
**IN THE
COURT OF APPEALS OF MARYLAND**

September Term, 2006

No. 71

NIKOS STANFORD LIDDY,

Petitioner,

v.

LINDA H. LAMONE, 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

**BRIEF OF RESPONDENTS
LINDA H. LAMONE AND STATE BOARD OF ELECTIONS**

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October 31, 2006

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STATEMENT OF THE CASE

As of the date of the submission of this brief, exactly one week remains before the November 7, 2006 general election. The plaintiff brought suit on Friday, October 20, only eleven days ago, challenging the placement on the ballot of Respondent Douglas F. Gansler as a candidate for the office of Attorney General of Maryland after Mr. Gansler won the Democratic Party's nomination in the September 12, 2006 primary election.

Petitioner Nikos Stanford Liddy filed his complaint, accompanied by a motion for a temporary restraining order and preliminary injunction. The complaint sought declaratory and injunctive relief not only against Mr. Gansler, but against the State Administrator of Elections

(the “State Administrator”) and the State Board of Elections (the “State Board”) (collectively, the “State Defendants”).¹ The action rests on Mr. Liddy’s contention that Mr. Gansler’s legal experience does not satisfy the constitutional requirement that a candidate for Attorney General have “practiced Law in this State for at least ten years.” Md. Const., Art. V, § 4.

Mr. Liddy’s complaint invoked the “judicial relief” provisions of Title 12, Subtitle 2 of the Election Law (“EL”) Article and sought an order declaring that Mr. Gansler “is unqualified to become a candidate for Attorney General.” Complaint at 5. Mr. Liddy also sought to enjoin the State Defendants from “includ[ing] [Mr. Gansler’s] name on the ballot for [the] general election to be held on or about November 7, 2006.” *Id.* Alternatively, Mr. Liddy sought injunctive relief requiring the State Defendants to “make reasonable efforts to notify all Maryland voters of [Mr. Gansler’s] ineligibility and disqualification.” *Id.* Finally, the complaint sought to enjoin Mr. Gansler “from continuing his candidacy for Attorney General of Maryland.” Complaint at 7.

On the morning of Monday, October 23, the defendants in this action were able to confirm that suit had been filed and learned the identity of counsel for the plaintiff.² That afternoon, counsel for Mr. Liddy sought to have the circuit court rule on his motion for a temporary restraining order. In a chambers conference in which counsel for the defendants

¹ The complaint contains two counts. The second largely repeats the allegations set forth with respect to Count I and differs primarily by invoking the standards generally applied in evaluating a request for interlocutory injunctive relief under Rules 15-504 and 15-505, which was the subject of Mr. Liddy’s separate motion for a temporary restraining order and for a preliminary injunction.

² Counsel for the State Defendants received a courtesy copy of a *pro se* complaint by facsimile on the evening of October 19, 2006, with a message indicating that Mr. Liddy intended to file the complaint the following day.

participated by telephone and which was subsequently memorialized in an on-the-record hearing,³ the Court declined to grant the temporary restraining order sought by Mr. Liddy and, in accordance with Rule 15-505(b), consolidated the hearing of the motion for a preliminary injunction with a hearing on the merits. The following day, the State Defendants submitted a motion to dismiss and to expedite scheduling, pursuant to Rules 2-322(c) and 2-504(b)(2)(G), and Mr. Gansler submitted a motion to dismiss or, in the alternative, for summary judgment, supported by affidavit, pursuant to Rules 2-322 and 2-501.⁴

The circuit court conducted the hearing on October 25. The court denied the dispositive motions filed by both the State Defendants and Mr. Gansler. (October 27 Order; Transcript at ____.) The parties stipulated to facts proffered by the State Defendants concerning the status of preparations for the November 7 general election. (Transcript at ____.) In the plaintiff's case-in-chief, Mr. Liddy testified that, although he was generally aware of developments in the 2006 campaign for Attorney General, he had not learned the purported basis for his allegation that Mr. Gansler did not meet the constitutional requirements set forth in Article V, § 4 until October 16, 2006. (Transcript at ____.)

Mr. Gansler testified at length about his legal experience during the approximately 17 years he has been a member of the Maryland Bar. (Transcript at ____.) The State Defendants moved for judgment at the close of the plaintiff's case on the grounds asserted in their dispositive motions and because Mr. Liddy had failed to sustain his burden of proof. (Transcript at ____.) The motions were denied. (Transcript at ____.) The defendants rested on

³ While a transcript of the October 25 hearing was ordered and transmitted with the record in this case, the transcript of the October 23 hearing was not.

