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NO. \_\_\_\_\_

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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-Appellants,*

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-Appellees.*

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**ON APPEAL TO THE COURT OF APPEALS FROM  
THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY**

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**RECORD EXTRACT**

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November 8, 2006

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**Case Information**

Court System: Circuit Court for Anne Arundel County - Civil System  
Case Number: 02C06118140  
Title: Melisande C Fritzsche, et al vs Maryland State Board Of Elections, et al  
Case Type: Injunction Filing Date: 11/06/2006  
Case Status: Open/Active  
Case Disposition: Disposition Date:

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**Plaintiff/Petitioner Information**

(Each Plaintiff/Petitioner is displayed below)

Party Type: Plaintiff Party No.: 2  
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City: Baltimore State: MD Zip Code: 21230

**Attorney(s) for the Plaintiff/Petitioner**

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City: Rochester State: NY Zip Code: 14623

**Attorney(s) for the Plaintiff/Petitioner**

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**Defendant/Respondent Information**

(Each Defendant/Respondent is displayed below)

Party Type: DefendantParty No.:3

Name:Burger, Gilles W

Address: Maryland State Board Of Elections

City: AnnapolisState:MDZip Code:21401

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Party Type: DefendantParty No.:1

Business or Organization Name: Maryland State Board Of Elections

Address: 151 West Street

City: AnnapolisState:MDZip Code:21401

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Party Type: DefendantParty No.:2

Name:Lamone, Linda H

Address: Maryland State Board Of Elections

City: AnnapolisState:MDZip Code:21401

---

Party Type: DefendantParty No.:4

Name:Mack, Bobbie S

Address: Maryland State Board Of Elections

City: AnnapolisState:MDZip Code:21401

---

Party Type: DefendantParty No.:5

Name:Beck, Joan

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Party Type: DefendantParty No.:6

Name:Jezik, Andrew V

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Party Type: DefendantParty No.:7

Name:Widerman, Susan

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**Document Tracking**

(Each Document listed. Documents are listed in Document No./Sequence No. order)

Doc No./Seq No.: 1/0

File Date: 11/06/2006Close Date:Decision:  
Party Type: PlaintiffParty No.:1  
Document Name: Complaint

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Doc No./Seq No.: 2/0  
File Date: 11/06/2006Close Date:11/06/2006Decision:  
Party Type: PlaintiffParty No.:1  
Document Name: Attorney Appearance Filed  
David R Rocah

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Doc No./Seq No.: 3/0  
File Date: 11/06/2006Close Date:11/06/2006Decision:  
Party Type: PlaintiffParty No.:2  
Document Name: Attorney Appearance Filed  
David R Rocah

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Doc No./Seq No.: 4/0  
File Date: 11/06/2006Close Date:11/06/2006Decision:  
Party Type: PlaintiffParty No.:1  
Document Name: Attorney Appearance Filed  
Deborah Jeon

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Doc No./Seq No.: 5/0  
File Date: 11/06/2006Close Date:11/06/2006Decision:  
Party Type: PlaintiffParty No.:2  
Document Name: Attorney Appearance Filed  
Deborah Jeon

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Doc No./Seq No.: 6/0  
File Date: 11/06/2006Close Date:Decision:  
Party Type: PlaintiffParty No.:1  
Document Name: Petition for a Temporary Restraining Order and Motion for a  
Preliminary  
Injunction and Exhibits

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Doc No./Seq No.: 7/0  
File Date: 11/06/2006Close Date:Decision:  
Party Type: PlaintiffParty No.:1  
Document Name: Motion for Special Admission of Out-of-State Attorney Under Rule  
14 of the Rules

## Governing Admission to the Bar of Maryland

**IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY  
STATE OF MARYLAND**

---

MELISANDE C. FRITZSCHE, 4046 Nathaniel  
Rochester Hall, Rochester New York 14623, for  
herself and on behalf of SIMILARLY SITUATED  
VOTERS, and MALCOLM G. VINZANT, JR., 911  
South Charles Street, Apt. 407, Baltimore Maryland,  
21230, for himself and on behalf of SIMILARLY  
SITUATED VOTERS,

Plaintiff,

- against -

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.

Index/File No.: \_\_\_\_\_

**COMPLAINT**

**COMPLAINT**

1. This emergency action for a Temporary Restraining Order or Preliminary Injunction is brought to preserve Petitioners' rights to effectively cast a vote in the 2006 general election held on November 7, 2006, rights secured by both the United States Constitution and the Maryland Constitution.

**Parties**

2. Petitioners are registered voters in the State of Maryland who timely applied for Absentee Ballots and, as of November 6, 2006, have not received them or have received them too late to postmark them by November 6.

3. Petitioner Mr. Malcolm G. Vinzant, Jr., resides in a nursing home at 911 South Charles Street, Apt. 407, Baltimore, Maryland 21230, where he is registered to vote. On October 31, 2006, his wife, Beverly Vinzant, traveled to the Baltimore City Board of Elections, main office, and filled out an application to get an absentee ballot to be mailed to him for the general election as she would be unable to accompany him to the polls directly. The elections clerk assured her that it would be sent out that evening. As of Monday, November 6, 2006, Mr. Vinzant has not received an Absentee Ballot. If the Ballot arrives on Monday, November 6, 2006 in the ordinary mail, he will be unable to properly fill it out, sign it, and postmark the Absentee Ballot by November 6, 2006, as required by law. Because he is unable to travel to the polls without the assistance of his wife, who will be unavailable, he will not be able to vote without an extension to the postmark date as he cannot independently access his precinct polling station to vote in the normal course. As a result, Because of the delay in mailing his Absentee Ballot, Mr. Vinzant, Jr. will be denied the right to vote without an extension to the postmark date.

4. Petitioner Melisande C. Fritzsche is registered to vote in Baltimore County, Maryland. Ms. Fritzsche is a student at the Rochester Institute of Technology in Rochester, New York. She currently resides at 4046 Nathaniel Rochester Hall, Rochester, New York. In mid-August, 2006, Ms. Fritzsche requested an absentee ballot for both the primary and general election, because she would be out of the state at school. She made this request by faxing and mailing an absentee request to the County Board of Elections in Catonsville, Maryland. As of Monday, November 6, 2006, Ms. Fritzsche has not received an Absentee Ballot. If the Ballot



arrives on Monday, November 6, 2006 in the ordinary mail, she will be unable to properly fill it out, sign it, and postmark the Absentee Ballot by November 6, 2006, as required by law.

Because Ms. Fritzsche lives out of state, she will not be able to personally access her precinct polling station to vote in the normal course or by provisional ballot.

5. Defendant 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. Defendants Lamone, Burger, Mack, Beck, Jezik, and Wideman are Administrators or Board Members of the MSBE.

6. Defendants are acting under color of State law and are sued in their official capacities.

#### **Jurisdiction and Venue**

7. Jurisdiction in this Court is proper because this is a Court of general jurisdiction. Venue in this Court is proper because Defendants are located here.

#### **Facts Common to All Claims**

8. On January 18, 2006, the Maryland Assembly enacted legislation that gave every Maryland voter the right to cast an Absentee Ballot regardless of the voters' circumstances.

9. Commencing on September 21, Maryland Governor Bob Ehrlich and other senior officials repeatedly urged Maryland voters to take advantage of their right to vote by Absentee Ballot as a "convenient and reliable option to avoid long lines and malfunctioning technology at the polling places."

10. 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. This represents almost triple the number of absentee ballots submitted during the most recent mid-term election in 2002.

11. As a result of this onslaught of Absentee Ballot requests, Local Boards of Elections have been unable to timely fulfill Absentee Ballot orders. Absentee Ballot orders have been exceedingly late or even erroneously filled, creating a statewide emergency.

12. The volume of requests, combined with the vendor's inability to provide the Absentee Ballots in a timely fashion, has created situations in which voters are unlikely to receive their Absentee Ballots in time to postmark by November 6.

13. 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.

14. Despite the early identification of the problems, many counties simply have not been supplied by the MSBE's vendor with any time left for them to timely fulfill the Absentee Ballot requests of their voters.

15. 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. As a result of these delays, many voters may not receive or be able to send out their absentee ballots by the postmark date.

16. Many voters are unlikely to receive their ballots on or before the postmark date of November 6, 2006. The Boards of Election's failure to remedy a known problem has called into question the integrity of Maryland's election and will result in widespread disenfranchisement among registered Maryland voters.

#### **FIRST CLAIM FOR RELIEF**

**(Maryland Constitution)**

17. Petitioners repeat and reallege each and every allegation contained in paragraphs 1-13.

18. Article 1, § 1 of the Maryland Constitution guarantees the right of every person entitled to vote to vote. Article 7 of the Maryland Declaration of Rights similarly guarantees the right to vote to those persons entitled to vote. Article 1, § 3 of the Maryland Constitution guarantees the right to vote by Absentee Ballot.

19. Pursuant to administrative regulations, Petitioners timely and properly filed an application for Absentee Ballots.

20. Defendants' failure to ensure that Absentee Ballots were distributed in time and their refusal to accept Absentee Ballots postmarked on November 7, 2006, threatens to wholly disenfranchise eligible voters who sought to exercise their right to vote by absentee ballot.

21. Pursuant to their rights under the Maryland Constitution, Petitioners are entitled to an Order ensuring that their Absentee Ballots be counted in the 2006 general election

**SECOND CLAIM FOR RELIEF**

**(Equal Protection under the Maryland Constitution)**

22. Petitioners repeat and reallege each and every allegation contained in paragraphs 1-18.

23. Article 24 of the Maryland Declaration of Rights prohibits laws that operate on some persons differently than others similarly situated.

24. Petitioners timely and properly filed their applications for Absentee Ballots.

25. Many other voters who filed applications for Absentee Ballots received their Ballots in time to meet the November 6, 2006 postmark deadline.

26. Defendants' failure to ensure that Absentee Ballots were timely mailed and their refusal to accept Absentee Ballots postmarked on November 7, 2006, imposes a burden on Petitioners' right to vote. Even though Petitioners, like many others who applied for Absentee Ballots, filed their applications according to state regulations and deadlines, the Defendants' failure to ensure that Petitioners' votes will be counted violates the equal protection clause embodied by Article 24 of the Maryland Declaration of Rights.

### **THIRD CLAIM FOR RELIEF**

27. Petitioners repeat and reallege each and every allegation contained in paragraphs 1-23.

28. The Fourteenth Amendment to the United States Constitution guarantees the right of equal protection of the laws.

29. Petitioners timely and properly filed their applications for Absentee Ballots.

30. Many other voters who filed applications for Absentee Ballots received their Ballots in time to meet the November 6, 2006 postmark deadline.

31. Defendants' failure to ensure that Absentee Ballots were timely mailed and their refusal to accept Absentee Ballots postmarked on November 7, 2006, imposes a burden on Petitioners' right to vote. Even though Petitioners, like many others who applied for Absentee Ballots, filed their applications according to State regulations and deadlines, the Defendants' failure to ensure that Petitioners' votes will be counted violates the Fourteenth Amendment's Equal Protection Clause.

### **FOURTH CLAIM FOR RELIEF**

1. Petitioners repeat and reallege each and every allegation contained in paragraphs 1-23.

2. Md. Code, Elec. L. § 9-304 guarantees the right of every registered voter to cast an absentee ballot for any reason, as long as a timely and proper request for a ballot is submitted.

