IN THE
COURT OF APPEALS OF MARYLAND

September Term, 2006

No. 141

THOMAS ROSKELLY, *et al.*,

Petitioners,

v.

LINDA LAMONE, *et al.*,

Respondents.

On Appeal from the Circuit Court for Anne Arundel County
(Paul A. Hackner, Judge)
Pursuant to a Writ of Certiorari to the Court of Special Appeals

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BRIEF OF RESPONDENTS

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July 21, 2006

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BRIEF OF RESPONDENTS

STATEMENT OF THE CASE

On June 8, 2006, Linda Lamone, the State Administrator of Elections ("Administrator"), notified Thomas Roskelly, Chairman of Marylanders for Fair Elections ("MFE"), that the petition the group filed on May 31, 2006, to begin the referral to referendum of Chapter 5, Laws of Maryland 2006, from the 2005 session, was deficient because it had been filed a year too late for reasons stated in an attached letter of the same date from the Office of the Attorney General. (E. 38-53.) The Administrator advised Roskelly that the local boards of elections would continue to verify signatures. (E. 38.)

On June 21, 2006, the Administrator notified Roskelly that his decision not to challenge her June 8 deficiency determination within ten days ended the petition process for Chapter 5, Laws of Maryland 2006. (E. 55.) She also informed him that the local boards had completed the verification and counting process, and that the number of signatures accepted was insufficient to continue the petition process for that bill. (E. 55.)

On June 27, 2006, Roskelly and MFE filed a complaint and emergency motion for judicial review challenging the Administrator's decision to terminate the petition process. (E. 7-60.) After a hearing on June 29, the circuit court ruled that the plaintiffs had not filed their action within ten days as required by §6-210(e) of the Election Law ("EL") Article. (E. 155-66.) Roskelly and MFE noted an appeal and petitioned this Court for a writ of certiorari, which was granted on July 5, 2006.

QUESTIONS PRESENTED

1. Is this action barred by limitations, where the plaintiffs waited 19 days before seeking judicial review of the Administrator's determination that the petition on Chapter 5, Laws of Maryland 2006 was deficient and could not be referred to referendum?

2. Does the Maryland Constitution permit the referendum of a non-emergency bill that has become law, such as Chapter 5, Laws of Maryland 2006 (Senate Bill 478), where that law has been in effect for four months and whose key provisions have been repealed and reenacted with amendments by a later enactment?

STATEMENT OF FACTS

I. MARYLAND'S EARLY VOTING LEGISLATION.

Senate Bill 478 (2005), Chapter 5, Laws of Maryland 2006, created a new §10-301.1 of the Election Law Article. (Apx. 1-3.) The bill provided for early voting eight hours each day for a five-day period beginning the Tuesday before a primary or general election through the Saturday before the election at early voting places and required each local board of elections to establish early voting places in its county, including at least three such places in the State's six most populous counties and Baltimore City. The bill was passed by both houses as of April 9, 2005, and vetoed by the Governor on May 20, 2005. The veto was overridden by both houses as of January 17, 2006; the bill therefore became law on February 16, 2006 pursuant to Article II, §17(d) of the Constitution.[1]

The General Assembly subsequently enacted a second bill addressing early voting, House Bill 1368 (2006), Chapter 61, Laws of Maryland 2006. (Apx. 4-17.) That legislation, among other things, repealed and reenacted with amendments EL §10-301.1(b) and (c) and thereby modified the law created by Senate Bill 478 in key respects: it extended the early voting period to between 7 a.m. and 8 p.m. each day; it specified the early voting sites in each of the seven most populous jurisdictions; it required early voting in other counties of the State to take place in the county seat (except in Charles County, where the early voting place is to be in Waldorf); and directed the state and local boards to inform the public about early

[1] Article II, §17(d) provides in pertinent part: "Any Bill enacted over the veto of the Governor, or any Bill which shall become law as the result of the failure of the Governor to act within the time specified, shall take effect 30 days after the Governor's veto is over-ridden, or on the date specified in the Bill, whichever is later. If the Bill is an emergency measure, it shall take effect when enacted." (Apx. 18-19.)

voting and the location of early voting polling places in each county.[2] House Bill 1368 passed both houses as emergency legislation as of March 29, 2006. The Governor vetoed the bill on April 7, 2006. Both houses overrode the veto as of April 10, 2006 and the bill thus became effective immediately pursuant to Article II, §17(d) of the Constitution.[3]

II. PETITIONS TO CHALLENGE EARLY VOTING.

On April 19, 2006, Roskelly, Chairman of MFE, requested an advance determination of proposed summaries of Senate Bill 478 and House Bill 1368 for placement on a petition signature page. On April 25, 2006, in a letter copied to Roskelly, the Attorney General's office approved summaries of the bills with changes, and stated:

> We also wish to call to your attention certain matters that do not relate directly to the petition's format, which is the subject of the advance determination, but that will relate to whether these bills ultimately may be petitioned to referendum. With respect to prior petition efforts, this Office has concluded that a petition drive for referendum must occur immediately after the session of the Legislature at which the bill is initially passed by the Legislature. *See* Letter from Assistant Attorney Generals Robert A. Zarnoch and Bonnie A. Kirkland to Honorable Donald H. Dwyer, Jr (April 26, 2005) (copy attached). In addition, in

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[2] House Bill 1368 (2006) also contained provisions relating to issues that Senate Bill 478 did not address, such as the requirements that the powers and duties of the State Board of Elections be exercised by a supermajority of its members, EL §2-102(c); that a local board establish a separate precinct to serve colleges and universities, EL §2-203(a)(2)(i); and that each polling place be equipped with computers that contain records of registered voters in the county that is networked to other computers. EL §10-302(b). The bill also contained a number of provisions relating to election administration in Baltimore City only. *See* Chapter 61, Laws of Maryland, Sections 2 and 5.