⁴ The papers were formally filed with the court the next morning, October 25, 2006.

the stipulated facts and the testimony already presented, and the court heard additional argument.

On Friday, October 27, the circuit court issued its order and memorandum opinion denying the relief sought by Mr. Liddy and stating that, “inasmuch as the Defendant, Douglas Gansler, has met the requirements set forth [in] Art. V, Section 4, he is eligible to remain on the ballot as a candidate for Attorney General in the upcoming general election.” On Monday, October 30, Mr. Liddy noted an appeal to this Court; he subsequently noted a separate appeal to the Court of Special Appeals and petitioned this Court for a writ of certiorari, which was granted on October 31, 2006.⁵

QUESTIONS PRESENTED

1. Was the plaintiff’s eleventh-hour challenge to the placement on the ballot of a candidate for state-wide office barred by the applicable statute of limitations, which requires that such a challenge be brought within three days after election results are certified, where that certification took place more than three weeks before the plaintiff filed suit?
2. Alternatively, should this Court deny equitable relief to a plaintiff whose untimely challenge to a state-wide candidate’s placement on the ballot, seeking to remove the candidate from the ballot and to prevent him from “continuing his candidacy,” was brought long after an alteration to every ballot in the State became impossible and any alternative form of “relief” would lead to the disenfranchisement of thousands of Maryland voters?

⁵The State Defendants, joined by Mr. Gansler, have informed the clerk of the Court and counsel for the petitioner that they intend to note a precautionary cross-appeal and to cross-petition for certiorari to remove any doubt that the defenses based on the statute of limitations and laches that were rejected by the circuit court have been preserved for review. The reasons for this precautionary measure will be set forth in the petition, which will be filed tomorrow morning, November 1.

STATEMENT OF FACTS

On June 28, 2006, Mr. Gansler formally registered his candidacy by filing with the State Board a certificate of candidacy, accompanied by associated forms and the necessary filing fee. In accordance with EL §§ 5-302 and 5-304, Mr. Gansler completed a standard form requiring him to supply certain information, *see* EL § 5-304(c)(1)-(4), and to provide a statement that he “satisfies the requirements of law for candidacy for the office” of Attorney General. This form, and the statement attesting to his eligibility for the office, were required to be “filed under oath.” EL § 5-302(a)(1). The form itself required Mr. Gansler to “certify under penalties of perjury” that he is “a registered voter and a citizen of Maryland and meet[s] all other requirements for the above listed office.”⁶

Mr. Gansler’s name, party affiliation, mailing address, phone number and date of filing were then added to the list of State candidates for the 2006 Gubernatorial Primary Election maintained by the State Board. That list, which was updated at least once daily through the July 5 filing deadline, was accessible through a link on the homepage of the State Board website entitled “Listing of State Filed Candidates.”⁷

On July 13, 2006, Stephen Abrams, then a candidate for the Republican nomination for Comptroller, filed an action challenging whether Thomas Perez, then a candidate for the Democratic nomination for Attorney General, met the requirement of having “practiced Law in this State for at least ten years.” *See Stephen N. Abrams v. Linda H. Lamone, et al.*, Case

⁶ Although the timing and content of the registration form were the subject of stipulation by the parties, the form does not appear in the trial court record and is therefore included as an appendix to this brief.

⁷ *See* www.elections.state.md.us/elections/2006/candidates/primary/All_Offices.html.

No. C-06-115383 (Cir. Ct. for Anne Arundel County). That case and the present case involve divergent contentions and distinct facts concerning the candidates' legal experience, but the *Abrams* case is nevertheless instructive because it illustrates the importance of the statutory timeframes for elections preparations and for ballot-access challenges.

The circuit court granted Mr. Perez's motion for summary judgment on July 31, 2006, and the plaintiff appealed. On August 25, 2006, this Court issued a *per curiam* order reversing the circuit court. *Abrams v. Lamone*, No. 142, September Term 2005. The Court's order stated that the reasons for its ruling would be given in an opinion to be issued later. That opinion has not yet issued.⁸ The State Defendants sought modification of that portion of the Court's order that required that Mr. Perez's name be "removed from the ballot," because, in the 18 days remaining before the primary election, it was impossible to reprogram voting machines or reorder paper ballots for absentee and provisional voters in order to prepare an entirely new ballot. This Court granted the motion and directed that local boards of elections be instructed to "post notices conspicuously in each polling location" informing voters that Mr. Perez was not a candidate for Attorney General and that votes cast for him would not be counted. Notwithstanding the provision of these notices to poll workers in each jurisdiction and the inclusion of the notice in mailings of absentee ballots sent out from that point forward, unofficial tallies indicate that more than 40,000 Democratic primary voters cast a vote for Mr. Perez. (Transcript at __.)