Md. Declaration of Rights, Art. 19 guarantees that for every right there is a remedy at law.

3. Petitioners timely and properly filed their applications for absentee ballots.

4. Defendants failure to ensure that absentee ballots were timely mailed, and their refusal to accept ballots postmarked on November 7, 2006, threatens to wholly disenfranchise eligible voters who sought to exercise their right to vote by absentee ballot

#### **PRAYER FOR RELIEF**

Petitioners reallege the allegations set forth in Paragraphs 1–28. Wherefore, Petitioners ask this Court to order the Maryland State Board of Elections (“MSBE”) to act immediately to preserve Petitioners’ rights to vote by Absentee Ballot. Specifically, Petitioners requests that this Court **ORDER** the MSBE to:

Direct all State and County Boards of Election to accept Absentee Ballots if postmarked on Election Day, November 7, 2006.

- OR IN THE ALTERNATIVE -

Order that all Absentee Ballots postmarked on November 7, 2006 be preserved by the MSBE until such time as a full hearing on this matter may be conducted.

Respectfully submitted,

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This 6th day of November, 2006

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DEBORAH JEON

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**IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY  
STATE OF MARYLAND**

---

MELISANDE C. FRITSZCHE, 4046 Nathaniel  
Rochester Hall, Rochester New York 14623, for  
herself and on behalf of SIMILARLY SITUATED  
VOTERS, and MALCOLM G. VINZANT, JR., 911  
South Charles Street, Apt. 407, Baltimore Maryland,  
21230, for himself and on behalf of SIMILARLY  
SITUATED VOTERS,

Plaintiff,

- against -

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.

Index/File No.: \_\_\_\_\_

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

**Request for an Emergency Hearing**

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

Pursuant to Maryland Rule 15-504, Petitioners – all of whom are eligible, registered voters in Maryland – request that this Court enter a Temporary Restraining Order (“TRO”) or Preliminary Injunction to prevent widespread disenfranchisement of a substantial number of registered Maryland voters due to state and local officials’ failure to prepare properly and timely deliver Absentee Ballots.

Petitioners request that this Court order the Maryland State Board of Elections and various elections officials (Defendants) to act immediately to preserve their right to vote by Absentee Ballot. Specifically, Petitioners request that this Court **ORDER** Defendants to:

1. Allow Absentee Ballots to be accepted if postmarked on Election Day, Tuesday, November 7, 2006.

- OR IN THE ALTERNATIVE -

2. Order that all Absentee Ballots postmarked on November 7, 2006 be preserved by Defendants until such time as a full hearing on this matter may be conducted.

#### **I. FACTUAL BACKGROUND**

Petitioners are voters in the State of Maryland who timely requested Absentee Ballots. Despite Petitioners' diligence in meeting their obligation to timely request (an) Absentee Ballot(s), absent action by this Court, Petitioners will not be 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.

Petitioner Mr. Malcolm G. Vinzant, Jr., resides in a nursing home at 911 South Charles Street, Apt. 407, Baltimore, Maryland 21230, where he is registered to vote. On October 31, 2006, his wife, Beverly Vinzant, traveled to the Baltimore City Board of Elections, main office, and filled out an application to get an absentee ballot to be mailed to him for the general election as she would be unable to accompany him to the polls directly. The elections clerk assured her that it would be sent out that evening. As of Monday, November 6, 2006, Mr. Vinzant has not received an Absentee Ballot. If the Ballot arrives on Monday, November 6, 2006 in the ordinary mail, he will be unable to properly fill it out, sign it, and postmark the Absentee Ballot by November 6, 2006, as required by law. Because he is unable to travel to the polls without the



assistance of his wife, who will be unavailable, he will not be able to vote without an extension to the postmark date as he cannot independently access his precinct polling station to vote in the normal course. As a result, Because of the delay in mailing his Absentee Ballot, Mr. Vinzant, Jr. will be denied the right to vote without an extension to the postmark date.

Petitioner Melisande C. Fritzsche is registered to vote in Baltimore County, Maryland. Ms. Fritzsche is a student at the Rochester Institute of Technology in Rochester, New York. She currently resides at 4046 Nathaniel Rochester Hall, Rochester, New York. In mid-August, 2006, Ms. Fritzsche requested an absentee ballot for both the primary and general election, because she would be out of the state at school. She made this request by faxing and mailing an absentee request to the County Board of Elections in Catonsville, Maryland. As of Monday, November 6, 2006, Ms. Fritzsche has not received an Absentee Ballot. If the Ballot arrives on Monday, November 6, 2006 in the ordinary mail, she will be unable to properly fill it out, sign it, and postmark the Absentee Ballot by November 6, 2006, as required by law. Because Ms. Fritzsche lives out of state, she will not be able to personally access her precinct polling station to vote in the normal course or by provisional ballot.

Defendant 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. Defendants Lamone, Burger, Mack, Beck, Jezik, and Wideman are Administrators or Board Members of the MSBE. Defendants are acting under color of State law and are sued in their official capacities. Under Maryland Code, Election Law § 9-303(a), Defendants 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); “the canvass process,” § 9-303(b)(5); “storage and

retention of ballots following canvass and certification,” § 9-303(b)(10); and more. Pursuant to this authority, Defendants 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 represent the discretionary exercise of the Defendants’ regulatory powers.<sup>1</sup>

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.<sup>2</sup> Commencing on September 21, Maryland Governor Bob Ehrlich and other senior officials repeatedly urged Maryland voters to take advantage of their right to vote by Absentee Ballot as a “convenient and reliable option to avoid long lines and malfunctioning technology at the polling places.”<sup>3</sup> 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. This represents almost triple the number of absentee ballots submitted during the most recent mid-term election in 2002.<sup>4</sup>

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<sup>1</sup> Plaintiffs do not bring a facial challenge to COMAR 33.11.03.08(b). Rather, Plaintiffs argue that application of the regulation in the context of the present election, when so many Absentee Ballots have been sent out too late to voters who timely requested them for them to be able to vote violates their statutory and constitutional rights.

<sup>2</sup> See H.B. 622, <http://mlis.state.md.us/2005rs/bills/hb/hb0622t.pdf>.

<sup>3</sup> See, e.g., <http://www.bobehrich.com/ab/>. Governor Ehrlich and Baltimore Mayor O’Malley were both sending out recorded messages urging voters to use absentee ballots. See Ann E. Marimow, At the Center of the Election Maelstrom, State Elections Chief Draws Array of Critics, <http://www.abc2news.com/news/06-09-29-election-ballots.html>.

Sep. 22, 2006; at B02 (see inset box).

<sup>4</sup> See, e.g., Steve Vogel & Rosalind S. Helderman, *Requests Hit Record for Absentee Ballots: Continued Delivery Delays Are Feared*, The Washington Post, Oct. 31, 2006, at B05 (“Whatever the cause, the number of ballots requested is well above the previous high of 137,953, recorded for the 2004 presidential election . . . . In the 2002 gubernatorial election, 65,284 voted absentee.”). The previous high was 137,953 absentee ballot requests in the 2004 presidential election; in the 2002 gubernatorial election, 65,824 people voted absentee. See also Melissa Harris & Andrew A. Green, *As Cox casts her absentee ballot, problems persist*, Baltimore Sun, Oct. 31, 2006, at <http://www.baltimoresun.com/news/local/bal-md.voting31oct31,0,1536115.story?coll=bal-local-headlines>. See also Melissa Harris, *Record Number of Voters Apply for Absentee Ballots*, Baltimore Sun, Nov. 1, 2006, at <http://www.baltimoresun.com/news/local/bal-te.md.voting01nov01,0,7727628.story?coll=bal-local-headlines>.

As a result of this onslaught of Absentee Ballot requests, Local Boards of Elections have been unable to timely fulfill Absentee Ballot orders. Absentee Ballot orders have been exceedingly late or even erroneously filled, creating a statewide emergency. The volume of requests, combined with the vendor's inability to provide the Absentee Ballots in a timely fashion, has created situations in which voters are unlikely to receive their Absentee Ballots in time to postmark by November 6. 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>5</sup> Despite the early identification of the problems, many counties simply have not been supplied with Absentee Ballots by the Defendants' vendor with any time left for them to timely fulfill the voters' Absentee Ballot requests. The problem is exacerbated by the fact that absentee ballots are heavy (the packaging notes that sending the ballots in requires "extra postage") and therefore most voters will need even more time to go to the Post Office to ensure successful delivery.

For example, the Board of Elections of Prince George's County completed its mailing on Saturday, November 4,<sup>6</sup> *allowing at most one business day* for Absentee Ballots to be delivered to voters' mailboxes and for voters to complete, sign, and postmark the Absentee Ballots by November 6.<sup>7</sup> For voters who do not receive their mail until the afternoon on November 6, this time period may be just a matter of hours, if there is any time at all. Assuming further that many voters must work until 5:00 p.m. or later, this makes postmarking an Absentee Ballot nearly, if not absolutely, impossible. Many voters are unlikely to receive their ballots on or before the

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<sup>5</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.

<sup>6</sup> Telephone call by Ben Blustein, The Lawyers' Committee for Civil Rights Under Law, with Interim County Elections Administrator Robert J. Antonetti, Sr. on Wednesday, November 1, 2006.

<sup>7</sup> See Jason Flanagan, Nearly 3,000 Absentee Ballots Yet To Be Sent. Board Of Elections Scrambles To Prepare For General Election On Tuesday, The Gazette, November 2, 2006, *available at* [http://www.gazette.net/stories/110206/princou175322\\_31939.shtml](http://www.gazette.net/stories/110206/princou175322_31939.shtml).

post-mark date of November 6, 2006. As of Thursday, November 2, 2006, the Prince George's County Board of Elections did not have three of its needed ballot styles and was unable to fulfill at least 250 requests.<sup>8</sup> Additionally, even with perfect postal service performance, some voters, who have maintained Maryland residency but have requested that the Absentee Ballot be mailed to an address out of state (as the Absentee Ballot Application allows), will not receive ballots in time to postmark them by November 6.

Even more recent data confirm these fears. 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. As a result of these delays, many voters may not receive or be able to send out their absentee ballots by the postmark date.<sup>9</sup>

The Boards of Election's failure to remedy a known problem has seriously jeopardized the integrity of Maryland's electoral system and will result in widespread disenfranchisement among registered Maryland voters.

## **II. THE LAW SUPPORTS THE ENTRY OF AN ORDER TO PREVENT DISENFRANCHISEMENT OF VOTERS**

A TRO or Preliminary Injunction is appropriate in this circumstance to prevent the irreparable harm of disenfranchisement of a substantial number of absentee voters. Such relief "may be granted only if it clearly appears from specific facts shown by affidavit or other statement under oath that immediate, substantial, and irreparable harm will result to the person seeking the order before a full adversary hearing can be held on the propriety of a preliminary or final injunction." Maryland Rule 15-504(a). Courts consider four factors to determine whether a TRO or Preliminary Injunction is appropriate:

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<sup>8</sup> *Id.*

<sup>9</sup> *See* Spreadsheet from MSBE (attached).

(1) the likelihood that the plaintiff will succeed on the merits; (2) the “balance of convenience” determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interest.