[3] Maryland thus joined 35 other states, all of which have some form of early voting legislation. *See* Early and Absentee Voting Laws, (last visited March 6, 2006) http://electionline.org/Default.aspx?tabid=474.

> 1977, Attorney General Burch concluded that, if the General Assembly repeals or amends a referred bill in good faith, the referendum concerning the original legislation should be removed from the ballot. *See* 62 *Opinions of the Attorney General* 405 (1977).

(E. 67.)

On May 31, 2006, MFE submitted 20,221 signatures in support of its petition to refer Chapter 5, Laws of Maryland 2006 to referendum or approximately 18.5 % more than 17,062, the required number of signatures.[4] (E. 12.) MFE's submission thus fell short of the State Board's recommendation that petitions "be signed by *at least 20% more than the number required*, since past experience indicates that a substantial number of signatures are likely to be invalid," and that "[i]n jurisdictions where residents move frequently, the invalidity rate may be higher." (E. 32) (emphasis in original).

By letter dated June 8, 2006, the Administrator notified Roskelly by mail and facsimile pursuant to EL §6-206(c)(5) that "the petition relating to Senate Bill 478 is deficient and may not be referred to referendum for reasons stated in the enclosed letter dated June 8 from the Office of the Attorney General."[5] (E. 38.) The Attorney General's letter expanded upon and reaffirmed the reasoning of its April 25, 2006 letter, which informed

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[4] This number represents 1% of the "qualified voters of the State of Maryland, as calculated upon the whole number of votes cast for Governor" in the 2002 election. Md. Const., art. XVI, §3.

[5] EL §6-206(c)(5) provides in pertinent part that "[t]he chief election official shall declare that the petition is deficient if the chief election official determines that . . . based on the advice of the legal authority . . . the petition seeks . . . a result that is otherwise prohibited by law." (App. 11.) *See also* COMAR 33.06.05.05A(2) (providing that the Administrator "shall [d]etermine whether the petition has satisfied all other requirements of law for that petition").

Roskelly that the bill could not be referred to referendum. (E. 40-55.) The Administrator's June 8 letter stated that the local boards of election would continue to verify signatures, as counsel had advised, "so that the referendum process may continue without interruption in the event that a court reaches a different conclusion." (E. 38.)

On June 21, 2006, the Administrator notified Roskelly, again by mail and facsimile, that the local boards of election had completed the validation of the signature pages for Senate Bill 478, and that 16,924 names had been accepted.[6] (E. 55.) MFE had thus not filed a sufficient number of signatures to continue the verification process. The Administrator also reminded Roskelly of the June 8 deficiency determination, which he had not challenged within the ten days required by EL §6-210(e)(1).[7] (E. 55.) Accordingly, she informed him, the petition process for Senate Bill 478 (2005) would not continue. (E. 55.)

Unless reversed, the Administrator's determination regarding Senate Bill 478 (2005), Chapter 5, Laws of Maryland 2006, assured that early voting will occur for the 2006 primary and general elections regardless of whether House Bill 1368 ultimately obtains enough

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[6] EL §6-210(c) provides that "verification and counting of validated signatures on a petition be completed within 20 days after the filing of a petition." The State Board thus met the statutory deadline with the Administrator's June 21 certification. The Administrator also informed Roskelly by separate letter on June 21 that MFE had submitted enough signatures for the petition process to continue for House Bill 1368 (2006). Subsequent to the circuit court judgment, the Administration notified Roskelly that MFE had obtained enough signatures to place the law on the November ballot.

[7] The statute reads:

> Except as provided in paragraph (2) of this subsection, any judicial review of a determination, as provided in §6-209 of this subtitle, shall be sought by the 10th day following the determination to which it relates.

Paragraph 2 sets an earlier deadline under certain conditions not present here.

signatures to be referred to referendum. House Bill 1368 was passed as an emergency measure, which means that it is not suspended pending a referendum. *See* Md. Const., Art. XVI, §2 ("An emergency law shall remain in force notwithstanding such petition, but shall stand repealed thirty days after having been rejected by a majority of the qualified electors voting thereon").

III. LITIGATION TO CHALLENGE THE ADMINISTRATOR'S DEFICIENCY DETERMINATION.

On June 27, 2006, Roskelly and MFE filed a complaint and an emergency motion for judicial review to challenge the Administrator's determinations on June 8 and 21, respectively, that the petition for Senate Bill 478 (2005) was legally deficient and lacked enough signatures to continue the signature-gathering and verification process. (E. 7-60.) Arguing that the Administrator's deficiency determination was "premature" since MFE had yet to file its "petition," as the plaintiffs construed that term's definition in the Election Law Article, the plaintiffs asserted that the Administrator was required to wait until June 30, 2006, before making any deficiency determination or before verifying any signatures. In other words, the plaintiffs maintained that they were not required to seek judicial review within ten days of the Administrator's June 8 deficiency determination.

