

LINDA H. LAMONE, *et al.*,

*Petitioners,*

v.

MARIROSE JOAN CAPOZZI, *et al.*,

*Respondents.*

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IN THE

COURT OF APPEALS

OF MARYLAND

September Term, 2006

Petition Docket No. \_\_\_\_\_

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**PETITION FOR WRIT OF CERTIORARI**

Linda H. Lamone, State Administrator of Elections, and the Maryland State Board of Elections (“SBE”) respectfully petition this Court for a writ of certiorari to review the decision of the Circuit Court for Anne Arundel County.<sup>1</sup> Review is warranted to resolve important constitutional and equitable relief issues concerning the manner in which the upcoming election will be conducted. Specifically, the issue presented is whether statutes providing voters with the option of voting up to five days before election day, at certain polling places, are unconstitutional, whether the doctrine of laches applies, and whether equitable relief should be permitted where the election is imminent and extensive preparations for early voting have been undertaken.

This Court should review the issues of substantial public importance presented by this case because the decision of the circuit court incorrectly held that the early voting statutes are unconstitutional, and, if left standing, will needlessly inconvenience the electorate, cause voter confusion and potentially deprive some voters of their franchise.

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<sup>1</sup>A copy of the decision of the circuit court is attached as Exhibit 1. A copy of the docket entries is attached as Exhibit 2. The judgment of the circuit court adjudicated all claims in the action in their entirety and the rights and liabilities of all parties in the action.

## **QUESTION PRESENTED**

Did the circuit court err in enjoining implementation of statutes providing voters with the convenience of an early voting option in the 2006 primary and general elections where the statutes do not conflict with constitutional provisions governing elections, where the plaintiffs filed suit fully five months after the early voting provisions first went into effect, and where the elections process – including preparations for early voting – was well underway?

## **PERTINENT LAWS**

1. Md. Const., Art. I, § 1
2. Md. Const., Art. I, § 3
3. Md. Const., Art. III, § 49
4. Md. Const., Art. XV, § 7
5. Md. Const., Art. XVII, §§ 1, 2
6. SB 478 (2005 Session), Chapter 5, Laws of Maryland 2006
7. HB 1368 (2006 Session), Chapter 61, Laws of Maryland 2006

## **STATEMENT OF THE CASE**

The General Assembly has enacted two 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. These statutes are commonly known as the early voting laws. The plaintiffs filed suit on July 17, 2006.

Upon the defendants' motion for a transfer of venue, the action was transferred from the Circuit Court for Queen Anne's County to the Circuit Court for Anne Arundel County.

The plaintiffs sought a temporary restraining order, preliminary injunction, final injunction, and summary judgment. The defendants filed a memorandum in opposition to the motion for a temporary restraining order and a motion to dismiss the complaint on August 4, 2006. The defendants also filed an unopposed Proffer of Evidence that dispensed with the need for oral testimony and the affidavits of Ross Goldstein, the Deputy Administrator of Elections, and of Lisa Lucas.<sup>2</sup> A hearing was set for August 8, 2006. On August 7, 2006, plaintiffs filed a “Trial Memorandum.” At the August 8 hearing, plaintiffs offered three election maps into evidence, without objection.

During the hearing, the circuit court issued an oral ruling rejecting the defense of laches. On August 11, 2006, the circuit court issued a memorandum opinion and order declaring the early voting statutes “void” “insofar as they purport to allow ‘early voting’” and enjoined implementation and enforcement of the statutes. A notice of appeal was filed on August 11, 2006. The defendants also moved, with the consent of the plaintiffs, for a stay of the court’s order pending appeal, which was granted on August 11, 2006.

### **REASONS FOR GRANTING REVIEW**

Review is warranted because the issues in this case potentially affect all voters and candidates. Review is also warranted because of the impact on the SBE’s preparation for upcoming elections, including the September 12, 2006 primary, for which early voting is scheduled to begin September 5 and end September 9. The general election is to be held

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<sup>2</sup>The factual proffer was unopposed in the sense that plaintiffs agreed that defendants could present witnesses and documents to support the facts contained in the proffer, and, further, that such presentation was not necessary. The plaintiffs reserved their right to object, and in fact objected, based on relevancy.

November 7, 2006, with early voting due to begin October 31 and end on November 4. There are approximately 3.3 million registered voters in Maryland. Under the early voting statutes, the plaintiffs can continue to vote on election day at their usual polling place. The early voting statutes do not compel the plaintiffs – or anyone else – to vote early, or to vote outside of their ward or district. The 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.

After the second early voting statute became effective on April 10, 2006, SBE commenced voter outreach to explain to voters the option of early voting. Early voting has been publicized not only by SBE and the local boards of elections, but by outside organizations, including the League of Women Voters and the American College of Emergency Physicians. 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.

If the circuit court's injunctive order is upheld, SBE must reverse course. 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 message can be distributed and understood by the voters, 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.

If SBE's efforts to contact 3.3 million or more people in the period of approximately

three weeks between the circuit court's order and the date on which early voting is scheduled to begin 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.

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.

The early voting statutes permit a voter to cast a ballot, prior to election day, at a specified location or locations. The early voting statutes make elections more convenient to some voters by giving those voters the option of a flexible voting schedule. Early voting provides busy voters with the option of choosing the day on which they will vote. 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. The decision below impacts substantially and directly upon the electorate, the election, and SBE. Expedited review by this Court is in the public interest.

## CONCLUSION

Wherefore, the defendants request that the Court issue a writ of certiorari to either the Court of Special Appeals or the Circuit Court for Anne Arundel County, or both.

Respectfully submitted,

J. JOSEPH CURRAN, JR.  
Attorney General of Maryland

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of August, 2006, a copy of this Petition for Writ of Certiorari was sent by facsimile and served by first-class 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, 16<sup>th</sup> Floor, Baltimore, MD 21201, attorneys for Respondents.

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Michael D. Berman  
Assistant Attorney General