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IN THE
COURT OF APPEALS OF MARYLAND

September Term, 2017

No. 85

LINDA H. LAMONE,

Appellant and Petitioner,

v.

NANCY LEWIN, *et al.,*

Appellees and Respondents.

On Appeal from the Circuit Court for Anne Arundel County
(Glenn L. Klavans., Judge)
Pursuant to a Writ of Certiorari to the Court of Special Appeals of Maryland

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I. STATEMENT OF THE CASE.

On April 9, 2018, Nancy Lewin, Elinor Mitchell, and Christopher Ervin, Appellees and Respondents in the present appeal (collectively, "Respondents"), filed an action in the Circuit Court for Anne Arundel County pursuant to Maryland Code, Election Law ("EL") § 12-202 challenging the refusal of Linda H. Lamone, the State Administrator, Maryland State Board of Elections ("State Board"), to remove the name of Nathaniel T. Oaks from the ballots for Maryland Legislative District 41 for the Democratic Party Primary Election to be held on June 26, 2018. (E. 73-82.) Respondents' Verified Complaint also sought declaratory and injunctive relief from the Circuit Court. *Id.*

Respondents, through counsel, requested by letter dated April 11, 2018, that the State Board remove Mr. Oaks' name from the ballot. (E. 102-03.) On Thursday, April 12, 2018, Respondents' counsel made an oral presentation to the State Board at its scheduled meeting. Amended Verified Complaint ¶¶ 23-24 (E. 63-64). On Friday April 13, 2018, Respondents' counsel emailed the Assistant Attorney General Andrea Trento, who represents the State Board, to inquire as to whether the State Board had changed its position regarding the inclusion of Mr. Oaks' name on the ballot. (E. 114.) On Saturday, April 14, 2018, Assistant Attorney General Trento informed Respondents' counsel that the State Board had taken no further action. (E. 114.)

On Monday, April 16, 2018, Respondents filed an Amended Verified Complaint and moved for a temporary restraining order ("TRO") or, in the alternative, for a preliminary injunction. (E. 59-72; E. 141-154.) The TRO was denied by the Honorable Stacy W. McCormack, but the Circuit Court scheduled a hearing upon Respondents' motion for a preliminary injunction for Friday, April 20, 2018. (E. 2; E. 8.) Pursuant to agreement between Respondents' counsel and Assistant Attorney General Trento, the Circuit Court ordered that the State Board's response to Respondents' motion for a preliminary injunction be filed by 10:00 a.m. on Wednesday, April 18, 2018, and that Respondents' reply be filed by 10:00 a.m. on Thursday, April 19, 2018.

The State Board filed an affidavit from Natasha Walker, an employee of the State Board, with its response. (E. 83-87.) Respondents filed an affidavit from Elinor Mitchell, one of Respondents, with their reply. (E. 123-24.) Respondents also filed affidavits from Nancy Lewin, Jill P. Carter and J.D. Merrill, prior to the preliminary injunction hearing. (E. 134-140.)

The Honorable Glenn L. Klavans presided over the preliminary injunction hearing on Friday, April 20, 2018. (E. 9-44.) Judge Klavans stated at the outset of the hearing that the affidavits that each side had filed would be considered as part of the evidentiary record for the hearing and the court would take judicial notice of the

entire record of the case. (E. 12-13.)[1] Assistant Attorney General Trento also called Ms. Walker as a witness at the hearing. (E. 19-31.)

At the conclusion of the hearing, Judge Klavans ruled as follows:

> As we stand here today, Nathaniel Oakes is not disqualified from holding the offices for which he is a candidate. I can understand why Mr. Oakes would join if not in this litigation in another case to put forth the – his assertion that he wishes to be removed from the ballot.
>
> He has to stand up again before a Federal judge and I am sure he would wish it to be clear that he does not intend to participate or hold further office. I don't think that point is dispositive of the issue. If he was currently disqualified I believe that the interest of the voters in District 41 particularly -- their interest to avoid the potential of being constructively disenfranchised is quite important. The harm attended(sic) to the rights of voters to cast a meaningful vote for a qualified candidate rather than potentially casting a meaningless vote by mistake or inadvertence or election year mischief or a disqualified candidate who cannot take the office would be in this case greater than the minimal harm to the election process caused the uncomfortable but adequate timing to reform the ballot in this case.
>
> **But I am constrained by the singular fact while it is virtually certain that Mr. Oakes will become disqualified prior to the general election, it remains legally speculative today. And close only counts in horseshoes. I cannot determine such a fundamental voting issue with such a central speculative fact and therefore I must reluctantly deny the request for preliminary injunction in this matter.**

[1] The Hearing Transcript misidentifies the speakers beginning at Transcript 4:15 (E.12) through 5:2 (E.13). The speaker at Transcript 4:15 and 4:20 is Mr. Trento and the speaker at Transcript 5:2 is Mr. Stichel.

Transcript 33:7-34:10 (emphasis added) (E. 41-42).

On Monday, April 23, 2018, Mr. Oaks requested that his name be removed from the statewide voter registration list pursuant to EL §3-501(1). (E. 105.) On April 23, 2018, the Baltimore City Board of Elections removed Mr. Oaks' name from the statewide voter registration list and, thus, he no longer was a registered voter in Maryland. (E. 106.) The same day, Respondents filed a Second Amended Verified Complaint and a motion for reconsideration of Judge Klavans' denial of their motion for a preliminary injunction on April 20, 2018. (E. 45-58; E. 168-174.) On the morning of Tuesday, April 24, 2018, Respondents' counsel and Assistant Attorney General Trento met with the Honorable Cathleen M. Vitale, the chambers judge for the day. Judge Klavans was on vacation and Judge Vitale declined to rule upon the motion for reconsideration. Assistant Attorney General Trento had requested an opportunity to respond to the motion for reconsideration and agreed to file the response by 6:00 p.m. on Wednesday, April 25, 2018. (E. 175.) The motion was set for hearing at 1:30 pm. on Thursday, April 26, 2018. (E. 4.)

At 9:46 a.m. on Thursday, April 26, 2018, Nancy Baker, Administrative Assistant to the Honorable Glenn T. Klavans, emailed to counsel:

> Judge Klavans will be ruling on the Motion for Reconsideration today without a hearing. The Hearing for this afternoon before Judge Mulford will be ***canceled*** and counsel are excused from appearing.