The parties presented arguments–but introduced no evidence– at an expedited hearing on June 29, 2006.[8] (E. 83-154.) The court issued an oral ruling the next day. (E. 155-65.)

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[8] Relying entirely on statements by counsel rather than testimonial or affidavit evidence, petitioners' Statement of Facts suggests that the court erred by refusing to order that the signatures be verified again and that discovery be permitted. Brief of Appellants at 10-12. Petitioners were unable to marshal admissible evidence even though they filed suit after the ten-day statutory limit. Notably, petitioners' Argument contains no assertion that the court erred on this basis.

Rejecting plaintiffs' argument that the Administrator's determination was premature because it preceded their filing of the total number of required signatures by June 30, the court ruled that their action was time-barred because it had not been not filed within 10 days of June 8. (E. 163.) The court noted that, under Article XVI, §2 of the Maryland Constitution, the effective date of a law is generally the first day of June following the session at which it is passed (except for an emergency law), unless a petition to refer the bill to referendum is submitted before that date, in which case it does not take effect until thirty days after its approval by a majority of the voters at the next election. (E. 158-59.) However, the court observed, the June 1st date may be extended "to the thirtieth day of the same month"under Article XVI, §3(b) if more than one-third, but less than the full number of signatures, are filed before June 1. (E. 159.)

The court found that it was "incongruous" to consider the documents MFE filed on May 31 to be anything other than a petition and "nonsensical" to suggest that MFE could file invalid signatures to meet the one-third requirement. (E. 159, 161.) The Administrator's June 8 determination was required by EL §6-206, which instructs the Administrator to review a petition "[p]romptly upon the filing of a petition with an election authority," §6-206(a), and to "declare that the petition is deficient . . . based on the advice of the legal authority, §6-206(c). Therefore, the court determined, the State Board was required to determine the sufficiency of the petition and to verify signatures on the petitions. (E. 162.) When the June 8 letter notified Roskelly that the petition was legally deficient because it should have been submitted before June 1, 2005, after that year's legislative session, the letter triggered plaintiffs' right to seek judicial review of the deficiency determination under EL §6-210(e).

(E. 162.) The plaintiffs did not file suit, however, until June 27, after the ten-day limitations period had expired. Thus, the court concluded that their action was time-barred. (E. 163.)

SUMMARY OF ARGUMENT

Although the Administrator officially notified plaintiffs Thomas Roskelly and MFE on June 8, 2006, that their petition for Senate Bill 478 (2005 Session) was deficient and could not be referred to referendum, the plaintiffs did not bring this action until June 27, after the ten-day limitations period established by EL §6-210(e). Thus, the Administrator properly notified plaintiffs on June 21 that their decision not to challenge her June 8 deficiency determination ended the petition process for Senate Bill 478.

Plaintiffs were required by May 31, 2006, to submit a legally sufficient petition with one-third the required number of signatures from qualified voters to be entitled, under Article XVI, §3(b) of the Maryland Constitution, to an extended period ending June 30 to collect and file the remaining two-thirds of the required signatures. However, plaintiffs did not submit a legally sufficient petition on May 31. Thus, there was nothing premature about the Administrator's determination on June 8 that MFE was not permitted to petition to referendum a bill from a previous year's session that had been repealed and reenacted by the General Assembly in the next year's session.

Even if plaintiffs had timely sought judicial review of the Administrator's deficiency determination, the Maryland Constitution does not permit the referendum of a non-emergency law that has already taken effect and that has been subsequently amended in a later session. Ignoring the interaction of Article II, §17 with Article XVI, and that Chapter 5, Laws of Maryland 2006 took effect on February 16, 2006, plaintiffs suggest that they have

the legal right to gather signatures for some four months after the effective date of Chapter 5, Laws of Maryland 2006 and to repeal its effectiveness upon the mere filing of a petition containing one percent of the necessary votes. Article II, §17 provides, among other things, that legislation is to take effect 30 days after the veto of the Governor. When that provision is considered together with Article XVI, plaintiffs' argument fails because: as a non-emergency bill, Senate Bill 478 cannot be petitioned to referendum after it has become law and taken effect; Senate Bill 478 was subsequently amended and was superseded by House Bill 1368 (2006 Session), which defeats an attempt to petition the earlier bill; and the signature-gathering process for Senate Bill 478 should have occurred in 2005, when the bill passed the General Assembly, rather than in 2006.

ARGUMENT

I. THIS ACTION IS BARRED BY LIMITATIONS BECAUSE PLAINTIFFS DID NOT FILE SUIT WITHIN TEN DAYS OF THE ADMINISTRATOR'S JUNE 8 DEFICIENCY DETERMINATION.

Plaintiffs failed to timely seek judicial review under EL §6-210(e) after notice of the Administrator's June 8 determination that Senate Bill 478 could not be referred to referendum. Although plaintiffs were required to file this action by June 19, they did not file until June 27.[9] Accordingly, the circuit court properly dismissed this action as time-barred.

[9] EL §1-301 provides that "in computing the time under this article for performing an act, Saturdays, Sundays, and legal holidays shall be included." *See also* Md. Rule 1-203(a) ("If the period of time allowed is more than seven days, intermediate Saturdays, Sundays, and holidays are counted . . .").

