17 They are creating, just as they created with respect
18 to what kind of relief we can have and what kind of timeliness
19 we acted on, they're creating a hobgoblin. We're talking
20 really here about Article 3, Section 49. And we agree with the
21 State that the key language -- we don't -- we agree with the
22 State that there is key language in Article 3, Section 49. We
23 don't agree as to what the key language is. And we suggest to
24 you that the key language is not inconsistent with this
25 Constitution.

1 And we suggest to Your Honor that in our memo we
2 cite to you the Benkowski case, which addresses another
3 constitutional provision where the constitutional provision
4 said may affect this stuff by law. And the Court said you
5 can't change the Constitution.

6 Now maybe I've talked too fast. But unless
7 Mr. Berman wants to talk some more about Article 3, Section 49,
8 I would just as soon go on Article 1, Section 1.

9 THE COURT: Mr. Berman?

10 MR. BERMAN: It's time, Your Honor. We have stated
11 our position.

12 THE COURT: Okay.

13 MR. FIGINSKI: Article 1, Section 1, Your Honor, I
14 believe the defendants have no objection to these maps.
15 Sometimes these microphones don't pick up people when they're
16 away from them.

17 THE COURT: You're fine. There are microphones
18 everywhere. And somehow I think the volume of your voice will
19 create no difficulty with our audio system.

20 MR. FIGINSKI: Your Honor, I was about to say that.
21 But you said it in such a much nicer way. Thank you. My wife
22 says to me always "just because you say it loud doesn't mean I
23 understand it."

24 THE COURT: I'll consider that.

25 MR. FIGINSKI: Wives have a way of saying things

1 that other people couldn't get away with.

2 But in any event, the first map here, Your Honor,
3 is -- this is wonderful -- a map of Baltimore County. Now we
4 are going to have -- they're going to have three -- is that
5 right, Chris, three places?

6 MR. WEST: Three.

7 MR. FIGINSKI: Three places in Baltimore County.
8 And this map shows that there are 12, 12 election districts, so
9 that people will be voting in Baltimore County in early voting
10 most likely in an election district where they are not
11 registered or do not reside.

12 This is a Carroll County map, Your Honor. There is
13 only one early voting place in Carroll County. And Carroll
14 County has 13 election districts, Your Honor. And they are all
15 colorfully depicted. And I'm sure you can't see them the way
16 I'm handling these things, but they are all colorfully
17 depicted. And it's obvious that unless the people are voting
18 in the -- people will be voting in the early -- let me try this
19 again.

20 In Carroll County, they will be voting in the
21 election places where you do not reside and where you are not
22 registered.

23 Baltimore City is probably the most incredible
24 example. There are 27 -- this is harder to see because the
25 Baltimore City map emphasizes, Your Honor, their city council

1 districts, not their wards or districts. There are, I would
2 proffer to you, 17 wards and, if my memory is correct, 512
3 precincts in Baltimore City. I spent a lot of time stealing
4 elections there years and years ago. I think that's right.
5 And it's obvious there were three early polling places. They
6 will be voting outside of their place where they are registered
7 and where they reside.

8 Now, Your Honor, we have done a couple things. This
9 is -- the Carroll County map is apparently Defendant's Exhibit
10 3. And the Baltimore County map is Exhibit 2. And the
11 Baltimore City map is Defendant's Exhibit 1, which I'm
12 offering, Your Honor, to show the number of wards and
13 precincts.

14 MR. BERMAN: Plaintiffs. Plaintiffs' exhibits.

15 MR. FIGINSKI: Plaintiffs, excuse me.

16 THE COURT: Plaintiffs' Exhibits 1, 2, 3. Any
17 objection?

18 MR. BERMAN: No, Your Honor. He is so pleasant he
19 is trying to make our case by offering our evidence for us.

20 THE COURT: They are received.

21 (The documents referred to
22 were marked for identification
23 as Plaintiffs' Exhibits 1, 2,
24 and 3 and were received in
25 evidence.)

1 MR. FIGINSKI: You're tempting me, Mr. Berman.

2 Your Honor, one provisions which no one has
3 mentioned is the Maryland Declaration of Rights Article 7.
4 Maryland Declaration of Rights Article 7 provides in pertinent
5 part for elections and the right of suffrage. and it says in
6 its pertinent place, "Every citizen having the qualifications
7 prescribed by the Constitution," note, "prescribed by the
8 Constitution," ought to have the right of suffrage." It
9 doesn't say prescribed by law. It says "prescribed by the
10 Constitution."

11 Article 1, Section 1, at the time of the Declaration
12 of Rights and it replaced in the Constitution was very much --
13 was much more lengthy than it is today. It included references
14 to white citizens, white male citizens, and things like that.
15 But clearly, the Declaration of Rights refers, gives the right,
16 confers the right as prescribed by the Constitution. And we
17 say the prescription of the Constitution is Article 1, Section
18 1.

19 What does Article 1, Section 1, require? That a
20 person be a citizen of the United States, who is entitled to
21 vote in the ward or election district in which he resides. And
22 once he is entitled to vote in that district, he shall vote
23 there until he acquires a new residence.

24 Now residence is a defined term. We defined it in
25 our memorandum from the infamous Blount case. That definition

1 says that for political purposes, residence means domicile, not
2 floating. I think it says for political and voting purposes.
3 Residence is contemplated by the framers of our Constitution
4 for political or voting purposes means a place affixed,
5 present, domicile.

6 Now it is our submission that the specification of
7 voting in the place where you reside and are registered is the
8 qualification for voting in the State of Maryland that cannot
9 be changed by statutory enactment, whether emergency or
10 otherwise. The right that's conferred is the right to vote
11 where you live and are registered.

12 We have cited a Latin phrase to Your Honor. The
13 statement of exclusive --- term. And that's an ancient Latin
14 phrase, which I can't even pronounce. But it's been applied by
15 two Maryland cases as recently as June, which was before we
16 filed our lawsuit.

17 Your Honor, our equation on early voting being
18 offensive to Article 1, Section 1, in our memorandum attached
19 to the verified complaint, in our memorandum attached to our
20 verified complaint, Your Honor, at page 13 we cite two cases
21 and we quote from two cases. As recently as 2003, the Court of
22 Appeals stressed that the Maryland Constitution sets forth the
23 exclusive qualifications, and the exclusive was emphasized in
24 the original, exclusive qualifications and restrictions on the
25 right to vote in the State of Maryland.

1 We cite another case in 1996. And we say that what
2 the Court said in 2003 is but a short version of what they said
3 in 1996. And in 1996 the Court said, "The General Assembly may
4 neither expand nor curtail the qualifications necessary to
5 vote." Now why do I bring it up since it's already in our
6 arguments? I bring it up because of all the stuff that they
7 have thrown at us, they don't say that these are misquotes.
8 They don't say that these are somehow taken out of context.
9 They don't even mention the two cases. And this, they didn't
10 get dropped on them on Friday. This has been around since July
11 17.

12 We'll get, Your Honor, at some point, to the
13 discussion of injunctive relief and summary judgment. I'm not
14 going to lapse into that. I'm talking just about Article 1,
15 Section 1, at this point. And I simply want to -- unless
16 Your Honor desperately wants to hear that at this juncture.
17 I will conclude on Article 1, Section 1, by saying that it is
18 the exclusive qualification for voting that controls this
19 case.

20 Now I do have to talk about something else. At page
21 42 of their brief, the defendant suggested as to primaries,
22 Article 1, Section 1, doesn't apply. Now I have to admit that
23 they got two cases, one decided at 200 Md., the other decided
24 in 210 Md., which say that. I said before, and I'll just
25 reiterate, that the Suessmann case argued in one by Mr. Berman

1 has a concurring opinion by Judge Cathell and a dissenting
2 opinion by Chief Judge Bell joined by Judge Eldridge, which
3 content otherwise.

4 I am not, I want it to be absolutely clear on this
5 record, I am not waiving our argument to the Article 1, Section
6 1, provision dealing with primary elections. But I am
7 reiterating it and staying with it and recognizing that they do
8 have two cases which say it doesn't apply to primary elections.
9 Those cases are old. They haven't been cited for that
10 proposition since they were adopted. And I think that they are
11 not binding on this Court. But I can't give you a case that
12 says that they aren't. I can only tell you that the Court of
13 Appeals seems to be at odds as to whether Article 1, Section 1,
14 applies to primary elections.

15 Regardless, it certainly applies to general
16 elections. And, Your Honor, I have spoken my piece. The
17 exclusive and only qualification is in Article 1, Section 1.
18 And if they're running to Article 1, Section 3, they are
19 walking into the minefield of the unwary. And there are four
20 cases in the Court of Appeals which will haunt them, Porten
21 Sullivan, Prince George's, Migdal, and Delmarva Power, because
22 secure absentee balloting or no absentee ballot is not
23 anywhere to be found in the text or the type to the bills at
24 issue.

25 Thank you, Your Honor.

1 MR. BERMAN: With the Court's permission, Your
2 Honor, in the Jackson case, the Maryland Court of Appeals said
3 that an election is not free if voters cannot cast a ballot. I
4 want to digress a little bit in response.

5 Mr. Figinski mentioned the Maryland Declaration of
6 Rights Article 7. And he pointed out that it had never been
7 briefed by anybody. This is our objection to going to the
8 final merits. He has cited four other Court of Appeals cases
9 that we have not even had time to read. He cited a Declaration
10 of Rights provision that was never mentioned in his complaint,
11 in his initial memoranda, in his memoranda yesterday. And we
12 are being asked to litigate important constitutional rights on
13 the fly.

14 Article 1, Section 1 --

15 THE COURT: IT's 12:05. Would you like to take a
16 break for lunch? That would give you a chance to read those
17 cases. I mean, we obviously are not going to finish before
18 lunch. So I'm happy to --

19 MR. BERMAN: I would prefer to go on, Your Honor.
20 Reading four cases plus trying to research the Declaration of
21 Rights and do the various arguments, it's not going to help us
22 to be able to take that break.

23 THE COURT: Okay.

24 MR. BERMAN: I appreciate it, but --

25 THE COURT: Well, if there is something else we

1 can do to help you, let me know. While we are on the
2 subject, what do you all want to do with -- how long do you
3 want to go?

4 MR. BERMAN: I would appreciate it if we could
5 finish the Article 1, Section 1, argument.

6 THE COURT: Okay.

7 MR. BERMAN: If Your Honor wants to break for lunch
8 at that point, that would be fine. I don't --

9 THE COURT: Okay. We'll do that.

10 MR. BERMAN: I don't think there is a lot to
11 belabor. I would hope that with another hour of argument --

12 MR. FIGINSKI: Oh, oh. If we go for another hour on
13 this one, Your Honor, it will even put me to sleep.

14 MR. BERMAN: Not on this provision, an hour on the
15 rest of the --

16 THE COURT: Well, we'll go. Let's hear your
17 argument. Then we will break for lunch.

18 MR. BERMAN: Article 1, Section 1, the parties'
19 briefs passed like ships in the night, Your Honor. First of
20 all, Mr. Figinski agrees that the Court of Appeals has held,
21 the Hill case, it held that the provision does not apply to
22 primary elections. That's the law. That's what respectfully
23 the Court, we submit, is bound to apply, not a dissent, not a
24 concurrence.

25 Article 1, Section 1, was designed to avoid dual

1 voting and colonization and to ensure voters got the correct
2 options. Now we would like to, since the parties do pass like
3 ships in the night, we would like to start off by looking at
4 the language. All elections shall be by ballot. Obviously,
5 that's not at issue. Every citizen of the United States of the
6 age of 18 years or upwards, who is a resident of the state as
7 of the time for the closing of registration next preceding the
8 elections, shall be entitled to vote in the ward or election
9 district in which he resides at all elections to be held in the
10 state. And then it goes on to say if you are once entitled to
11 vote, you are continued, your right continues.

12 So it says "Every citizen of the U.S., who is 18 or
13 older, who is a resident of the state at the specified time,"
14 those are the qualifications, "shall be entitled to vote,
15 entitled, not required, "entitled to vote in the ward or
16 election district in which he resides."

17 Now, we focus on the word entitled, that votes are
18 entitled to vote in their district. The framers of the
19 Constitution certainly knew how to say voters are required to
20 vote in their district. And they didn't say that.

21 Early voting does nothing more than give voters who
22 choose to do so the right to waive the entitlement. Plaintiffs
23 respectfully in their trial memorandum go off on a tangent.
24 And they take us to task for not responding to the Maryland
25 Green Party and other cases on qualifications. And the reason

1 we didn't respond is because they're passing like ships in the
2 night. They equate entitlement to a qualification that can
3 neither be expanded or curtailed.

4 Respectfully, they are wrong. In a case they cited,
5 Kemp versus Owen, and subsequently in Sable versus Baltimore
6 City, 342 Md. 586, at page 598, the Court of Appeals listed the
7 qualifications for voting. And they described resident of
8 Maryland, 18 years, U.S. citizen, registered to vote. And they
9 didn't, they did not, list entitled to vote in your ward or
10 district as a qualification to vote.

11 The early voting law does not modify qualifications
12 in any way or permit unqualified people to vote. If Your Honor
13 is a citizen, 18 years of age, and a resident, and so forth,
14 you can vote on November 7 or November 5 or October 31. And if
15 Your Honor was not 18 or not a citizen or not a resident, you
16 couldn't vote. And the early voting laws don't change the
17 qualifications.

18 In fact, in their memorandum plaintiffs admit that
19 the poll procedure during early voting is exactly the same as
20 the poll procedure on election day. The same qualification
21 process, the same ballot style. They themselves admit
22 everything is done the same at early voting.

23 The entitlement language was intended by the framers
24 to ensure a convenience polling place. Imagine, particularly
25 in the 1800s, telling a Severna Park resident that they had to

1 vote in Allegheny County. So I started off saying in Jackson
2 an election is not free if voters can't cast a ballot. So what
3 Article 1, Section 1, was done is it's saying, look, Severna
4 Park resident, we can't drag you to Allegheny County and defeat
5 your right to vote. You have a right to vote in your ward or
6 district. You're entitled to do it.

7 But there is nothing anywhere in the Constitution or
8 in any case subsequently decided that said the voter can't
9 waive that right, the voter can't be given a more convenient
10 option. Assume a voter, who resides in Eastern Howard County
11 but works in Western Howard County, why shouldn't that voter
12 under Article 1, Section 1, be entitled to the voter's
13 entitlement and vote early at a more convenient polling place?
14 Assume a voter who has two residences, assume any one of the
15 complicated living arrangements that occur today. Article 1 is
16 simply an entitlement. It can be waived.