*In re Application of Kimmer*, 392 Md. 251, 260 n.13, 896 A.2d 1006, 1012 n.13 (Md. 2006) (quoting *LeJeune v. Coin Acceptors, Inc.*, 381 Md. 288, 300-01, 849 A.2d 451, 458-59 (Md. 2004)). Petitioners meet this standard here.

**A. Petitioners Will Suffer Irreparable Injury if Relief Is Not Granted.**

Under extant regulations, eligible voters who request absentee ballots must postmark their ballots by the day *before* Election Day for their absentee vote to be counted. COMAR 33.11.03.08(b). On Election Day itself, absentee voters may vote in only one of two ways: they may present their absentee ballot in person to their local board of elections, COMAR 33.11.03.08(b)(1); or they may use a provisional ballot at their local polling place. These procedures are the exclusive means by which absentee voters may exercise their right to vote.

However, as outlined in the factual background, Defendants have failed to distribute absentee ballots in time for those ballots to be mailed on the day before Election Day. Other absentee voters likely will not receive their ballots even in time to submit them in person on Election Day. Furthermore, Defendants have failed to ensure that there are sufficient provisional ballots to enable absentee voters to exercise alternative means of voting.

These actions have irreparably injured or will irreparably injure Petitioners in a number of ways. The following groups of Petitioners will face a serious burden on their right to vote:

- Petitioners who timely requested an absentee ballot but who did not receive the ballot until after the mailing deadline; and

- Petitioners who received an absentee ballot but who did not have sufficient time to postmark the ballot by the mailing deadline.

In addition, the following groups of Petitioners will be wholly disenfranchised:

- Petitioners for whom a polling place does not have sufficient provisional ballots to provide an alternative to absentee voting;
- Petitioners who do not receive an absentee ballot;
- Petitioners who receive an absentee ballot too late, drop it off *in a mailbox* on November 6, and who mistakenly believe that doing so protects their right to vote, when in fact only a *postmark* on November 6 guarantees that right; and
- Petitioners who receive an absentee ballot too late to submit by the mailing deadline, and who are physically unable to cast a provisional ballot or to visit the local board of elections.

These burdens and restrictions on the right to vote are immediate, substantial, and irreparable without this Court's intervention. Today marks the postmark deadline for absentee voters; tomorrow is Election Day. The right to vote is a fundamental right protected by the Maryland and United States Constitutions. Under extant regulations, those eligible voters who will not receive absentee ballots and who cannot complete a provisional ballot, either because he or she cannot reach the polling place or because of a shortage of provisional ballots at the polling place, will not have his or her vote counted.

**B. The "Balance of Convenience" Strongly Favors Granting the TRO or Preliminary Injunction**

In comparison to the substantial harms that Petitioners face, Defendants will suffer little to no harm if the requested relief is granted. First, Defendants could easily comply with the

relief requested using existing procedures. Extending the deadline for postmarking absentee ballots until **Election Day, November 7**, will not burden the Defendants because they can count such ballots during either the first canvass on November 9 or the second canvass of absentee ballots on November 17. COMAR 33.11.04.05(A)(2). Furthermore, COMAR 33.11.03.07 requires all absentee ballots to be gathered in one centralized location for the counting process, minimizing any logistical issues with counting such ballots.<sup>10</sup>

Second, the requested relief is consistent with Maryland law. The Maryland Code already contemplates the issuance of court orders that extend the time for voting activities. For example, Maryland Code, Election Law § 9-404(c) (entitled “Under court order”) specifically mentions court orders that keep polling places open: “any individual who appears to vote during a period covered by a court order or other order extending the time for closing the polls shall cast a provisional ballot.” Furthermore, the rule at issue here – the postmark deadline for absentee ballots – is a creature of regulation, not state law. In granting relief, this Court would not be flouting the legislature’s intent. Rather, it would be merely modifying a regulation that, given current circumstances, is unreasonable if applied. Thus, the requested relief represents no sharp break from existing Maryland law.

Third, courts outside of Maryland have extended the deadline for receipt of absentee ballots in analogous circumstances. *See Reitz v. Rendell*, 2004 U.S. Dist. LEXIS 21813 (M.D. Pa. Oct. 29, 2004) (extending deadline for receipt of absentee ballots from overseas military voters where U.S. “did not mail . . . ballots in time for their votes to be counted”). This

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<sup>10</sup> “33.11.03.07 B. Securing Ballots. Until the canvass begins, every absentee ballot shall:  
(1) Remain sealed in:  
(a) The security envelope for Federal Write-In Absentee Ballots; or  
(b) The return envelope for all other ballots; and  
(2) Be placed in a secure location to which the public does not have access.”

precedent demonstrates that the requested relief does not place an onerous burden on the Defendants in comparison to the risk that eligible voters will be disenfranchised.

Fourth, the proposed relief is narrowly tailored to the specific anticipated harm. As noted above, some Boards of Election did not complete their mailings of absentee ballots until only two or three days ago. Nevertheless, to minimize the burden on Defendants, Petitioners seek only to extend the postmark deadline to November 7, Election Day, even though such a remedy will not give voters the fullest measure of relief.

**C. The Public's Interest in Preventing the Disenfranchisement of Eligible Voters Is of the Highest Order**

The importance of the right to vote cannot be gainsaid. “[V]oting is of the most fundamental significance under our constitutional structure.” *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184 (1979). Suffrage is “a fundamental political right, because [it is] preservative of all rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). The Maryland Declaration of Rights similarly affirms the importance of the right to vote: “[E]very citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage.” Md. Declaration of Rights, Article 7. There can be no question that the imminent loss of or burden on the right to vote represents the kind of threat to the public interest for which a TRO or Preliminary Injunction is appropriate.

**D. Petitioners Are Likely to Succeed on the Merits**

Petitioners are likely to prevail on their claim that the Defendants have violated both State and Federal law in denying eligible voters the opportunity to vote or, at least, by imposing a severe burden on the right to vote.



**1. Defendants Have Violated Petitioners' Right to Vote Under the State Constitution.**

Article 1, § 1 of the Maryland Constitution provides that “[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” (emphasis added). Similarly, Article 7 of the Maryland Declaration of Rights proclaims, “[E]very citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage.” “Article 7 has been held to be even more protective of rights of political participation than the provisions of the federal Constitution.” *Md. Green Party v. Md. Bd. of Elections*, 832 A.2d 214, 228 (Md. 2003).

These provisions of State law guarantee the right to vote despite any governmental interference, whether intentional or inadvertent. At their most lenient, these provisions may excuse “unimportant mistakes” or “misleading, erroneous, or ambiguous instructions” that merely affect – without wholly depriving eligible voters of – the right to vote. *See Lamb v. Hammond*, 518 A.2d 1057, 1069 (Md. 1987). However, absolutely proscribe more serious errors, such as failing to fulfill election duties, that directly threaten the right to vote. Here, the Defendants’ errors are not “unimportant.” Rather, they fundamentally affect the electoral process. The Defendants’ failure to distribute absentee ballots in time and to ensure that polling places have sufficient provisional ballots threaten to *wholly disenfranchise* eligible voters who, in reliance upon the Governor’s declarations and provisions of State law, sought to exercise their right to vote by absentee ballot.

**2. Defendants’ Actions Violate the Statutory Right to Submit an Absentee Ballot.**

There is no question that Maryland Voters have an unqualified right to vote by absentee ballot in this election. In January of this year, the Maryland Assembly enacted a law providing,

*inter alia*, that Maryland voters had the right to cast an absentee ballot for any reason, unless prohibited by Federal law.<sup>11</sup> The source of power for this legislation is Article 1, § 3 of the Maryland Constitution, which specifically contemplates giving voters the right to use absentee ballots.<sup>12</sup> Although the legislature enacted this legislation over the veto of the Governor, the Governor has since signaled his official support for the legislation by publicly encouraging all Maryland voters to use absentee ballots as a preferred method to cast votes.<sup>13</sup> The plain text of new statute is clear. It provides that “[a] registered voter may vote by absentee ballot at an election if the voter” meets one of a list of criteria. *See* H.B. 622. The statute thus entitles voters to submit an absentee ballot and to have that ballot counted if they comply with the statute’s requirements, as Petitioners have here.

When a state statute grants a right, Article 19 of the Maryland Declaration of Rights ensures a remedy. Under Article 19, a citizen is guaranteed a remedy under the Maryland Constitution “for every injury done to him in his person or property.” Md. Const., Dec. of Rights., Art. 19.<sup>14</sup> The Court of Appeals of Maryland has stated that where, as here, the government has enacted a law or rule granting rights, but has not set up a means by which that law can be enforced, Article 19 affords persons whose rights are violated direct access to the courts for this purpose. *See Piselli v. 75th St. Med.*, 371 Md. 188, 206, 808 A.2d 508, 518 (Md. 2001) (“[W]here a person clearly has a right to money or property under a statute or common

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<sup>11</sup> *See supra* note 2.

<sup>12</sup> Maryland Const., art. 1, § 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.”

<sup>13</sup> *See supra* note 3.

<sup>14</sup> Although Article 19 has no counterpart in the Federal Constitution, the constitutions of thirty-eight other States have clauses similar to those in Maryland’s Constitution, although different States have adopted varying approaches to enforcement. A list of the state constitutions containing remedy clauses can be found in David Schuman, *The Right to a Remedy*, 65 Temp. L.Rev. 1197, 1201 n. 25 (1992).

law principle, and no statute specifically provides for a remedy, Article 19 guarantees a common law remedy to enforce the right.”), citing *Robinson v. Bunch*, 367 Md. 432,444, 788 A.2d 636,644 (2002) (“[If the General Assembly had not enacted a specific statutory remedy, state employees would certainly have a common law remedy in Maryland courts to enforce their rights to mandated overtime compensation under state or federal law.”).

This type of provision – often referred to as a “remedy clause,” “open courts clause,” or “access to the courts clause” – was originally derived from Chapter 40 of the Magna Carta, as interpreted by Lord Coke. See *Piselli*, 371 Md. at 204-05, 808 A.2d at 517- 18. Article 19 affords broad protection of the right to redress constitutional violations in the courts. See *Dua v. Comcast Cable of Md., Inc.*, 370 Md. 604, 645 & n.14, 805 A.2d 1061, 1085 (Md. Ct. App. 2002), citing *Smother's v. Gresham Transfer, Inc.*, 23 P.3d 333, 339 (Ore. 2001), for its “excellent and comprehensive discussion of the history and effect of so-called ‘remedy clauses’ in state constitutions, including a discussion of Maryland's Article 19.” The *Smother's* court explained, “Unlike many provisions in bills of rights, which protect individual rights by prohibiting the legislature from enacting certain laws or prohibiting the government from taking certain actions, [a remedy clause] protects rights respecting person, property, and reputation by mandating affirmatively that remedy by due course of law be available in the event of injury to those rights.” 23 P.3d at 339.