The present action was filed more than three months after the *Abrams* case, 18 days

⁸ Because that case, like this one, presented questions about the proper construction of Article V, § 4, the Court's forthcoming opinion may dictate the results in this case if it is decided on the merits.

before the November 7 general election, the same period of time remaining before the primary election when this Court issued its August 25, 2006 *per curiam* order. At the time of the October 25 hearing before the circuit court, more than 138,000 applications for absentee ballots had been received by local boards of elections. Of these, more than 7,000 were from Maryland voters overseas. More than 14,000 voters had already cast absentee ballots.⁹ All of these ballots, which are also used as provisional ballots on November 7, carry the name of Douglas F. Gansler as a candidate for the office of Attorney General.

At the time of the October 25 hearing before the circuit court, extensive preparations were also under way or completed, with respect to the approximately 20,000 electronic voting units that will be deployed throughout the State at every polling station on November 7. These preparations include the programming and installation of data cards with the ballot style particular to the polling place where the unit will be used. These units then undergo “Logic and Accuracy” testing. At the time of the October 25 hearing, a majority of the State’s 24 jurisdictions had completed this process and the public demonstration of the units that, by regulation, accompanies the testing.¹⁰

⁹ The corresponding figures as of the morning of October 31 are: 171,250 absentee ballots requested; 7,157 requests from overseas; and 40,280 absentee ballots voted and returned. The facts discussed in the text were stipulated or are subject to judicial notice. *See* Rule 5-201(c) (judicial notice may be taken at any stage in the proceeding). The facts presented in this footnote and the succeeding one are not a part of the record because they occurred subsequent to the development of the record. Nevertheless, the State Defendants believe it is important to bring these more recent facts to the attention of the Court. The State Defendants proffer that, if this case were remanded to the circuit court (a disposition the State Defendants oppose), evidence in support of these facts could be readily adduced.

¹⁰ All jurisdictions have now completed the Logic and Accuracy testing and public demonstration of the electronic voting units.

ARGUMENT

I. STRICT ADHERENCE TO THE DEADLINES IMPOSED BY THE ELECTION CODE SERVES NOT ONLY TO ENSURE ORDERLY PREPARATIONS OF ELECTIONS BUT TO SAFEGUARD THE FUNDAMENTAL RIGHT TO VOTE.

A. Preserving The Right Of Marylanders To Choose Their Elected Officials Is The Animating Force Behind The Provisions Of The State Election Code And The Paramount Consideration In Contests Over Ballot Access.

The State Administrator and State Board, by ensuring a fair and orderly elections process, exercise duties that go to the heart of our representative democracy. *Cf.* EL §§ 2-102, 2-103. Exercise of the franchise is a “fundamental political right, because preservative of all rights.” *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 667 (1966). Similarly, the Maryland Declaration of Rights provides that “the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government.” Md. Declaration of Rights, Art. 7. “[F]or this purpose” of safeguarding the right to participate in our democratic system, “elections ought to be free and frequent; and every citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage.” *Id.* The guarantee of suffrage declared in Article 7 is “even more protective of political participation than the provisions of the federal Constitution.” *Maryland Green Party v. State Board of Elections*, 377 Md. 127, 150 (2003). “‘The elective franchise,’ it is said in *Kemp v. Owens*, 76 Md. 235, 241 [(1892)], ‘is the highest right of the citizen, and the spirit of our institutions requires that every opportunity should be afforded for its fair and free exercise.’” *Jackson v. Norris*, 173 Md. 579, 598 (1937).

The State Board's interest in a fair and efficient electoral process is not simply an interest in administrative convenience, although administrative efficiency is vital to the conduct of an orderly election. Nor is the State Board interested in elevating process over substance. Rather, the State Board recognizes, as has this Court, that eleventh-hour challenges such as this one, by disrupting the election process, sowing voter confusion and uncertainty and limiting the ability of voters to choose freely and intelligently from among the candidates that appear on the ballot, threaten the exercise of the most fundamental right granted to citizens of a free society. To insist that ballot-access challenges be brought before a date certain is not only consistent with statutory imperatives but also gives substance to this Court's longstanding recognition of the vital importance of the franchise.

B. The Election Process Is Characterized By A Series Of Strict Deadlines To Facilitate Expeditious And Orderly Preparations For Elections, Requiring That Judicial Challenges Be Brought Promptly.