A. The Maryland Constitution Requires That A Legally Sufficient Petition With Valid Signatures Be Filed By May 31.

Article XVI of the Constitution sets forth the procedures under which the voters may petition certain forms of legislation passed by the General Assembly to referendum. While the Constitution allows the Legislature to supplement its provisions by legislation, those constitutional provisions are self-executing. *See* Article XVI, §1(b). And because the referendum process can overturn or suspend the actions by the popularly-elected Legislature, the constitutional provisions must be narrowly construed. *See Tyler v. Sec'y of State*, 229 Md. 397, 402 (1962); *see also* Friedman, *The Maryland State Constitution: A Reference Guide* at 270 (2006). Thus, "those seeking to exercise the right of referendum in this State must as a condition precedent strictly comply with the conditions prescribed." *Pickett v. Prince George's County*, 291 Md. 648, 658 (1981) (quoting *Tyler*, 229 Md. at 402).

The Constitution dictates a two-step process for petitions. First, to successfully petition a public general law to referendum, a petition must be signed by at least "three percent of the qualified voters . . . calculated upon the whole number of votes cast for Governor at the last preceding Gubernatorial election," not more than half of whom can be from a single county or Baltimore City. Article XVI, §3(a). Second, while the petition must be submitted before June 1, submission of a legally sufficient petition with only one-third of the required signatures extends by 30 days the time for gathering and submitting the remaining two-thirds. *See* Article XVI, §3(b). During that 30-day period, the subject legislation is ordinarily suspended. *See* Article XVI, §§2 and 3(a).[10] However, if a legally

[10] The exception is legislation passed as an emergency measure, which if petitioned to referendum, remains in effect until 30 days following the referendum and its status is

sufficient petition with the minimum qualifying signatures is not submitted by May 31, the petition process ends.

The plaintiffs did not file a legally sufficient petition on May 31. Consequently, they were not entitled under Article XVI, §3(b) of the Constitution to an extended period ending June 30 to collect and file the remaining signatures. After consulting with the Attorney General's office, which furnished her a letter of counsel, the Administrator notified Roskelly and MFE that, based on that advice, the petition was deficient. (E. 38-53.) This declaration of deficiency under EL §6-206(c)(5) triggered petitioners' right to seek judicial review. *See* EL §6-209(a)(1) ("A person aggrieved by a determination made under . . . this subtitle may seek judicial review."). Roskelly and MFE were required to seek judicial review "by the 10th day following the determination to which it relates," §6-210(e), *i.e.* by June 19, but they did not do so until June 27.

B. The Administrator Was Required To Determine Whether The Petition Filed on May 31 Was Legally Sufficient.

Relying on the statutory definition of "petition," which means "all of the associated pages necessary to fulfill the requirements of a process established by law by which individuals affix their signatures," EL §6-101(i), the petition-gatherers argue that limitations does not begin to run until they file all of the required signatures by June 30. *See* Brief of Appellants at 17-19. The circuit court properly rejected that contention because "the definition of what a petition is cannot be interpreted to be inconsistent with the

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dependent on the referendum results. *See* Article XVI, §2. Although House Bill 1368 was passed as an emergency measure, Senate Bill 478, the subject of this litigation, was not.

Constitution,"[11] and because "the requirements of the entire petition for [the] referendum process have to be strictly construed." (E. 158.) Finding that Article XVI, §3 describes a petition process, and not merely a single petition, the court found that the State Board had not only the authority, but the duty, to determine whether the petition filed on May 31 was sufficient and contained signatures from qualified voters.[12] (E. 160.)

Petitioners' argument would lead to the absurd result that, as the circuit court recognized, the petition process "has these two components [which] could allow the first component to be a number of signatures that are not valid and then at the end come in with the valid signatures." (E. 161.) *See Yox v. Tru-Rol Co., Inc.*, 380 Md. 326, 337 (2004) ("We do not interpret statutes in ways that produce absurd results that could never have been intended by the Legislature."). Moreover, EL §6-208(a)(2) requires the chief election official "at the conclusion of the verification and counting process . . . *if it has not done so previously*, [to] determine whether the petition has satisfied all other requirements established by law for that petition . . . ." (emphasis added); *see also* EL §6-206(a), (c) (requiring the chief election official to review the petition "*promptly* upon the filing of the petition" and to make a declaration of deficiency) (emphasis added).[13] Thus, contrary to petitioners'

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[11] *Cf.* EL §6-102(c) (Petitions title of Election Law Article "may not be interpreted to conflict with any provision relating to petitions specified in Maryland Constitution").

[12] Plaintiffs' reliance on *Ficker v. Denny*, 326 Md. 626, 632 (1992) is thus misplaced, *see* Brief of Appellants at 18-19, because Article XI-A of the Constitution, which was at issue there, requires that all signatures be filed at a single time and, unlike Article XVI, §3(b) does not extend the filing period if one-third of the signatures are filed.