At 10:01 a.m., Respondents' counsel emailed a reply brief to Ms. Baker and filed it via MDEC. At 11:23 a.m., Ms. Baker emailed counsel:

> Attached please find a *courtesy copy* of the Order signed by Judge Klavans this morning which has just been sent to the Clerk for filing.

Judge Klavans' Order stated:

> This matter having come before the Court for reconsideration of the denial of a preliminary injunction, and having considered said motion and the response thereto, the Court has determined that grounds exist for such reconsideration due to the fact that Nathaniel T. Oaks is now disqualified for election to the offices for which he filed certificates of candidacy, by virtue of his voluntary removal from the voter registration rolls. For the reasons expressed by the Court at the original adversary hearing in this matter, the Court finds that the Board of Elections still has adequate time to reform the ballots in Baltimore City. Any actions taken by the Board of Elections since the adversary hearing to further their printing and testing process was done after notice that the instant matter remained in active litigation and thus cannot be deemed to have further prejudiced the Board of Elections' position in this matter. The harm to the voters by way of potential confusion, inadvertence, and/or mischief by the appearance of a disqualified name on the ballot far outweighs any inconvenience to the Board of Elections. No less comprehensive remedy, such as the posting of signs at polling places, can assure that the voters' rights to effectively exercise their franchise will be protected.
>
> The Court further finds that there is a likelihood that the Plaintiffs will prevail on the merits of this case, and that the Plaintiffs have raised a substantial question concerning whether the Defendant is violating Maryland law and the Maryland Constitution by the refusal to remove Mr. Oaks' name from the ballot. The Court finds the balance of

> convenience favors the Plaintiffs and that the public interest would be served by the issuance of a preliminary injunction; wherefore:
>
> **ORDERED**, the Motion for Preliminary Injunction is GRANTED. Linda H. Lamone, in her official capacity as State Administrator of the Maryland State Board of Elections shall immediately remove the name of Nathaniel T. Oaks from any and all ballots for elective office, in any form, to be distributed to voters in Legislative District 41, for the Democratic Party Primary Election to be held in June, 2018. This preliminary injunction shall apply to all persons under the direction of the State Administrator. No bond shall be required prior to or after the effectiveness of this Order.

(E. 6-7.)

On the afternoon of Thursday, April 26, 2018, the State Board filed notices of appeal, petitioned this Court for a writ of certiorari and filed a motion to stay the Circuit Court's Order. On Friday, April 27, this Court issued a writ of certiorari and advanced the briefing and argument of the case.

II. QUESTION PRESENTED.

Was the Circuit Court's grant of a preliminary injunction, after considering affidavits and live witness testimony, properly within the discretion of the Circuit Court to enter?

III. STATEMENT OF FACTS.

This case involves the ballot for Maryland Legislative District 41 for the Democratic Party Primary Election to be held on June 26, 2018. Mr. Oaks, the then-

incumbent Maryland State Senator for Legislative District 41 and a member of the Democratic State Central Committee for Legislative District 41, filed for re-election to both offices prior to the filing deadline set by EL § 5-303(a)(1), which was February 27, 2018. (E. 46.) Mr. Oaks did not withdraw his candidacy by the withdrawal deadline, which was March 1, 2018, two days after the filing deadline. *See* EL § 5-502.

On March 29, 2018, Mr. Oaks pleaded guilty to Counts Three and Four of the Superseding Indictment against him that was filed in the United Stated District Court for the District of Maryland in *United States v. Oaks*, Criminal No. RDB-17-0288 ("Federal Criminal Case"). (E. 46.) The Baltimore Sun reported on March 30, 2018, that Jared DiMarinis, chief of candidacy for the State Board, stated that Mr. Oaks would remain on the June 26, 2018, Primary Election Ballot, notwithstanding his guilty plea, because he met the qualifications for the office he sought at the time of the filing deadline, which was February 27, 2018. (E. 47.)

On April 9, 2018, Respondents, all three of whom are registered voters in Maryland Legislative District 41 and two of whom are candidates for Democratic State Central Committee representing Legislative District 41, filed the present case in the Circuit Court for Anne Arundel County. (E. 73-82.) The same day, nearly simultaneously with the filing of the original Complaint in the present case, Laura Harpool filed an action in the Court against the Baltimore City Elections Board,

Armstead B.C. Jones in his official capacity as Elections Director of the Baltimore City Elections Board, the State Board and Linda H. Lamone in her official capacity as State Administrator of the State Board. ("Harpool Action.") (E. 48.) Filed with the Complaint in the Harpool Action was an Affidavit of Nathaniel T. Oaks. ("Oaks Affidavit.") (E. 113.) The Oaks Affidavit affirmed under the penalty of perjury that Mr. Oaks consented to the removal of his name from the ballot and that it would be in the best interest of the people of Legislative District 41 that his name be removed from the ballot. (E. 113.)

On April 16, 2018, Respondents moved in the Circuit Court for, inter alia, a TRO and preliminary injunction. (E. 141-154.) Respondents submitted four affidavits in support of their motion for a preliminary injunction.

Respondent Elinor Mitchell stated in her affidavit:

> As a native Baltimorean, 14 year resident of the 41st district, and a candidate for Baltimore City State Democratic Central Committee, I believe in the power of effective, ethical and energetic representation in Annapolis. I decided to run for Central Committee on a platform of reform with a team of like-minded activists to more fully engage voters and bring greater transparency to party activities with particular emphasis on the appointments process by which Nathaniel Oaks was sent to the Maryland Senate.
>
> I want to make sure every voter has all the information necessary to make informed decisions when at the polls. A ballot that includes Mr. Oaks would provide confusing and conflicting messages to voters since if nominated he will not be able to serve. It also sends the

> message that a representative who abuses and exploits the power of their office is still qualified to seek elected office.
>
> The inclusion of Mr. Oaks name also has the potential to impact the outcome of the election. With Nathaniel Oaks name on the ballot there are currently 21 candidates, of which I am one, running for the 7 elected State Democratic Central Committee seats. The number of votes required to win is impacted by the number of names appearing on the ballot. The voters of the 41st district deserve a clean ballot to ensure every vote cast is a vote that counts.