The Court of Appeals of Maryland has ruled that Article 19 generally protects two interrelated rights: (1) a right to a remedy for an injury to one’s person or property; and (2) a right of access to the courts:

Article 19 of the Maryland Declaration of Rights insures that rights belonging to Marylanders are ‘not illegally or arbitrarily denied by the government.’ *State v. Board of Education*, 346 Md. 633, 647, 697 A.2d 1334, 1341 (1997). Furthermore, under Article 19, ‘a plaintiff injured by unconstitutional state action

should have a remedy to redress the wrong.’ *Ashton v. Brown*, 339 Md. 70, 105, 660 A.2d 447, 464-465 (1995). See *Weyler v. Gibson*, 110 Md. 636,653-54, 73 A.261, 263 (1909). Moreover, even with regard to causes of action not based upon constitutional violations, ‘Article 19 does guarantee access to the courts.’ *Johnson v. Maryland State Police*, 331 Md. 285, 297, 628 A.2d 162, 168 (1993). See also, e.g., *Renko v. McLean*, 346 Md. 464, 484, 697 A.2d 468,478 (1997); *Murphy v. Edmonds*, 325 Md. 342, 365, 601 A.2d 102, 113 (1992); *Whiting-Turner Contracting Co. v. Coupard*, 304 Md. 340, 360,499 A.2d 178,189 (1985).

*Doe v. Doe*, 358 Md. 113, 127-28, 747 A.2d 617, 624 (Md. 2000).

Maryland law is clear that where, as here, a law or rule granting rights has been enacted, but has not set up a means by which that law can be enforced, Article 19 affords persons whose rights under the law are violated direct access to the courts for this purpose. Redress through Article 19 for Defendants’ violation of Maryland law governing absentee ballots is consistent both with existing Court of Appeals rulings under this provision and with general rules concerning the jurisdiction of Maryland trial courts. The rules establish that “[c]ircuit courts do not require expressed statutory authorization to entertain a particular type of civil action; instead, they have jurisdiction over civil causes of action generally.” See *R.A. Ponte Architects, LTD. v. InvestorsJAlert, Inc.*, 382 Md. 869, 696, 857 A.2d 1, 5 (Md. 2004) (citing *In re Heilig*, 372 Md. 692, 712-21, 816 A.2d 68, 80-86 (Md. 2003)).

**3. Defendants’ Discriminatory Treatment of Petitioners and Similarly Situated Absentee Voters Violates the Right to Equal Protection Under the State and Federal Constitutions.**

The Defendants have also violated Petitioners’ right to vote under the equal protection guarantees contained in the Federal Constitution and in Article 24 of the Maryland Constitution. “[A]lthough Article 24 does not contain an express equal protection clause, the concept of equal protection nevertheless is embodied in the Article.” *Renko v. McLean*, 697 A.2d 468, 477 (Md. 1977). The Court of Appeals of Maryland has held that “where all persons who are in like circumstances are treated the same under the laws, there is no deprivation of equal protection,

but a law which operates upon some persons or corporations, and not upon others like situated or circumstanced or in the same class, is invalid.” *Md. Green Party*, 832 A.2d at 234. Restrictions on the right to vote are “subject to some degree of special scrutiny.” *O.C. Taxpayers for Equal Rights, Inc. v. Ocean City*, 375 A.2d 541, 547-48 (Md. 1977). Similarly, the Federal Constitution requires that election laws treat like voters equally. “[T]he rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens . . . Fourteenth Amendment rights.” *Burdick v. Takushi*, 504 U.S. 428, 434 (1992).

Under both State and Federal law, there is no relevant distinction between the voting rights of Petitioners and nonabsentee voters, especially after the Governor urged *all* Maryland voters to vote by absentee ballot. There is even less of a distinction between the voting rights of Petitioners – who either will not receive absentee ballots or who will receive them too late – and other absentee voters who are unaffected by Defendants’ delays because they happened to receive their ballots in time. Nevertheless, the Defendants’ actions impose a burden on the right to vote *exclusively* on Petitioners and other absentee voters similarly situated. Furthermore, Defendants cannot articulate any public policy concern that would justify the imposition of this burden. Rather, this discrimination against Petitioners is occurring solely as a result of the Defendants’ negligent failure to prevent a known problem: the high demand for absentee ballots and the unresponsiveness of the State’s vendor in fulfilling orders. Because the Defendants can offer no justification for their unequal imposition of a burden on the right to vote, their actions violate the equal protection guarantees of State and Federal Law.

### III. CONCLUSION

In light of the imminent, irreparable, and substantial harm to Petitioners' right to vote, Petitioners respectfully request that this Court enter a TRO or Preliminary Injunction granting the relief requested above.

Respectfully submitted,

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This 6th day of November, 2006

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served, by electronic mail and facsimile, a copy of the foregoing Petition of [the Petitioners] for a Temporary Restraining Order or Preliminary Injunction for the relief requested above upon each person designated on the attached service list.

Dated at Washington, D.C., this 6<sup>th</sup> day of November, 2006.

	David Rocah
	American Civil Liberties Union of Maryland
	3600 Clipper Mill Road, Suite 350
	Baltimore, Maryland 21211
	Telephone: (410) 889-8555
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### SERVICE LIST

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**IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY  
STATE OF MARYLAND**

---

MELISANDE C. FRITZSCHE, 4046 Nathaniel  
Rochester Hall, Rochester New York 14623, for  
herself and on behalf of SIMILARLY SITUATED  
VOTERS, and MALCOLM G. VINZANT, JR., 911  
South Charles Street, Apt. 407, Baltimore Maryland,  
21230, for himself and on behalf of SIMILARLY  
SITUATED VOTERS,

Plaintiff,

- against -

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.

Index/File No.: \_\_\_\_\_

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

**Request for an Emergency Hearing**

**ORDER GRANTING PETITIONERS' PETITION FOR A TEMPORARY  
RESTRAINING ORDER OR PRELIMINARY INJUNCTION**

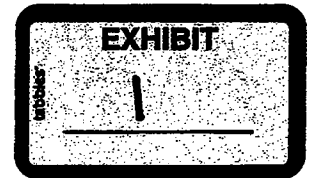
The Court orders the MSBE to accept Absentee Ballots if postmarked on Election Day,  
November 7, 2006;

DATED: ..... SIGNED: .....

UNOFFICIAL COPY OF HOUSE BILL 622

G1  
HB 473/00 - CGM

5lr1560



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By: Delegates Petzold, Griffith, Barkley, Bates, D. Davis, Dumais, Heller,  
Kaiser, Madaleno, Mandel, Moe, Montgomery, and Taylor Taylor,  
Bartlett, Boschert, Bozman, Cardin, Crvor, C. Davis, Elmore, Gilleland,  
Goodwin, Gordon, Healey, Hixson, Howard, King, Marriott, McKee,  
Myers, Patterson, Ramirez, and Ross

Introduced and read first time: February 4, 2005  
Assigned to: Ways and Means

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Committee Report: Favorable with amendments  
House action: Adopted  
Read second time: March 25, 2005

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CHAPTER \_\_\_\_\_

1 AN ACT concerning

2 **Elections - Absentee Voting on Demand**

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

7 BY repealing and reenacting, with amendments,  
8 Article - Election Law  
9 Section 9-304, 9-305, and 10-102  
10 Annotated Code of Maryland  
11 (2003 Volume and 2004 Supplement)

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

14 **Article - Election Law**

15 9-304.

16 [(a) A registered voter may vote by absentee ballot at an election if the voter:

17 (1) may be absent on election day from the county in which the voter is  
18 registered;

## UNOFFICIAL COPY OF HOUSE BILL 622

1 (2) because of accident, illness, or physical disability, will be unable to go  
2 to the polling place on election day;

3 (3) because of confinement in or restriction to an institution, will be  
4 prevented from going to the polling place on election day;

5 (4) because of a death or serious illness in the voter's immediate family,  
6 will be unable to go to the polling place on election day;

7 (5) is a full-time student at an institution of higher education located  
8 outside the voter's precinct but within the county of registration, and academic  
9 requirements prevent the voter from going to the polling place on election day; or

10 (6) because of employment by or service as an official of the State Board  
11 or a local board, is required to be absent from the precinct in which the voter is  
12 registered to vote on election day.

13 (b)] An individual may vote by absentee ballot [if authorized] EXCEPT TO THE  
14 EXTENT PREEMPTED under an applicable federal law.

15 9-305.

16 (a) An application for an absentee ballot, signed by the voter, may be made:

17 (1) on a form produced by the local board and supplied to the voter [on  
18 request];

19 (2) on a form provided under federal law; or

20 (3) in a written request that includes:

21 (i) the voter's name and residence address; AND

22 (ii) the address to which the ballot is to be mailed, if different from  
23 the residence address; and

24 (iii) the reason, as authorized in § 9-304 of this subtitle, for  
25 absentee voting].

26 (b) Except for a late application under subsection (c) of this section, an  
27 application for an absentee ballot must be received by a local board not later than the  
28 Tuesday preceding the election, at the time specified in the guidelines.

29 (c) (1) Beginning on the Wednesday preceding the election, through the  
30 closing of the polls on election day, a registered voter or the voter's duly authorized  
31 agent may apply in person for an absentee ballot at the office of the local board [if the  
32 voter is qualified for absentee voting under § 9-304 of this subtitle or § 10-102 of this  
33 article].

## UNOFFICIAL COPY OF HOUSE BILL 622

1           (2)     A special application for an absentee ballot issued under this  
2 subsection shall be supplied by the staff of the local board to the voter or the voter's  
3 duly authorized agent.

4           (3)     The application shall be made under penalty of perjury[,] but  
5 without a formal oath[, specifying the reason for absentee voting].

6           (4)     After review of the application, [if the staff of the local board finds  
7 that the voter qualifies for absentee voting,] the staff shall issue an absentee ballot to  
8 the voter or the voter's duly authorized agent.

9 10-102.

10       (a)     If the polling place assigned to an elderly or disabled voter is not  
11 structurally barrier free, the voter may request a reassignment by the local board.

12       (b)     (1)    To qualify for a reassignment by the local board, the voter shall  
13 submit a request in writing to the local board not later than the close of registration  
14 for the election.

15       (2)     The request may be made on a form prescribed by the State Board.

16       (c)     On receipt of a request from an elderly or disabled voter under subsection  
17 (b) of this section, the local board shall either:

18           (1)    assign the voter to an election district, ward, or precinct in the voter's  
19 county that contains a structurally barrier free polling place; or

20           (2)    issue the voter an absentee ballot in accordance with the procedures  
21 established under Title 9, Subtitle 3 of this article[, notwithstanding the voter's lack  
22 of eligibility for an absentee ballot under Title 9, Subtitle 3 of this article].

23       (d)     Any ballot issued to a voter under subsection (c)(2) of this section shall be  
24 identical to the ballot used in the polling place originally assigned to the voter.

25       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
26 October 1, 2005.

**Governor**  
**EHRlich**

**EXHIBIT**  
2

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## Absentee Voting

Every Marylander deserves a fair, accurate and accessible election.

Unfortunately, primary voters encountered long lines and malfunctioning election technology in the 2006 primary election. As the technology broke down, the lines to vote grew longer, prompting many citizens to leave with voting. This was unacceptable.

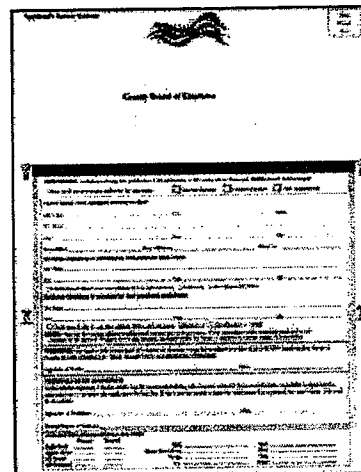
In light of the long lines and malfunctioning technology encountered on Primary Day, please consider voting in November's General Election by absentee ballot. Absentee ballots are convenient and reliable option to avoid long lines and malfunctioning technology at the polling places.