17 Now plaintiffs rely on the Latin maxim exclusio
18 unis. And I remember a law school professor who said that he
19 was always amazed at the ability of a Latin phrase to
20 substitute for sound reasoning. Saying that you are entitled
21 to vote in your ward or district does not mean that you can't
22 be offered an option to vote somewhere else. Exclusio unis
23 never got to that kind of an argument. We now have electronic
24 poll booths, electronic voting, and it becomes possible through
25 technology to do these things.

1 Even without the technology, Article 1 does not
2 prohibit the legislature from making voting more convenient by
3 offering voters an option.

4 Thank you, Your Honor.

5 MR. FIGINSKI: Your Honor, very briefly. I am going
6 to call your attention to Kemp versus Owens, a case which we
7 cited at the very outset of our filings, and a case of
8 Southerland versus whoever, another case. They are both very
9 old case. They are both very short cases. They both discuss
10 qualifications for voting. And they both discuss Article 1,
11 Section 1.

12 THE COURT: I have Kemp. What is the other one?

13 MR. FIGINSKI: Southerland, Your Honor. I will give
14 you the whole -- let me finish with Kemp, and then I will give
15 you Southerland, if you don't mind.

16 Kemp versus Owens was decided in 1892 in 76 Md. 235,
17 24 Atl. 606. Unfortunately, the App pages, I only have are the
18 Atl.App. pages, Your Honor.

19 THE COURT: I have it.

20 MR. FIGINSKI: Okay. There are two judges who
21 wrote, Judge McSherry apparently for the majority and Judge
22 Bryant who apparently concurred. I'm not sure. But in the
23 second paragraph of the Kemp opinion, Judge McSherry writes,
24 "Section 1 of Article 1 of the Constitutes prescribes the
25 qualifications of a voter." They can talk all they want. The

1 case says it prescribes the qualifications.

2 It goes on to talk about the language. And it
3 concludes that, as a consequence of the language that follows,
4 you cannot lawfully vote in a ward or election district in
5 which he does not reside.

6 Judge Bryant in concurrence, in this second
7 paragraph of his concurrence, adds "We cannot add anything to
8 the qualifications described in the Constitution. Neither can
9 we take anything away from that."

10 I urge the Court -- I know the Court has probably
11 already read this. I shouldn't say "urge the Court." I know
12 the Court has already it. I will consider the case, I believe
13 it directly stands for the proposition that we cited it for.
14 And it was cited not on Friday. It was cited in the Friday's
15 discussion, but it has been with us in our submissions since
16 July 17.

17 Now the Southerland case, Your Honor, unfortunately,
18 among this paper I brought with me, I didn't bring it. But its
19 citation is 74 Md. 326. And that was the case in which I think
20 really gives lie to what they are talking about. Here's a
21 gentleman who lived in Culvert County, was registered in
22 Culvert County, and he went to the District of Columbia to work
23 in the Navy Yard. He never gave up his registration, but he
24 was living in the District of Columbia. So he comes back and
25 he wants to vote. And the Court of Appeals of Maryland back in

1 1891 says no.

2 I think that supports our proposition, just like
3 Kemp versus Owens does. And I would urge the Court to hold
4 that Article 1, Section 1, is not merely a suggestion or an
5 entitlement, but it is a specific statement of where a voter is
6 qualified to vote. And that voter is qualified to vote in the
7 place where he resides and where he is registered, not
8 elsewhere.

9 Thank you, Your Honor.

10 MR. BERMAN: Your Honor, may I be heard very
11 briefly?

12 THE COURT: You may.

13 MR. BERMAN: Thank you. Your Honor, first of all,
14 the Kemp case and the Southerland case are discussed at
15 footnote 20 of our brief. The Kemp case is cited by the Blount
16 case that Mr. Figinski has repeatedly mentioned, which is
17 reported at 247 Md.

18 In Blount, the Court of Appeals describes Kemp as "a
19 voter registration case." That's exactly the way we described
20 it in footnote 20, where we say it stands for the entirely
21 unremarkable proposition that a voter cannot lawfully vote
22 where he or she is not registered to vote. That's what the
23 facts of the case were about. That's what the Court of Appeals
24 has said it's about. And that's not what early voting is
25 about. Early voters will be permitted to vote a ballot that

1 represents their ward and their district.

2 Thank you, Your Honor.

3 THE COURT: All right. Why don't we take a
4 recess until 1:30? And then we will hear the rest of the
5 arguments.

6 MR. FIGINSKI: 1:30, Your Honor?

7 THE COURT: Yes, sir.

8 MR. FIGINSKI: Thank you very much.

9 MR. BERMAN: May we leave our materials in the
10 courtroom?

11 THE COURT: You certainly may. And the courtroom
12 will be locked up. So --

13 THE CLERK: All rise.

14 (Whereupon, a luncheon recess was taken.)

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1 A F T E R N O O N S E S S I O N

2 THE CLERK: All rise.

3 THE COURT: Have a seat, everyone.

4 We are back on the record in the Capozzi versus
5 State of Maryland and Linda Lamone, et al., C-2006-115807.
6 Counsel, identify yourselves, please.

7 MR. WEST: Yes, Your Honor. Christopher West and
8 Albert Figinski on behalf of the plaintiffs.

9 MR. BROCKMAN: Your Honor, Will Brockman and Michael
10 Berman for the defendants.

11 THE COURT: Okay. Are we ready to resume?

12 MR. WEST: I think next up in our agenda, Your
13 Honor, is the discussion of Articles 15 and 17 of the State
14 Constitution.

15 THE COURT: Okay.

16 MR. WEST: So I am going to handle that on our side.
17 These two articles, Article 15, Section 7, and Article 17,
18 Sections 1 and 2, are really very similar. They both hold that
19 all general elections shall be held on the Tuesday after the
20 first Monday in the month of November, which we might as well
21 just refer to from now on as election day.

22 The second of the two articles, Article 17, Sections
23 1 and 2, is only slightly different. It said the general
24 elections for state and county officers shall be held on
25 election day.

1 This year, for the first time in the history of the
2 State of Maryland, thanks to the early voting statutes, the
3 voting will be held not only on --

4 THE COURT: Go ahead.

5 MR. WEST: -- will be held not only on election day,
6 but will start on the Tuesday preceding election day and then
7 continuing on the Wednesday, the next day, the following day
8 Thursday, the following day Friday, the following day Saturday,
9 and then finally conclude on election day.

10 In the State's materials that have been attached to
11 the complaint as a part of Exhibit E, the guidelines for early
12 voting suggest that an estimated 20 percent of the votes will
13 be cast not on election days but on these days preceding
14 election day. It is the argument of the plaintiffs that
15 election, therefore, this year will not be held on election
16 day, but rather will be held on six days, concluding with
17 election day, starting with the preceding Tuesday, in
18 contradiction to the State Constitution.

19 The defendants, by contrast, are arguing that the
20 election is held on election day, because they argue the
21 election should be deemed to be held after all the voters have
22 gone home, at the time that the votes are tabulated.

23 The standards for interpreting the Constitution have
24 been discussed in a number of Maryland Court of Appeals
25 decisions. The Court of Appeals has indicated that the same

1 standard should be used when interpreting the State
2 Constitution as are used when interpreting statutes. The Court
3 has held that the first thing to do is to look at the normal,
4 plain meaning of the language of the Constitution. And if that
5 is clear and unambiguous, there is no need to look any further.
6 It is our contention that the definitions of the words
7 "election" and "held" are sufficiently clear and unambiguous
8 that there is no need to look beyond the plain language of the
9 Constitution when deciding what those two sections mean.

10 The Norris case, which we cite or discuss in our
11 brief, in our memorandum, is particularly illuminating. That
12 case states, and I am going to quote, "Since constitutions are
13 the basic and organic law and are meant to be known and
14 understood by all the people, the words used should be given
15 the meaning which would be given to them in common and ordinary
16 usage by the average man in interpreting them in relation to
17 everyday offices."

18 So there is no need to become exotic or complicated
19 or tricky in trying to define or interpret the meaning of the
20 State Constitution. The words election and held should be
21 given their normal meanings. These are words that are used in
22 everyday speech by average people. So we are not talking about
23 abstruse legal terms here. We are talking about terms which
24 are used on the streets daily. They are common and ordinary
25 words.

1 In our memorandum, we cite a number of definitions
2 of both the word election and the word held. The word held is
3 so simple we have cited fewer definitions for that word,
4 because over and over the word held is defined as schedule and
5 assemble or meet, as in some classes were held in the evening
6 or to assemble at, for, and conduct the activity of, in another
7 case.

8 The word election has been fairly consistent in its
9 definition for centuries. We found the Webster's Dictionary of
10 1828, which preceded the State Constitution in which Article
11 15, Section 7, was first adopted and really has not changed
12 since then, the 1867 Constitution. The Webster's Dictionary of
13 1828 defines the word election as the act of choosing a person
14 to fill an office or employment by any manifestation of
15 preference as by ballot, uplifted hands, or viva voce, as the
16 election of a president.

17 Note the emphasis there on the act of choice by the
18 people as the central act of an election, of any election.
19 Note also the fact that there is no mention of ministerial acts
20 conducted by public employees in setting the election up or
21 breaking it down after the election is over with.

22 Webster's Revised Unabridged Dictionary in 1913,
23 obviously a later decedent of the earlier one, defines the term
24 election in almost the same words, not quite, but close, as the
25 act of choosing a person to fill an office or to membership in

1 a society, as by ballot, uplifted hands, or viva voci, as the
2 election of a president or mayor.

3 Again, the emphasis is on the actions of the
4 electorate in making the choice. Dictionaries that are in use
5 today also emphasize the central role of the electorate in any
6 election. Webster's Third New International Dictionary
7 Unabridged defines election as the act or process of choosing a
8 person for office, position, or membership by voting. And then
9 there are some other encyclopedias and dictionaries which
10 contain similar definitions, all involving the idea of choice
11 and vote.

12 So it is our contention that by the normal, plain
13 meaning of the words "election" and "held," an election should
14 be deemed to be held when voters convene or assemble in order
15 to vote and choose a person to fill an office.

16 I note that a case we did not cite but I found in
17 between yesterday and today called Cohen versus Governor of
18 Maryland, 252 Md. 5, a 1969 decision. The Maryland Court of
19 Appeals looked at the words "general election." And the Court
20 held, in our opinion, the words general election used in a
21 different section of the Constitution are clear and
22 unambiguous. And it is our contention that if the Court of
23 Appeals could find the words "general election" are clear and
24 unambiguous, certainly this Court and the Maryland Court of
25 Appeals ultimately should be capable of finding the word

1 "election" to be clear and unambiguous.

2 The defendants disagree. They fail to cite any
3 dictionary as a source. But they contend that when an election
4 is held -- when the votes are tabulated, I would suggest that
5 nothing in the normal definitions of the words "election" or
6 "held" suggest that a general election should be deemed to be
7 held when the votes are tabulated. That is not the common,
8 normal definition of the word.

9 For example, I just -- the ABA National Convention
10 is right now being held in Hawaii. It started the middle of
11 last week, and it concludes this coming Friday. I'm sure that
12 if the literature announcing the convention announced that the
13 convention was going to be held on Friday, not many people
14 would have gone to Hawaii, because they would have thought it
15 was a single day.

16 The definition of held for an event such as an
17 election or a convention means when does it start and when does
18 it end. So in this case, for the first time in this history of
19 Maryland, the election is not being held on election day,
20 because the voting is not occurring on election day. Rather,
21 the election is being held starting a week before election day,
22 when the voting starts, and will conclude on election day.

23 The defendants' argument that the election is held
24 when the votes are tabulating just doesn't stand up in terms of
25 history. As noted earlier, this language that is in the

1 Constitution today has been there since the 1867 Constitution
2 was adopted back in 1867. So the language has applied and
3 would necessarily have applied to elections conducted in the
4 latter half of the 19th century even as it applies to elections
5 held today.

6 In the latter half of the 19th century -- well,
7 let's start with today. Today, of course, we have electronic
8 voting machines and we have cars. And so the rules governing
9 the elections contained in COMAR provide that after the
10 election concludes on election night, the election judges in
11 the precincts are to run everything back to the county election
12 boards, and the canvas of the votes starts as soon as the
13 material starts to arrive back that night. So that by the end
14 of that evening, unofficial results and incomplete results are
15 released to members of the press. And they are published in
16 the newspapers the next day.

17 When I say incomplete, the election COMAR also
18 establishes that certain elements of the election are not
19 completed on election night. The write-in votes aren't
20 tabulated. The absentee votes aren't tabulated. The
21 provisional votes aren't tabulated. All that's available on
22 election night are the incomplete results off of the machines,
23 the accuracy of which remains open to questioning at later
24 points in the process.

25 But in 1867, when the Constitution was adopted and

1 the same language was adopted that we are interpreting today,
2 there were no automobiles. And the ballots weren't cast on the
3 machine, they were cast by hand, by writing on paper ballots
4 and putting them in boxes. In light of those realities, the
5 applicable state election statute as late as 1888 provided that
6 the judges of the elections shall within ten days after the
7 election all meet at the usual place of holding, the circuit
8 court for each county, and shall cast up the whole of all the
9 districts or precincts.

10 So the tabulation back in the latter half of the
11 19th century simply could not occur on election night. It was
12 not physically possible for people to transport election
13 materials after 11:00 in the evening from distant corners of a
14 county all the way to the county seat by horseback. Even as
15 late as 1904 with early automobiles beginning to run along the
16 roads of the state, Article 33, Section 77 through 80, in that
17 era provided that the election boards would meet two days after
18 the election; in other words, on Thursday of election week; and
19 would tabulate the votes then.

20 So if the Court were to adopt the defendants'
21 proffered definition of the word election as occurring when the
22 votes are tabulated, it would in effect retroactively conclude
23 that all of Maryland's elections back during those decades were
24 unconstitutional, because they all occurred after the day
25 specified in the State Constitution when the election must

1 occur.

2 Even today, it's strange that they would choose the
3 tabulation of the vote on election night. As I indicated
4 earlier, that tabulation is these done by running computer
5 memory cards through machines and coming up with numbers. And
6 those are only the numbers of the votes actually cast on the
7 machines. They don't include the write-in votes. They don't
8 include the absentee votes. And they don't include the
9 provisional votes. The absentee vote count doesn't start until
10 two days after the election on Thursday of election week. And
11 as we saw in the Sauerbrey election back in 1994, it can run on
12 several days if there's a hotly contested and very close
13 election.

14 The count of provisional ballots by regulation isn't
15 supposed to start until the second Friday -- is that right, or
16 is it the first Friday? I think it's the first Friday after
17 the election. Maybe it's the second Friday. Maybe it's the
18 second Friday after the election. And on the second Friday
19 after the election, that's also the day that the second
20 absentee vote count is done. In other words, ballots that come
21 in that are postmarked properly but haven't arrived by two days
22 after the election date are still countable and are counted the
23 second Friday after election day.