(E. 123-24.) Respondent Nancy Lewin stated in her affidavit:

> The inclusion of Mr. Oaks on the primary ballot for State Senate, the seat in which he served until the time of his resignation and subsequent guilty plea, will create confusion and mistrust among voters. The 63,000 registered Democrats in my district deserve a clean primary ballot on June 26 that includes only legitimate candidates – those who are both qualified *and* will be able to serve in the office for which they are running. It is clear that Mr. Oaks does not meet the latter requirement, and the inclusion of his name on the ballot is a false representation of his legitimacy as a candidate to voters. In addition, voters throughout Maryland deserve an election system that we can trust to preserve voters' rights at all times, including when adverse developments arise related to a candidate's ability to serve in the office they seek on a ballot after the state's filing deadline.
>
> There is still time to remove Mr. Oaks' name from the primary ballot, and it is the right thing to do for the integrity of our election system and in the interest of the most responsible use of public funds for elections. Voters cannot trust a state election system that will knowingly leave a candidate on the ballot who is not able to serve; this has adverse consequences for the election system at all levels – candidate qualifications, voter rights, and the outcomes for legitimate candidates on the ballot.

> There are two legitimate candidates for State Senator and twenty-three legitimate candidates for Democratic Central Committee for the 41st District on the ballot. These candidates have met all of the requirements for candidacy and have no foreseeable inability to serve in that office. Although it is secondary to the larger issue of election system integrity and voter rights, Mr. Oaks himself has said publicly and via affidavit to the Court that he wishes to have his name removed from the ballot.
>
> Removing Mr. Oaks from the ballot now will preserve the integrity of the election system by assuring voters that the state will not allow illegitimate candidates to remain on a ballot when there is still time to remove them. Without this action, the state will send the message to voters that the state election system protects candidates who seek to use the system's rules for political or personal benefit by hedging their bets against the Board's likelihood of taking action to preserve an administrative bureaucracy rather than demonstrating swift responsiveness in the face of the blatant de-legitimization of the state's election system by a candidate.
>
> Removing Mr. Oaks from the ballot will prevent voter confusion, voter loss of trust in the election process, and the continuation of an election law rule that provides cover for candidates with questionable intentions (i.e., using the election law rules for personal and political gain at the cost of voter confusion and election system de-legitimization) and clear inability to fulfill the requirements of office if elected.

(E. 134-36.)

In addition to Mr. Oaks, two additional candidates filed certificates of candidacy for the Democratic Party nomination for the District 41 State Senate seat:

Jill P. Carter and J.D. Merrill.[2] Both Ms. Carter and Mr. Merrill stated in their respective affidavits that they had no objection to the removal of Mr. Oaks' name from the ballot. (E. 137-38; E. 139-40.) Ms. Carter also stated in her affidavit:

> It is my opinion as a candidate for Maryland State Senate representing Legislative District 41 that the inclusion of Mr. Oaks' name on the Primary Election ballot notwithstanding his seeking to have his name removed from the ballot and the near certainty that he would be ineligible to be a candidate in the November 6, 2018, General Election, would cause prejudice to me and the other candidate who is seeking the Democratic Party Nomination for Maryland State Senate representing Legislative District 41. Including Mr. Oaks' name on the ballot implicitly informs voters that Mr. Oaks is a viable candidate for office. Voters who mistakenly cast votes for Mr. Oaks believing that he is a viable candidate would cast votes for me or my opponent if Mr. Oaks' name did not appear on the ballot.

(E. 138.) The State Board has published on its website a document titled: "2018 Gubernatorial Election Calendar." (E. 115-122.) The Calendar lists May 2, 2018, as the deadline for certification of the ballot, May 3, 2018, as the deadline for display of the ballot, and May 4, 2018, as the deadline for a registered voter to seek judicial review of the content and arrangement or to correct any other error in the ballot. (E. 117.)

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[2] No registered voter has filed a certificate of candidacy for the Republican nomination for the District 41 State Senate seat.

IV. ARGUMENT

A. Standard of Review

This Court set forth the standard of appellate review to be applied to all interlocutory injunctions in *Lamone v. Schlakman*, 451 Md. 468, 479, 153 A.3d 144, 151 (2017):

> We review the Circuit Court's decision to issue a temporary restraining order for an abuse of discretion. *See Schisler v. State*, 394 Md. 519, 534, 907 A.2d 175, 185 (2006). *See generally LeJeune v. Coin Acceptors, Inc.*, 381 Md. 288, 300–01, 849 A.2d 451, 458–59 (2004) (reviewing a preliminary injunction). **To the extent the Circuit Court's exercise of discretion is based on an interpretation of law, that aspect of the ruling below is reviewed *de novo***, because "even with respect to a discretionary matter, a trial court must exercise its discretion in accordance with correct legal principles." *LeJeune*, 381 Md. at 301, 849 A.2d at 459 (citation and internal quotation marks omitted); *see Cabrera v. Penate*, 439 Md. 99, 106, 94 A.3d 50, 54 (2014) (*de novo* review of circuit court's interpretation of Election Law Article). **We review the factual findings of the lower court for clear error**. *See Toms v. Calvary Assembly of God, Inc.*, 446 Md. 543, 551, 132 A.3d 866, 871 (2016) (citations and quotation marks omitted).

(Emphasis added.)

B. The Circuit Court's grant of a Preliminary Injunction was not an abuse of discretion.

The criteria for granting a preliminary injunction were articulated in *Department of Transportation v. Armacost*, 299 Md. 392, 404-05, 474 A.2d 191, 197 (1984):

> As a general rule, the appropriateness of granting an interlocutory injunction is determined by examining four factors: (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.

These criteria are factors to be considered by the court. *DMF Leasing, Inc. v. Budget Rent-A-Car of Maryland, Inc.*, 161 Md. App. 640, 649, 871 A.2d 639, 644 (2005); *Schade v. Maryland State Bd. of Elections*, 401 Md. 1, 36, 930 A.2d 304, 325 (2007). Each of these factors supported the Circuit Court's entry of a preliminary injunction.

1. Respondents are likely to succeed on the merits.

The ultimate issue before the Court is the proper interpretation of EL § 5-504(b) and § 5-601 under the circumstances presented. The State Board is championing an inflexible interpretation of the time limits set forth in these statutes, despite the fact that if Mr. Oaks' name remains on the ballot, voters in Legislative District 41 will be disenfranchised. Under the circumstances presented, it is a violation of Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution to permit Mr. Oaks' name to remain on the ballot.