[13] *See also* EL §6-207(a) ("*Upon the filing of a petition* . . . the staff of the election authority shall proceed to verify the signatures and count the validated signatures contained in the petition.") (emphasis added).

argument, the statute specifically permits the Administrator to determine before the conclusion of the petition process whether the petition is legally sufficient. To ignore this language would render it surplusage, a result inconsistent with this Court's principles of statutory construction. *See, e.g., Moore v. State*, 388 Md. 446, 453 (2005) ("We construe a statute as a whole so that no word, clause, sentence, or phrase is rendered surplusage, superfluous, meaningless or nugatory."). In sum, the Administrator properly determined on June 8 that the petition was deficient, requiring Roskelly and MFE to file an action for judicial review within ten days. This they failed to do.

This Court should accord deference to the State Board's practice of instructing local boards to begin verifying signatures when petitions are filed on May 31, instead of waiting, as petitioners suggest, until June 30. *See Suessmann v. Lamone*, 383 Md. 697, 725 (2004) (according "considerable weight" to State Board's interpretation of election law). The General Assembly has delegated to the State Board of Elections authority to adopt regulations to carry out provisions of the State election law governing the petition process. *See* EL §6-103(a). Under those regulations, the Administrator is to determine whether a petition satisfies the minimum signature requirements and "whether the petition has satisfied all other requirements of law for that petition." COMAR 33.06.05.05A.(2). The State Board requires that one-third of the required signatures be submitted by May 31, and ends the petition process after verifying that the constitutional threshold has not been met. (E. 29.) This practice fully comports with the constitutional and statutory scheme and explains the Administrator's declaration of deficiency "promptly" after the petitions are filed.

C. Limitations Should Not Be Tolled Because Of The June 8 Notice.

Arguing that the signature verification process cannot proceed if a petition has been declared deficient, petitioners contend that limitations are tolled because the Administrator's June 8 letter informed them "the local boards of elections [will] continue the petition verification process." Brief of Appellants at 19-20. This argument was not raised below and therefore this Court should not consider it. *See* Rule 8-131(a). However, even if the argument had been preserved, it should be squarely rejected because EL §6-207(a), upon which the petitioners rely, does not expressly prohibit the local boards from continuing to verify signatures where, as here, the Administrator declares a deficiency but the Attorney General's office advises that the verification process should continue.[14] The provision merely provides general authorization for staff to verify signatures when a petition is filed.

The Attorney General's office recommended that signature verification continue because of the novelty of the timing issue. "[B]ecause the timing of the referendum drive in these circumstances is an issue of first impression, we recommend that the local boards of election proceed to verify signatures so that the referendum process continue without interruption in the event that a court reaches a different conclusion." (E. 40.) Thus, petitioners were clearly on notice that signatures would be counted only if a court reached a contrary conclusion. Nothing in the advice letter, or in the Administrator's deficiency determination, even remotely suggested that petitioners should not treat the June 8 notice as

[14] EL §6-207(a) provides: "Upon the filing of a petition, and unless it has been declared deficient under §6-206 of this subtitle, the staff of the election authority shall proceed to verify the signatures and count the validated signatures contained in the petition."

a final deficiency determination. *Cf. Delaware State College v. Ricks*, 449 U.S. 250, 258 (1980) (in employment discrimination case, limitations begins to run when discrimination occurs, not when employment is terminated). Despite the advice letter's reference to a possible contrary judicial resolution of this issue, the petitioners delayed seeking judicial review in accordance with EL §6-209 until June 27, by which time limitations had already run.[15]

The petitioners do not and cannot claim that they were misled by the June 8 notice. This Court has "maintained a rule of strict construction concerning the tolling of the statute of limitations." *Arroyo v. Bd. of Educ. of Howard County*, 381 Md. 646, 672 n.19 (2004) (quoting *Hecht v. Resolution Trust Corp.*, 333 Md. 324, 333 (1994)). "Absent legislative creation of an exception to the statute of limitations, we will not allow any 'implied and equitable exception to be engrafted upon it.'" *Id.* (other citation omitted). This Court has not adopted the doctrine of equitable tolling, which federal courts in this Circuit apply "where the defendant has wrongfully deceived or misled the plaintiff in order to conceal the existence of a cause of action." *Mezu v. Morgan State Univ.*, 264 F. Supp. 2d 292, 295 (D. Md. 2003) (quoting *C.M. English v. Pabst Brewing Co.*, 828 F.2d 1047, 1049 (4th Cir. 1987)). Even if the Court were to invoke the doctrine, neither the Administrator's June 8 notice nor the Attorney General's advice letter of the same date wrongfully deceived or misled the petition-gatherers in any way.

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[15] Additionally, the Attorney General's office, by letter dated April 25, 2006, informed Roskelly of that office's position on the timing issue with respect to prior petition efforts. (E.67.)

Roskelly makes no claim that he would have filed suit sooner had the Administrator worded the June 8 notice differently. Instead, as petitioners acknowledge, "Roskelly was first made aware of Lamone's letter on Saturday, June 17, 2006, when he picked up his mail from the post office and after his return from vacation." Brief of Appellants at 22. Despite managerial responsibility for a highly publicized referendum campaign involving thousands of people, Roskelly apparently did not arrange for anyone to monitor his mail in his absence or inform the State Board to send notices to someone else. As far as the State Board knew, Roskelly received the Administrator's June 8 notice by facsimile and by regular mail. The State Board's facsimile transmittal sheet indicated that he received all 16 pages of the June 8 facsimile. (E. 62.) While petitioners acknowledge that "Roskelly did not receive the faxed copy of Lamone's June 8 letter until June 18, 2006, when he filled his fax machine with paper," Brief of Appellants at 22, they appear unwilling to accept any responsibility for the consequences of his actions. Contrary to their argument, *id.*, the State Board was not legally required to contact Roskelly by telephone to determine whether he received the June 8 notice.