In addition, this year is the first year in which Marylanders can vote by absentee with no excuses. Any registered voter can request and vote on absentee ballot - no questions asked.

Every Marylander deserves to have confidence that their vote will be counted.

**[Click Here to download and print your absentee ballot application!](#)**

Just a reminder - All Absentee Ballot applications must be received by your Local Board of Elections office by 4 p.m. on October 31, 2006.



**Get Your Absentee Ballot!**

© 2006 Paid for and Authorized by the Bob Ehrlich for Maryland Committee  
 Henry A. Grandizio, Treasurer  
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## **2**Candidates in Md. governor's race promote use of absentee ballots

ANNAPOLIS, Md. (AP) – Rep. Gov. Robert Ehrlich and Democratic Mayor Martin O'Malley are using recorded teleph promote the use of absentee ballots in the general election, following a problems during this year's primary and the gc about the security of touchscreen voting machines. Until this year, absentee ballots could be used legally only by peop to the polls on election day.

But a new state "no fault" law enacted by the Democratic-controlled legislature over Ehrlich's veto allows anyone to vc ballot. The promotion of absentee ballots could lead to more frustration in November – hand counting paper ballots is that could drag on for days. If large numbers of voters decide to use absentee ballots, Marylanders may have to wait c winners in close elections. But both campaigns insist they are merely alerting voters to a new option. The Ehrlich cam Thursday to provide details on how many automated telephone calls, referred to as "robo" calls, are being made using and what the target audience is. "It is a similar tactic that was used in 2002," said Shareese DeLeaver, spokeswoman campaign. "This is campaign 101.

The Ehrlich campaign is not breaking new ground." Hari Sevugan, spokesman for O'Malley's campaign, said the robo Democratic gubernatorial nominee are being used, as in the past, for targeted voters, such as "drop off" voters who hi in presidential elections but not in midterm elections when all state offices are on the ballot. "Our goal is to give people Sevugan said. "We've done this in the past in a very targeted way." In recent months, Ehrlich has escalated his criticis touchscreen machines which were first used in Maryland four years ago in four counties and are now used statewide. promoted absentee ballots as an option for voters who don't trust the electronic machines. In the recorded message, l votes and encourages his supporters to use absentee ballots. "This is not a demand, this is not a request, this is just a said. David Paulson, spokesman for the Maryland Democratic Party, said the party might expand its promotion of abs because of the new law. "If that helps you to vote in a convenient, safe and secure manner, we'd encourage anybody But Paulson said studies have shown electronic machines are the most secure method of voting and paper ballots the

Electronic voting systems have passionate defenders and equally passionate critics in Maryland and across the count that without a paper trail that can be used to recount votes if there is a disputed election, there is no way to guarantee touchscreen machines were conducted honestly and fairly. Supporters insist that elaborate security measures ensure counts, noting the machines have been used nationally in hundreds of elections with not a single case of proven frau

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washingtonpost.com

## Requests Hit Record For Absentee Ballots

Continued Delivery Delays Are Feared

By Steve Vogel and Rosalind S. Helderman  
Washington Post Staff Writers  
Tuesday, October 31, 2006; B05

A record 166,000 Maryland voters had requested absentee ballots as of yesterday, spurred in part by suggestions from the governor and other state officials to abandon electronic voting for the security of a paper ballot.

Gov. Robert L. Ehrlich Jr. (R) and Montgomery County Executive Douglas M. Duncan (D), among others, urged voters to use absentee ballots in the wake of widespread voting problems during the Sept. 12 primary. The governor's running mate, Kristen Cox, voted by absentee ballot yesterday morning in Baltimore County, and Ehrlich has said he will vote absentee.

The crush of demand for absentee ballots has left local election officials overwhelmed and worried that late delivery of them will make it difficult for everyone to vote.

"The Democratic and Republican politicians are telling them that they should not trust the voting system," said Barbara L. Fisher, elections director for Anne Arundel County. "The whole scenario is ridiculous."

Yet despite widespread problems during the primary, a Washington Post survey shows that an overwhelming majority of Maryland voters are confident that their votes in the Nov. 7 election will be counted.

The poll of slightly more than 1,000 registered voters conducted last week found that 86 percent are confident -- 45 very confident and 41 somewhat confident -- that their votes will be counted.

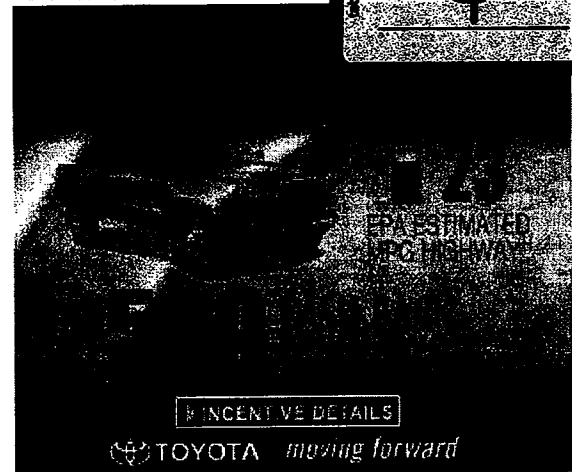
Officials said the high demand for absentee ballots is also linked to a "no excuses" law passed in the spring that allows registered voters to request absentee ballots without giving a reason.

Whatever the cause, the number of ballots requested is well above the previous high of 137,953, recorded for the 2004 presidential election, according to State Board of Election officials. In the 2002 gubernatorial election, 65,824 voted absentee. The deadline for requesting an absentee ballot is today. Voters can still request absentee ballots in person at local election boards through 8 p.m. Election Day.

The high number of absentee ballots could delay election results in close races. The first count of absentee ballots will begin at 10 a.m. on the Thursday after the election. Each envelope containing a ballot will have to be examined to make sure it has been postmarked by Monday, Nov. 6.

Ballots that are postmarked by Nov. 6 will continue to be accepted until Nov. 17, 10 days after the election, to give ballots mailed from overseas time to arrive.

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If previous rates for gubernatorial elections hold, about 1.6 million people -- 60 percent of Maryland's 3.1 million registered voters -- could cast ballots in the election. In previous elections, about 85 percent of those who requested absentee ballots used them. Absentee ballots could therefore make up about 10 percent of the total vote, according to election officials.

"It's absolute hysteria," said John Willis, a Democratic former secretary of state. He warned that chances are far greater that an absentee ballot, rather than one cast via machine, will not be counted because of issues ranging from mail delivery problems to the possibility that a vote will be disqualified because the ballot was not properly filled out. "It'd be amusing if it wasn't so serious," he said.

Ehrlich's opponent in the election, Baltimore Mayor Martin O'Malley (D), has characterized the governor's advocacy of absentee ballots as a form of voter suppression, accusing him of "spending a lot of time trying to confuse people and discourage them from going to the polls and predicting that there are going to be all sorts of problems."

During a visit to Montgomery last week, Ehrlich denied trying to suppress the vote. "I've never figured out how that benefits me," he said.

Ehrlich and other candidates have factored the absentee voters into their campaign strategy, tracking how many of their supporters have requested the ballots and following up to ensure that they mail them. Campaign workers can then concentrate on bringing others out to the polls on Election Day.

As of yesterday morning, Democrats held an edge in the number of absentee ballots requested in Maryland -- 77,836 to 68,014. But the ratio is well short of the nearly 2 to 1 advantage Democrats hold among registered voters.

Because of uncertainty over how many ballots would be needed, election boards requested that 1.1 million be printed for absentee voters and for voters who cast provisional ballots.

Officials with Diebold Election Systems, which manufactures Maryland's electronic voting machines and is printing the ballots, told the state Board of Elections yesterday that they greatly underestimated the number needed.

Most outstanding ballots were sent to county boards over the past several days and the last should be delivered by today, the board was told by Tom Feehan, Maryland project manager for Diebold. But election officials said there may not be enough turnaround time for some voters.

In Prince George's County, officials struggled to fill requests for more than 13,000 absentee ballots -- more than twice as many as four years ago.

Interim Elections Administrator Robert J. Antonetti Sr. said the office had run out of several of the county's 37 ballot styles. More ballots were delivered yesterday, but he said Diebold had still not sent the county's full order.

*Staff writers Robert Barnes and John Wagner contributed to this report.*

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*From the Baltimore Sun*

## **As Cox casts her absentee ballot, problems persist**

### **Election offices flooded with calls, visitors; more than 160,000 have requested forms**

By Melissa Harris and Andrew A. Green  
Sun reporters

October 31, 2006



Today is the deadline for Marylanders to request absentee ballots by mail, but voters can still obtain one at their local elections office until Nov. 6, the day before the general election.

Sparked by a call from Gov. Robert L. Ehrlich Jr. and other political leaders, Maryland voters have already requested more than 160,000 absentee ballots - more than the state counted in the 2004 presidential election, said Mary Cramer Wagner, the state's director of voter registration.

Local election officials have also tripled and quadrupled their orders for paper ballots as a backup, should they experience a repeat of the chaotic September primary, which was marred by equipment failures and human error. Maryland uses the same form for absentee and provisional ballots.

Leading by example, Ehrlich's running mate, state Department of Disabilities Secretary Kristen Cox, cast her votes by absentee ballot at the Baltimore County elections board in Catonsville.

"It's really important that people's votes count," Cox said. "We think it's a good way for people to vote."

But the trip also highlighted just how much havoc the absentee voting push has played with local elections boards.

During the time Cox was at the elections office, all 23 phone lines were ringing nonstop, with one person to answer them. Most of the time, they had to ring and ring as Mary Alberta, an elections supervisor who was filling in for the receptionist, helped a steady stream of people walking in the door

to vote.

Many of them said they had applied for absentee ballots weeks ago but hadn't received them in the mail, a common problem around the state as elections offices have worked to process a crush of applications without any new personnel to help. Others couldn't get through on the phones, so they showed up in person.

This month, the request for nearly 1.2 million paper ballots overwhelmed the printer, Diebold Election Systems, Inc., which also makes the state's voting equipment. In some cases, printing delays meant that requests for absentee ballots piled up at local election offices, and the ballots did not reach voters traveling overseas or out-of-state in time.

The last shipment of paper ballots to the state, which is destined for Montgomery County, is expected to arrive this morning, said Tom Feehan, Diebold's project manager in Maryland, at a meeting yesterday of the State Board of Elections. But as of yesterday evening, Prince George's County officials said they were still missing three ballot styles.

"This really puts everybody in a bad squeeze," said Joan Beck, a state elections board member.

Staff members said yesterday that voters would not be disenfranchised as long as they contacted their local elections office and explained their travel schedule. Under that scenario, the ballot could be faxed - even overseas - to the voter and then returned in the same manner. An election official would then transcribe the votes onto an official ballot.

Baltimore County Elections Director Jacqueline McDaniel said she ordered 60 percent more absentee ballots than she did four years ago but that she's still running out of them in some districts.

"What's wrong is both parties telling everyone under the sun to vote absentee and not giving us any time to prepare," McDaniel said. "It is political, and they shouldn't be bringing that into this office because we're nonpartisan."

Martin and Arlene Kurland of Pikesville tried to vote at the same time as Cox but couldn't because the office was out of ballots for their precinct. They said their encounter didn't give them much confidence in the system.