However, this Court may invoke the doctrine of constitutional avoidance and interpret the time limits set forth in EL §§ 5-504(b) and 5-601 as directory rather than mandatory.

a. The State Board's interpretation of Election Law §§ 5-504(b) and 5-601 violates the Maryland Constitution and the United States Constitution

The relevant statutory provisions are as follows:

Maryland Code, Election Law, § 5-504
Effect of withdrawal of candidacy

In general

* * *

Appearance of name on primary election ballot

(b) Except for the offices of Governor and Lieutenant Governor, the name of any individual who files a certificate of candidacy and does not withdraw shall appear on the primary election ballot **unless, by the 10th day after the filing deadline specified** under § 5-303 of this title, the individual's death or disqualification is known to the applicable board with which the certificate of candidacy was filed.

Maryland Code, Election Law, § 5-601
Candidate names remaining on ballot

The name of a candidate **shall remain on the ballot** and be submitted to the voters at a primary election if:

(1) the candidate has filed a certificate of candidacy in accordance with the requirements of § 5-301 of this title and has satisfied any other requirements of this article

> relating to the office for which the individual is a candidate, provided the candidate:
>
> > (i) has not withdrawn the candidacy in accordance with Subtitle 5 of this title;
> >
> > (ii) has not died or become disqualified, and **that fact is known to the applicable board by the deadline prescribed in § 5-504(b) of this title**;
> >
> > (iii) does not seek nomination by petition pursuant to the provisions of § 5-703 of this title; or
> >
> > (iv) is not a write-in candidate; or
>
> (2) the candidate has qualified to have the candidate's name submitted to the voters in a presidential primary election under Title 8, Subtitle 5 of this article.

(Emphasis added.)

Article 7 of the Maryland Declaration of Rights safeguards "the right of the People to participate in the Legislature," the "right of suffrage" and ensures that "elections … be free and frequent." Article 7 has been held to be even more protective of rights of political participation than the provisions of the federal Constitution. *Maryland Green Party v. Maryland Board of Elections*, 377 Md. 127, 150, 832 A.2d 214, 228 (2003).

Article 24 of the Maryland Declaration of Rights states as follows:

> That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

The concept of equal protection is embodied in Article 24. *Frankel v. Board of Regents*, 361 Md. 298, 313, 761 A.2d 324, 332 (2000). *See also Maryland Green Party v. Maryland Board of Elections*, 377 Md. 127, 157, 832 A.2d 214, 231 (2003). This Court has "consistently recognized that the federal Equal Protection Clause and the Article 24 guarantee of equal protection of the laws are complementary but independent, and 'a discriminatory classification may be an unconstitutional breach of the equal protection doctrine under the authority of Article 24 alone.'" *Attorney General v. Waldron*, 289 Md. 683, 715, 426 A.2d 929, 947 (1981).

The First and Fourteenth Amendments of the United States Constitution also mandate relief under the circumstances. *See, e.g., Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992). The arbitrary freezing of the ballot well in advance of the printing of ballots is a constitutional violation analogous to the early filing deadlines that have been found to violate the federal Constitution. *Anderson*, *Burdick*, and their progeny are based on the doctrine that statutory provisions that preclude voters from casting an effective vote are unconstitutional.

As explained by this Court in *Goodsell*:

> "'[T]he rights of voters and the rights of candidates do not lend themselves to neat separation: laws that affect candidates always have at least some theoretical, correlative effect on voters. Of course, not every limitation or incidental burden on the exercise of voting rights is subject to a stringent standard of review … Texas does not place a condition on the exercise of the right to vote, nor does it quantitatively dilute votes that have been

> cast. Rather, the Texas system creates barriers to candidate access to the primary ballot, thereby tending to limit the field of candidates from which voters might choose. The existence of such barriers does not of itself compel close scrutiny …. In approaching candidate restrictions, it is essential to examine in a realistic light the extent and nature of their impact on voters.

Board of Supervisors of Elections of Prince George's County v. Goodsell, 284 Md. 279, 287, 396 A.2d 1033, 1037 (1979) (internal quotations and citations omitted). As this Court has repeatedly held, "the extent and nature of the impact on voters, examined in a realistic light, is the key to the appropriate standard for judicial review." *Id.*, 284 Md. at 288, 396 A.2d at 1038 (1979) (applying strict scrutiny to requirement that candidate be a registered voter in that county for five years before the election); *Nader for President 2004 v. Md. State Board of Elections*, 399 Md. 681, 697, 926 A.2d 199, 208-09 (2007) (maintaining that "because this case involves the rights, and possible disenfranchisement, of hundreds of Maryland voters, this Court must examine, in a realistic light[,] the extent and nature of [the] impact … on [those] voters" (internal quotation and citations omitted)).

The provisions of Article 7 of the Declaration of Rights "have been substantially in every Constitution of Maryland." *Jackson v. Norris*, 173 Md. 579, 594, 195 A. 576, 584 (1937). Prior to Maryland's adoption of the Australian Ballot in 1890, voters initially cast their votes viva voce and later by unofficial ballots on which voters freely wrote the names of their own selection or marked out names of

candidates if the ballot was printed. *Id.; see also Norris v. Mayor and City Council of Baltimore*, 172 Md. 667, 678-79, 192 A. 531, 536 (1937). The introduction of the Australian Ballot put an end to the use of unofficial ballots. *Jackson*, 173 Md. at 595, 195 A. at 584; *see also* 1890 Md. Laws ch. 538; 1892 Md. Laws ch. 236.

Maryland had no obligation to produce an official ballot. However, when it voluntarily agreed to produce an "Official Ballot," by adoption of the Australian Ballot, it also assumed the duty to produce a ballot that did not abridge the right of suffrage. *Cf.* Restatement (Third) of Torts: Phys. & Emot. Harm § 37 (2012) (No Duty of Care with Respect to Risks Not Created by Actor); *Id.* § 42 (Duty Based on Undertaking).

The State Board's publication of an "Official Ballot" implicitly expresses the State Board's imprimatur that the persons whose names are listed are qualified candidates. The inclusion of Mr. Oaks' name on the "Official Ballot" that Maryland requires that Democratic voters use in Legislative District 41, will mislead voters and cause voters to vote for Oaks notwithstanding that he is not qualified to hold the offices for which his name is listed on the ballot.