24 So there is no certified count, no certified vote
25 count, issued by the county election boards until nearly two

1 weeks after election day. And from that point on, COMAR goes
2 on and on and talks about how those counts go to the state
3 level, and then the State Board of Elections does certain
4 things, and ultimately the election is certified.

5 But to choose the unofficial, incomplete tabulation
6 that occurs on election night and for the defendants to argue
7 that that constitutes "holding the election" doesn't make any
8 sense. And it certainly is not the definition of holding an
9 election which an average man on the street would volunteer, if
10 you asked him when the election was being held.

11 The defendants don't cite any Maryland case in
12 support of their argument that the election is held when the
13 vote tabulation occurs. And they don't cite any dictionary
14 definitions to suggest that the election is held when the vote
15 tabulation occurs. Rather, they cite a couple of federal
16 decisions interpreting federal election law which was adopted
17 subsequently to the adoption of Maryland's Constitution of
18 1867.

19 Now there is a Maryland case, the Dua decision,
20 which we cited to the Court, Dua versus Comcast Cable, 370 Md.
21 604, which indicates that when the U.S. Constitution has a
22 provision which is identical to a provision in the Maryland
23 Constitution, Maryland can -- Maryland Courts do not have to
24 follow the interpretation of the U.S. Constitution adopted by
25 the U.S. Courts, that the U.S. Court's rationale may be

1 persuasive, but not binding on the Maryland Courts.

2 That certainly would doubly be the case when what is
3 being interpreted by the federal courts is not the U.S.
4 Constitution, but a statute. And even more so when the statute
5 in question was adopted by the U.S. Congress subsequently to
6 the adoption of the Maryland constitutional language, which is
7 the subject of the interpretation.

8 The two cases which are cited by the defendants are
9 Voting Integrity Project versus Bomer and Millsaps versus
10 Thompson. The Bomer case was out of Texas. The Thompson case
11 was out of Tennessee. In each of these cases, the early voting
12 was described as a form of absentee voting. And so from the
13 outset, the Courts involved in interpreting these two decisions
14 were looking at a form of absentee voting and trying to decide
15 whether this form of absentee voting should be ruled
16 unconstitutional, as in conflict with the federal statute.

17 They ran into a problem. The federal statute, as
18 enacted many decades ago, contains no exception for absentee
19 voting at all. So the Courts realized quickly that if they
20 concluded that early voting, which was an element of absentee
21 voting, violated the statute, they would thereby be ruling that
22 all absentee voting violated the federal statute. And they
23 realized that all 50 states have absentee voting, and therefore
24 necessarily they would be rendering a decision that absentee
25 voting, as it is known and has been known for many decades in

1 every state in the country, is unconstitutional.

2 They noted that the Congress on a number of
3 occasions in recent years has passed legislation ordering that
4 certain things be done with respect to the conduct of absentee
5 voting. And therefore, they concluded that the Congress could
6 not possibly have meant, when it adopted the federal statute,
7 that absentee voting was unconstitutional.

8 In light of that fact, they sought an opportunity or
9 a rationale for ruling that the early voting, which, as I say,
10 in both Tennessee and Texas, unlike in Maryland, is defined as
11 an aspect of absentee voting was indeed constitutional. They
12 seized on a Supreme Court case decided back in the 1990s
13 entitled Foster versus Love. The Foster versus Love case
14 really has nothing to do with this case and no relevance to the
15 case except in that it supplied a rationale to Bomer and
16 Millsap to excuse early voting in those cases.

17 In Foster, it grew out of a situation in Louisiana.
18 Louisiana had an all-party primary earlier than the election
19 day. And if a candidate won 50 percent of the vote in the all-
20 county primary, that candidate was declared elected. And
21 apparently more often than not that's exactly what happened.
22 One candidate won more than 50 percent of the vote in the
23 primary and was declared elected prior to election day.

24 Foster concluded that that didn't pass muster under
25 the federal statute, that under the federal statute everything

1 had to be at an end by election day and could not end before
2 election day. So the Foster Court held that you can't have an
3 election of federal officers which ends prior to election day.

4 This holding provided Bomer and Millsaps a way out
5 of their conundrum. They proudly claimed to follow the Supreme
6 Court case, but they insistently refused to look at definitions
7 of the term election in so doing. For that reason, the Bomer
8 case and the Thompson case simply should not be viewed as
9 either binding precedent or persuasive precedent by this Court.
10 Because the Maryland Court of Appeals over and over again has
11 illustrated how our constitution should be interpreted. And
12 that is, you look at the language of the constitution first and
13 foremost. You take the plain and common meaning of the
14 language. And if that answers the question, you go no further.

15 In both the Millsaps and the Thompson cases, or,
16 rather, the Bomer cases, the Courts did not look at the
17 language. They did not look at the definitions. They made an
18 end run around those. And that is inconsistent with how this
19 state handles interpreting its constitution.

20 So for all those reasons, our contention is that the
21 language in the State Constitution is plain and simple. The
22 words election and held are common words used every day by
23 ordinarily people. This Court ought to adopt the definition of
24 those words used by average people on the streets of Maryland
25 when looking at their constitution. And by that standard, an

1 election this fall which purports to start a week before the
2 election and the voting would then continue on the same
3 machines that the voting is engaged in on election day, in the
4 same way, that voting, which starts on the Tuesday beforehand
5 and continues on Wednesday, Thursday, Friday, and Saturday, and
6 finally concludes on those machines on election day, should be
7 ruled to be unconstitutional as inconsistent with Article 15,
8 Section 7, and Article 17, Sections 1 and 2.

9 THE COURT: Counsel?

10 MR. BERMAN: Thank you, Your Honor. Again, under
11 the Court of Appeals Jackson decision, an election is not free
12 if voters can't cast a ballot. Ms. Lucas says she has trouble
13 casting a ballot on election day. Section 1-201, subsection 5,
14 of the election article says, "Citizen convenience is
15 emphasized in all aspects of the election process."

16 Let's look at the two constitutional provisions that
17 Mr. West referenced. The first is the Fewer Election Amendment
18 of Article 17. That simply doesn't apply to primaries. There
19 has been no argument to the contrary. If it applied to
20 primaries, of course primaries would have to be held on Tuesday
21 at the same time as the general election. So as to primaries,
22 their early voting challenge fails.

23 They also missed the purpose of the Fewer Election
24 Amendment. The purpose of the Fewer Election Amendment is to
25 have fewer elections so that there is less voter inconvenience.

1 It is to increase voter inconvenience. Under the words and
2 purpose of the Fewer Election Amendment, early voting is
3 certainly permissible. Early voting furthers voter
4 convenience. It is not create another election. There is no
5 violation of the Fewer Elections Amendment.

6 So the parties really join issue on what curiously
7 has come up to be the last portion of the argument, Article 15,
8 Section 7. That provides that elections shall be held on
9 Tuesday. The purposes were, like the Fewer Election Amendment,
10 to limit the number of elections and avoid presidential
11 politics interfering with state gubernatorial races.

12 We say that the issue is "what is an election," much
13 like the Judge Friendly decision of what is chicken, is it a
14 stewing chicken, a fowl, et cetera. The plaintiffs say the
15 Supreme Court, the Fifth Circuit, the Sixth Circuit, the Ninth
16 Circuit, and the other state legislatures are all wrong. they
17 claim that the word election has a common, ordinary, everyday
18 meaning.

19 If so, why do four appellate courts, including the
20 United States Supreme Court, and at least one dictionary
21 provide a meaning that differs from their definition? They
22 take us to task, and they take the Fifth Circuit to task, for
23 not referring to a dictionary. If Your Honor refers to page 29
24 of our memorandum, we discuss, I'm sorry, the Sixth Circuit
25 case. And we say, "The Court referred to the definition of

1 Noah Webster and American Dictionary of the English Language
2 defining election as 'the act of choosing a person to fill an
3 office.'"

4 Under their rule, what happens? If the elections
5 are to be held on Tuesday, does everything have to be done on
6 Tuesday? Does specimen ballots have to be mailed on Tuesday?
7 Does registration have to occur on Tuesday? Does everything
8 have to occur on Tuesday? If not, why not? What, under their
9 rule, what can occur on a different day? If elections have to
10 occur on Tuesday, does the whole ball of wax get compressed
11 into one day?

12 The word election or an election is a process. At
13 least since the modern institution of the ballot, no election
14 has opened and closed on one day. And it's curious, while they
15 take us to task for citing the Fifth Circuit, Sixth Circuit,
16 Ninth Circuit, and Supreme Court cases, they are unable to find
17 one case in 200 years of jurisprudence that supports them, not
18 one case.

19 The Supreme Court, we would submit, is an authority
20 of slightly greater weight than a dictionary. And it held that
21 an election is more than casting a ballot. It rejected their
22 position. Every Court, every Court that has considered the
23 definition of an election has rejected their position.

24 A ballot must be processed and counted or it has no
25 meaning. I raised my tsunami argument early on. And I said if

1 we have four days of early voting and then a tsunami stops the
2 electoral process and the State Board saves those 15 percent of
3 the early votes, would anyone contend that that is an election?
4 Of course not. They haven't been able to respond to it,
5 because their definition and their analysis doesn't let them
6 respond.

7 And I said tsunami, but you could look at Katrina.
8 Katrina hit New Orleans when there was an election. On
9 September 11, we know that there were polling places in use in
10 the World Trade Center. It's not an idle hypothetical.

11 In this context, the definition has been held to be
12 the time that voting closes and counting and tabulating
13 commences. The process of turning your vote into a final
14 choice is an election. In Foster, the Supreme Court said the
15 combined acts of voters and public officials to make a final
16 selection of an office holder is what an election is.

17 All the Courts that have decided it agree. There is
18 no court decision to the contrary. And the plaintiffs rely on
19 dictionaries. Now they came in with their dictionaries. We
20 got it about 3:00 or 4:00 o'clock yesterday afternoon. And
21 again, I'm not criticizing them. This has been a rush thing.
22 And they did the best they could to get it to us early.
23 Between 3:00 or 4:00 o'clock yesterday afternoon and this
24 morning, I haven't been able to go find the 1868 dictionaries
25 that they were able to find. But I did have time last night to

1 check the online dictionary that they cited. And they gave
2 Your Honor one definition from that dictionary. They didn't
3 give Your Honor the other three definitions from that
4 dictionary. And the fourth definition in that dictionary of
5 election was "the process of being chosen."

6 That's exactly what the Supreme Court said in
7 Foster. The dictionary that they cite supports the Foster
8 definition, the Fifth Circuit definition, the Sixth Circuit
9 definition, the Ninth Circuit definition, the General
10 Assembly's definition, and the definition of the nine other
11 states that have similar constitutional provisions on early
12 voting.

13 To resolve this case, Your Honor, the Court need to
14 decide only a narrow, very narrow, very, very narrow issue on
15 this point. The Court need only conclude that an election is
16 more than the act of some, but not all, voters casting a
17 ballot. If the Court concludes that an election is more than
18 the act of some, but not all, voters, maybe 15 or 20 percent,
19 casting a ballot early, there is no violation of Article 15,
20 Section 7. That would be consistent with its words. It would
21 be consistent with the case law. It would be consistent with
22 the purpose of the Constitution. It would be consistent with
23 the purpose of the election code, to make elections more
24 convenient.

25 If the four days of voting before the tsunami are

1 not an election, plaintiffs lose. And we would submit that an
2 election is more than the act of some people casting a ballot.

3 The plaintiffs do misperceive our position. We
4 never said that tabulation is the key to when an election
5 occurs. We say it is at the point of transition between the
6 close of casting ballots and the commencement of tabulating,
7 processing, and selecting the final candidate.

8 Now they strive mightily for pages of their trial
9 memorandum to distinguish the Fifth Circuit case. And quite
10 frankly, if the judges in the Fifth Circuit and Sixth Circuit
11 and Ninth Circuit saw a conundrum, I didn't see it reading
12 their opinions. And I think the plaintiffs' effort to
13 distinguish them is not well founded.

14 But the plaintiffs do make an interesting argument.
15 They say, well, the courts looked at early voting as a form of
16 absentee voting. And the plaintiffs were making a form over
17 substance argument, Your Honor. And a form over substance
18 argument should not prevail on something that is as important
19 as the franchise. As I understand the plaintiffs' argument, it
20 is, if the General Assembly had not called this early voting,
21 if they had uttered magic words like 16 other states and called
22 it no excuse in person absentee voting, there would be no
23 violation of Article 15, Section 7, because Article 1, Section
24 3, says the General Assembly controls the time, manner, and
25 place of absentee voting, if a voter is "unable to vote on

1 election day." You don't have to be absentee, just unable to
2 vote.

3 So the plaintiffs' argument, in attempting to
4 distinguish the Fifth, Sixth, Nine Circuit and Supreme Court
5 cases, is that while most cases the law said early voting is
6 absentee. Is a law unconstitutional because the General
7 Assembly called it early voting instead of absentee voting? I
8 would hardly suggest that the Constitution places that type of
9 a burden on the General Assembly. There is no magic language
10 requirement.

11 THE COURT: Let me ask you something. Mr. Figinski,
12 I think, said earlier that he challenged anyone to look at the
13 language of the statute, titles, headings, body, to find any
14 reference to the phrase that you use for early voting. I
15 forget exactly what it was.

16 MR. BERMAN: Absentee. That is correct. The
17 word --

18 THE COURT: Absentee voting.

19 MR. BERMAN: The word absentee is not in there, nor
20 do we think from a constitutional dimension --

21 THE COURT: You used another term.

22 MR. BERMAN: I used no excuse in person --

23 THE COURT: No excuse.

24 MR. BERMAN: Right.

25 MR. FIGINSKI: No excuse absentee voting.

1 MR. BERMAN: No excuse just means that under the old
2 versions of absentee voting, you had to give a reason to get an
3 absentee ballot: I am in military service, I won't be there on
4 November 7; I'm in the hospital, I can't get there. You had to
5 give an excuse.

6 The legislature in the most recent session amended
7 the absentee ballot to provide for no excuse absentee voting.
8 You can get an absentee ballot without giving an excuse. You
9 just come in and say "I want one." That's what the no excuse
10 language is.

11 So many states have called their early voting
12 programs no excuse in person absentee voting. And they have no
13 excuse mail absentee voting. Now those words are not used in
14 the early voting statutes. We concede that Mr. Figinski is
15 factually correct. That concession is irrelevant.

16 Mr. Figinski makes two arguments. One argument is
17 that unless the General Assembly put the right magic words in
18 the preamble to the bill, the bill is unconstitutional. That's
19 not the constitutional inquiry. The inquiry is, did the
20 General Assembly have the power to do it?