The petitioners fare no better with their related argument–also raised for the first time in this Court–that the June 8 notice was constitutionally defective because the Administrator's statement that signature verification would continue led petitioners to believe that the notice was a not final determination of legal deficiency. *See* Brief of Appellants at 20. This Court recently reaffirmed that analyzing due process claims requires a balancing test of three factors: "1) the private interest that will be affected by the official action; 2) a balancing of the risks of erroneous deprivation versus the value of additional safeguards; and 3) the Government's interest, including the function involved and any fiscal and

administrative burdens that any additional or substitute procedural requirement would necessitate." *In Re Katherine C.*, 390 Md. 554, 573 n.22 (2006) (citing *Mathews v. Eldridge,* 424 U.S. 319, 335 (1996)).

Here, the notice plainly informed Roskelly that "pursuant to . . . §6-206(c)(5), I have determined that the petition relating to Senate Bill 478 is deficient and may not be referred to referendum. . . ." (E. 38.) Roskelly knew, or should have known, of the legal significance of a §6-206 determination. Unlike an indigent defendant without access to legal services, Roskelly was directing a well-financed referendum drive involving thousands of voters backed by one of the principal political parties. Thus, there was little risk of "an erroneous deprivation" of petitioners' rights in the Administrator informing them that the petition was deficient but that signature verification would continue, given the likelihood of a legal challenge to her deficiency determination.

Moreover, the State Board had a significant interest in continuing with signature verification at the same time its Administrator notified Roskelly and MFE of the petition's legal deficiency. The Attorney General's office advised that the issue of taking to referendum a bill from a previous year's session which had been amended the next year was one of first impression which a court could conceivably decide differently. The election calendar sets forth strict deadlines. If no signatures had been verified, and if a court had decided the legal sufficiency issue against the State defendants, signature verification would have started much later, jeopardizing the election milestone dates. Requiring petitioners to adhere to the statutory process and its limitations provisions would ensure an early resolution of any possible dispute, thereby sparing the government "fiscal and administrative burdens,"

In Re Katherine C., 390 Md. at 573 n. 22, that additional signature verification would entail.[16]

For the foregoing reasons, the Court should affirm the circuit court's denial of the emergency motion on limitations grounds.

II. THE MARYLAND CONSTITUTION DOES NOT PERMIT THE REFERENDUM OF A NON-EMERGENCY LAW THAT HAS ALREADY TAKEN EFFECT AND THAT HAS BEEN SUBSEQUENTLY AMENDED IN A LATER SESSION.

As an alternative ground to support the judgment below, the Court should hold that, as a matter of law, Chapter 5 cannot be petitioned to referendum. The petition-gatherers' asserted right in 2006 to suspend the 2005 early voting legislation is premised upon an unreasonable parsing of Article XVI of the Maryland Constitution and a failure to address its interaction with Article II, §17 of the Constitution. Thus, the petitioners urge the impermissible referendum of a nonemergency law that had been in effect for more than five months when this suit was brought and that was substantively amended in a later session of the General Assembly.

Article XVI, §2 provides that a nonemergency bill passed by the General Assembly "shall not become law or take effect" if sufficient signatures are timely gathered. The bill will never take effect if the voters reject the measure. An emergency law passed by a three-fifths majority in both houses is not immune from referendum but cannot be suspended prior to its submission to the voters at the next election. If such a law is disapproved, it "shall

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[16] Indeed, having the local boards of elections verify signatures enabled the Administrator to determine in her June 21 notice that the 1% threshold had not been met. The failure to obtain sufficient signatures provided a second reason to terminate the petition process, permitting "fiscal and administrative" resources to be devoted to other tasks.

stand repealed." Article XVI does not recognize any other possibilities. Nonemergency legislation that has *become law* and has *taken effect* cannot be suspended or repealed and is not otherwise subject to referendum.

Article II, §17 of the Constitution governs gubernatorial vetoes and their override and provides in subsection (a) that if a veto is overridden, the bill "shall become a law." Section 17(d) provides that legislation enacted over the veto of the Governor "shall take effect 30 days after the Governor's veto is overridden or on the date specified in the Bill, whichever is later, unless the Bill is an emergency measure, in which event it shall take effect when enacted." These provisions were intended to expedite the effectiveness of legislation enacted by veto override.[17] In addition, these provisions were adopted without any evident intent to facilitate a referendum.[18]

Senate Bill 478 was vetoed by the Governor on May 20, 2005. The veto was overridden in January 2006, and by operation of Article II, §17, the legislation took effect in February 2006. The statute was substantially amended by Chapter 61 Laws of Maryland 2006–emergency legislation that was also enacted after a veto override. The 2005 legislation the petitioners seek to submit to referendum is now a new measure.

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[17] Prior to a 1974 constitutional amendment, nonemergency legislation enacted over a gubernatorial veto could not take effect until the "June 1 following." *See* Chapter 883, Laws of Maryland 1974. (E. 75-80.) Among the other changes made by the 1974 amendment were to: substitute the term "enacted for "passed" in two places in §17(d) to refer to a successful override of a veto, and to impose a 50-day post-session deadline for gubernatorial action. *See* Maryland Constitution, Article II, §17(c) and Article III, §30.