The State statutes governing the election process impose a series of strict deadlines in order to advance the overarching goal of ensuring a swift and orderly preparation of ballots and conduct of elections. The 2006 Election Calendar prepared by the State Board identifies no fewer than 75 deadlines for the completion of various tasks or performance of certain acts between May 2, 2006 and the general election on November 7, 2006, all of which are imposed by the Constitution, statute, or regulation.¹¹

Most of those deadlines, including many relevant to the timeliness of this suit, have

¹¹ See www.elections.state.md.us/elections/2006/Election_Calendar_2006.pdf.

already passed. As noted above, Mr. Gansler filed his certificate of candidacy on June 28, 2006. The deadline for doing so was July 3, 2006. *See* EL § 5-303(a)(1). The deadline for a candidate to withdraw his or her candidacy was July 13. *See* EL § 5-502(a). The primary ballot on which Mr. Gansler appeared was required to be certified no later than July 24, 2006. *See* EL § 9-207(a)(1). As this Court has observed, such deadlines are vitally important “in view of the necessity for making timely preparations for elections.” *Andrews v. Secretary of State*, 235 Md. 106, 108 (1964) (candidate filing deadline); *see also McGinnis v. Board of Supervisors of Elections*, 244 Md. 65, 68 (1966) (candidate withdrawal deadline). The primary election, in which Mr. Gansler won the Democratic party’s nomination for Attorney General, was held September 12, 2006.

Following the primary election, a new set of deadlines came into play, serving to ensure orderly preparations for the general election, which in a gubernatorial election year is held only two months after the primary. *See* EL § 8-201(a)(2)(i). The State Board must certify the results of the primary election within two days of receipt of the results from local boards of elections. *See* EL § 11-501. The State Board made its certification of the September 12 primary results on September 26. The State Board has 18 days following the primary to certify the content and arrangement of the ballot for the general election, *see* EL § 9-207(a)(2)(ii), and must then coordinate with local boards of elections to proof and finalize each of the approximately 260 ballot styles that will be used in the upcoming general election.

Printing of paper (optical scan) ballots for absentee and provisional voters is performed

by a vendor. On October 4, an initial order for 1,165,300 such ballots was placed. In response to increased demand for absentee ballots, several local boards of elections have made supplemental orders for additional ballots. Thousands of Maryland troops are stationed overseas, many deployed in combat areas, making prompt delivery of absentee ballots crucial. As of the morning of October 31, local boards of elections had received 171,250 applications for absentee ballots, and 40,280 such ballots had already been cast.¹² All of the ballots that have been sent to absentee voters carry the name of Douglas F. Gansler as a candidate for the office of Attorney General. Marylanders who vote on November 7 by provisional ballot will likewise be given ballots reflecting his candidacy.

Election-day voting on the State’s Direct Recording Electronic (“DRE”) voting units also requires intensive preparation and coordination between the State Board and local boards of elections. Screen shots for the 260 ballot styles being used throughout the State were generated and reviewed during the week of October 9; these screen shots are reproduced in specimen ballots, *see* EL § 9-214. Audio ballots for the visually impaired were finalized on October 17. Each of the 19,000 DRE units that will be used in the general election were required to be loaded with a data card particular to the ballot format it will display. Those cards have been programmed, and each will display Mr. Gansler’s name as a candidate for Attorney General. Following installation of the data cards, each DRE unit must, by regulation, undergo “preelection logic and accuracy” testing to ensure the security and

¹² In the 2002 gubernatorial election cycle, approximately 65,000 voters cast absentee ballots.

integrity of the voting process. *See* COMAR 33.10.02.14 - .15. This testing must be conducted at least ten days before the election, and all 24 jurisdictions have now completed testing. A public demonstration of the logic and accuracy testing must likewise be performed at least 10 days before the election. *See* COMAR 33.10.02.16. Following the public demonstration, the units are sealed with tamper-proof tape and prepared for delivery to polling places.

There is insufficient time to reprogram, install and test the data cards for a state-wide ballot on the DREs and insufficient time to redesign, reorder, reprint and redistribute absentee and provisional ballots. Indeed, many voters have already submitted their absentee ballots. Thus, it is logistically impossible for the State Board and local boards of elections to implement the relief sought by Mr. Liddy of having Mr. Gansler “removed from the ballot” at this late date. As to the alternative form of relief sought by Mr. Liddy, no form of notice to Maryland’s 3 million registered voters would protect against the disenfranchisement of Maryland voters, particularly the tens of thousands who have already voted by absentee ballot.