Strict scrutiny has repeatedly been applied in cases that impact voter choice. *See Maryland Green Party v. Maryland Board of Elections*, 377 Md. 127, 161-163, 832 A.2d 214, 234-235 (2003) (applying strict scrutiny to two-tiered petitioning requirement for minor political parties); *Nader for President 2004 v. Maryland State*

Board of Elections, 399 Md. 681, 698-99, 926 A.2d 199, 209-210 (2007) (applying strict scrutiny to Election Law statute that required a "county-match" before validating signatures on nominating petition).

As interpreted by the State Board, EL §§ 5-504 and 5-601 impact voter choice. If Mr. Oaks' name remains on the ballot, those who vote for him will waste their vote and have no opportunity to cast a vote for a qualified candidate. At the same time, the two remaining candidates will not receive the votes they would have had Mr. Oaks' name been removed. The State Board contends that voters can still choose which candidate to vote for, and thus no votes will be wasted. History belies this assertion.

In *McNulty v. Board of Supervisors of Elections for Anne Arundel County*, 245 Md. 1, 8-9, 224 A.2d 844, 848 (1966), this Court stated that "[i]t is axiomatic that unnecessary disenfranchisement of voters due to minor errors or irregularities in casting their ballots, in the absence of fraud, should be avoided." There, 136 voters were disenfranchised when they pulled an ineffectual lever in the voting booth. *Id.* at 7. Mr. McNulty filed a challenge after the election trying to recoup those votes for himself. While the Court determined that it was too speculative to determine for whom those votes would have been cast, it nevertheless viewed the wasted votes as a form of disenfranchisement.

This Court explained the importance of a single vote in *Jackson v. Norris,* 173 Md. 579, 601, 195 A. 576, 587 (1937): "It must be considered in this connection that every voter has but a single vote to cast. This vote, whether cast with the majority or the minority, is as important in terms of personal value and constitutional significance as every other vote." Here, all disenfranchisement caused by voters within District 41 casting wasted votes for Mr. Oaks can be avoided by simply removing Mr. Oaks' name from the ballot before the primary election.

Applying strict scrutiny, EL §§ 5-504 and 5-601 as applied to these facts are unconstitutional. It is incumbent upon the State Board to show that the mandatory withdrawal deadlines they contend these statutes create are "reasonably necessary to the accomplishment of legitimate governmental objectives … or necessary to promote a compelling governmental interest." *Maryland Green Party v. Maryland Board of Elections,* 377 Md. 127, 163, 832 A.2d 214, 235 (2003) (citations omitted).

Here, Judge Klavans has already found that interpreting the withdrawal statute as mandatory is not reasonably necessary to prepare the primary election ballots. Based on the evidence presented at the April 20 hearing, the Circuit Court found that even with the delay caused by removing Mr. Oaks' name from the District 41 ballots, the State Board has adequate time to reform the ballot in this case. Transcript 34:1-3 (E. 42). Additionally, Judge Klavans found that the interest of the State Board to prepare the primary election ballots in strict accordance with this statute pales in

comparison to the "harm [attendant] to the rights of voters to cast a meaningful vote for a qualified candidate rather than potentially casting a meaningless vote by mistake or inadvertence or election year mischief [for] a disqualified candidate who cannot take the office" if elected. Transcript 33:21-25 (E. 41). As this Court has previously determined, "[i]t is clear that in order for there to be a fair and honest implementation of the elective franchise, regulations must be in place. Those regulations, however, cannot, as previously stated, be inconsistent with the protections afforded under the Constitution." *Nader for President 2004 v. Maryland State Board of Elections*, 399 Md. 681, 708, 926 A.2d 199, 215 (2007).

Judge Klavans' reasoning was correct. EL §§ 5-504 and 5-601 as interpreted by the State Board violate Article 7 of the Maryland constitution. Inflexibly requiring that Mr. Oaks' name remain on the ballot under these circumstances will result in voter confusion and will inevitably lead to voters casting ineffective votes.

Similarly, requiring Mr. Oaks' name to remain on the ballot will violate Article 24 of the Declaration of Rights. Individuals who vote for Mr. Oaks will be disenfranchised, while individuals who do not vote for him will have their vote counted.

If Mr. Oaks' name is removed from the ballot, every vote cast will be for a qualified candidate and the citizens of Legislative District 41 will be able to fully exercise their voting rights as the Maryland constitution intended.

b. Election Law §§ 5-504(b) and 5-601 are directory not mandatory.

Interpreting EL §§ 5-504 and 5-601 as directory rather than mandatory allows this Court to avoid a constitutional conflict. Maryland courts recognize a "canon of constitutional avoidance, which provides that a statute will be construed so as to avoid a conflict with the Constitution whenever that course is reasonably possible." *Koshko v. Haining*, 398 Md. 404, 425, 921 A.2d 171, 183 (2007) (quoting *In re James D.*, 295 Md. 314, 327, 455 A.2d 966, 972 (1983)). The canon is applied by courts "where a statute is subject to two constructions, one of which will result in the legality and effectiveness of the statutory provisions being construed and the other of which might make it illegal and nugatory." *James D.*, 295 Md. at 327, 455 A.2d at 972.

Undergirding Maryland's use of the avoidance canon is a judicial policy preference against deciding constitutional issues unnecessarily. *Md. State Bd. of Elections v. Libertarian Party*, 426 Md. 488, 519 n.12, 44 A.3d 1002, 1020 n.12 (2012) ("This Court has 'long adhered to the policy of not deciding constitutional issues unnecessarily.'") (quoting *Curran v. Price*, 334 Md. 149, 171, 638 A.2d 93, 104 (1994)). Interpreting the withdrawal provisions as directory would avoid this Court's having to decide whether the provisions are unconstitutional.

Although this Court has held that the use of the word "shall" is presumed to be mandatory, it has not held so universally. In *Maryland State Bar Association v. Frank,* 272 Md. 528, 533, 325 A.2d 718, 721 (1974), this Court stated:

> Although, ordinarily the use of the word "shall" indicates a mandatory provision and therefore it is presumed that the word is used with that meaning, this is not so if the context indicates otherwise, as we believe it does here. [Citation omitted.] Though not controlling, we think it is of some significance in this regard that the language of the statute provides no penalty for failure to act within the time prescribed. Of more importance, it is clear that the broad policy of the law regulating the conduct of attorneys authorized to practice law in this State is designed for the protection of the public, [citation omitted], and that purpose would be largely vitiated if respondent's restrictive interpretation were to prevail.

In *Frank* this Court held that a statutory time requirement for completion of attorney disciplinary proceedings was directory.

