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No. 73, September Term 2006

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In The Court of Appeals of Maryland

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MELISANDE C. FRITZSCHE, for herself and on behalf of Similarly Situated Voters,  
MALCOLM G. VINZANT, JR., for himself and on behalf of Similarly Situated Voters,  
*Plaintiffs-Petitioners,*

v.

MARYLAND STATE BOARD OF ELECTIONS, LINDA H. LAMONE, State Administrator,  
GILLES W. BURGER, Chairman, BOBBIE S. MACK, Vice Chairman, JOAN BECK,  
Boardmember, ANDREW V. JEZIK, Boardmember, and SUSAN WIDERMAN, Boardmember,  
in their official capacities as Administrators and Board Members of the Maryland State  
Board of Elections,  
*Defendants-Respondents.*

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**PETITION FOR WRIT OF CERTIORARI**

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*Counsel of Record*

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DEBORAH JEON

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November 8, 2006

\*\* Pro hac vice application to be filed

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**TABLE OF AUTHORITIES**

**DOCKETED CASES**

*Melisande C. Fritzsche, et al. v. Maryland Board of Elections et al.*, Case  
No. 02-C06118140 .....1

**STATUTES, REGULATIONS, AND CONSTITUTIONAL PROVISIONS**

Code of Maryland Regulations 33.11.03.08 .....2, 3  
Code of Maryland Regulations 33.09.02.07 .....2  
Maryland Code, Election Law § 9-102 .....2  
Maryland Code, Election Law § 9-103 .....2  
Maryland Code, Election Law § 9-303 .....2, 3  
Maryland Code, Election Law § 9-304 .....2  
Maryland Code, Election Law § 12-202 .....1, 2  
Maryland Code, Election Law § 12-203 .....1, 2  
Maryland Code, Courts and Judicial Proceedings § 12-303 .....2

**REFERENCE TO THE ACTION IN THE LOWER COURT**

The action is in the Circuit Court for Anne Arundel County, *Melisande C. Fritzsche, et al vs. Maryland State Board of Elections et. Al*, Case no. C06118140.

**DECISION BY THE COURT OF SPECIAL APPEALS**

The case has not yet been decided by the Court of Special Appeals. Petitioners seek a temporary restraining order or preliminary injunction determining that the Maryland State Board of Elections accept as valid all absentee ballots postmarked November 7, 2006, for purposes of the November 7, 2006, elections.

**BRIEFING IN THE COURT OF SPECIAL APPEALS**

No briefs have yet been filed in the Court of Special Appeals, aside from a Notice of Appeal. Petitioners have separately sought to bring a direct interlocutory appeal to this Court from the decision of a circuit court in an action “seek[ing] judicial relief from an[] act or omission relating to an election” under Maryland Code, Election Law § 12-202. Direct appeal to the Court of Appeals is authorized by Maryland Code, Election Law § 12-203(a)(3), which states that “an appeal shall be taken directly to the Court of Appeals within 5 days of the date of the decision of the Circuit Court.” The Court of Appeals is directed by statute to “give priority to hear and decide an appeal brought under

subsection (a)(3) of [Maryland Code, Election Law § 12-203] as expeditiously as the circumstances require.”<sup>1</sup>

**JUDGMENT OF THE CIRCUIT COURT**

The circuit court has not yet adjudicated all claims in this action in their entirety.

**JUDGMENT SOUGHT TO BE REVIEWED**

The judgment sought to be reviewed was entered by the circuit court on November 6, 2006. The Court of Special Appeals has not yet entered a mandate.

**QUESTION PRESENTED FOR REVIEW**

Are Petitioners entitled to an order directing Respondents to accept as valid all absentee ballots postmarked November 7, 2006, as provided by statute and as required by the state and federal constitutions?

**PERTINENT STATUTES AND REGULATIONS**

This case involves Maryland Code, Election Law §§ 9-102, 9-103, 9-303 & 9-304; Maryland Code, Election Law §§ 12-202 & 12-203; Maryland Code, Courts and Judicial Proceedings §§ 12-201, 12-203 & 12-303(3); and Code of Maryland Regulations §§ 33.09.02.07 & 33.11.03.08.

**DOCUMENTS REQUIRED UNDER RULE 8-303(B)(2)**

The written order from the circuit court from November 6, 2006, denying Petitioners’ petition for a temporary restraining order and preliminary injunction; a Notice of Appeal filed with the Court of Special Appeals; and the docket entry

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<sup>1</sup> Alternatively, because this petition concerns the circuit court’s refusal to timely grant Petitioners’ request for a preliminary injunction, adjudication of all claims is not necessary for appeal under Maryland Code, Courts and Judicial Proceedings § 12-303(3)(iii).

evidencing the judgment of the circuit court are attached. Neither the circuit court nor the Court of Special Appeals has issued an opinion in this case.