Since the hearing in the circuit court, additional milestone dates have passed, exacerbating the prejudice caused by this untimely suit. For instance, EL § 5-1002 permits a political party to designate a substitute candidate if the party’s nominee “is disqualified for any cause.” The election code anticipates that 5 days should be sufficient for the party to act in such a situation. *See* EL § 5-1002(b)(2). If the statute of limitations set forth in § 12-202(b) is disregarded, a conflict potentially arises between the provision permitting

designation by the political party and a separate provision requiring that a certificate of designation be filed within 10 days of the general election. *See* EL § 5-1302(a). The processes established in Title 5, subtitles 10 and 13 are designed to ensure that voters are provided a full and fair opportunity to choose between candidates, but that design is undercut if the processes are triggered by a tardy challenge.¹³

In short, Mr. Liddy's delay in filing this suit made the relief he sought impossible to provide. It is for precisely this reason that the statute governing a ballot-access challenge such as this one requires that it be brought promptly. Mr. Liddy did not do so, and the statute of limitations bars this action.

II. THIS ACTION IS BARRED BY LIMITATIONS AND LACHES AND SHOULD THEREFORE HAVE BEEN DISMISSED AS UNTIMELY.

A. This Action Is Governed By EL § 12-202(b)(2), Which Requires Dismissal Of The Suit Because It Was Not Brought Within Three Days Of The Certification Of The Primary Election Results.

To guard against undue disruption of an orderly elections process and to prevent prejudice to the electorate, the statutes governing election-law challenges impose strict deadlines for initiating and adjudicating such litigation, *see, e.g.*, EL §§ 3-602(b)(2), 3-603(a)(2)(ii), (d)(2), 5-305(c), 6-210(e), 9-209(a), (c), just as the elections process itself is

¹³ Should this Court exercise its equitable powers to grant the extraordinary relief sought by Mr. Liddy by relaxing the statutory time periods for bringing suit, there may be justification for similarly relaxing other statutory deadlines that are affected by the untimely suit.

characterized by short timeframes and mandatory deadlines.¹⁴ This action arises under EL Title 12, Subtitle 2. Section 12-202(b) requires that such a challenge be brought within “*the earlier of*” two time periods. Here, the limitations period set forth in EL § 12-202(b)(2) applies, and it requires that the action be brought within “3 days after the election results are certified.” As noted above, this certification took place on September 26. Thus, Mr. Liddy was required to bring this action on or before September 29 (unless application of the limitations period set forth in EL § 12-202(b)(1) would have produced an earlier date). Mr. Liddy brought suit fully three weeks after the limitations period had run.

A strict statute of limitations governing these types of actions has been a feature of the election law for more than twenty years. *See* 1985 Laws of Maryland, ch. 755 (enacting former Art. 33, § 19-3). At the time the predecessor version of § 12-202(b) was enacted in 1985, the General Assembly explained that it was acting in recognition of the fact that “timely determination of issues arising with respect to elections will facilitate the administration of elections, promote equity among interested parties, and enhance the confidence of the citizens of the State in the elections process.” *Id.* (Preamble).

As part of further revisions to the election code in 1998, the limitations provisions were refined and the periods were shortened. *See* 1998 Laws of Maryland, ch. 585. At that time, the pertinent period was changed from 20 days following the date that election results are

¹⁴ Notably, under the Election Law Article, periods of time are computed by including intervening Saturdays, Sundays and legal holidays. *See* EL § 1-301(a); *compare* Md. Ann. Code, art. I, § 36; Md. Rule 1-203.

“declared official” to the period that currently appears in § 12-202(b)(2), *i.e.* “7 days after the election results are certified, unless the election was a gubernatorial primary or special primary election, in which case 3 days after the election results are certified.”¹⁵ The limitations period thus created is tailored closely to the circumstances of the situation, providing a lengthier, seven-day limitations period for challenges after certification of primary election results in presidential election years, when the period between the primary election and the general election is eight months instead of two months. *See* EL § 8-202(a)(ii).¹⁶

The three-day limitations period set forth in EL § 12-202(b)(2) provided ample time for Mr. Liddy to challenge Mr. Gansler’s candidacy, which was announced in May and formally registered in late June. Had suit been brought in June or early July, the disruption to election preparations would have been considerably less, and much of the potential prejudice to the electorate posed by Mr. Liddy’s challenge could have been avoided. A timely challenge could have been resolved prior to the primary election. By waiting until after Mr.