There is no penalty in the Election Law should the State Board remove the name of a candidate who has pleaded guilty to two felonies, withdrawn his voter registration and requested that his name be removed from the ballot, notwithstanding that the withdrawal deadline in the Election Law has passed. Further, unlike the waiving of a filing deadline which would prejudice candidates who filed timely, the waiving of the withdrawal deadline prejudices no one. *Cf. Resetar v. State Board of Education*, 284 Md. 537, 550, 399 A.2d 232 (1979) (party suffered no prejudice).

Applying this concept of directory versus mandatory in the election context, in *Black v. Board of Supervisors of Elections of Baltimore City*, 232 Md. 74, 80, 191 A.2d 580, 583 (1963), the Court allowed the withdrawal of a general election candidate and substitution of another after the statutory deadline for doing so. This Court noted that: "The courts in other states have generally held that time limitations imposed upon a right to withdraw are directory and not mandatory." Although this Court said that it did not need to go so far in *Black* because it found on other grounds that the statutory deadline did not apply in Baltimore City, the Court's statement supports the general proposition that withdrawal deadlines are directory. *Cf. New Jersey Democratic Party, Inc. v. Samson*, 175 N.J. 178, 814 A.2d 1028 (2002) (allowed filling of vacancy on the ballot 34 days before election notwithstanding statutory prohibition of filling vacancy within 48 days of a general election).

Three years later, this Court, without any mention or discussion of *Black,* stated in *McGinnis v. Board of Supervisors of Elections of Harford County*, 244 Md. 65, 68, 222 A.2d 391, 393 (1966), that both filing and withdrawal deadlines were mandatory. At the next session of the General Assembly, the following was inserted in front of the provision interpreted in *Black* and *McGinnis*:

> The times designated in paragraphs (a) and (b) of this section for declining nominations and withdrawal of certificates of candidacy are mandatory and the provisions of these paragraphs shall also be applicable to municipal elections in Baltimore City.

1967 Md. Laws ch. 392 at pp. 859-60 (Article 33, § 9-1). The implication of the legislative change was that because of the conflicting decisions, the interpretation of the withdrawal provisions was not certain. The language quoted above remained in the Election Law until 1998.

In 1998, the General Assembly enacted a comprehensive revision of the Election Law. The revised code omitted any reference as to whether the withdrawal provisions were mandatory or directory. *See* 1998 Md. Laws ch. 585 at 2739-41 (§§ 5-501 to 5-504; 5-601). The comprehension revision of the Election Law was based upon the Report and draft statute submitted by the Commission to Revise the Election Law, which was created by the General Assembly in 1996. The Commission's Report is silent as to whether the withdrawal provisions should be mandatory or directory. *See* Report at 54-55.

As shown by the amendment of the Election Law subsequent to *McGinnis*, the General Assembly knew how to make withdrawal deadlines explicitly mandatory. *See Columbia Road Citizens' Association v. Montgomery County*, 98 Md. App. 695, 702, 635 A.2d 30, 34 (1995). However, when the General Assembly comprehensively revised the Election Law in 1998 it abandoned the mandatory language, which implies that the withdrawal provisions of the Election Law are directory.

Such an interpretation dovetails with current interpretations by other state courts around the country. *See e.g., In re Ross*, 109 A.3d 781, 784 (Pa. Commw. Ct. 2015) ("the Election Code's deadlines for candidate withdrawal and substitution are directory and not mandatory"); *Regaldo v. Curling*, 430 N.J. Super. 342, 345-46, 64 A.3d 589, 591-92 (2013) (time constraints on withdrawal of a candidate's name from the ballot should be liberally construed where leaving the candidate's name on the ballot "potentially result[s] in a voter casting a vote for a candidate who is no longer pursuing the office, thereby depriving that voter of the opportunity to cast a meaningful vote for another viable candidate").

Moreover, the interpretation Respondents urge the Court to adopt is consistent with what Professor Richard L. Hasen, one of the nation's pre-eminent election law scholars, has called the "Democracy Canon" of statutory construction. *See* Richard L. Hasen, *The Democracy Canon*, 62 STAN. L. REV. 69 (2009).

The Democracy Canon is defined by Professor Hasen as follows:

> The Canon's stated purposes usually are described in terms of its role in fostering democracy. Its purpose is "to give effect to the will of the majority and to prevent the disfranchisement of legal voters . . . ." The canon plays a role in "favoring free and competitive elections . . . ." It recognizes that the right to vote "is a part of the very warp and woof of the American ideal and it is a right protected by both the constitutions of the United States and of the state." Liberal construction of election laws serves "to allow the greatest scope for public participation in the electoral process, to allow candidates to get on the ballot, to allow parties to put their candidates on the ballot, and

> most importantly to allow voters a choice on Election Day."

Hasen, *supra*, 62 Stan. L. Rev. at 78 (footnotes omitted). The Democracy Canon has been employed by the courts since at least 1885. In *State v. Dewey*, 73 Neb. 396, 102 N.W. 1015, 1016 (1905), the Supreme Court of Nebraska noted:

> The statute of Kentucky provides that certificates of nomination shall be filed "not more than sixty and not less than fifteen days before the election." In *Hallon v. Center* (Ky.) 43 S. W. 174, it was held that "the requirement of the statute that the certificate of nomination shall be filed not more than sixty days before the election is directory, merely." The court recognized the difficulty in stating a general rule by which to determine in all cases when a statute is intended as directory only, and quotes the following **rule formulated by Judge Cooley: "Those directions which are not of the essence of the thing to be done, but which are given with a view merely to the proper, orderly, and prompt conduct of the business, and by a failure to obey which the right of those interested will not be prejudiced, are not commonly to be regarded as mandatory; and, if the act is performed, but not in the time nor in the precise mode indicated, it may still be sufficient, if that which is done accomplishes the substantial purposes of the statute."** Cooley, Const. Lim. 92. The object of our statute is satisfied if the certificates of nominations to fill vacancies are filed eight days before the election, and if the proper authorities are afforded four days, if necessary, after the original nominations have been declined, in which to fill the vacancies. The "rights of the parties interested were not prejudiced" by the failure to allow the nominating committees the full four days in which to make the substituted nominations.

(Emphasis added.)