[18] As introduced, Chapter 883 of the Laws of Maryland 1974 would have expressly authorized referendum 30 days after a veto override. (Apx. 20-26.) However, all of the referendum language was deleted from the measure.

Whether Article XVI, §2 is examined in isolation or, more appropriately, in conjunction with Article II, §17, two legal conclusions inexorably emerge:

1) A nonemergency bill cannot be petitioned to referendum and suspended *after* it has already become law and taken effect. A contrary conclusion is inconsistent with Article XVI and Article II, §17.

2) The only way the effectiveness of a veto override under Article II, §17 can be reconciled with Article XVI, §§ 1 and 2 is if the petition-gathering process occurs the same year the bill initially *passed* the General Assembly, rather than in a subsequent year, when the bill is *enacted* over the Governor's objection.

The petitioners contend that they have the legal right to gather signatures for some four months in order to refer Chapter 5 to the voters and to repeal the law in the interim, upon the mere filing of a petition signed by one percent of the necessary voters. The Referendum Article does not permit such an extraordinary intrusion on the legislative process. A proper petition can suspend the effectiveness of *a bill* before it becomes law, but only the vote of an electoral majority can repeal a *law,* such as an emergency measure. A bill that becomes law through a veto override has passed with the same supermajority vote needed to pass a non-suspendable emergency bill.

It is unlikely the framers of Article XVI and Article II, §17 intended such a weighty legislative action to be suspended or repealed so lightly. As this Court has observed, "the referendum is a concession to an organized minority and a limitation upon the rights of the people," *Tyler,* 229 Md. at 402. The court went on to note that:

> The exercise of the right of referendum is drastic in its effect. The very filing of a petition, valid on its face, suspends the operation of any of a large class of legislative enactments and provides an interim in which the evil designed to be corrected by the law may continue unabated, or in which a need intended to be provided for, may continue unsatisfied.

Id.

The petitioners (petition-gatherers) have never offered a theory under which Article XVI, §§1 and 2 can be harmonized with the later-enacted provisions of Article II, §17.[19] Key amendments to Article II, §17 occurred in 1974. Article XVI, §2 has been amended only twice since 1914 and in minor ways. Article XVI, §1 has never been amended. Article XVI has never been changed to alter its effect of preventing a non-emergency bill from taking effect as opposed to suspending or repealing such a law already in existence.

The State does not assert that a bill that would become law through a veto override cannot be petitioned to referendum. *See* Article XVI, §1. However, the petitioners would have to gather signatures in the year the bill initially passed the General Assembly to prevent it from becoming law and taking effect upon a veto override.[20]

There is nothing irrational about requiring petitioners to gather their signatures in the year a bill passes, because a gubernatorial veto is not an act that can be reasonably or timely

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[19] In accordance with Rule 8-504(a)(7), the text of Article II, §17 is included in the appendix to this brief, at Apx. 18-19, because the petitioners omitted it from the pertinent authorities section of their brief.

[20] When the Referendum Article was adopted, and for more than 35 years afterwards, *see* Chapter 714, Laws of Maryland 1949, veto overrides *could occur only during the year of passage while the Legislature was in session*. Thus, nothing in the never-amended Article XVI, §1 or in any notion of "original intent" supports the petitioners' reading of the Constitution. Of course, some bills are still passed, presented, vetoed and overridden during the same session and clearly must be petitioned to referendum before June 1st after the end of that session.

anticipated.[21] The 1974 constitutional amendment, which essentially gave the Governor 50 days after the conclusion of the session to veto most bills, typically results in belated vetoes – usually the last week of May; and because of the interaction of these deadlines with the calendar, more than 20 percent of the time, the deadline for the Governor, to exercise the veto will occur *after* the referendum deadline.[22] In light of this timeframe and the fact that a veto or signing decision is often made late in the day, it makes good sense for the prudent petitioner to begin gathering signatures upon a bill's initial passage.[23] *See* Article XVI, §3(d) (signatures may be gathered "at any time after the Act or part of the Act is passed."). What would be irrational is to require petitioners to gather their signatures twice – once in the year of passage (until such time as a veto is belatedly announced) and again the next year after an override occurs.[24]

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[21] Giving credence to Fats Waller's line that "One never knows...," every year there are veto and signing "surprises," typically announced in late May. Senate Bill 796 of 2005 (The Medical Decision Making Act) is a prime example. (E. 48.) There was little certainty over what the Governor would do with the bill. Although a petition drive had been in place for 5-6 weeks, the bill was not vetoed until May 20, 2005 – a handful of days before the June 1st deadline. The petitioners seek to draw some solace from the statement of the Court in *Selinger v. Governor,* 266 Md. 431, 437 (1972), that a signature-gathering effort "could become a futile exercise if the Governor should veto the bill." However, this statement made two years before the 1974 amendment of Article II, §17, does not imply that a law in effect via a veto override can be petitioned the following year.

[22] An analysis of 40 years of veto dates prepared by the Department of Legislative Services confirms the practice of belated veto dates, including some extending into June beyond the referendum deadline. (E. 82.) This occurs when the session ends on April 12 or 13.