¹⁵ More recently enacted provisions similarly emphasize the need for claims to be brought promptly and adjudicated expeditiously. For instance, a challenge to a candidate’s qualifications on residency grounds, which previously would have been governed by EL § 12-202, is now controlled by EL § 5-305. *See* 2004 Laws of Maryland, ch. 338. That provision requires that such a challenge be brought no later than nine weeks before the election, *i.e.*, by *September 5, 2006* for the general election this year. *See* EL § 5-305(c)(1)(i). EL § 5-305(c)(2) further directs that the circuit court’s review be conducted expeditiously, “and in no case, longer than 7 days from the date the petition is filed.” The same considerations counseling urgency in a case challenging qualifications based on residency apply to this case challenging qualifications based on the “practiced Law” requirement.

¹⁶ The primary date in presidential election years was advanced from May to March as a result of legislation enacted in 1986. *See* 1986 Laws of Maryland, ch. 846 (amending former Art. 33, § 5-2).

Gansler had won the primary election and after 286,000 members of his party had cast ballots in support of his candidacy, however, Mr. Liddy asks this Court to negate the will of the voters who participated in that election.

To justify his initiation of litigation just 18 days before the general election, Mr. Liddy argued that the applicable limitations period is that set forth in EL § 12-202(b)(1), not (b)(2). Accordingly, Mr. Liddy testified that inferences he had drawn from internet websites led him to conclude, on October 16, 2006, that Mr. Gansler was did not meet the ten years' practice of law requirement imposed by Article V, § 4. (Transcript at 36-37.) As discussed above, however, EL § 12-202(b) requires that suit be initiated within the earlier of the two alternative time periods set forth in that subsection. Even if the October 16 date had any significance for purposes of subsection (b)(1), the applicable limitations period would be provided by subsection (b)(2), because September 29 (three days after September 26) is earlier than October 26 (ten days after October 16), and the statute demands compliance with the earlier deadline.

Furthermore, October 16 cannot serve as the triggering date for the ten-day limitations period running from “the date the act or omission became known to the petitioner” within the meaning of subsection (b)(2). Mr. Gansler’s alleged “lack of qualifications,” of which Mr. Liddy assertedly became aware on October 16, does not constitute an “act or omission related to an election.” A number of acts or omissions related to an election and to Mr. Gansler’s candidacy have taken place: his June 28 filing of a certificate of candidacy, the State Board’s

acceptance of his certificate of candidacy prior to the July 3 deadline for filing, his September 12 primary election victory, the State Board's September 26 certification of the results of the primary election. Acts or omissions took place on each of these dates prior to October 16, and Mr. Liddy could not credibly claim to be unaware of all of them. By contrast, no act or omission took place on October 16 except Mr. Liddy's ostensible actions taken to investigate the history of Mr. Gansler's legal career.¹⁷

Under Mr. Liddy's argument or the construction of EL § 12-202(b) offered by the circuit court, (Memorandum Opinion at 12-13), the statute of limitations poses no greater bar to a plaintiff bringing suit the very day of the election than to a suit brought like this one, only 18 days before the election. This approach is untenable. By the circuit court's reasoning, because Mr. Liddy was not "specifically alleging" an act or omission tied to the State Board's "certifying [Mr.] Gansler as a candidate [on June 28, 2006] or certifying his victorious result in the primary [on September 26, 2006]," subsection (b)(2) could not apply until after the general election results are certified on Tuesday, December 12, 2006. *See* EL § 11-503(a).

Title 12, subtitle 2 permits a plaintiff to seek, and a court to order, judicial relief based on "an act or omission that may change the outcome of [a] pending election." EL § 12-204(c); *see also* EL § 12-202(a)(2). The action is permitted "whether or not the election has been held." EL § 12-202(a). The statute provides that an appeal must be *taken* within 5 days of

¹⁷ The State Defendants note that Mr. Liddy testified only that he became aware of the "potential disqualification" or, as he also put it, "the discrepancy," on October 16. (Transcript at 32, 38.) Mr. Liddy thus testified only to when he reached a conclusion based on facts he may have been aware of much earlier.

the circuit court's judgment, and the Legislature surely anticipated that the appeal could be adjudicated before the election as well.¹⁸ Yet the circuit court's rationale would allow a single plaintiff to bring an action under these provisions on the very eve of an election, so long as the plaintiff had remained studiously ignorant of the basis for his or her suit until ten days beforehand.