No one will be prejudiced by removing Mr. Oaks' name from the ballot. However, keeping Mr. Oaks' name will cause confusion and directly impact the franchise. Affidavit of Nancy Lewin ¶ 3 (E. 134-35). ("The inclusion of Mr. Oaks on the primary ballot for State Senate, the seat in which he served until the time of his resignation and subsequent guilty plea, will create confusion and mistrust among voters."). State Senate candidate Jill P. Carter has averred that the inclusion of Mr. Oaks' name on the ballot

> would cause prejudice to me and the other candidate who is seeking the Democratic Party Nomination for Maryland State Senate representing Legislative District 41. Including Mr. Oaks' name on the ballot implicitly informs voters that Mr. Oaks is a viable candidate for office. Voters who mistakenly cast votes for Mr. Oaks believing that he is a viable candidate would cast votes for me or my opponent if Mr. Oaks' name did not appear on the ballot.

Affidavit of Jill P. Carter ¶ 5 (E. 138).

Elinor Mitchell, a candidate for State Democratic Central Committee in Legislative District 41 also submitted an affidavit. (E. 123-24.) Ms. Mitchell stated that a ballot that includes Mr. Oaks' name

> would provide confusing and conflicting messages to voters since if nominated he will not be able to serve. It also sends the message that a representative who abuses and exploits the power of their office is still qualified to seek elected office.
>
> The inclusion of Mr. Oaks' name also has the potential to impact the outcome of the election. With Nathaniel Oaks on the ballot there are currently 21 candidates, of which I

> am one, running for the 7 elected State Democratic Central Committee seats. The number of votes required to win is impacted by the number of names appearing on the ballot. The voters of the 41st district deserve a clean ballot to ensure every vote cast is a vote that counts.

Affidavit of Elinor (Ellie) Mitchell ¶ 3 (E. 123-24).

Additionally, both candidates who are running for the same Maryland State Senate Seat as Mr. Oaks submitted affidavits in this matter stating that they have no objection to the removal of Mr. Oaks' name from the ballot. Affidavit of J.D. Merrill ¶ 4 (E. 140); Affidavit of Jill P. Carter ¶ 4 (E. 139).

Under these circumstances, the Court should interpret EL §§ 5-504 and 5-601 as directory rather than mandatory. Rather than remanding this matter to the State Board for an administrative decision as to whether or not Mr. Oaks' name should be removed from the ballots, in light of the timing of the situation, the rights of Maryland voters to cast a meaningful vote, and the State Board's mistake of law in interpreting as mandatory the time provisions of these statutes, the Court should order the State Board to remove Mr. Oaks' name from the two ballots in Legislative District 41 forthwith. *See City of Seat Pleasant v. Jones*, 364 Md. 663, 675, 774 A.2d 1167, 1174 (2001) (a court has the power to correct a mistake of law practiced by Election Supervisors); *Hammond v. Love*, 187 Md. 138, 145, 49 A.2d 75, 78 (1946) ("a clear mistake of law, however honest, is an 'arbitrary' action, reviewable on mandamus….").

2. The Balance of Convenience favors affirming the grant of a preliminary injunction.

Based on the evidence presented in support of and in opposition to Respondents' motion for preliminary injunction, Judge Klavans found that "[t]he harm to the voters by way of potential confusion, inadvertence, and/or mischief by the appearance of a disqualified name on the ballot far outweighs any inconvenience to the Board of Elections." That finding of fact is reviewed for an abuse of discretion. *Lamone v. Schlakman*, 451 Md. 468, 479, 153 A.3d 144, 151 (2017) ("We review the factual findings of the lower court for clear error.").

For the reasons set forth above and during the preliminary injunction hearing, the balance of convenience tips strongly in favor of Respondents. On the scales are administrative convenience, for the State Board, and the right of Maryland voters to cast a meaningful vote, for Respondents.

As Natasha Walker testified for the State Board, while it would be "challenging" to remove Mr. Oaks' name from the ballot, it is "doable." Transcript 18:7-8 (E. 26.) Moreover, there are statutes governing the State Board that allow changes to the ballot and the election process even closer to the election than we are now.

For example, under EL § 9-209(c), it is possible for a registered voter to seek judicial review of the content and arrangement of the ballot even after the ballot is printed, at any time until the second Monday preceding the election. And under 52

U.S.C. § 20302(a), all states must accept and process absentee ballot applications and voter registration applications from absent uniformed services voters or overseas voters so long as the application is received by the State election office not less than 30 days before the election. Thus, the State Board's argument that its process is inflexible, must proceed in a particular order, and cannot be changed past certain hard deadlines simply does not hold water.

Counsel for Respondents has informed the State Board at every step of the way the steps Respondents were taking to bring this matter to the courts as expeditiously as possible and made it explicitly clear at the conclusion of the April 20, 2018, preliminary injunction hearing that Respondents would be seeking review in this Court of any adverse decision by the Circuit Court. (Transcript 34:14-35:2 (E. 42-43). On Sunday, April 22, 2018, counsel for Respondents informed counsel for the State Board that Mr. Oaks was willing to withdraw his voter registration immediately and that a Second Amended Verified Complaint and a motion for reconsideration would be filed on Monday, April 23, 2018. (E. 104.) Yet, the State Board forged ahead and began the process for printing ballots on April 23, 2018. Supplemental Affidavit of Natasha Walker ¶ 3 (E. 89). Natasha Walker, the State Board employee who testified at the April 20, 2018, preliminary injunction hearing testified that beginning the printing process later than April 23, would be **"doable." This case involves only two of the 747 primary election ballots that the State**

Board has to prepare and print. Affidavit of Natasha Walker ¶ 7 (E. 84). The change that Respondents seek is the removal of exactly two lines on two ballots. The statutory deadline for printing the ballots is not until May 7, 2018. *See* EL § 9-207(e); *see also* (E. 117).

Respondents are greatly inconvenienced by the status quo – the State Board has posted a sample ballot listing Mr. Oaks as a candidate and intend to distribute the ballot with Mr. Oaks' name to voters. Respondents effectively are forced right now in the context of an ongoing campaign for public office to campaign against someone who is not a proper candidate but is listed as being so by the State Board.

3. Respondents and other members of the electorate will suffer irreparable injury unless Mr. Oaks' name is removed from the ballots.