"I'm so frustrated," Martin Kurland said. "Is it worth voting? I don't know if my vote is going to count."

Cox, who is legally blind, had been an advocate for the touch-screen voting machines - which Ehrlich is now suggesting Marylanders avoid - because they have an audio ballot component that allows those who can't see to vote in privacy. When Cox voted in the primary, the audio function wasn't working, so she had to get her son Tanner, who's in the fifth grade, to read the ballot for her.

Yesterday, an aide had to read the ballot to Cox and mark the selection. But that wasn't the only snag. At first, the elections officials mistakenly gave her a ballot for the 11th Legislative District, not the 42nd District, where she lives.

"It's a little disconcerting that this late in the game we have these problems," she said.

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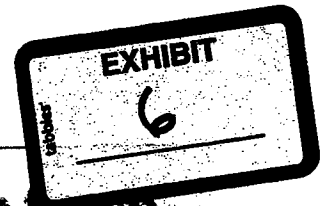
As Cox casts her absentee ballot, problems persist

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*From the Baltimore Sun*

**Voting**

## **Record number of voters apply for absentee ballots**

By Melissa Harris  
Sun reporter

November 1, 2006



A record number of voters - 175,500 - have requested absentee ballots for next week's election, state officials said yesterday after the deadline for mailed applications passed.

Faxed applications were still being accepted until midnight, and walk-in requests can be made until the day before Tuesday's election, so the number of ballot requests will almost certainly grow.

The surge of requests after the Sept. 12 primary has been fueled by a call from Gov. Robert L. Ehrlich Jr. and others to avoid the polls after absent election judges and human errors in Baltimore City and Montgomery County delayed voting for more than an hour in some precincts.

Despite continuing questions about the integrity of the state's voting system and the large number of absentee ballot requests, Marylanders remain optimistic that their votes will be counted, a Sun poll released today shows.

According to the survey, 42 percent of likely voters said they are very confident that the election system will work accurately, and 49 percent said they were somewhat confident.

Fewer than one in 10 voters said they had no confidence that their vote will be counted. The poll, of 800 likely voters conducted Oct. 28-30 by Potomac Inc. of Bethesda, has a margin of error of 3.5 percentage points.

As many election administrators predicted, the governor's suggestion has jammed some local election offices' phone lines and overwhelmed staff members, who must individually stuff absentee ballots into envelopes.

Some Democrats, including Senate President Thomas V. Mike Miller, have called the absentee ballot push "irresponsible" and said Ehrlich's concerns are an effort to discourage Democrats, who outnumber the state's registered Republicans by about 2-to-1.

"If you want to talk about a way for your vote not to be counted, it's an absentee ballot," Miller said. "People forget to sign them. They use the wrong type of marking. This plays to Ehrlich's advantage."

Voters have asked for nearly three times as many absentee ballots as were cast four years ago.

As of yesterday morning, Montgomery County - where elections officials forgot to distribute a key computer card needed for casting votes on the electronic machines - led in the number of absentee ballot requests at 35,322. Nearly 19,800 were from Democrats, and almost 10,900 were from Republicans.

Baltimore County followed with approximately 27,300 requests and an almost even split among Democrats and Republicans.

Those who want an absentee ballot but have not yet requested one can do so only at their local elections office today until Monday, the day before the general election. Elections officials estimate that about 85 percent of those who request absentee ballots will return them.

Joseph Shear of Pikesville said that he and his wife planned to drive to Baltimore County's Board of Elections office in Catonsville today to cast their absentee ballots. They leave for vacation next week, and the absentee ballots they requested had not arrived in the mail.

"I'm worried that if our ballots are already in transit, they're going to give us a hard time," he said.

The situation is most dire in Prince George's and Baltimore counties. Baltimore County ran out of three kinds of ballots. Prince George's never received three styles. Larger counties have dozens of different ballots because of local races.

Robert J. Antonetti, interim elections director in Prince George's County, said that the shipment delay was affecting 243 absentee voters in his county.

Diebold Election Systems, the ballots' printer and the maker of the state's electronic voting equipment, had assured the State Board of Elections on Monday that Maryland's approximately 1.2 million paper ballots would all arrive at local elections offices by yesterday. The paper forms are also used as provisional ballots on Election Day.

On Monday, State Board of Elections Chairman Gilles W. Burger asked the attorney general's office to investigate Diebold's earlier activities in Maryland, specifically whether the company discovered a flaw in a key component of about 4,700 of the state's voting units in 2002 and failed to disclose it to the agency for several years.

In the letter to Assistant Attorney General Mark J. Davis, Burger, a Republican, asked that the investigation "be conducted in a manner that does not hinder the 2006 election." A spokesman for the attorney general's office said that an inquiry would not begin until after Tuesday's election.

Despite Burger's concerns about Diebold's past actions, he said this week that he would be voting in his precinct and that the state's voting system was "at the highest level of readiness that it has ever been."



Record number of voters apply for absentee ballots

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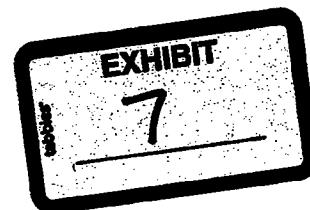
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**Karl S. Aro**  
Executive Director

**DEPARTMENT OF LEGISLATIVE SERVICES**  
**OFFICE OF LEGISLATIVE AUDITS**  
**MARYLAND GENERAL ASSEMBLY**

October 16, 2006



**Bruce A. Myers, CPA**  
Legislative Auditor

Mr. Karl S. Aro  
Executive Director  
Department of Legislative Services  
90 State Circle  
Annapolis, Maryland 21401-1991

Dear Mr. Aro:

In accordance with your September 25, 2006 directive, I am submitting the Office of Legislative Audits' (OLA) third report on the progress of the State Board of Elections (SBE) and the local election boards of Anne Arundel County, Baltimore City, Prince George's County and Montgomery County in identifying and correcting problems from the September 12, 2006 Primary Election.

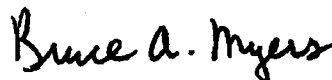
We have included an updated matrix from our last report for each of the five entities we are monitoring that identifies the problems or issues, the corrective actions planned and the current implementation status of the correction actions based on activity in the intervening week. Notable events since the last progress report are as follows:

- SBE has finalized its contingency plan, in case of unforeseen major General Election Day failures, and it has been distributed to the local boards. Key components are the use paper ballots and optical scanners to record and count votes, with Diebold printing over 1.1 million ballots for Statewide use.
- Absentee ballots were to be received by all local boards no later than October 16, 2006. Although not late according to State law and regulation, some local boards have expressed concern about the timeliness of absentee ballot delivery as well as the significantly increased demand on their staff to process requests and mail absentee ballots timely.
- Approved fixes to the ExpressPoll books are almost complete with the exception of about 50 from Prince George's County. Last week, Diebold supplied each local with a number of updated machines for judge and technician training.
- Except for Anne Arundel County, recruiting an adequate number of judges is still ongoing. Baltimore City and Prince George's County continue to report significant vacancies, although some progress has been made. Baltimore City is still concerned about its lack of progress in recruiting an adequate number of Republican judges.

- Training has begun at each of the four local boards for technicians, judges and chief judges, although for some the pace to date appears slow. Each of these local boards has also developed a training schedule that includes what should be a sufficient number of opportunities for attendance.
- Although Baltimore City has agreed to use the resources of the University of Baltimore's Schaefer Center for training, which started on 10/14/06, a formal agreement and cost estimate has not yet been finalized. Also still to be formalized, is an agreement with the City government to assist in monitoring polling places and provide cellular phones to each polling place.
- All requested components of the corrective action plan for Baltimore City have not yet been delivered to SBE.

The information contained in this report is based primarily on our observations and inquiries. Accordingly, the work performed by OLA is considerably less than would be required for an examination performed in accordance with government auditing standards. Our assessment of the implementation status has been conveyed to the respective entities. If you have any questions, please do not hesitate to contact me.

Sincerely,



Bruce A. Myers, CPA  
Legislative Auditor

BAM/lcy

cc: Joint Audit Committee Members  
Linda H. Lamone, State Administrator, Maryland State Board of Elections  
Gilles W. Burger, Chairman, Maryland State Board of Elections  
Barbara Fisher, Election Director, Anne Arundel County Board of Elections  
Garry Voith, President, Anne Arundel County Board of Elections  
Cornelius L. Jones, Acting Election Director, Baltimore City Board of Elections  
Armstead B. C. Jones, President, Baltimore City Board of Elections  
Margaret A. Jurgensen, Election Director, Montgomery County Board of Elections  
Nancy H. Dacek, President, Montgomery County Board of Elections  
Robert J. Antonetti, Sr., Interim Administrator, Prince George's County Board of Elections  
S. John di Stefano, President, Prince George's County Board of Elections

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Office of Legislative Audits  
Reference: Election Status Report No.3  
Entity: State Board of Elections (SBE)  
As of Date: October 16, 2006

No.	Issue Description	Entity Corrective Action	Status of Corrective Action
	State Board of Elections (SBE) required 9 corrective action deliverables from Diebold, including a Root Cause Analysis report of the problems which occurred.	<p>All day public testing of a selected number of adjusted/fixed e-poll books (with voting machines) to be conducted on 10/3/06. Results to be evaluated by SBE.</p> <p>Independent consultant hired by SBE to evaluate Root Cause Analysis report.</p>	<ul style="list-style-type: none"> <li>No further action to be taken by SBE. Diebold provided all expected deliverables, including the Root Cause Analysis report (to SBE) and training materials and guides for use of the e-poll books and related hands-on training to LBEs.</li> </ul>
	All day public testing of a selected number of adjusted/fixed e-poll books (with voting machines) to be conducted on 10/3/06. Results to be evaluated by SBE.		<ul style="list-style-type: none"> <li>No further action to be taken by SBE. The public test was held on 10/3/06. During the test there were ultimately 9 minor incidents noted, but no repeat of the Primary Election problems (e.g., e-poll books rebooting, e-poll books not syncing, voter access cards not being written to). Based on the public test and testing of touchpad fix, on 10/5/06, SBE decided to use the e-poll books during the General Election.</li> </ul>
-1-	Equipment/technical problems primarily with ExpressPoll Book (e-poll book).		<ul style="list-style-type: none"> <li>No further action to be taken by SBE. The consultant submitted a draft report on 9/26/06. The report concluded that the solutions for the e-poll book problems provided by Diebold were reasonable and that Diebold should provide check-off forms to SBE to document changes made to the e-poll books.</li> <li>SBE also submitted Diebold test documentation to the consultant for review, and a report on this review was received 10/11/06, which confirmed original conclusions in the 9/26/06 draft report. The report rated the e-poll performance at the public testing as "pass with conditions". SBE advised that those conditions relate primarily to documentation of the fixes (e.g., test plans and results) to be provided by Diebold by 10/19/06.</li> <li>As of 10/13/06 all but approximately 50 machines have been updated.</li> <li>A check-off form is currently in use to document upgrades made to each e-poll book. The forms are approved by Diebold management and an independent verification and validation contractor hired by SBE. SBE also advised that LBEs are to verify that proper upgrades were made as part of their pre-election logic and accuracy testing. Furthermore, a test of certain machines is scheduled for 10/17/06 to ensure that all fixes are operating properly.</li> </ul>