21 Secondly, he argues, that if they had put early
22 voting in, they would violate the constitutional requirement
23 that a bill only address one subject, because, he argues, that
24 would be addressing two subjects, early voting and absentee
25 voting. The rebuttal is Mr. West's very own argument that many

1 states call it early and absentee voting. It's not two
2 subjects. It's one and the same.

3 Under Article 1, Section 3, of the Maryland
4 Constitution, a voter can vote on a day other than election
5 day, as prescribed by the General Assembly, if the voter is
6 either absent or unable to vote.

7 THE COURT: Well, let me ask you this, are you
8 contending that this legislation that is being challenged by
9 Mr. Figinski was enacted in accordance with the constitutional
10 authority given on, is it, Article 1, Section 3, to set up a
11 process for absentee voting? Yes or no?

12 MR. BERMAN: I am contending, Your Honor, that
13 Article 1, Section 3, is broad enough to cover this statute.
14 It's broad enough to confer on the General Assembly that power,
15 regardless of whether, in the mind of the legislator who voted
16 on it, they were intending to do that. I'm arguing that the
17 three provisions that they cite do not bar this statute and
18 that Article 1, Section 3, is broad enough to authorize it.

19 THE COURT: So you're saying that the Constitution
20 Article 1, Section 3, gave the General Assembly the authority
21 to enact absentee balloting rules, processes. But I guess then
22 the question is, is that what this legislation in fact does?

23 MR. BERMAN: Yes, Your Honor. It does -- if the
24 Court will bear with me one moment.

25 (Pause.)

1 Let me go back, if I can, to Article 1, Section 3.
2 "The General Assembly of Maryland shall have the power to
3 provide by suitable enactment for voting by qualified voters of
4 the State of Maryland, who are absent at the time of any
5 election in which they are entitled to vote, and for voting by
6 other qualified voters who are unable to vote personally, and
7 for the manner in which, and the time and place at which such
8 absent voters may vote, and for the canvas and return of their
9 votes."

10 That's Article 1, Section 3. So it said to the
11 General Assembly: you can prescribe law specifying the time
12 and place at which people who are unable to vote personally may
13 vote. What does early voting do? It says to the early voter:
14 You have an option.

15 On the facts before Your Honor, Ms. Lucas says, "I
16 work shift work. And I have four kids. And I have a 90-minute
17 bus commute. I have a hard time getting to the polls. So I
18 use early voting." She is unable, within the terms of the
19 Constitution, unable to vote personally. And the legislature
20 has the right to prescribe the manner in which and the time and
21 place she may vote. And that is exactly what the early voting
22 laws do.

23 THE COURT: Well, let me ask you this, if that's
24 what the legislature intended to do, why isn't it spelled out
25 in the language somewhere?

1 MR. BERMAN: Your Honor, I would submit for a
2 constitutional inquiry it makes no difference what the
3 legislature intended, whether they intended -- if the
4 legislature -- let's say hypothetically that the legislature
5 had intended to act under Article 1, Section 1. And let's say,
6 for argument's sake, they failed. But if Article 1, Section 3,
7 provided them with the power to do it, their mistake as to the
8 source of their authority does not invalidate the law. The law
9 is valid under the constitution. There is nothing that says
10 that the legislature must refer to the correct constitutional
11 provision in order for their enactment to be sustained.

12 I cannot stand here before Your Honor and say when
13 delegate one or senator two voted, they had in mind Article 1,
14 Section 3. And the reason I can't is we haven't surveyed them
15 because it's irrelevant. Because if Section 3 provides the
16 power, it provides the power.

17 I hope I have answered Your Honor's questions. I
18 have nothing further on the Fewer Voting Amendment or the
19 Tuesday provisions.

20 Your Honor, I am not certain where the Court wishes
21 to go from here.

22 MR. WEST: Could I have a little rebuttal?

23 MR. BERMAN: Oh, certainly.

24 THE COURT: All right. He is standing up, anxious
25 to respond.

1 MR. WEST: Yes, Your Honor. This argument about
2 Article 1, Section 3, absentee voting has come up today for the
3 first time. It was not in prior submittals of the State,
4 excuse me, of the defendants. So we obviously haven't done a
5 lot of preparation. But there is not much preparation, I would
6 submit, necessary.

7 The first thing to do when interpreting any section
8 of the Constitution is to read its language. So, the language
9 of Article 1, Section 3, says, "The General Assembly of
10 Maryland shall have power to provide by suitable enactment for
11 voting by qualified voters of the State of Maryland who are
12 absent at the time of any election in which they are entitled
13 to vote." Clearly, voters who show up to vote at early voting
14 are not absent.

15 And it continues, "And for voting by other qualified
16 voters who are unable to vote personally." Again, voters who
17 show up for early voting are personally present at the voting
18 place and are casting their vote personally. They are not
19 absent.

20 It continues, "And for the manner in which, and the
21 time and place in which such absent voters may vote." It
22 totally deals with absent voters. Early voting voters are not
23 absent voters. By definition, they are there at the early
24 voting locations, casting ballots.

25 Secondly, the General Assembly a couple of years ago

1 recodified the election law. They brought order out of what
2 previously had been chaos. And Title 9 is entitled "Voting."
3 And Subtitle 3 of Title 9 is entitled "Absentee Voting." All
4 of the absentee voting provisions in the Maryland election code
5 were gathered together in Subtitle 3 of Title 9 of the election
6 law article entitled "Absentee Voting."

7 If we take a look at the two bills passed by the
8 General Assembly, the first of them which was enacted over the
9 governor's veto, it's Chapter 5, purports to add to the
10 election law Section 10-301.1. Section 10 of the election law
11 is entitled "Polling Places." And Subtitle 1 in which this
12 statute has been inserted, excuse me, Subtitle 3, in which this
13 statute is being inserted is entitled "Polling Place
14 Procedures." The legislation in question was not added to the
15 absentee ballot section subtitle of the election law.

16 Secondly, Chapter 61 was also enacted. And the
17 relevant sections of that are being inserted by repealing and
18 reenacting and adding a section -- well, lots are being
19 repealed and reenacting and added because it's a very long
20 piece of legislation. But nothing is being done to Article 9,
21 Subtitle 3. Nothing is being repealed, reenacted, or added to
22 Article 9, Subtitle 3. I just haven't had the time, because I
23 was trying to listen to Mr. Berman, to go back and find exactly
24 where the early voting elements of this long bill are being put
25 into the election law, but it is not in the absentee ballot

1 section.

2 So I think that deals with the absentee ballot
3 issue.

4 A couple other things I want to talk about. First
5 of all, Ms. Lucas, this affidavit was filed by Ms. Lucas that
6 the Court was given this morning. And she has been referred to
7 several times today as one of those voters that is going to be
8 terribly hurt and prejudiced if early voting is not permitted.
9 We just talked about absentee voting. Ms. Lucas has the right,
10 along with any other voter in the State of Maryland, to apply
11 for an absentee ballot without supplying any excuse. If she
12 feels that there is any question that she might be too busy on
13 election day because of her work and her time that needs to be
14 spent working with her children, she can apply for an absentee
15 ballot and can vote by absentee ballot, as many, many, many
16 Marylanders do.

17 Thirdly, when we got the State's submission last
18 Friday, it was hard, frankly, for me to figure out exactly when
19 they were contending that the election was held. If you read
20 that portion of their memorandum, it is not clear as to exactly
21 when they contend the election is being held. I believe our
22 memorandum is quite clear, that the election is being held when
23 the voting is going on. But their memorandum is not. I
24 listened carefully to Mr. Berman, and I think that what he said
25 today was the election is held at, my scribbling, "the point of

1 transition between the close of voting and tabulation."

2 I would submit to the Court, again, that -- an
3 ordinary Marylander, an average Marylander asked when the
4 election is held might come up with various ways of expressing
5 it. But no average, ordinary Marylander would say, oh, the
6 election is held at the point of transition between the close
7 of voting and the tabulation. That simply is not what an
8 average person would believe. And no definition that I am
9 aware of in any dictionary holds that.

10 Finally, Mr. Berman refers to the online dictionary
11 and the fourth definition there, the process of being chosen.
12 Well, the State Constitution requires the election to be held
13 on election day. And if the process -- if the election is the
14 process of being chosen and if that has to occur on election
15 day, how do we treat the early voters, the people who voted the
16 previous Tuesday, the previous Wednesday, the previous
17 Thursday, the previous Friday, and the previous Saturday? Are
18 they not a part of the process of being chosen?

19 The State's argument is very confusing. If the
20 election is being held at the point of transition between the
21 close of voting and tabulation, it's being held -- the election
22 is held when no one is voting, after the vote is over and the
23 people have gone. And I am hard-pressed to see how in the
24 world one can try to interpret the meaning of the plain
25 language in the Maryland statute, the Maryland Constitution, to

1 that effect.

2 Thank you.

3 THE COURT: Okay. Anything further on that issue?

4 MR. BERMAN: Very briefly, Your Honor. Just as a
5 housekeeping matter, plaintiffs contend that we didn't raise
6 the Article 1, Section 3, argument earlier. It was raised on
7 page 51 of our memorandum where we said, "However, to the
8 extent express authorization is required, Article 1, Section 3,
9 provides it." So we have timely raised it.

10 I would submit to Your Honor that they simply,
11 number one, misunderstand the words of Article 1, Section 3.
12 And number two, they themselves err by asking Your Honor to sit
13 in the shoes of the General Assembly. Article 1, Section 3,
14 says, "The General Assembly shall have the power to provide by
15 suitable enactment for voting by qualified voters who are
16 absent at the time of any election in which they are entitled
17 to vote and for voting by other qualified voters who are unable
18 to vote personally."

19 Now, we went to great lengths in our memorandum to
20 point out that the General Assembly in Maryland has plenary
21 power. The Constitution does not grant the General Assembly
22 power. The Constitution grants the executive power. It grants
23 the Court's power. The General Assembly is the repository of
24 all power. Unlike Congress, which is a body of enumerated
25 powers, state legislatures have the power of the people, as the

1 people's representatives. And they may exercise that power
2 unless they are prohibited by an express constitutional
3 limitation.

4 Here what we have is Article 1, Section 3, not only
5 not prohibiting but expressly granting the General Assembly
6 that power. It's not up to anyone else to define it. It's not
7 up to anyone else to determine it. Unless they can point to a
8 constitutional limitation, it's up to the General Assembly to
9 do that. And that's what they have done in the early voting
10 statutes.

11 Where they codified the bill, who cares? That may
12 be sloppy drafting. It may be bad code revision. It may be a
13 thousand things. But it's not a constitutional violation.
14 They could --

15 THE COURT: Well, I expect this side says that if
16 they intended it to be in any way, shape, or form part of that
17 constitutionally mandated authority to set up absentee voting,
18 common sense would tell you it would be in that section.

19 MR. BERMAN: And it might be in the polling
20 procedures section, because it deals with polling procedures.
21 And it might -- and if they had goofed and they had put it in
22 the state government article, if they had the constitutional
23 power to do it, it doesn't become unconstitutional because they
24 put it in the state finance article or the health article or
25 anything else.

1 The Court's sole inquiry, respectfully, is, did the
2 General Assembly have the power to do it? If they were sloppy,
3 if they were unwise, if they were even ignorant, that's not an
4 inquiry for the Court. That's committed to them. I'm not
5 saying that they were. I'm just saying the fact that they
6 didn't codify it in what the plaintiffs would assert is the
7 most logical position is not a constitutional amendment.

8 THE COURT: Well, let me ask you this, do they have
9 the power to -- I mean, absentee voting is provided, at least
10 the authority to promulgate the rules and regulations provide
11 in the Constitution, do they have the authority to modify
12 absentee balloting to simply mean convenience? In other
13 words --

14 MR. BERMAN: Simply what?

15 THE COURT: To mean convenience. In other words,
16 you can be -- in other words, if I accept what you are saying
17 as correct, then wouldn't that change absentee balloting to
18 convenience balloting?

19 MR. BERMAN: In fact, Your Honor, that is what the
20 General Assembly has done. It's not before the Court now.
21 There is no excuse absentee balloting. I can get an absentee
22 ballot by going in and saying I want one. I don't have to
23 say --

24 THE COURT: Well, I think what this side is saying
25 is that the constitutional framers gave the authority to the

1 General Assembly to promulgate these rules for absentee
2 balloting. But I -- the language of convenience balloting
3 seems to be somewhat absent from that. I mean, I'm sure
4 Mr. Figinski will correct me, if I am misinterpreting his
5 argument.

6 MR. BERMAN: Your Honor, what they did was -- let's
7 look at the history of Article 1, Section 3. It was passed in
8 1918 as a response to, I believe, an Attorney General's opinion
9 involving soldiers in a war being able to vote. And it said
10 that the people in the military or naval service can vote by
11 absentee ballot. And at some point it said people who were
12 confined to a hospital or to a bed could vote by absentee
13 ballot. And at some point there was a reference to you had to
14 be absent from your ward or district in order to get an
15 absentee ballot.

16 The Constitution was amended to take out all those
17 restrictions. All that is left is that the legislature has the
18 power to provide for voting, if a person is absentee or unable
19 to vote. And respectfully, it leaves to the legislature the
20 power to define who is absent or unable to vote.

21 And that is what the legislature has effectively
22 done. Regardless of whether when they voted, they had that in
23 their mind, regardless of whether they cited Article 1, Section
24 3, regardless of whether they put it under Title 9 of the
25 election code, we submit that that constitutional provision

1 gave them the power to do what they did.

2 If we are correct -- Your Honor may say we are
3 incorrect. If we're incorrect, we lose that issue and we still
4 have the other ones. If we are correct, then there is a
5 constitutional grant of power for them to do what they did. If
6 they were sloppy in the way they did it because they didn't
7 cite the right provision, that doesn't invalidate their law.

8 Thank you, Your Honor.

9 THE COURT: Okay. Mr. Figinski?

10 MR. FIGINSKI: Your Honor, I think we are at the
11 point where we have beaten a dead horse to death. And I think
12 what we need to do is to take a moment to sum up and tell you
13 what standards there are that you should apply to this case.
14 Now maybe I have misinterpreted where we are. And if Your
15 Honor has questions of our side, I would be delighted to try to
16 respond to them.

17 THE COURT: Okay. Well, let me hear from you on the
18 issue raised about the applicability of early voting only in
19 the general election.