**STATEMENT OF THE CASE AND STATEMENT OF THE FACTS**

Petitioners are registered voters in the State of Maryland who timely applied for absentee ballots. Despite Petitioners' diligence in meeting their obligation to timely request absentee ballots, Petitioners were not able to vote in this election by virtue of Code of Maryland Regulations ("COMAR") 33.11.03.08(b), which requires that absentee ballots be postmarked by November 6, 2006.

As explained in our merits brief, Petitioner Melisande C. Fritzsche is a Maryland resident and is registered to vote in Baltimore County, Maryland. Ms. Fritzsche is a student at the Rochester Institute of Technology, and lives in Rochester, New York while she attends school there. Despite requesting an absentee ballot for both the primary and general elections in mid-August 2006 by fax and mail, she did not receive her absentee ballot in the mail until Monday, November 6, 2006. The ballot bore a postmark of November 1, 2006. As a result, and for other reasons detailed in our merits brief, she was unable to submit a postmarked ballot on that date. Because Ms. Fritzsche lives out of state, she was not able to personally access her precinct polling station to vote. However, she submitted her absentee ballot by mail on November 7, in time to obtain a postmark for that date.

Appellee Maryland State Board of Elections ("MSBE") is a public agency responsible for all aspects of general elections in Maryland and in specific counties, including the appointment of election judges and other officials and employees at each

polling place. Respondents Lamone, Burger, Mack, Beck, Jezik, and Widerman are administrators or board members of the MSBE. Respondents are acting under color of State law and are sued in their official capacities. Under Maryland Code, Election Law § 9-303(a), Respondents have been delegated the authority to “establish guidelines for the administration of absentee voting by the local boards,” including “determining [the] timeliness of receipt of . . . ballots,” § 9-303(b)(4). Pursuant to this authority, Respondents have required that voters postmark absentee ballots by November 6, 2006, in order for those ballots to be counted. COMAR 33.11.03.08(b). No statute requires this deadline; rather, the rule represents the discretionary exercise of the Respondents’ regulatory powers.

On January 18, 2006, the Maryland Assembly enacted legislation that gave every Maryland voter the right to cast an absentee ballot as long as a timely request was submitted to the local board of elections. As of Thursday, November 2, approximately 186,000 registered voters in Maryland had taken the State’s advice and had requested to vote by absentee ballot in the 2006 general election.

As a result of this onslaught of absentee ballot requests, local boards of election were unable to timely fulfill absentee ballot orders. According to the Maryland General Assembly’s Office of Legislative Audits, problems with the printing and delivery of absentee ballots to local boards were identified nearly three weeks ago, during the week

of October 16, 2006.<sup>2</sup> Still, many voters, like the Petitioners here, did not receive absentee ballots in time to postmark them by November 6. In fact, as of Monday, November 6, the MSBE reported that at least 900 absentee ballots were not sent out until Saturday, November 4, and approximately 2,350 were not sent out until Friday, November 3.

On Monday, November 6, Petitioners filed the petition for a TRO and motion for a preliminary injunction before the Circuit Court for Anne Arundel County, Judge Joseph P. Manck presiding. Judge Manck denied the petition.

### **ARGUMENT**

Petitioners' argument in support of their request for relief is set forth in their separately filed Brief to this Court.

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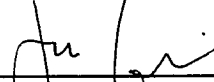
<sup>2</sup> Letter from Bruce A. Meyers, CPA, Legis. Auditor, to Karl S. Aro, Exec. Dir., Dept. of Legis. Servs., MD Gen. Assembly, Oct. 16, 2006.



**CONCLUSION**

Petitioners respectfully request that this Court grant the petition for writ of certiorari and review the decision of the circuit court.

Respectfully submitted,



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This 8th day of November, 2006

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**Civil Hearing Sheet  
IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY**

Melisande C. Fritzsche, et al.

Case No. C-06-118140

Plaintiff

(David Rocah/Anthony Pierce/Debora Jeon)

Date: November 6, 2006

VS

Maryland State Board of Elections, et al.

Defendant

(Mark Davis)

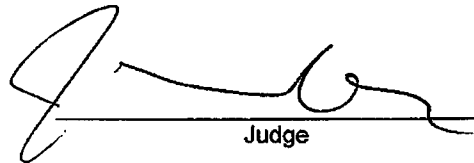
Clerk: Johnston

4C

**Case called for Hearing on Petition for Temporary Restraining Order and Motion for a Preliminary Injunction**

**In Open Court before Judge Joseph Manck**

Counsel heard as to Plaintiffs' Petition for Temporary Restraining Order and Preliminary Injunction - Motion denied.