Office of Legislative Audits  
Reference: Election Status Report No.3  
Entity: State Board of Elections (SBE)  
As of Date: October 16, 2006

No.	ISUE Description	Entity Corrective Action	Status of Corrective Action
2.	LBEs lacked a formal contingency plan in case of e-poll book failure.	<p>Contingency plan to be developed by SBE in case of e-poll book failure.</p> <p>SBE to ensure that Diebold has a sufficient number of technicians available on election day to address equipment/technical problems.</p> <p>SBE has mandated refresher training for all chief judges retained by LBEs from the primary election, and for all judges retained in Baltimore City. SBE also prepared a judges' self-assessment (competency) tool as a training aid for chief judges.</p> <p>By 9/27/06, all LBEs required to provide SBE with proposed schedules for all required retraining, and to advise SBE of their requirements for training help from Diebold.</p>	<ul style="list-style-type: none"> <li>• A contingency plan for both e-poll book failure and voting unit failure was developed by SBE and sent to the LBEs on 10/6/06. Plan includes utilization of scan-able ballots and optical readers to record and count the votes.</li> <li>• Diebold has advised SBE that it needs approximately 500 technicians on election day to support the LBEs, and that it was currently working toward this end. Because of a temporary record keeping problem, Diebold could not immediately provide the number of technicians it currently has available, but stated that it plans to train about 580 individuals to ensure that the requirements are met.</li> </ul>
3.	Election judges at many precincts were not adequately trained.	<p>SBE also prepared a judges' self-assessment (competency) tool as a training aid for chief judges.</p> <p>By 9/27/06, all LBEs required to provide SBE with proposed schedules for all required retraining, and to advise SBE of their requirements for training help from Diebold.</p>	<ul style="list-style-type: none"> <li>• No further action to be taken by SBE. On 10/6/06, SBE sent a listing of the required tasks that must be addressed in the chief judge training, which also included the self-assessment (competency) tool.</li> <li>• SBE received responses from all 24 LBEs. Fourteen LBEs requested Diebold training support. SBE advised that it is satisfied with the responses. SBE plans to attend selected training sessions and receive certain attendance documentation from Diebold.</li> </ul>

Office of Legislative Audits  
Reference: Election Status Report No.3  
Entity: State Board of Elections (SBE)  
As of Date: October 16, 2006

No.	Description	Findings	Corrective Action
4.	Training materials were not provided to LBEs in a timely manner.	SBE will ensure that updated training materials are provided to LBEs prior to training judges. SBE has mandated that training not begin prior to 10/9/06.	<ul style="list-style-type: none"> <li>Diebold prepared "An Election Day Timeline" manual that lists the various tasks to be performed on election day, along with pictures. (This represents a simplified graphical representation on how to use the Diebold system; a document the LBEs requested). These were distributed on 10/10/06.</li> <li>SBE advised that there are no additional materials to be provided to the LBEs unless there are any necessary last minute changes.</li> <li>Diebold has completed all e-poll book updates and has distributed them to the LBEs (except for the 50 or so noted above).</li> <li>Diebold has received all e-poll book printers and expects to have all printers distributed to the LBEs by 10/20/06.</li> </ul>
5.	Certain critical equipment, such as e-poll books and printers was not always provided in sufficient quantities to the LBEs in a timely manner.	SBE to ensure that e-poll books and printers are provided to LBEs in a timely manner For training purposes, Diebold will provide a sufficient number of adjusted/fixed e-poll books to each LBE by 10/10/06.	<ul style="list-style-type: none"> <li>Diebold provided at least 50 updated e-poll books to each local jurisdiction by 10/10/06.</li> </ul>
6.	There was inadequate communication between polling places and some LBEs during the primary election.	SBE is requiring each LBE to have cellular or landline communications available. To assist LBEs, SBE will develop a communications plan after discussions (including costs) with available communications vendors.	<ul style="list-style-type: none"> <li>No further action to be taken by SBE. SBE sent an email to the LBEs during the week ending 9/29/06 asking whether they wanted assistance in obtaining communication services; only two LBEs responded. Information has been provided to those LBEs (see next item).</li> <li>No further action to be taken by SBE. SBE contacted two vendors to obtain rates for communication services (such as cellular and landlines) that they could provide on election day, and made vendor contact information available to the LBEs.</li> </ul>
7.	One LBE has expressed significant concern regarding the cost of additional mandated training for judges.	SBE has reported its commitment to obtaining the necessary funding to help LBEs pay the cost of additional training.	<ul style="list-style-type: none"> <li>No change from preceding status report. SBE is committed to obtaining the necessary funding. SBE advised that the LBEs are developing cost estimates. SBE intends to seek a deficiency appropriation during the 2007 legislative session.</li> </ul>

Office of Legislative Audits  
Reference: Election Status Report No.3  
Entity: Anne Arundel County Board of Elections  
As of Date: October 16, 2006

No	Issue Description	Entity Corrective Action	Status of Corrective Action
1.	Anne Arundel County Board of Elections (AACBOE) had a shortage of judges (approximately 140) which caused certain precincts to open late.	AACBOE will aggressively recruit additional judges from targeted sources, such as colleges.  AACBOE will follow-up on the approximately 360 election judge applications received on Primary Election day.	<ul style="list-style-type: none"> <li>Recruiting efforts have concluded. See the status for the next item.</li> <li>OLA was advised that AACBOE has hired an adequate number of judges and is currently fully staffed for all precincts. We were provided with a precinct report summary that showed an adequate number of judges to staff all precincts. In addition, AACBOE has identified and trained 34 floater (substitute) judges who are available for use as needed in any precinct for the General Election.</li> <li>New judge training will take place on October 14, 18, 19 and 25. OLA attended a session of new judge training on 10/14/06 and verified that the training appeared to include adequate detail on operation of election machines and Express Poll Books.</li> <li>Refresher training for chief judges scheduled for October 10-12, 14, 16-18, 21, 24. According to AACBOE attendance records, 106 judges have attended training as of October 13, 2006. AACBOE advised that not all attendees were chief judges. We attended training on 10/14/06 and noted that AACBOE used the SBE competency test as part of the training.</li> </ul>
2.	Certain judges were not adequately trained. AACBOE reported that inadequate training due to untimely receipt of training materials and equipment.	Refresher training to be provided to chief judges as mandated by the State Board of Elections (SBE) and competency must be demonstrated.	

Office of Legislative Audits  
Reference: Election Status Report No.3  
Entity: Anne Arundel County Board of Elections  
As of Date: October 16, 2006

No.	Issue Description	Entity Corrective Action	Status of Corrective Action
3.	Memory cards containing vote counts were inadvertently left in certain voting units at the end of primary election day.	<p>Retrieval of memory cards to be emphasized in refresher training.</p> <p>AACBOE will have a retrieval plan in place in case cards are again left in voting units.</p>	<ul style="list-style-type: none"> <li>Refresher training has been scheduled as noted above. OLA attended training on 10/14/06 and verified that returning memory cards on Election Night was specifically emphasized as part of the training. In addition, a reminder notice will be included in the election supplies sent to chief judges immediately prior to the General Election.</li> <li>AACBOE stated that the County has agreed to provide facilities staff as needed to access County buildings used in the election.</li> </ul>



Office of Legislative Audits  
 Reference: Election Status Report No.3  
 Entity: Baltimore City Board of Elections (BCBOE)  
 As of Date: October 16, 2006

No.	Description	Entity Corrective Action	Status of Corrective Action
1.	<p>Baltimore City Board of Elections (BCBOE) had reported that approximately 180 elections judges did not report for work, causing certain precincts to open late.</p>	<p>Letters to be sent to absent judges asking for an explanation to be submitted by 10/2/06. BCBOE to evaluate explanations for retention or dismissal of each applicable judge.</p> <p>State Board of Elections (SBE) required BCBOE to submit by 10/6/06 a summary of removed judges and any other investigations conducted in this matter.</p> <p>SBE has reported that City Police Department will help verify on election day that precincts are open and staffed.</p>	<ul style="list-style-type: none"> <li>Letters were sent. BCBOE has received about 110 responses to date, which are still being evaluated.</li> <li>No change since preceding status report. BCBOE has not yet submitted the required summary to SBE. BCBOE advised that no summary will be sent until all responses have been evaluated.</li> <li>No change since preceding status report. City officials and BCBOE have discussed having police officers conduct certain procedures to verify on election day whether or not polling places are ready for voting. Although BCBOE believes it has received a commitment from the City, no formal written agreement has been established.</li> </ul>

Office of Legislative Audits  
Reference: Election Status Report No.3  
Entity: Baltimore City Board of Elections (BCBOE)  
As of Date: October 16, 2006

No.	Issue Description	Entity Corrective Action	Status of Corrective Action
2.	<p>BCBOE's inability to obtain/recruit a sufficient number of election judges contributed to precinct opening delays.</p>	<p>Additional support personnel to be hired by BCBOE to focus on recruitment of additional judges.</p> <p>BCBOE to increase recruitment efforts via letters, advertisements, public service announcements to targeted entities and media.</p> <p>State and City Government to aid in recruitment efforts. (City committed to providing 500 new judges).</p> <p>SBE required BCBOE to submit by 10/6/06 the number of vacancies in each precinct and a plan for recruiting sufficient judges to fill vacancies and provide an adequate supply of substitute judges.</p> <p>SBE required BCBOE to submit a plan by 10/6/06 for ensuring that all trained judges are given a precinct assignment for election day.</p>	<ul style="list-style-type: none"> <li>Four temporary employees have been hired to focus on the recruitment of election judges and other election tasks. At this time, BCBOE does not anticipate hiring any additional support personnel for recruiting purposes.</li> <li>BCBOE has sent letters or otherwise contacted various targeted entities. According to the most recent BCBOE records, approximately 1,900 new applications for election judges have been received from various sources and are currently being processed. Approximately 200 of these are for Republican judges; nevertheless, BCBOE is concerned about ultimately having an adequate number of Republican judges.</li> <li>See preceding status.</li> <li>No change since preceding status report. Although BCBOE has not yet provided SBE with the requested data, it does know the demand for new judges will be significant and is continuing its recruitment and processing efforts.</li> </ul>
3.	<p>SBE reported that certain judges who received training were not assigned to a precinct.</p>		<ul style="list-style-type: none"> <li>No change since preceding status report. A written plan has not yet been submitted to SBE.</li> </ul>

Office of Legislative Audits  
 Reference: Election Status Report No.3  
 Entity: Baltimore City Board of Elections (BCBOE)  
 As of Date: October 16, 2006

No.	Issue Description	Entity Corrective Action	Status of Corrective Action
4.	<p>Certain election judges were not adequately trained.</p>	<p>SBE has required all BCBOE judges retained from primary election to receive refresher training, after which competency must be demonstrated.</p> <p>BCBOE has committed to using the University of Baltimore Schaefer Center for Public Policy along with Diebold to conduct required training prior to the general election.</p>	<ul style="list-style-type: none"> <li>• See the status for the next item.</li> <li>• Center officials and BCBOE have held several discussions regarding how required training will be accomplished. BCBOE has advised that a draft agreement with the Center has been developed as well as preliminary cost estimates.</li> <li>• BCBOE provided us with a training schedule indicating approximately 57 classes are to be held during the period of 10/14 through 11/3. The schedule may be adjusted as necessary (e.g., additional classes added). BCBOE advised that a training schedule has been provided to SBE. We attended a judge training class on 10/14/06. The class appeared to address all significant issues experienced in the Primary Election. Final attendance totals for the weekend were not yet available.</li> </ul>
5.	<p>There was a lack of coordinated communication between precincts and BCBOE on election day.</p>	<p>BCBOE will seek help from City for obtaining resources necessary to establish an adequate communication system for election day.</p>	<ul style="list-style-type: none"> <li>• BCBOE advised that the City will provide cell phones for use by chief judges. According to BCBOE, no formal procedures or agreement have been developed on this matter.</li> </ul>