20 MR. FIGINSKI: Applicability of early voting only in
21 the general election.

22 THE COURT: Not applying to the -- or the
23 statute -- I mean, there has been reference to, is it,
24 article --

25 MR. FIGINSKI: Article 1, Section 1, Your Honor?

1 THE COURT: -- Article 15, Section 7, applies --

2 MR. FIGINSKI: Article 15, Section 7, and Article
3 17, 1, 2, and 9 only apply to the general election.

4 THE COURT: Okay. Now, in looking at the plain
5 language -- and I know there has been some discussion of
6 several cases that supposedly say that Article 1, Section 1,
7 does not apply to primaries. But let's look back at Article
8 15, Section 7. Do you have any authority that says, or do you
9 have anything you want to say about the effect of this
10 limitation to -- well, let's see. All general elections shall
11 be held -- the date set by the Section 7 for the general
12 election is Tuesday.

13 MR. FIGINSKI: The general election has to be held
14 on Tuesday. And our submission with respect to the general
15 election, as I understand it, Mr. West has discussed it, as far
16 as the general election is concerned, Article 15, Section 7,
17 and Article 17, Sections 1, 2, and 9, relate only to general
18 elections. And they require that the election be held, as
19 Article 15, Section 7, says, on the Tuesday next after the
20 first Monday in November. All general elections shall be held.

21 Then, it does not apply, 15 and 17 do not apply, to
22 primaries. We can't make that argument. We don't make that
23 argument. There is in my view a substantial issue as to
24 whether Article 1, Section 1, applies to primaries. The State,
25 the defendants, have cited two cases 40 years old which say

1 that they don't apply to primaries. Three judges of the Court
2 of Appeals in Suessmann decided in 2005 say that Article 1,
3 Section 1, because it is all inclusive in its language to say
4 all elections, they say that this applies to primaries as --
5 they would argue it applies to primaries, as well as to
6 general.

7 And I don't want to go to the next level, if I have
8 to go there by anybody construing what I'm saying today, that I
9 have waived that argument as to primaries.

10 THE COURT: Okay. Well, maybe I should ask the
11 other side. What in the plain language of Article 1, Section
12 1, limits its applicability only to primaries?

13 MR. BERMAN: If Your Honor will give me one moment,
14 I will provide Your Honor with the specific answer. Bear with
15 me one moment, if you, Your Honor.

16 (Pause.)

17 Your Honor, straight answer to your question, there
18 is nothing in the language of Article 1, Section -- oh. Did
19 Your Honor ask about Article 1, Section 1, or --

20 THE COURT: Article 1, Section 1. What in the plain
21 language of Article 1, Section 1, says that it does or does not
22 apply to primaries? I mean, it does say all elections shall be
23 by ballot. It appears in its general language to apply to all
24 elections, as opposed -- it doesn't say all general elections.
25 It says all primary elections. And is it reasonable to

1 anticipate that certainly the framers would have understood
2 that there may be primaries in the future that would be
3 regulated by the legislature? But they didn't say all general,
4 they said all elections.

5 MR. BERMAN: Your Honor, the straight answer to Your
6 Honor's straight question is that there is nothing in the
7 express language of Article 1, Section 1 --

8 MR. FIGINSKI: You're looking for page 42.

9 MR. BERMAN: Yes. Thank you.

10 The answer to Your Honor's question is in the two
11 cases that Mr. Figinski referred to. In Hill versus Mayor of
12 Colmar Manor, 210 Md. at page 53, the Court of Appeals in 1956
13 said Article 1 doesn't restrict the legislature's powers as to
14 a primary. That's what the Court of Appeals said. So it's a
15 straight answer. It's not in the words.

16 Primaries didn't exist when that provision was put
17 into effect. We would submit the Court of Appeals' Hill
18 holding is binding on this Court, respectfully. And that the
19 dicta -- I'm sorry. The concurring and dissenting opinion is
20 in Suessmann that Mr. Figinski mentioned may very well be grist
21 for his argument, if this case goes up on appeal. But in this
22 court, Hill is the binding holding. It's not the express
23 language of Article 1. It's the Hill holding.

24 THE COURT: Okay. Anything else?

25 MR. FIGINSKI: We have -- I thought we were in the

1 question period, Your Honor. Do you have any questions? If
2 not, we need to -- I think I need a few minutes to discuss the
3 standards that you have to apply, unless you don't want to hear
4 that. I'll stop right now.

5 THE COURT: I'm happy to hear that.

6 MR. FIGINSKI: May I proceed? Well, I'll wait.

7 (Pause.)

8 MR. BERMAN: It's 210 Md. at page 53, Your Honor, in
9 the Hill case.

10 THE COURT: Let me quickly look at Hill.

11 (Pause.)

12 Okay. I will hear your closing.

13 MR. FIGINSKI: All right. Your Honor, I want to
14 begin perhaps by trying to deal with where Mr. Berman ended.
15 And where Mr. Berman ended was to portray early voting as
16 secure absentee ballot voting, as no excuse absentee ballot
17 voting. And I challenged the defendants to tell me where in
18 the two enactments there was anything referencing that. And
19 they cannot do it.

20 And they say, in response to that, that the
21 legislature has great power, they have all the power, and
22 they're not circumscribed. They can pass this bill, and they
23 can call it anything. Under the defendants' analysis, we could
24 have a bill enacted dealing with crabbing. And it could be
25 applied to oysters.

1 Unfortunately, they overlook another constitutional
2 amendment. The legislature does not have plenary power, Your
3 Honor. They have only that power which is given to them by the
4 Constitution. And the Constitution circumscribes them in
5 certain ways. We have argued that Article 3, Section 49, says
6 that they may enact laws dealing with elections not
7 inconsistent with the Constitution. But there is another
8 provision which their argument today has brought to the fore.

9 And that argument is one which has tripped other
10 efforts by the General Assembly four times since 1989. And
11 that's Article 3, Section 29. Article 3, Section 29, does
12 not -- we had no reason, absolutely no reason, on the face of
13 what was enacted over the governor's veto, to think that
14 Article 3, Section 29, was at issue here, because the only
15 thing mentioned in Article 3, Section 29, was early voting.
16 And we challenged early voting.

17 And now they come in here and tell us it's not early
18 voting, it's no excuse absentee voting. And it's not in the
19 bill. And this Constitution Section 29, Article 3, says that
20 every law enacted by the General Assembly shall embrace but one
21 subject and shall be described in its title. There is
22 nothing -- for them to come in here today after all these
23 months, after all this time, and to change the name of the game
24 in order to save what cannot be saved is unconstitutional.

25 But this -- we don't have to go there, Your Honor.

1 We can go to what we've argued: Article 1, Section 1; Article
2 15; and Article 17.

3 Now you have before you two motions. One is a
4 motion for summary judgment. And in that regard, Your Honor,
5 on July 17, when we filed our initial pleadings, we filed with
6 that pleading a motion for summary judgment. And that motion
7 very clearly said that there was no issue of material fact.
8 There remains to be no issue of material fact.

9 And we went on to tell you in the memorandum that
10 accompanied it that this case was controlled by Salisbury
11 Beauty Schools versus State Board. And we also noted both
12 Kelly versus Marylanders for Sports Sanity, Bane versus
13 Secretary of State, and Village Square versus Retail
14 Partnership, all were constitutional issues decided summarily.
15 Nowhere, nowhere, not one word, has been addressed by the State
16 in its voluminous pleadings to this case authority.

17 Salisbury Beauty Schools says some very relevant
18 things about summary judgments. You have to have a genuine
19 dispute of material fact. Disputes of some facts which are not
20 material are irrelevant. And the material fact here is that
21 the statutes were enacted under certain titles and are infirm
22 because they are inconsistent with the Constitution under
23 Article 1, Section 1, Article 15 and Article 17.

24 I am not going to stand here and reiterate that
25 which we already said. But as a formula for decision, Your

1 Honor needs to find only that there is no genuine dispute of
2 material fact. And everything that they have told you about
3 the summary judgment issue is that it is more convenient or it
4 is somehow in the public interest that an unconstitutional law
5 go into effect regardless of the fact that it's
6 unconstitutional. Now I know of no authority for that.

7 Likewise with respect to the injunctive relief, on
8 the day we filed the case on July 17, we submitted a memorandum
9 on the issue of a temporary restraining order. We stand by
10 that memo. We stand by that memo, Your Honor, because of
11 certain clear, absolutely clear, case law.

12 It is absolutely certain that in 281 Md. 548 certain
13 factor were set out to guide preliminary relief. As recently
14 as 2005, the Court of Special Appeals in a case called DMF
15 Leasing versus Budget Rent-A-Car clearly held that those
16 criteria are merely factors, they are not elements like a tort.

17 And DMF Leasing did another thing, Your Honor. It
18 gave us some insight as to what, not as to what, but the
19 difference between injunctive relief when a governmental
20 interest is at issue and when merely private litigants are
21 fighting. This is not a case, Your Honor, as a traditional
22 case, for preliminary relief. This is not a case where some
23 employee left employment and violated a covenant not to
24 compete. That's not what's before you.

25 In such a case, convenience, public interest,

1 irreparable harm and all those other things might very well be
2 at issue and are at issue. But when it comes to dealing with
3 cases that deal with government entities, Judge Davis has
4 explained to us that the Court of Appeals expressly adopted a
5 theory that when government interests are at stake, fewer than
6 all four factors apply. And the trial courts exercising their
7 traditional equity powers have broader latitude than when only
8 private interests are involved.

9 Under the Court of Appeals holdings, then when
10 government entities are involved, Courts have discretion to
11 disband with vigorous application of all four factors. And he
12 points to the Fogel versus H&T Restaurant case. And Fogel, the
13 Court said, "In litigation between government and private
14 parties or in cases where injunctive relief deals directly
15 impacts governmental interest," which is what this is, "the
16 Court is not bound by the strict requirements of traditional
17 equity developed in private litigation. We have also
18 acknowledged that courts of equity may, and frequently do, go
19 much farther both to give and withhold relief than they are
20 accustomed to do when only private interests are at stake."

21 And I submit to you, Your Honor, that that is
22 particularly true when a matter is raised as to the
23 constitutionality of an enactment.

24 If, just as Judge Karwacki said in the Schaeffer --
25 no, the doctrine. What's the doctrine? The judge has already

1 ruled on it.

2 MR. WEST: Laches.

3 MR. FIGINSKI: On the laches doctrine -- I'm getting
4 old, Your Honor. Sorry. On the laches doctrine, just as he
5 said in that, when something is intrinsically void, you look at
6 it in a different light. And what we are arguing here is that
7 it is intrinsically void.

8 Now, Your Honor, I do not stand here and suggest to
9 you that these issues are easy. And I do not suggest to you
10 that they are without some argument on each side. Mr. West has
11 told you that 15 and 17 hold. And I tried to argue what
12 Article 1, Section 1, holds. I have tried to express it both
13 in our pretrial hearing, a memorandum, or whatever the thing
14 was called, the thing we handed up today. But, Your Honor, I
15 am fading. I don't have much voice left. And I don't have
16 much energy left. But these bills should not have much life
17 left.

18 And they should not have much life left, Your Honor,
19 if for no other reason, if for no other reason, than what we
20 concluded our trial memorandum with, words uttered by the Court
21 of Appeals just days ago, on July 28. And it's a discussion
22 quoting Chief Judge Chase in an 1802 case about what is a
23 judicial obligation when a piece of legislation is challenged.
24 Quoting from Judge Chase, and contrary to what the State has
25 argued, Judge Chase wrote, "The legislature being the creature

1 of the Constitution" -- being the creature of the Constitution
2 is not being omnipotent. This is not a parliamentary
3 government. This is a constitutional democracy.

4 Back to Judge Chase, "The legislature being the
5 creature of the Constitution and acting within a circumscribed
6 sphere not inconsistent with the Constitution is not omnipotent
7 and cannot rightfully exercise any power but that which is
8 derived from that instrument. It is the office and province of
9 the Court to decide all questions of law which are judicially
10 brought before them, according to the established mode of
11 proceeding, and to determine whether an act of the legislature,
12 which assumes the appearance of the law, is clothed with the
13 garb of authority, is made pursuant to the power vested by the
14 Constitution and the legislature. If it is not the result of
15 emanation of authority derived from the Constitution, it is not
16 law and cannot influence the judgment of the Court in the
17 decision of the question before them."

18 Your Honor, we closed with that in the pretrial
19 memorandum. I close with that now. I would be delighted to
20 answer any questions you have. I hope I haven't intruded upon
21 your patience too much today, Your Honor. But this, I ask you
22 to grant the relief that has been prayed, a summary judgment
23 for the plaintiffs, at least as to the general election.

24 In saying that, I am not waiving Article 1, Section
25 1. I am simply recognizing that it is, among all the issues

1 presented, the most contentions that you have to decide.

2 Thank you.

3 THE COURT: Thank you very much.

4 MR. BERMAN: With the Court's permission,
5 Mr. Figinski opened up by saying that the legislature does not
6 have plenary power. We cited half a dozen cases at pages 18 to
7 19 of our memo. First Continental, a 1962 decision, 229 Md.
8 302, "The powers of the Maryland legislature are plenary except
9 as restrained or confined by the federal or state
10 constitutions."

11 The plaintiffs have brought suit based on primary
12 elections. They concede that their argument is a good faith
13 effort to modify the law. We appreciate the fact that they are
14 candid about that. They can't succeed on the primary
15 elections. The Constitution simply does not protect them.

16 Mr. Figinski has argued, I would say forcefully,
17 that Article 3, Section 28, the titling portion of the
18 Constitution, somehow defeats my argument that Article 1,
19 Section 3, of the absentee voting portion provides power.
20 Nothing in Article 3, Section 28, prescribes magic words that
21 have to be in the title of the bill. The bill is described.
22 It's properly described. It's valid. And it's covered by
23 Article 1, Section 3, for all the reasons we have argued and
24 I'm going to repeat.

25 Respectfully, the Court doesn't have to "buy" my

1 Article 1, Section 3, argument. I can lose on that, and I
2 still can win the case. Here's how: The bill was enacted.
3 Under plenary power, they have to show a constitutional
4 provision that prohibits that exercise.

5 We say Article 1, Section 3, expressly authorizes
6 that exercise. If we're right, we win. If we're wrong, they
7 still have to show a prohibition. We've been through Article
8 1, Section 1, Article 15, Article 17. I'm not going to repeat
9 what we've covered since early this morning. For all the
10 reasons we've stated, they're not a prohibition on this bill.
11 And if there is no prohibition, the bill is constitutional, and
12 it is valid.

13 Again, we suggest or request or submit that the
14 Court need hold only that an election is more than the casting
15 of some ballots by some voters. If the Court agrees with that
16 proposition, their whole case falls.