  
\_\_\_\_\_  
Judge

*Original in case files.*

FILED  
06 NOV -8 AM 11:58

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  
 Civil (410)222-1431

11/08/06

Case Number: 02-C-06-118140 IJ

Date Filed: 11/06/2006

Status: Open/Active

Case Flag: Appeal

Judge Assigned: To Be Assigned,

Location :

CTS Start : 11/06/06 Target : 05/04/08

Melisande C Fritzsche, Et Al Vs Maryland State Board Of Elections, Et

**C A S E H I S T O R Y****OTHER REFERENCE NUMBERS**

Description	Number
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Case Folder ID	C06118140V01

**INVOLVED PARTIES**

Type Num	Name (Last, First, Mid, Title)	Addr Str/End	Pty. Disp. Addr Add/Upd
-----	-----	-----	-----
PLT 001	Fritzsche, Melisande C		
		Party ID: 1574181	
	Capacity : On Behalf Of Similarly Situated Voters		
	Mail: 4046 Nathaniel Rochester Hall	11/06/06	11/06/06 SGA
	Rochester, NY 14623		
Attorney:	0020001 Jeon, Deborah	Appear: 11/06/2006	
	American Civil Liberties Union Foundation Of Maryland		
	3600 Clipper Mill Road		
	Suite 350		
	Baltimore, MD 21211		
	(410)889-8550		
	0808025 Rocah, David R	Appear: 11/06/2006	

02-C-06-118140 Date: 11/08/06 Time: 13:40

Page: 2

ACLU Of Maryland Foundation  
 3600 Clipper Mill Road  
 Suite 350  
 Baltimore, MD 21211  
 (410)889-8555

Type Num	Name (Last, First, Mid, Title)	Addr Str/End	Pty. Disp. Addr Add/Upd
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-----  
 PLT 002 Vinzant, Malcolm G, Jr

Party ID: 1574182

Capacity : On Behalf Of Similarly Situated Voters  
 Mail: 911 South Charles Street 11/06/06 11/06/06 SGA  
 Apt 407  
 Baltimore, MD 21230

Attorney: 0020001 Jeon, Deborah Appear: 11/06/2006  
 American Civil Liberties Union Foundation Of Maryland  
 3600 Clipper Mill Road  
 Suite 350  
 Baltimore, MD 21211  
 (410)889-8550

0808025 Rocah, David R Appear: 11/06/2006  
 ACLU Of Maryland Foundation  
 3600 Clipper Mill Road  
 Suite 350  
 Baltimore, MD 21211  
 (410)889-8555

DEF 001 Maryland State Board Of Elections

Party ID: 1574183

Mail: 151 West Street 11/06/06 11/06/06 SGA  
 Suite 200 11/06/06 SGA  
 Annapolis, MD 21401

DEF 002 Lamone, Linda H

Party ID: 1574184

Capacity : State Administrator  
 Mail: Maryland State Board Of Elections 11/06/06 11/06/06 SGA  
 151 West Street, Suite 200  
 Annapolis, MD 21401

DEF 003 Burger, Gilles W

Party ID: 1574185

Capacity : Chairman  
 Mail: Maryland State Board Of Elections 11/06/06 11/06/06 SGA  
 151 West Street, Suite 200  
 Annapolis, MD 21401

02-C-06-118140 Date: 11/08/06 Time: 13:40

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Type Num	Name (Last, First, Mid, Title)	Addr Str/End	Pty. Disp. Addr Add/Upd
DEF 004	Mack, Bobbie S		
		Party ID: 1574186	
	Capacity : Vice Chairman		
	Mail: Maryland State Board Of Elections	11/06/06	11/06/06 SGA
	151 West Street, Suite 200		
	Annapolis, MD 21401		
DEF 005	Beck, Joan		
		Party ID: 1574187	
	Capacity : Boardmember		
DEF 006	Jezik, Andrew V		
		Party ID: 1574188	
	Capacity : Boardmember		
DEF 007	Widerman, Susan		
		Party ID: 1574189	
	Capacity : Boardmember		

**JUDGE HISTORY**

JUDGE ASSIGNED	Type	Assign Date	Removal	RSN
TBA To Be Assigned,	J	11/06/06		

**DOCUMENT TRACKING**

Num/Seq	Description	Filed	Party	Jdg Ruling	Closed	User ID/ Entered
0001000	Complaint	11/06/06	PLT001	TBA		SGA 11/06/06
0002000	Attorney Appearance Filed David R Rocah	11/06/06	PLT001	TBA	11/06/06	SGA 11/06/06
0003000	Attorney Appearance Filed David R Rocah	11/06/06	PLT002	TBA	11/06/06	SGA 11/06/06
0004000	Attorney Appearance Filed Deborah Jeon	11/06/06	PLT001	TBA	11/06/06	SGA 11/06/06
0005000	Attorney Appearance Filed	11/06/06	PLT002	TBA		SGA SGA