In essence, the construction adopted by the circuit court creates a lacuna in the statute of limitations that allows a tardy plaintiff to escape the limitations bar, frustrating the elections process during its most crucial stages and depriving voters of the ability to cast their votes freely and intelligently for the candidates that appear on the ballot. Mr. Liddy's filing of this action fell well outside the applicable period permitted under EL § 12-202(b). The action is, therefore, barred by the statute of limitations and should be dismissed.

B. Mr. Liddy's Claims Are Subject To Dismissal Based On Equitable Considerations Of Laches.

In *Ross v. State Board of Elections*, 387 Md. 649 (2005), this Court held that laches may apply to bar a claim even before a statutorily imposed limitations period has run. This principle applies with great force in the elections process, where practical imperatives related to the implementation of the election process and the statutory scheme governing that process

¹⁸ This case sorely tests that assumption if the limitations provisions are as toothless as Mr. Liddy contends. The case was heard on the merits three business days after it was brought; the circuit court's decision followed two days later; the appeal was noted one business day later; the briefs submitted the next day; and the case scheduled for argument for two days after that. Even so, the argument date comes only three business days before voters go to the polls on November 7.

combine to emphasize the need for expedited resolution of disputes, as discussed above.

Special considerations apply in the elections context when a claimant comes before a court seeking injunctive relief. Indeed, on the very day that Mr. Liddy filed his complaint, the Supreme Court issued an opinion summarily reversing a lower court's injunction in a case involving election law. *See Purcell v. Gonzalez*, ___ U.S. ___, Nos. 06-532, 06-533, 2006 WL 2988365 (Sup. Ct. Oct. 20, 2006). The Supreme Court observed that the lower court was "required to weigh, in addition to the harms attendant upon issuance or nonissuance of an injunction, considerations specific to election cases" and further noted that court orders affecting elections can "result in voter confusion and consequent incentive to remain away from the polls." *See id.*, Slip op. at 4. It would be unfortunate, to say the least, if a single plaintiff, by bringing suit less than three weeks before an election, was thereby permitted to create voter confusion in a statewide race or to dissuade voters from coming to the polls.

The "considerations specific to election cases" recognized by the Supreme Court in its opinion are not new. Indeed, in *Reynolds v. Sims*, the Court said: "In awarding or withholding immediate [injunctive] relief, a court is entitled to and should consider the proximity of a forthcoming election and the mechanics and complexities of state election laws, and should act and rely upon general equitable principles." 377 U.S. 533, 585 (1964). The Court elaborated on the equitable considerations that bear on the timeliness of an election challenge, stating: "[A] court can reasonably endeavor to avoid a disruption of the election process which might result from requiring precipitate changes that could make unreasonable

or embarrassing demands on a State in adjusting to the requirements of the court’s decree.” *Id.*; see also *Wells v. Rockefeller*, 394 U.S. 542, 547 (1969); *Kilgarin v. Hill*, 386 U.S. 120, 121 (1967). Following this rationale, courts have denied or dismissed claims for injunctive relief on equitable principles based on the nearness of the elections and the harm to the State, candidates and citizens from the disruption of the electoral process. See, e.g., *Purcell*, ___ U.S. ___ (Oct. 20, 2006); *White v. Daniel*, 909 F.2d 99, 102 (4th Cir. 1990), *cert. denied*, 501 U.S. 1260 (1991); *Knox v. Milwaukee County Bd. of Elections Comm’rs*, 581 F. Supp. 399, 402 (E.D. Wis. 1984).

In *Ross*, this Court likewise recognized that laches can bar a claim in the elections context based on considerations of delay, prejudice to the defendants and, notably, prejudice to the electorate. See 387 Md. at 671-72. Concerns about prejudice to the electorate are paramount in this case, as they should always be. The causes of delay are immaterial to its consequences, and it is the consequences of delay that are determinative in this context. To grant the relief requested by Mr. Liddy at this stage in the elections process would lead to an unmanageable disruption of the general election and disenfranchise thousands of voters. For that reason, the equitable doctrine of laches operates to bar Mr. Liddy’s untimely claims, and they are subject to dismissal on this ground in addition to the limitations grounds discussed above.

CONCLUSION

The State Defendants request that the judgment of the Circuit Court for Anne Arundel County, denying relief to the petitioner, be affirmed, either on the grounds advanced above or, in view of the need for expedition, on the merits.

Respectfully submitted,

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October 31, 2006

Pursuant to Md. Rule 8-504(a)(8), this brief has been printed with proportionally spaced type: Times New Roman - 13 point.