Office of Legislative Audits  
Reference: Election Status Report No.3  
Entity: Montgomery County Board of Elections  
As of Date: October 16, 2006

No.	Issue Description	Entity Corrective Action	Status of Corrective Action
1	<p>Voter access cards were left out of precinct supply packets and not delivered to precincts until mid or late morning on Primary Election day.</p>	<p>Transparent bags will be used to transport cards.</p> <p>Critical items, including the access cards, will be checked by Senior staff (100% verification), MCBOE members (10% random selection), and Chief Judges (their own precinct) before the General Election day.</p> <p>70 county employees will be available with 70 vehicles for deliveries.</p>	<ul style="list-style-type: none"> <li>No change from preceding status report. Transparent bags have been purchased by Montgomery County Board of Elections (MCBOE). OLA sighted transparent bags delivered on 9/28/06.</li> <li>No change from preceding status report. Local board has developed a new checklist to be used by MCBOE for its 10% verification process. The senior staff checklist has been updated for the inclusion of the voter access card. OLA sighted both checklists.</li> <li>No change from preceding status report. A County official confirmed during the 10/5/06 Council hearing that a list of county employees that will be available on General Election day, with a vehicle and cell phone, is in the process of being generated.</li> </ul>
2	<p>Training of judges was inadequate to deal with technical problems, voter questions and use of provisional ballots.</p>	<p>Chief judges will be retrained. Training of new chief judges scheduled for October 2, 10, 20 and 30, after which competency must be demonstrated.</p> <p>Recruitment efforts for election judges with technical skills</p>	<ul style="list-style-type: none"> <li>Training curriculums were provided by SBE for chief judges, check-in judges, and voting unit judges; training classes range from 3-4 hours and cover various election day activities. Over 60 sessions are scheduled during October for all types of judges. OLA attended training refresher training for check-in judges on 10/10/06. As of 10/13/06, 365 judges (approximately 13% of all judges) had completed training.</li> <li>OLA sighted completed competency tests from various training sessions.</li> <li>OLA sighted documentation of recruiting efforts including e-mails, newspaper advertisements, etc. As of 10/13/06, MCBOE advised OLA that it still needs 4 chief judges, 79 assistant chief judges, 102 check-in judges, 79 voting unit judges, 65 election technicians and 28 election tech roamers. Total needed on election day is approximately 2,800 judges of all types.</li> </ul>

Office of Legislative Audits  
 Reference: Election Status Report No.3  
 Entity: Montgomery County Board of Elections  
 As of Date: October 16, 2006

No.	Issue Description	Identify Corrective Action	Proposed Action
3	Communication failures, especially between MCBOE headquarters, precincts and transportation staff	Modifications being made to internal system as well as to processes for chief judges at polling places. Includes issues such as, telephone access, additional phone lines, the Help Desk, and the use of Interactive Voice Response (IVR) technology on election day.	<ul style="list-style-type: none"> <li>OLA sighted documentation of additional phone lines added to Help Desk. MCBOE staff advised that installation was completed as of 10/13/06.</li> <li>No change from preceding status report. OLA sighted change order to IVR system and related work conducted by the County. OLA also observed successful testing of IVR software upgrade on 10/5/06.</li> <li>No change from preceding status report. OLA sighted list of planned press releases, along with dates of future publications, that will inform the public of actions being taken by MCBOE.</li> </ul>
4	Insufficient quantity of equipment	County will develop emergency response plan.	<ul style="list-style-type: none"> <li>No change from preceding status report. County staff testified at the 10/5/06 County Council hearing that the plan was in the development stages.</li> </ul>
5	Insufficient number of provisional ballots	Obtain 300 additional printers from State/Diebold, along with necessary supporting equipment.	<ul style="list-style-type: none"> <li>No change from preceding status report. SBE advised OLA that additional printers have been ordered and received to address statewide needs. MCBOE still awaiting delivery.</li> <li>MCBOE provided an estimate of the quantity of ballots needed. Ballots are to be printed and distributed by Diebold under the State contract.</li> </ul>

<sup>1</sup> Estimated voter turnout is 72% of registered voters.

Office of Legislative Audits  
 Reference: Election Status Report No.3  
 Entity: Prince George's County Board of Elections (PGCBOE)  
 As of Date: October 16, 2006

No.	Description	Identifying Corrective Action	Status of Corrective Action
1	<p>Primary election results from certain precincts were not counted timely, due to problems with the electronic submission of results and accounting for voter machine memory cards.</p>	<p>After testing 10 precincts on 9/29/06, the PGCBOE plans to conduct tests to determine the ability of all 196 precincts to transmit voting results to headquarters. In addition, Verizon is supposed to test all precinct phone lines before Election Day.</p> <p>Proper accounting and handling of memory cards is seen by PGCBOE as training issue. Board staff has indicated that chief judge retraining requested by the State Board of Elections (SBE) and technician training will emphasize the importance of returning all memory cards on election night. A 9/29/06 letter from the SBE asked for additional information from the PGCBOE regarding corrective action for this issue (beyond training).</p>	<ul style="list-style-type: none"> <li>• OLA observed the tests at two precincts on 9/29/06 and found that phone lines could not be readily located, except in locked rooms that will likely not be accessible on General Election day, and there was some confusion about how to dial an outside line.</li> <li>• No formal schedule of when all remaining precincts will be tested has been developed, although PGCBOE plans to test at least 10 precincts per day starting on 10/13/06 until all precincts are tested.</li> <li>• PGCBOE officials advised that Verizon will be testing the phone lines simultaneously with their tests.</li> </ul> <ul style="list-style-type: none"> <li>• PGCBOE officials advised the SBE on 10/10/06 that if memory cards are not returned on Election Night, the County Police will be used to obtain the cards on Election Night. However, the County Police have yet to be contacted by the PGCBOE to work out the logistics of obtaining memory cards. We attended technician training on 10/11/06 and chief judge training on 10/14/06. At both classes, the returning of memory cards on Election Night and electronically submitting the results on Election Night was stressed. Although included in the training, SBE notified PGCBOE that its decision to require technicians to collect and return memory cards to the headquarters location on Election Night violates COMAR, which requires a bipartisan pair of election judges to deliver the cards.</li> </ul>

Office of Legislative Audits  
Reference: Election Status Report No.3  
Entity: Prince George's County Board of Elections (PGCBOE)  
As of Date: October 16, 2006

Entity: Prince George's County Board of Elections		Status of Barrestive
No.	Description	
2	Inadequate training of chief judges.	<p>Per SBE direction, the PGCBOE committed to provide retraining for all chief judges starting on 10/6/06, after which competency must be demonstrated.</p> <ul style="list-style-type: none"> <li>A training schedule has been developed based on precinct assignment and the first training class was held on 10/6/06. We attended a chief judge training class on 10/14/06. The class appeared to address all significant issues experienced in the Primary Election. Additionally, the SBE competency test was administered to chief judges during the training. Through 10/14/06, 169 chief judges had attended training (out of a total of 412 chief judges). Additional training was scheduled for later that day and later in the month.</li> </ul>
3	Not all technicians responsible for assisting the judges in opening the precincts, setting up the E-poll books and transmitting votes to headquarters on election day were adequately trained or showed up as required.	<ul style="list-style-type: none"> <li>As of 10/12/06, the PGCBOE has 227 technicians for the General Election. As the subdivision has 206 precincts, this provides for extra staff in the event of no-shows.</li> </ul>
	(Instead of using Diebold technicians as provided for under the State contract with Diebold, PGCBOE hired its own technicians for the General Election, the same approach taken for the Primary Election.)	<ul style="list-style-type: none"> <li>As of 10/12/06, 63 of the technicians had attended training. The PGCBOE has four additional formal technician training classes scheduled before the election (technicians may also receive direct one-to-one training if unable to attend a formal class).</li> <li>The curriculum was developed by PGCBOE based on SBE and Diebold material and appears to address all significant functions performed by technicians. Although technicians are not required to formally demonstrate competence through completing a written examination, OLA noted that, for the training class we attended, the technicians were required to perform the tasks the position entails (such as setting up all ExpressPoll Books for a precinct).</li> </ul>

**Franklin, Charles L.**

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**From:** Melisande Fritzsche [mcf7725@rit.edu]  
**Sent:** Monday, November 06, 2006 2:59 PM  
**To:** Franklin, Charles L.  
**Subject:** Re: Declaration of Ms. Melisande Fritzsche

On Nov 6, 2006, at 2:30 PM, Franklin, Charles L. wrote:

Melisande, please review and if you agree, please indicate you authorize us to file on your behalf. If possible please also print out and fax us a signed copy of this to me at 202-887-4288.

**AFFIDAVIT**

1. I, Melisande C. Fritzsche, am a registered voter in the County Baltimore, age 20, and am currently residing at 4046 Nathaniel Rochester Hall, Rochester, New York, where I am a student at the Rochester Institute of Technology.
2. In mid-August, 2006, I requested an absentee ballot for both the primary and general election, since I would be out of the state at school. I made this request by faxing and mailing an absentee request to the County Board of Elections in Catonsville, Maryland.
3. As of Monday, November 6, 2006, I have not received an Absentee Ballot.
4. If the Ballot arrives on Monday, November 6, 2006 in the ordinary mail, I will be unable to properly fill it out, sign it, and postmark the Absentee Ballot by November 6, 2006, as required by law.
5. I will not be able to personally access my precinct polling station to vote in the normal course.
6. Because of the delay in mailing my Absentee Ballot and because I am unable to vote at my regular polling place, I have been denied the right to vote.
7. I authorize the Election Protection Coalition to identify me as a plaintiff in any litigation to extend the postmark date for submitting absentee ballots.

DATED: ..6 November 2006.. SIGNED: ...Melisande Catherine Fritzsche...

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IRS Circular 230 Notice Requirement: This communication is not given in the form of a covered opinion, within the meaning of Circular 230 issued by the United States Secretary of the Treasury. Thus, we are required to inform you that you cannot rely upon any tax advice contained in this communication for the purpose of avoiding United States federal tax penalties. In addition, any tax advice contained in this communication may not be used to promote, market or recommend a transaction to another party.

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11/7/2006

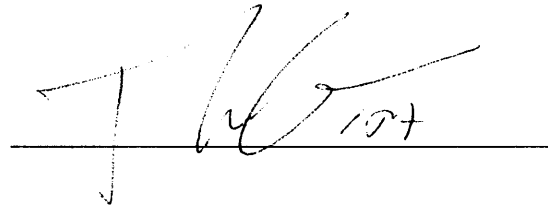


## CERTIFICATE OF SERVICE

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 Record Extract 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 7th day of November, 2006.

A handwritten signature in black ink, appearing to read 'T. Goldstein', is written over a horizontal line. The signature is stylized and cursive.

Thomas C. Goldstein  
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