02-C-06-118140 Date: 11/08/06 Time: 13:40

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Deborah Jeon

11/06/06 11/06/06

Num/Seq	Description	Filed	Party	Jdg	Ruling	Closed	User ID/ Entered
0006000	Petition for a Temporary Restraining Order and Motion for a Preliminary Injunction and Exhibits	11/06/06	PLT001	TBA			SGA SGA 11/06/06
0007000	Motion for Special Admission of Out-of-State Attorney Under Rule 14 of the Rules Governing Admission to the Bar of Maryland	11/06/06	PLT001	TBA			SGA 11/06/06
0008000	Hearing Sheet. Case called for Hearing on Petition for Temporary Restraining Order and Motion for a Preliminary Injunction before Judge Joseph Manck. Counsel heard as to Plaintiff's Petition for Temporary Restraining Order and Preliminary Injunction- Motion denied.	11/08/06	000	TBA			SB 11/08/06
0009000	Hearing sheet signed as Order of the Court. (Copies faxed to D. Rocah (ACLU) A. T. Pierce, D. Liu, J. Goldman, and Linda Lamone, Gilles Burger, Bobbie Mack, Andrew Jezvik, Joan Beck, Susan Widerman).	11/08/06	000	TBA			SB SB 11/08/06 11/08/06
0010000	***Clerks Note-Faxed a copy of docket entries and hearing sheet to the Atty. Gernals Office to the Attn of Kelly***	11/08/06	000	TBA			CDW CDW 11/08/06
0011000	Notice of Appeal to COA filed by attys. Thomas Goldstein/A.T. Pierce and Jonah Goldblum/Jon Greenbaum. (Copies to Judge Manck and Jean Bowman).	11/08/06	PLT001	TBA			SB SB 11/08/06
0012000	Notice of Appeal to COSA filed by attys Goldstein, Pierce, Goldman & Greenbaum. (Copies to Judge Manck and Jean Bowman).	11/08/06	PLT001	TBA			SB SB 11/08/06
0013000	*** Per Clerk at the Court of Appeals, please send the files tomorrow. Case is to be heard Monday, 11/13/06 ***	11/08/06	000	TBA			SB 11/08/06
0014000	Original Pleadings sent to COA including 1 Volume of Pleadings. (Transcript expected - Overnight- by noon tomorrow (11/09/06). Files sent by BWA Courier 11/09/06.	11/08/06	000	TBA			SB 11/08/06

## TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
140T	140 Day Tickle	OPEN	03/26/07	140	no	no	DCOM	D	005	000

02-C-06-118140 Date: 11/08/06 Time: 13:40

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Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From	Type	Num	Seq
60DT	60 Day Tickle	OPEN	01/07/07	60	yes	no		DMIS D	010	000

## ACCOUNTING SUMMARY

## NON-INVOICED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct	Desc	Debit	Credit	Method
11/06/06		106	Solicitor	10.00	.00	
11/06/06		265	MD LSC Fee	25.00	.00	
11/06/06		107	Filing New	80.00	.00	
11/08/06	200600019418/DMB	106	Solicitor	.00	10.00	CK
11/08/06	200600019418/DMB	108	Filing Fee	.00	25.00	CK
11/08/06	200600019418/DMB	107	Filing New	.00	80.00	CK
11/08/06	200600019418/DMB	265	MD LSC Fee	.00	25.00	CK
11/08/06		1220	Appl File Fe	60.00	.00	
11/08/06		1220	Appl File Fe	60.00	.00	
11/08/06	200600019490/SB	1220	Appl File Fe	.00	60.00	CA
11/08/06	200600019492/SB	1220	Appl File Fe	.00	60.00	CA
BALANCE:		0.00				

## ESCROW DEPOSITS AND DISBURSEMENTS - 114 Escrow Crt of Special Appeals

Date	Rcpt/Initials	Deposit	Disbursement	Balance
11/08/06	200600019494/SB	50.00	.00	50.00

## CASE FOLDER HISTORY

Date	Time	Type	User	Location	Clerk	Reason
11/08/06	9:03 AM	Transfer	JMC	Civil	LC1	
11/06/06	5:22 PM	Created		Clerk employee	SGA	Case Folder Crea




**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served, by electronic mail and by first-class mail, postage pre-paid, 2 copies of the foregoing Petition for Writ of Certiorari upon opposing counsel designated below.

Mark Davis  
Office of the Maryland Attorney General  
200 St. Paul Place  
Baltimore, MD 21202

Dated at Washington, D.C., this 8th day of November, 2006.



---

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