APPENDIX

State of Maryland - Certificate of Candidacy
2006 Gubernatorial Primary Election

Form with fields: Name to Appear on Ballot (Douglas F. Gansler), Name as Registered for Voting (Douglas Friend Gansler), Office Sought (Attorney General), Residence Address (7509 Wyndale Road, Chevy Chase, MD 20815), Mailing Address (7509 Wyndale Road, Chevy Chase, MD 20815), Contact Phone (301) 654-8303, Public Phone (301) 588-1588, Fax, E-mail (doug@gansler2006.com), County or Baltimore City (Montgomery), Election District or Ward (007), Precinct, Party Affiliation (Democratic), Date of Birth (10/30/1962), Sex (M).

I have carefully reviewed the information above and affirm that it is correct and accurate. I have received a document explaining how the various name fields will appear on the ballot and other election documents.

Handwritten signature of Douglas Gansler

(Signature of Candidate)

I, Douglas Friend Gansler, am filing for the office of Attorney General. I request that you place my name on the official Primary ballot to be used in the 2006 Gubernatorial Primary Election on September 12, 2006 as a candidate seeking nomination of the Democratic Party.

I hereby certify:

- > The ballot name listed above is my legal name or a name supported by an affidavit filed at this time under penalty of perjury.
> I will not be a candidate for any other public office.
> I am not a treasurer, sub-treasurer, or campaign manager for any candidate or committee.
> I am a registered voter and a citizen of Maryland and meet all other requirements for the above listed office.
> I understand that my signature authorizes local boards to change all records except party affiliation.
> I understand that final acceptance of this certificate depends upon verification of the information provided by me.
> I am in compliance with all campaign finance reporting requirements under Title 13 of the Election Code.
> The filing fee for the above-mentioned office is submitted herewith.

I hereby certify under penalties of perjury that the information provided above is true.

June 28, 2006

Date of this Certificate

Stamp: F.F. AT GEN/D, TOTAL CHECK, 290.00, 6/28/06

Handwritten signature of Douglas Gansler

Signature of Candidate

Subscribed and sworn before me this 26 day of June, 2006

For Board Use Only
[] Financial Disclosure
[] Statement of Organization
[] Filing Fee

Handwritten signature of Peggy Wilkerson

Witnessed by Election Office

RECEIVED

JUN 28 2006

STATE BOARD OF ELECTIONS

Candidate Information Sheet

C 448

To expedite your in-person filing process, you should fax this Candidate Information Form to this office at (410) 974-5415 with an indication of your expected filing date and time.

Election	<input type="checkbox"/> Gubernatorial Primary <input type="checkbox"/> Gubernatorial General	
Office Sought	ATTORNEY GENERAL OF MARYLAND	
District Running In	MARYLAND <i>Leg</i>	<input type="checkbox"/>
Party Affiliation	DEMOCRAT	<input type="checkbox"/> ✓
Election Year	2006	
Legal Name (As Registered to Vote)	Douglas Friend Gansler ✓	
Name to Appear on Ballot (Indicate only if different than legal name)	Douglas F. Gansler	
Date of Birth	10/30/62	
Contact Phone (home phone)	301-654-8303	
Public Phone	301-588-1588	
Fax		
E-Mail	doug@gansler2006.com	
County of Residence	Montgomery County	
Sex	MALE	
Election District (Will be filled out by Staff)	7	<input type="checkbox"/>
Precinct (Will be filled out by Staff)	5	<input type="checkbox"/>
Residence Address (Number, Street, City, Zip)	7509 Wyndale Rd. Cherry Chase MD 20815	
Mailing Address (Only if different than Residence)		
For Board Use Only		
<input checked="" type="checkbox"/> Financial Disclosure	<input checked="" type="checkbox"/> Statement of Organization	<input checked="" type="checkbox"/> Identification
<input type="checkbox"/> Alternate Name Affidavit	SEE Staff _____	LBE Staff <i>Little G.</i>
Place a ✓ in each box to indicate that the required forms have been provided and that you have verified the above information.		

MARYLAND STATE BOARD
OF ELECTION LAWS
P O BOX 231
ANNAPOLIS, MD 21404

YOUR REPT, THANK YOU!
KEEP AS A RECORD

PRT1
F F AT GEN/D 290.00

772
0046 12:41PM 6/25/06

I will file my candidacy in Annapolis on: Wed., June 28, 2006 at _____
 (Approximate filing date) (Approximate filing time)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 31st day of October 2006, a copy of the foregoing Brief of Respondents Linda H. Lamone and State Board of Elections was sent by email and two copies were served by first-class mail on:

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