17 They never answered my tsunami argument. The reason
18 is because they can't. If four days of voting and a tsunami
19 that postpones the election, is that an election? They must
20 say yes to win the case. But if they say yes, it demonstrates
21 how tenuous their argument is. Because, in Mr. West's words,
22 no common person would think that four days of early voting by
23 15 percent of the voters with the rest of the election
24 postponed due to a tsunami is an election. They cannot
25 logically prevail.

1 Jackson, again, an election is not free if voters
2 cannot cast ballots. Early voting ensures that people who are
3 busy, people who are poor, people who have daycare, people who
4 have children can cast ballots. That's what this is all about.

5 Now, on the summary judgment argument, plaintiffs
6 spent a good deal of their closing argument on summary
7 judgment. So I would like to address it a little bit.

8 One thing that is wholly missing, wholly missing,
9 from their argument is what is the standard for entry of a
10 final injunction. We looked. We didn't find any Maryland case
11 law on what the standard is for entry of a final injunction.
12 So we had to go to the Supreme Court of the United States in
13 the case of E-Bay, Inc., versus Mercexchange, M-e-r-c-e-x-c-h-
14 a-n-g-e, L.L.C. It was decided May 15, 2006. It is in advance
15 sheets. There is no U.S. citation of which I'm aware of.

16 In the slip opinion at page two, the Supreme Court
17 said, "According to well-established principles of equity, a
18 plaintiff seeking a permanent injunction must satisfy a four
19 factor test before a Court may grant such relief." And they
20 went on to say the plaintiff has to demonstrate, and I'm not
21 quoting exactly, irreparable injury, inadequate remedy at law,
22 balance of hardships, and public interest.

23 The Supreme Court went on to say that the decision
24 to grant or deny permanent injunctive relief is an act of
25 equitable discretion. And the Fogel case and the DMF case give

1 Your Honor wide latitude. There is no doubt about it, wide
2 latitude to grant or to withhold equitable relief. But
3 noticeably absent from their motion for summary judgment,
4 noticeably absent from their entire closing argument, is the
5 standard for summary judgment on a permanent injunction. The
6 plaintiffs argue only likelihood of success or success on the
7 merits. We have beaten that one to death. I'm not going to
8 repeat what we've talked about.

9 We've argued there is no injury to these plaintiffs.
10 They can't assert third party rights. They can't take the
11 rights away from other voters. We've argued balance of
12 inconvenience. We've argued public interest. We've argued the
13 facts. We've proffered the facts. All that is absent from
14 their summary judgment argument.

15 We point out, and the Court may deny, but we have a
16 motion for extension of time to respond to summary judgment.
17 We cite the Basilico case that says the presence of unanswered
18 interrogatories is a factor to consider. We have a 2-501(d)
19 affidavit. None of these issues were addressed by the
20 plaintiff.

21 At bottom, Your Honor -- well, before I go to at
22 bottom, there are a couple of what I would call almost
23 housekeeping issues. We pointed out and they have conceded, I
24 think pretty much conceded, if not conceded, subject to arguing
25 that the Court of Appeals should change its holdings in

1 accordance with the Suessmann dissents, that they can't win on
2 the primary election, that the Constitution doesn't prohibit
3 early voting on the primary. We've argued that under Maryland
4 statutes, primaries should be conducted in the same way, I'm
5 sorry, general elections should be conducted in the same way as
6 primaries. And we think that is a forceful argument.

7 We also have pointed out that there is an extremely
8 over-broad request for relief here, and that the plaintiffs
9 seek to enjoin implementation of the entire early voting
10 statute. And there are a lot of provisions of the early voting
11 statute that have nothing to do with the issues that they're
12 talking about. The early voting statute provides by decisions
13 by a super majority of the board of elections. Are they
14 seriously contending that should be enjoined? There are a host
15 of other provisions. And they haven't addressed, they have
16 made no attempt to narrow their request for relief to the
17 pertinent issues.

18 They say an election is held when the voting is
19 going on. Not one Court in 200 years of American history has
20 agreed with them, not one. The dictionaries have multiple
21 definitions. There may be some that support them. There are
22 certainly some that support us. The cases support us. The
23 cases interpreting virtually identical statutory provisions
24 support us.

25 We would suggest that at bottom on this decision, at

1 bottom, we are here on August 8. It would be disruptive to the
2 process to interfere. We accept the Court's ruling on laches.
3 However, for purposes of injunctive relief, the plaintiffs have
4 waited too long. Reynolds versus Simms and its progeny stand
5 for the proposition that the Court should consider the impact
6 of injunctive relief on the imminent election, the ongoing
7 processes, the state election machinery.

8 We have submitted evidence on the record, and it is
9 unopposed, that injunctive relief would interfere with the
10 electoral process and interfere with voters' rights and
11 interfere with the electorate and interfere with employers.
12 And that is unopposed. We would submit that that is one of the
13 weightiest factors that the Court should consider in balancing
14 the various factors for final injunctive relief.

15 We, of course, have argued that the Court should not
16 reach final injunctive relief. The Court has ruled otherwise.
17 We accept the Court's ruling. But we think that it is
18 critically important to consider that factor.

19 To sort of wrap up on likelihood of success, we
20 think there is an express grant. We certainly have argued that
21 there is no express prohibition on the exercise of the plenary
22 power that has been discussed here. That is only one of the
23 multiple prongs that the plaintiffs must satisfy to get
24 permanent injunctive relief. They have to show irreparable
25 injury. They haven't.

1 These plaintiffs will vote how and when they want to
2 vote under the early voting laws. The balance of convenience
3 tips markedly in the State's favor given the imminency of the
4 election, given the fact that the train left the station, and
5 that it's too late to turn the ship around.

6 And the public interest is enunciated in Jackson, an
7 election is not free if voters cannot cast ballots. The risk
8 of an injunction is that it will interfere, in part because of
9 the plaintiffs' delay and in part because of the complexities
10 of modern society, it will interfere with the rights of people
11 to exercise their franchise as they choose to do when those
12 people have no notice of the suit, are not part of the suit.

13 Your Honor, we would respectfully request that the
14 Court deny the request for injunctive relief.

15 Thank you, Your Honor.

16 MR. FIGINSKI: Your Honor, briefly, if I may.

17 THE COURT: I think you have the last word.

18 MR. FIGINSKI: Your Honor, it has been said that we
19 have made too broad an attack. On July 17, we filed our
20 verified complaint. And we asked for a decree that declares
21 Chapter 5 and portions of Chapter 61, insofar as they purport
22 to allow early voting, as well as any other implementing
23 legislation, are unconstitutional.

24 We don't ask to deal with Ms. Lamone's plenary
25 powers that may have been attached to one of these provisions.

1 We ask for specific relief. And we ask for an injunction
2 enjoining the State, Ms. Lamone, and the State Board, from
3 implementing early voting until such time, implementing early
4 voting until such time, if ever, as the Constitution of
5 Maryland is amended to allow the General Assembly to provide
6 for a general election to be held, other than on the Tuesday
7 after the first Monday in the month of November, and to allow a
8 voter who does not avail himself or herself of the
9 constitutionally sanctioned right to vote by absentee ballot to
10 vote in a location away from the ward or election district in
11 which the voter resides.

12 We have not fired a bunderbust at these statutes.
13 We have filed and ask for specific relief. And that specific
14 relief, I believe, Your Honor, has been made clear to you. If
15 you have any questions, I will be delighted to try to answer
16 them. Otherwise, thank you for your patience.

17 THE COURT: Okay. No, I don't have any questions.
18 I am going to consider everything that I have heard, the
19 arguments. And I am want to re-read the cases. And hopefully
20 I can render a decision in the next day or so. I'm going to
21 try to do that. Will you all be available in case I need you
22 back in the next day or so?

23 MR. FIGINSKI: Your Honor's wish will be our
24 command.

25 THE COURT: All right.

1 MR. FIGINSKI: And I believe if anyone wants to
2 interfere with that, we'll tell them that you asked for us.

3 THE COURT: All right. I will try not --

4 MR. BERMAN: Your Honor, I am scheduled to be off
5 tomorrow afternoon, Thursday, and Friday. If possible, if
6 we're needed, I would prefer, if it's possible, in the morning
7 of tomorrow, because I am scheduled to be away.

8 THE COURT: Okay.

9 MR. BERMAN: Or not to be away, but to be off on
10 personal time, leave time.

11 THE COURT: Well, I can't promise you that I will
12 have this done tomorrow. I am still not 100 percent sure
13 whether I am just going to write this or whether or not I am
14 going to bring you back and put it on the record. It depends
15 on where I am. And I want to -- I can tell you what I want to
16 do, and that's the quickest and most efficient, because this
17 needs to get resolved so that the train can continue going
18 wherever it is going.

19 All right. Thank you all for your cooperation with
20 each other.

21 MR. FIGINSKI: Thank you, Your Honor, for your time.

22 MR. BERMAN: Thank you.

23 THE CLERK: All rise.

24 (Whereupon, the hearing was concluded.)

25

C E R T I F I C A T E

CompuScribe hereby certifies that the attached pages represent an accurate transcript of the duplicated electronic sound recording of the proceedings in the Circuit Court for Anne Arundel County in the matter of:

Case No. C-2006-115807

MARIROSE CAPOZZI, et al.

v.

STATE OF MARYLAND, et al.

By:

Gail A. Williams, Transcriber

MARIROSE JOAN CAPOZZI, *et al.*

Plaintiff,

v.

STATE OF MARYLAND, *et al.*

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No. C - 06 - 115807

* * * * *

MEMORANDUM OPINION

This matter came before the Court on August 8, 2006. The Court heard argument regarding the Defendants' Motion to Dismiss and their defense of laches, including a proffer of testimony agreed upon by the parties. The Court also heard argument regarding the parties' positions on whether the Court should proceed in accordance with Maryland Rule 15-505(b). The Defendants' Motion to Dismiss, insofar as the Defendants sought dismissal of the State of Maryland as a party, was granted. The Court held that the defense of laches would not bar the Plaintiffs' Complaint.¹ The Court then proceeded in accordance with Maryland Rule 15-505(b), which allows the Court to order that a trial on the merits be advanced and consolidated with the preliminary injunction hearing.² Subsequent to this hearing on the Plaintiff's Verified Complaint for Declaratory and Injunctive Relief, the matter was held *sub curia*.³

¹ The Court finds, having received and reviewed the proffer of evidence that the only factual issues in this case relate to the Defendants' laches defense. The Court finds that the substantive issues raised in the Plaintiffs' Verified Complaint for Injunctive and Declaratory Relief raise purely questions of law, and that there are no material facts in dispute. Having rejected the Defendants' argument for laches, for the reasons stated on the record, the only remaining issues are therefore questions of law.

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Upon consideration of the arguments of the parties and the evidence admitted, the Court presents its conclusions below.

BACKGROUND

The Plaintiffs in this case are Queen Anne's County, Maryland, taxpayers and residents. On July 17, 2006, Plaintiffs filed a Verified Complaint for Declaratory and Injunctive Relief, a Motion for a Temporary Restraining Order and Preliminary Injunction, and a Motion for Summary Judgment in the Circuit Court for Queen Anne's County. Plaintiffs requested in their Complaint that the Court declare as void Chapter 5 of the 2006 Laws of Maryland and portions of Chapter 61 of the 2006 Laws of Maryland,⁴ and enjoin the Defendants from implementing these laws. The Plaintiffs have sued the State of Maryland, the Maryland State Board of Elections, and Linda Lamone, in her capacity as the Administrator of the Maryland State Board of Elections.

² A temporary restraining order, by definition, is an injunction granted without the opportunity for a full adversary hearing; whereas, a preliminary injunction may be granted after the opportunity for a full adversary hearing. Md. Rule 15-501.

³ Because the Court proceeded to hear the parties on the merits, by default, the issue of summary judgment becomes moot.

⁴ Chapter 5 of the 2006 Laws of Maryland was introduced as Senate Bill 478 during the 2005 session. It created a new § 10-301.1 of the Election Law Article of the Maryland Code. The bill was passed by both houses of the General Assembly, and vetoed by the Governor on May 20, 2005. Both houses overrode the veto on January 17, 2006, and legislation was subsequently enacted on February 10, 2006. The bill was codified as Chapter 5 of the 2006 Laws of Maryland, found in the Advance Sheets, Volume 1, at pages 20-22. See Plt.'s Compl., Ex. C.

Chapter 61 of the 2006 Laws of Maryland was introduced as House Bill 1368 during the 2006 session. It repealed and reenacted § 10-301.1(b) and (c) with certain amendments and specified other necessary action for implementation of early voting. The bill was passed as emergency legislation by both houses of the General Assembly, then vetoed by the Governor. Both houses overrode the veto, and the legislation was subsequently enacted on April 10, 2006. The bill was codified as Chapter 61 of the 2006 Laws of Maryland, found in the Advance Sheets, Volume 1, at pages 388-402. See Plt.'s Compl., Ex. D.

In response to the Plaintiff's Complaint, the Defendants, collectively through the Attorney General, filed a Motion for Transfer of Venue on July 24, 2006. On July 28, 2006, the Circuit Court for Queen Anne's County, ordered that the matter be transferred to the Circuit Court for Anne Arundel County.⁵

Upon transfer to this Court, a conference call for scheduling was held. The parties agreed to set a hearing on August 8, 2006. On August 4, 2006, the Defendants filed, through the Attorney General's office, a Motion to Dismiss the Complaint, a Memorandum in Opposition to the Plaintiffs' Motion for a Temporary Restraining Order, a Motion for Extension of Time to respond to the Plaintiffs' Motion for Summary Judgment, and a request for a hearing on their Opposition to Plaintiffs' Motion for a Temporary Restraining Order. Upon receipt of these materials, a second conference call was held and it was agreed that the Defendants would submit a proffer of evidence with regard to their laches defense and it was further decided that a determination would be made at the hearing on how to proceed after argument regarding laches was heard.

After reviewing the pleadings and submission of counsel, and after hearing from counsel, this Court concluded that it would be appropriate and expedient to advance and consolidate the merits with the hearing being held on the preliminary injunction and laches, as permitted by Md. Rule 15-505(b), particularly inasmuch as the remaining issues involved purely legal matters. Plaintiff consented to this action. Defendants opposed consolidation, arguing that discovery needed to be concluded and that they were not sure how things would "play out." The Court

⁵ Judge Ross wrote in his Memorandum and Order, that the Defendants and their offices are located in Anne Arundel County, and "[c]learly, it is not only the most convenient forum, it is the proper venue for this suit under the statute and serves the interest of justice." The Court also cited the relevant venue statutes in the Maryland Code.

indicated a willingness to allow additional time, if needed, for follow-up legal research or response. No such request has been made.