If Mr. Oaks' name appears on ballots that the State Board distributes to voters, Respondents will suffer the irreparably injury that votes that otherwise would have been cast for eligible candidates, including votes that otherwise may have been cast for Respondents Mitchell and Ervin for Democratic State Central Committee, will be cast for an ineligible candidate. Once voters cast their ballots, it will be impossible to then determine for which candidate Mr. Oaks' voters would have voted had Mr. Oaks' name not been on the ballot. Votes cast for Mr. Oaks, an ineligible candidate, could supply the margin of victory to one of the Respondents in the race for Democratic State Central Committee and one of the candidates for State Senate in Legislative District 41. *See generally Cabrera v. Penate,* 439 Md.

99, 110-12, 94 A.3d 50, 57-58 (2014) (distinguishing pre-election challenge from post-election challenge and the burden a plaintiff must show for relief pursuant to EL § 12-202).

Moreover, as discussed above, the rights of Maryland voters in Legislative District 41 will be irreparably harmed when they cast votes for Mr. Oaks.

4. The Public Interest supports injunctive relief in the present case.

Both the Maryland Declaration of Rights and the United States Constitution protect the right of suffrage. By placing the name of a person wishes to withdraw and never will be eligible to serve office robs voters of their ability to cast their votes for properly-qualified candidates. Those voters who cast their votes for Mr. Oaks effectively will have been disenfranchised in violation of the strong public policy of protection of voters' rights.

The public interest in this case is in having Maryland Election Law, the Maryland Constitution and the United States Constitution correctly applied in a situation of great importance: the determination who should appear on the election ballot. *Black's* defines "public interest" as:

> "1. The general welfare of the public that warrants recognition and protection. 2. Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulation."

Black's Law Dictionary (9th ed. 2009). The public welfare would not be well-served if a disqualified person's name is allowed to remain on the official ballot provided by the State Board. Accordingly, the public interest test is met.

V. CONCLUSION.

Respondents satisfied all four criteria for the issuance of a preliminary injunction and the Circuit Court did not abuse its discretion. For the reasons stated above, this Court should affirm the Circuit Court, dissolve its stay of proceedings in the Circuit Court and remand the case for entry of further proceedings in accordance with this Court's opinion.

Given the expedited nature of the current appeal, it is likely that this Court will issue an order immediately following oral argument on May 2, 2018, with a full opinion to follow at a later date. Respondents respectfully request that this Court directly order the State Board to remove Mr. Oaks' name from the ballots in Legislative District 41.

April 30, 2018

/s/ H. Mark Stichel

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STATUTORY APPENDIX

Maryland Declaration of Rights, Article 7.

That the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government; for this purpose, elections ought to be free and frequent; and every citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage.

Maryland Declaration of Rights, Article 24.

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

United States Constitution, Amendment I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

United States Constitution, Amendment XIV, § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Md. Code Ann., Elec. Law § 3-501(1).

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

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

(i) signed by the voter;

(ii) authenticated by the election director; and

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

Md. Code Ann., Elec. Law § 5-303(a)(1).

(a) Except as provided in subsections (b) and (c) of this section:

(1) in the year in which the Governor is elected, a certificate of candidacy shall be filed not later than 9 p.m. on the last Tuesday in February in the year in which the primary election will be held; …

Md. Code Ann., Elec. Law § 5-502.

(a) Subject to § 5-402 of this title, an individual who has filed a certificate of candidacy may withdraw the candidacy by filing a certificate of withdrawal on the form prescribed by the State Board within 2 days after the filing date established under § 5-303 of this title.

(b) An individual who has filed a certificate of candidacy for the special election to fill a vacancy for Representative in Congress may withdraw the certificate on the prescribed form within 2 days after the filing date established in the proclamation issued by the Governor.

Md. Code Ann., Elec. Law § 5-504(b).

(b) Except for the offices of Governor and Lieutenant Governor, the name of any individual who files a certificate of candidacy and does not withdraw shall appear on the primary election ballot unless, by the 10th day after the filing deadline specified under § 5-303 of this title, the individual's death or disqualification is known to the applicable board with which the certificate of candidacy was filed.

Md. Code Ann., Elec. Law § 5-601.

The name of a candidate shall remain on the ballot and be submitted to the voters at a primary election if:

(1) the candidate has filed a certificate of candidacy in accordance with the requirements of § 5-301 of this title and has satisfied any other requirements of this article relating to the office for which the individual is a candidate, provided the candidate:

(i) has not withdrawn the candidacy in accordance with Subtitle 5 of this title;

(ii) has not died or become disqualified, and that fact is known to the applicable board by the deadline prescribed in § 5-504(b) of this title;

(iii) does not seek nomination by petition pursuant to the provisions of § 5-703 of this title; or

(iv) is not a write-in candidate; or

(2) the candidate has qualified to have the candidate's name submitted to the voters in a presidential primary election under Title 8, Subtitle 5 of this article.

Md. Code Ann., Elec. Law § 9-209(c).

(c) If an error is discovered after the ballots have been printed, and the State Board fails to correct the error, a registered voter may seek judicial review not later than the second Monday preceding the election.

Md. Code Ann., Elec. Law § 12-202.

(a) If no other timely and adequate remedy is provided by this article, a registered voter may seek judicial relief from any act or omission relating to an election, whether or not the election has been held, on the grounds that the act or omission:

(1) is inconsistent with this article or other law applicable to the elections process; and

(2) may change or has changed the outcome of the election.

(b) A registered voter may seek judicial relief under this section in the appropriate circuit court within the earlier of:

(1) 10 days after the act or omission or the date the act or omission became known to the petitioner; or

(2) 7 days after the election results are certified, unless the election was a gubernatorial primary or special primary election, in which case 3 days after the election results are certified.

52 U.S.C. § 20302(a).

(a) In general

Each State shall--

(1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office;

(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;

…

(8) transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter--

(A) except as provided in subsection (g), in the case in which the request is received at least 45 days before an election for Federal office, not later than 45 days before the election; and

(B) in the case in which the request is received less than 45 days before an election for Federal office--

(i) in accordance with State law; and

(ii) if practicable and as determined appropriate by the State, in a manner that expedites the transmission of such absentee ballot;

Certification of Word Count and Compliance with Rule 8-112

1. This brief contains 8,722 words, excluding the parts exempted from the word count by Rule 8-503.

2. This document complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ H. Mark Stichel
H. Mark Stichel

Rule 20-201 Certification

Pursuant to Rule 20-201(f), I certify that this document does not contain any restricted information.

/s/ H. Mark Stichel
H. Mark Stichel

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April 2018, a copy of the foregoing Appellee's Brief was filed and served electronically on the MDEC system and sent by electronic mail to:

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