Plaintiffs contend that Chapter 5 of the 2006 Laws of Maryland and portions of Chapter 61 of the 2006 Laws of Maryland (generally referred to as the "early voting acts," or "early voting statutes"), violate the Maryland Constitution. In essence, the early voting acts allow Maryland voters to cast their ballots on days other than the traditional election day by polling in certain designated areas "beginning the Tuesday before a primary or general election through the Saturday before the election."⁶ Plt.'s Compl., Ex. C. In certain counties, the local board of election is required to establish at least three early voting polling places, and in the remaining counties, at least one early voting polling place must be established. The acts further state that "a voter may vote at any early voting polling place in the voter's county of residence." *Id.* at Ex. C., p. 22 (section 10-301.1(D) of the Act).

Article III, Section 49 of the Maryland Constitution sets forth the power of the Legislature to regulate elections. In its entirety, it reads:

The General Assembly shall have power to regulate by Law, not inconsistent with this Constitution, all matters which relate to the Judges of election, time, place and manner of holding elections in this State, and of making returns thereof.

MD. CODE ANN., CONST. ART. III, § 49.

⁶ As set forth in Senate Bill 478, the legislation was enacted:

For the purpose of establishing a process to allow voters to vote in elections at early voting polling places in the State; specifying the period in which early voting is allowed; requiring the local boards of elections to establish the early voting polling places in each county; requiring the local boards in certain counties to establish at least a certain number of early voting polling places for each primary or general election; requiring the State Board of Elections to adopt certain regulations and guidelines by a certain date; making certain provisions of law applicable to early voting; and generally relating to early voting in elections in the State.

The Plaintiffs argue that the joint effect of the acts is to allow "every voter in Maryland... to vote in every primary and general election on a day other than Election Day and, in most cases, at a location distant from the ward or election district where the voter resides;" and that this effect is in derogation of the Maryland Constitution.⁷ Pl.'s Compl. at ¶¶ 16, 17. Specifically, Plaintiffs maintain that the acts are inconsistent with the following sections of the Maryland Constitution because of the location and dates upon which these laws allow elections to be held:

MD. CODE ANN., CONST. ART. I, § 1:

Elections to be by ballot; qualifications of voters; election districts.

All elections shall be by ballot. Every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which he resides at all elections to be held in this State. A person once entitled to vote in any election district, shall be entitled to vote there until he shall have acquired a residence in another election district or ward in this State.

MD. CODE ANN., CONST. ART. XV, § 7:

Time for holding general elections.

All general elections in this State shall be held on the Tuesday next after the first Monday in the month of November, in the year in which they shall occur.

⁷ The Plaintiffs also emphasize the political positions regarding the acts, stating that Governor Ehrlich vetoed each bill, and that the necessary overrides of the Governor's vetoes were "party-line votes; not a single Republican delegate or state senator voted in favor of either of the overrides. In effect, therefore, the General Assembly of Maryland, in highly partisan fashion, has presumed to alter by legislation the organic law of Maryland...." Pl.'s Compl. at p. 7, ¶ 21.

While the Plaintiffs presented this information in their pleadings, the Court agrees with the Defendants that such political commentary should have and, in fact, it has not had any influence upon the Court's consideration of the purely legal issues presented. The political posture involved is irrelevant to the ultimate Constitutional analysis.

Plaintiffs also claim that Sections 1 and 2 of Article XVII, titled Quadrennial Elections, have been violated:

Section 1. Purpose of article; "officers" defined.

The purpose of this Article is to reduce the number of elections by providing that all State and county elections shall be held only in every fourth year, and at the time provided by law for holding congressional elections, and to bring the terms of appointive officers into harmony with the changes effected in the time of the beginning of the terms of elective officers. The administrative and judicial officers of the State shall construe the provisions of this Article so as to effectuate that purpose. For the purpose of this Article only the word "officers" shall be construed to include those holding positions and other places of employment in the state and county governments whose terms are fixed by law, but it shall not include any appointments made by the Board of Public Works, nor appointments by the Governor for terms of three years.

Section 2. When elections for State and county officers to be held.

Except for a special election that may be authorized to fill a vacancy in a County Council under Article XI-A, Section 3 of the Constitution, elections by qualified voters for State and county officers shall be held on the Tuesday next after the first Monday of November, in the year nineteen hundred and twenty-six, and on the same day in every fourth year thereafter.

Defendants contend that the early voting acts were validly passed pursuant to the plenary power of the General Assembly. They note that the "...statutes do not compel the plaintiffs - - or anyone else - - to vote early, or to vote outside of their ward or district..." Def.'s Op. Mem. at p. 2. Briefly, the Defendants' arguments are set forth below and will later be detailed in the discussion section.

Regarding the Plaintiffs' challenge to the location of early voting polling places based on Article I, Section 1,⁸ the Defendants maintain that language related to where a voter casts his vote simply indicates an *entitlement* to vote in his district or ward, not a *requirement* that a voter cast his vote in his district or ward.

Regarding the Plaintiffs' challenge to the dates for early voting, the Defendants maintain that an election is not defined as the day upon which one casts his vote. Instead, the election itself is the "point of transition" when the votes have been cast and the collection may begin. Def.'s Oral Argument. However, the Defendants noted that tabulation itself "isn't the key" to the definition of election. *Id.* The Defendants in support of their argument defer and rely upon a Supreme Court case, *Foster v. Love*, 522 U.S. 67 (1997), and opinions from several federal circuit courts citing *Foster*. See *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773 (5th Cir. 2000), *Millsaps v. Thompson*, 259 F.3d 535 (6th Cir. 2001), *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169 (9th Cir. 2001).⁹

DISCUSSION

Having reviewed the written submissions of each party, all exhibits, the Defendants' proffer and the arguments presented, this Court finds that the General Assembly exceeded its Constitutional authority in enacting the early voting statutes. For the reasons discussed below, the Defendants are enjoined from further implementing any portion of the subject statutes related to early voting.

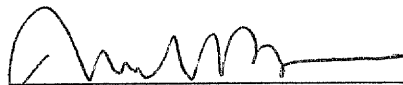
⁸ Unless otherwise indicated, citations to Articles herein refer to MD. CODE ANN., CONST. (2003 Repl. Vol.).

⁹ In addition to these arguments, the Defendants expounded upon the perceived benefits to early voting. While there may be a multitude of arguments opposing or supporting early voting, these factors are irrelevant to the ultimate Constitutional analysis. The Court's focus remains on whether the Legislature exceeded its authority in passing the early voting acts.

Wherefore, the defendants request that the time within which they must reply to plaintiffs' motion for summary judgment be extended to a date that is thirty days after the close of discovery, said date to be established by routine scheduling order.

RESPECTFULLY SUBMITTED,

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

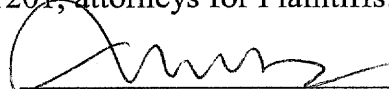


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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of August, 2006, a copy of the foregoing Defendants' Motion for Extension of Time to Respond to Plaintiffs' Motion for Summary Judgment was hand delivered to M. Albert Figinski, Esquire, One Charles Center, 100 N. Charles Street, Suite 2200, Baltimore, MD 21201 and Christopher R. West, Esquire, 250 West Pratt Street, 16th Floor, Baltimore, MD 21201, attorneys for Plaintiffs.



Michael D. Berman

The Court shall first discuss the issue regarding election districts and shall next discuss the issue regarding the date for holding elections. Relevant to the Court's analysis in this case is the language of the Court of Appeals in *Buchholtz v. Hill*:

While statutes are sometimes hastily and unskillfully drawn, a Constitution imports the utmost discrimination in the use of language. Chief Justice Marshall declared that the patriots who framed the Federal Constitution must be "understood to have employed words in their natural sense, and to have intended what they have said." *Gibbons v. Ogden*, 9 Wheat. 1, 188, 6 L.Ed. 23, 68. The Maryland Constitution was carefully written and solemnly adopted by the Constitutional Convention of 1867, and approved by the people of the State; we should therefore be careful not to depart from the plain language of the instrument.

178 Md. 280, 285-286 (1940).

Article III, Section 49, gives the General Assembly the power to enact laws that relate to the time, place and manner of elections. However, that power is specifically constrained by the clause that those laws must not be "inconsistent with [the Maryland] Constitution." Art. III, § 49.

A. Election Districts.

This Court finds that the provisions in early voting that would allow some voters to cast their votes in a district or ward other than the one in which they reside are inconsistent with the language of Article I, Section 1. In this section, the Constitution first sets forth the qualifications one must possess in order to be eligible to vote. This section next states that each voter "shall be entitled to vote in the ward or election district in which he resides at all elections to be held in this State. A person once entitled to vote in any election district, shall be entitled to vote there until he shall have acquired a residence in another election district or ward in this State." Art. I, § 1.

The Plaintiffs rely on the plain meaning of this language and the legal principle of *expression unius est exclusion alterius*, meaning that the “expression of one thing is the exclusion of another.” They cite a multitude of cases where the Court of Appeals has applied this legal principle to Constitutional issues. See Plt.’s Trial Mem. at pp. 11 – 12. Applied to Article I, Section 1, the “expression of a citizen’s place of voting in the district or ward of his residence until the citizen acquires a new residence *excludes* voting elsewhere.” Plt.’s Trial Mem. at 11. They urge the Court to find that residence is a voting “qualification that can’t be changed by emergency legislation.” Plt.’s Oral Argument.

The Defendants argued that the physical place *where* you vote is not a qualification. In their opinion, the Constitution only requires that all elections be by ballot, that one be a U.S. citizen over the age of 18, and a resident of the state at the specified time of registration. They assert the fact that the remainder of Article I, Section 1 simply sets forth the entitlement to vote for those meeting these qualifications, and secures to voters the *entitlement* to vote *in their district* – not a requirement that they do so. The Defendants briefed the legislative history regarding Article I, Section 1. Succinctly put, the Defendants propose that this language was merely another safeguard to afford voters a convenient venue in which to cast their ballot. In other words, the goal was not to restrict voters from voting outside of their district, but to prevent the Legislature from forcing voters to travel great distances – especially in the times of horse and buggy – to exercise their franchise.

This Court must rely on the holdings in two cases where the Court of Appeals clearly interpreted the language of Article I, Section 1 regarding the location where one must vote. In

Kemp v. Owens, 76 Md. 235, 24 A. 606, 607 (1892), the Court states:

Having the requisite qualifications, he may move from place to place within a legislative district or county; but he can only vote in the ward or election district in which he resides at the time he offers to vote, provided he be duly registered in that ward or election district. As a consequence of this, it follows that **[one] cannot lawfully vote in a ward or election district in which he does not reside, even though that ward or election district be within the legislative district or county where he has his residence....** (emphasis added)

Kemp was cited in *Smith v. Hackett*, 129 Md. 73 (1916), where the Court wrote:

The constitutional qualifications of the right of suffrage are said to restrict its exercise to the precinct in which the voter is registered.... **The only condition imposed by the Constitution as to the place where the right to vote shall be exercised is that it must be in the election district of which the voter is a resident....** This court has had occasion to emphasize the fact that the Constitution has conferred upon citizens of the state, otherwise qualified, the right to vote in the election district of their residence. (emphasis added)

Based on these decisions, the Court finds that the Constitution entitles qualified voters to cast their votes only in the "ward or election district in which he resides." This language is not permissive, but mandatory. Voting in the ward or district is not a matter of choice that can be waived as Defendants' counsel suggests.

In addition to the principal issue regarding whether voters may Constitutionally cast their votes outside of their district, the Defendants also argued that Article I, Section 1 is only applicable to the general election, and not the primary. This Court notes that such a reading could lead to an absurd result, as it would eliminate *all* Constitutional qualifications for primary elections. Thus, a 12 year-old, non-U.S. citizen, residing in Virginia, would not be barred by the Constitution from voting in the Maryland primary election. The Court again recognizes that the plain language of Article I, Section 1, begins with the phrase "*all* elections." The Court must

“...lean in favor of that construction which will render all words operative, rather than the construction which may make some words nugatory.” *Reed v. McKeldin*, 207 Md. 553, 561 (1955). Therefore, on its face, and pursuant to the plain language, this clause raises no doubt that the qualifications it sets forth are applicable to primaries, as well as the general election.¹⁰

B. Timing of Elections.

To the extent that the subject acts expand the time for holding the general election, the acts are again inconsistent with Article XV, Section 7. This section states that “[a]ll general elections in this State shall be held on the Tuesday next after the first Monday in the month of November, in the year in which they shall occur.” (emphasis added) See also Art. XVII, § 2, Art. II, § 2.

Plaintiffs maintain that where Article XV, Section 7 states that the election “shall be held on the Tuesday next after the first Monday,” it refers to a single day. The word “held,” they argue, indicates that an event begins and ends during a particular time frame.¹¹

¹⁰ For support of their proposition that Article I, Section 1 of the Constitution does not apply to the primary, Defendants cite a line of cases, which begins with *Jackson v. Norris*, 195 Md. 579 (1937). The issue in these cases concerns the validity of write-in votes in reference to the ballot. Recall that Article I, Section 1 states that “[a]ll elections shall be by ballot.” The holding in *Jackson* was not made “applicable to primary elections nor to municipal elections other than those of the city of Baltimore.” 195 Md. at 603. The Court stated that “[t]his exception must be made since the provisions of article 1, § 5 of the Constitution have been held to apply solely to the right to vote at federal and state elections, and municipal elections in the city of Baltimore.” *Id.* at 603-4. *Jackson* cited *Smith v. Stephan*, 66 Md. 381 (1887), as precedent for this exception. Article I, § 5 provided that “no person shall vote at any election, federal or state, or at any municipal election in the city of Baltimore, unless his name appears in a list of registered voters.” *Smith* held that Article I, § 5 did not apply to local municipal elections in other towns in the state.

This Court reads these decisions to be limited to the development of the constitutionality of write-in votes during primary elections and other local elections; not for the proposition that the qualification requirements in Article I, Section 1 do not apply to primaries. On point is *Hennegan v. Gearner*, 186 Md. 551, 559 (1946), where it was said, “[t]here is no fundamental right in any voter to participate in the primaries or conventions of parties other than the one to which he belongs.” Implicit is the holding that voters do have the Constitutional right to vote in primaries, and the foundation for that right is found in Article I, Section 1.

For the Defendants, this issue turns on the meaning of the word "election." They argue that the word "election," as used in the Constitution, refers not only to the date upon which a ballot is cast, but the date upon which voting is concluded and the transition to tabulating the votes begins.¹² The Defendants find support in *Foster*, where the Supreme Court stated, "[w]hen the federal statutes speak of 'the election' of a Senator or Representative, they plainly refer to the combined actions of voters and officials meant to make a final selection of an officeholder.... By establishing a particular day as 'the day' on which these actions must take place, the statute simply regulates the time of the election, a matter on which the Constitution explicitly gives Congress the final say." *Foster*, 522 U.S. at 71-2.

This issue is one of first impression in Maryland. While this Court certainly respects the analysis of the federal judiciary with regard to a federal statute,¹³ until the Court of Appeals rules otherwise, this Court must adhere to the guiding principle set forth at the beginning of this opinion: the judiciary should "be careful not to depart from the plain language of the instrument." *Buchholtz*, 178 Md. at 286. The Court of Appeals has instructed the trial courts that, "the words used in the Constitution should be given the meaning which would be given to

¹¹ As illustration, during oral argument, Plaintiffs used the example of a convention that might be held between certain dates. If the convention is advertised to be "held" on the last day of that period, it would be unlikely that anyone would attend that convention during the other days. The plain meaning of the word "held" indicates the definite time period on which an event shall occur. Regarding the Constitution, the Plaintiffs argued that the election is held on Tuesday.

¹² As illustration, during oral argument, Defendants used the example of a tsunami that may hypothetically disrupt the election, two days after early voting has commenced. The Defendants argued that, even if the votes from the two days of early voting been salvaged, no one would logically conclude that an election had been held. Rather, the election process culminates in the completion of collecting the votes and the transition to the tabulation stage.

¹³ See *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604 (2002) (The fact that a state constitutional provision is in *pari materia* with a federal one or has a federal counterpart does not mean that the provision will always be interpreted or applied in the same manner as its federal counterpart.)

them in common and ordinary usage by the average person interpreting them with respect to everyday affairs." *Norris v. Mayor of Baltimore*, 172 Md. 667 (1937).

The Court finds that the common sense meaning of the phrase an election is "held" on Tuesday refers to the day upon which voters cast their ballots. The argument set forth in the Plaintiffs' Pre-trial Memorandum is persuasive, that election means "the act of choosing a person to fill an office or employment by any manifestation of preference, as by ballot, uplifted hands or viva voce..." Plt.'s Pre-trial Mem. at 15, quoting WEBSTER'S DICTIONARY (1828). Clearly, there are ministerial obligations of the election board to prepare for election day prior to the "Tuesday next after the first Monday in the month of November," and there are administrative tasks necessary to tabulate the votes subsequent to that day. The reference to "election" in Article XV, Section 7 could not possibly have been intended by the framers to refer to the entire election process, which would include those tasks. The election as referred to in Article XV, Section 7 refers to the date when voters cast their ballots. To suggest that the framers intended that the entire election process would be concluded on the "Tuesday next after the first Monday in the month of November" ignores the historical reality. Even in today's world with automobiles, trains, planes, and computers, this cannot be done in most instances. Certainly, in the days of the horse and buggy, it could not be done. So, it is clear to this Court that the framers, by setting forth the date of the election, intended to refer to the date that all qualified voters could appear at the polls to cast their ballots.

The language and grammar of the clause in Article XV, Section 7, appears to explicitly single out one precise day on which all general elections shall occur. If one refers to the history of this clause, as briefed by the Defendants, the discussions of the framers evidences that

choosing Tuesday as election day was not an arbitrary decision.¹⁴ Nevertheless, when a Constitutional provision's plain meaning is clear and unambiguous, it is unnecessary for the trial court to look beyond those words to interpret its meaning. Here, while Article III, Section 49 gives the General Assembly the power to regulate the "time, place and manner of holding elections," its very terms specifically subordinate that power to the other provisions of the Constitution. Therefore, the date set for the general election in Article XV, Section 7 is controlling and may not be abrogated by the General Assembly. "It is a familiar principle in the construction of a constitution that the construction should be upon the whole instrument, and effect given to every part of it, if that be possible, and that, unless there be some reason to the contrary, no part of the fundamental law should be disregarded, or rejected as inoperative." *Beall v. State*, 131 Md. 669 (1917). Thus, to the extent that the early voting statutes expand the dates for casting ballots, they are inconsistent with the Constitution.

The Court also finds that *Foster* and its progeny are inapposite. All *Foster* stands for is the proposition that the voting system utilized by a state may not produce a winner as to the federal Senators and Representatives prior to the first Tuesday following the first Monday of November. The three Federal Circuit Court cases which follow *Foster* all dealt with early voting within the umbrella of absentee ballot provisions. The statutes in question in this proceeding were not enacted pursuant to the authority granted to the Legislature in Maryland's Constitution at Article I, Section 3 to pass laws for "qualified voters of the State of Maryland who are absent

¹⁴ See Def.'s Op. Mem. at pp. 32-35. For example, during the 1850 Convention, "[o]ther considerations mentioned in the timing of elections were... that elections not be held on Monday as that had in the past led to unseemly electioneering on the Sabbath." *Id.* at 34. And in 1864, "[t]he provision was originally to set all elections on the first Wednesday of November and the language was changed to coincide with the language used for Presidential elections." *Id.* at 35. This history evidences that the framers did not select Tuesday arbitrarily.

at the time of any election in which they are entitled to vote and for voting by other qualified voters who are unable to vote personally” that would “provide... for the manner in which and the time and place at which such absent voters may vote, and for canvass and return of their votes.” Art. I, § 3. There is no indication that the General Assembly intended early-voters to be considered absentee voters. In fact, the act specifically states that “*except* as provided under title 9, subtitle 3 of this article [the subtitle captioned “Absentee Voting”], a voter shall vote... in the voter’s assigned precinct on election day; or... in an early voting polling place as provided in this section.” See § 10-301.1(A) of the early voting statute (emphasis added). And, nowhere does the early voting act limit its breadth to those “who are absent at the time of any election” or “who are unable to vote personally.” Thus, the early voting acts are inconsistent with and exceed the authority granted in Article I, Section 3.

The Defendants argued that, instead of titling the acts as “early voting,” had the Legislature used the “magic words” naming these provisions “no excuse, in person, absentee voting,” these statutes would be Constitutional. In light of the explicit language that specifically distinguishes absentee voting provisions from the early voting acts, this Court finds that this argument is without merit.

This Court further rejects the argument of Defendants that, notwithstanding the inartful drafting of these bills, and the lack of any reference to tie early voting to absentee voting, the authority to enact early voting legislation is found in Article I, Section 3. As drafted, early voting goes far beyond the specifically authorized absentee voting language, creating a “no excuse” needed category for voters who need not be absent or unable to vote personally. This is inconsistent with the plain language of Article I, Section 3.

C. Granting Injunctive Relief

Lastly, the Court wishes to address the issue raised by the Defendants regarding the Plaintiffs' requested relief. The Defendants stated in their closing "one thing that is wholly missing from [Plaintiffs'] argument is the standard for summary judgment on a permanent injunction." Def.'s Oral Argument. The Defendants maintain that this Court should consider whether a final injunction is appropriate in accordance with the standard set forth by the Supreme Court in *eBay Inc. v. MercExchange, L.L.C.*, __ U.S. __, 126 S.Ct. 1837, 1839 (2006):

According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

The Defendants stated that they could find no Maryland precedent regarding the appropriate standard to use. Given the Constitutional importance of this case and the need for a speedy hearing, see MD. CODE ANN., CTS. & JUDC. PROC. § 3-409(e), this Court shall incorporate the guidance offered in the Maryland Rules Commentary, that after "the court determines to collapse the determination of the propriety of a preliminary injunction with the determination on the merits of the case... then the four-factor test for a preliminary injunction is reduced to the simpler determination applicable for permanent injunctions, whether the plaintiff will suffer irreparable harm from something that is wrongful and needs to be enjoined." NIEMEYER PAUL V. & LINDA M. SCHUETT, MARYLAND RULES COMMENTARY 619 (3d ed. 2003); and see *Cnty. and Labor United for Baltimore Charter Comm., v. Baltimore City Bd. of Elections*, 377 Md. 183 (2003); *Stysley v. Carroll County Bd. of Elections*, 371 Md. 186 (2002).

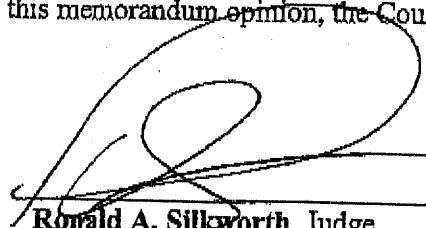
The Defendants maintain that “the risk of an injunction is that it will interfere, in part because of the plaintiff’s delay and in part because of the complexities of modern society, it will interfere with the rights of people to exercise their franchise as they choose to do when those people have no notice of this suit, are not part of this suit.” Def.’s Oral Argument. However, this Court finds that, not only would the named plaintiffs suffer irreparable harm, but so would all citizens of the State of Maryland, if an illegal election is held. Clearly, an election that is carried out by unconstitutional means is something that is wrongful and needs to be enjoined.¹⁵ To the extent that this Court may be required to balance the rights of the parties, as argued by the Defendants, the need to preserve the integrity of the election process consistent with constitutional principles is paramount. Simply stated, there is no reason why the 2006 primary and general elections cannot proceed without early voting. Any waste of resources is regrettable but does not justify allowing unconstitutional procedures to be implemented.

As recently stated by Judge Eldridge in *Bienkowski v. Brooks*, 386 Md. 516, 546 (2005), “the constitutional authority to implement a constitutional provision, such as set forth in the last clause of Article IV, § 22, does not authorize the General Assembly by statute or this Court by rule to contradict or amend the Constitution.” The Constitution sets forth limits on the General Assembly’s ability to regulate elections by demanding that laws passed are not inconsistent with its framework. Laws such as the early voting acts, that are passed without amending that framework or otherwise acting within the power granted, threaten the integrity of the Constitution itself – despite the benign purpose intended.

¹⁵ See also 43A C.J.S. Injunctions § 212. (“Moreover, injunction will lie to restrain the conduct of an election which is affected by illegal conduct on the part of the election officers, or is conducted pursuant to an illegal statutory procedure.”)

CONCLUSION

For the reasons set forth in this memorandum opinion, the Court shall enter the order attached hereto.



Ronald A. Silkworth, Judge
Circuit Court for Anne Arundel County

8/11/2006
Date

MARIROSE JOAN CAPOZZI, et al.

Plaintiff,

v.

STATE OF MARYLAND, et al.

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No. C - 06 - 115807

* * * * *

ORDER

Upon consideration of the Verified Complaint for Declaratory Judgment and Injunction, including Defendants' response thereto, as well as the evidence, and arguments presented, in accordance with the foregoing memorandum opinion, it is on this 11th day of August, 2006, by the Circuit Court for Anne Arundel County, Maryland,

ORDERED that Chapter 5 of the 2006 Laws of Maryland and the portions of Chapter 61 of the 2006 Laws of Maryland insofar as they purport to allow "early voting," as well as any other implementing legislation, are unconstitutional and are hereby declared VOID; and it is further,

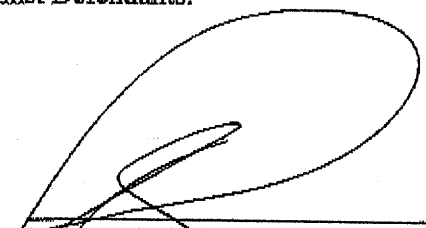
ORDERED that Defendants are hereby ENJOINED from further implementing and/or enforcing the above-referenced laws; and it is further,

ORDERED that, consistent with this Court's Memorandum Opinion, Defendants' Motion to Dismiss is GRANTED as to the State of Maryland, and DENIED as to all remaining Defendants; and it is further,

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ORDERED that all other motions or request for relief are hereby **DENIED**, resulting in a resolution of all pending matters before this Court; and it is further,

ORDERED that the costs be assessed against Defendants.



Ronald A. Silkworth, Judge
Circuit Court for Anne Arundel County

MARIROSE JOAN CAPOZZI, *et al.*,

Plaintiffs,

v.

STATE OF MARYLAND, *et al.*,

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* CASE NO.: 02-C-06-115807

* * * * *

**ORDER GRANTING
STAY PENDING APPEAL**

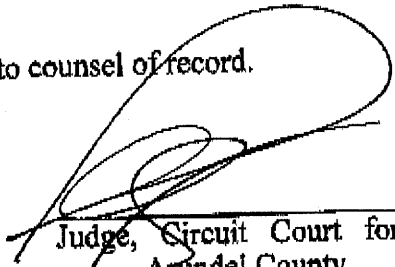
Whereas, defendants have moved for a stay pending appeal;

Whereas, plaintiffs do not oppose that request;

Accordingly, it is this 11th day of August, 2006, by the Circuit Court for

Anne Arundel County, ORDERED:

1. That defendants' motion for a stay pending appeal be, and hereby is, GRANTED;
 2. That the final judgment, including all equitable relief, entered on August 9, 2006, be, and hereby is, STAYED pending appeal;
 3. That this stay shall EXPIRE upon resolution of the appeal by the Court of Appeals;
- and,
4. That a copy of this order shall be mailed to counsel of record.



Judge, Circuit Court for Anne
Arundel County

JUDGE RONALD A. SILKWORTH

MARIROSE JOAN CAPOZZI, *et al.*,

Plaintiffs,

v.

STATE OF MARYLAND, *et al.*,

Defendants.

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IN THE

*

CIRCUIT COURT

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FOR

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ANNE ARUNDEL COUNTY

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CASE NO.: 02-C-06-115807

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DEFENDANTS' NOTICE OF APPEAL

Now come the defendants, the State of Maryland, the State Board of Elections, and Linda H. Lamone, as State Administrator of Elections in her official capacity, by their attorneys, J. Joseph Curran, Jr., Attorney General of Maryland, and Michael D. Berman, Deputy Chief of Civil Litigation, and, note an appeal to the Court of Special Appeals from the order and final judgment dated August 11, 2006, in the above-captioned action. This notice also appeals from the prior included oral decision denying the defense of laches, which

was entered in open Court on August 8, 2006.¹

Respectfully submitted,

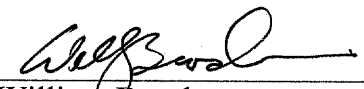
J. JOSEPH CURRAN, JR.
Attorney General of Maryland


MICHAEL D. BERMAN
Deputy Chief of Civil Litigation
200 St. Paul Place, 20th Floor
Baltimore, Maryland 21202
Voice: (410) 576-6345
Facsimile: (410) 576-6955

Attorneys for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of August, 2006, a copy of the foregoing Notice of Appeal was sent by facsimile transmission and served by mail to M. Albert Figinski, Esquire, One Charles Center, 100 N. Charles Street, Suite 2200, Baltimore, MD 21201 and Christopher R. West, Esquire, 250 West Pratt Street, 16th Floor, Baltimore, MD 21201, attorneys for Plaintiffs.


William Brockman

¹Defendants are also filing a petition for a writ of certiorari in the Court of Appeals.