[23] In the year of initial passage, the petitioners will also have some idea of whether an override is possible the following year depending on whether the legislation passed by more than a three-fifths vote.

[24] The Attorney General's Office has advised that petitions gathered before a veto be accepted and promptly validated. (E. 53)

The petitioners ("petition-gatherers") rest most of their argument on the definition of "passed" in Article XVI, §3(c) as final action by both Houses - to the complete exclusion of key language in §§2 and 3 of Article XVI and Article II, §17. This is an extremely weak reed. This definitional section was a relatively minor revision undertaken as part of a comprehensive constitutional amendment (Chapter 548, Laws of Maryland 1976) and had nothing to do with veto overrides. It merely "codified" the decision in *Selinger v. Governor,* in an attempt to put to rest the stubborn myth that a petition drive had to wait until the Governor signed the bill in question.[25] The addition at the same time of a definition of "enacted" as meaning approval by the Governor and an express sanction in §3(d) of the right to gather signatures before enactment emphasizes this concern.

Another sign that the 1976 amendment made no change as to the timing of a petition to override a veto is that it did not alter the language of Article II, §17 – added just two years before – that a measure is "enacted" over a veto, not "passed." *See* n.17, *supra.* Most importantly, however, neither §2 nor §3 of Article XVI, was amended in 1976 to make it apply to a nonemergency statute on the books and in effect. The addition of a definition of "passed" would be an extremely subtle way – bordering on the clandestine – to rewrite critical language of the remainder of Article XVI or to trump the recent amendments to Article II, §17 intended to speed into effect legislation enacted over a veto override.

Rather than advancing the petitioners' case, the 1976 amendments to Article XVI, §3(c) and (d) underscore the uncertainty that faces all signature-gatherers who do not know

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[25] Materials in the Committee files on SB 639 of 1976 (which became Chapter 548) confirm this fact. A summary of House Committee testimony said of this language: "Would no longer have to wait for Governor to sign. Has been so ruled by Court of Appeals." (Apx 23.)

the Governor's ultimate intentions regarding a bill. They must begin their campaign as soon as the bill initially passes both Houses and before knowledge of signing or veto.[26]

An additional reason why Chapter 5 cannot be petitioned to referendum is the fact that in key respects, it has been repealed and reenacted with significant amendments. *See supra* at 3.[27] This is an argument made below to which the petitioners have never responded. Even the provisions not reenacted were either not severable, have already been carried out or reflected clarifying changes.[28] Chapter 5 is no longer the same measure the petitioners have sought to suspend and place on the ballot; it has been effectively displaced by Chapter 61, Laws of Maryland 2006, emergency legislation enacted by veto override. Under these circumstances, a referendum of the 2005 legislation is precluded and that statute can no longer be suspended or repealed. In 62 *Opinions of the Attorney General* 405, 408-09 (1977), Attorney General Burch said that:

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[26] The petitioners seek to draw support from language in *Wicomico County v. Todd,* 250 Md. 459, 466 (1970), that there would be no point in giving County voters the opportunity to kill a bill already killed by the County Council. However, at that time (and until recently) Wicomico had no County Executive and no veto override. Thus, a bill passed and vetoed by the same Council really was dead and incapable of being referred. Also failing is petitioners' analogy of the subsequent repeal of a bill petitioned to referendum to a *vetoed bill* awaiting override. A repeal does curtail legislation, while a veto is not necessarily the end of the matter. Under the Maryland Constitution, at every subsequent session (except the beginning of a new Governor's term), the vetoes will be taken up and sustained or overridden. *See* Article II, §17(d).

[27] Under Chapter 61, subsections (b) and (c) of §10-301.1 of the Election Law Article were repealed and reenacted with amendments and their effective date moved up.

[28] Chapter 5 and Chapter 61, Laws of Maryland 2006 can be regarded as nonseverable even if they become law by separate enactments at different times. *See Kelly v. Marylanders for Sports Sanity, Inc.,* 310 Md. 437, 468-74 (1987); and *Ocean City Taxpayer v. Ocean City,* 280 Md. 585, 596-99 (1977).

> If the referred law is validly repealed, it should be removed from the ballot and in the event that such a repeal is accompanied by a new enactment, the new enactment may be petitioned to referendum under Article XVI. *Id.* at 409.

That is what should happen here. The petitioners should look to placing Chapter 61 on the ballot as vindicating their interests (even though the law cannot be suspended in the interim). Chapter 5, as enacted, is no longer subject to referendum.

For all of these reasons, the signature-gatherers may not petition Chapter 5 to referendum.

CONCLUSION

For the reasons stated above, the decision of the Circuit Court for Anne Arundel County should be affirmed.

Respectfully submitted,

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July 21, 2006

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21st day of July, 2006, a copy of the foregoing Brief of Respondents was sent by electronic mail to:

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CHAPTER 5
(Senate Bill 478)/2005

AN ACT concerning

Election Law – Early Voting

FOR the purpose of establishing a process to allow voters to vote in elections at early voting polling places in the State; specifying the period in which early voting is allowed; ~~specifying criteria and procedures to guide the State Administrator of Elections in setting the number and location of early voting polling places for each election; granting authority to certain entities to select early voting polling places; establishing that each local board of elections has the final authority to select the geographic locations for certain early voting polling places;~~ *requiring the local boards of elections to establish the early voting polling places in each county; requiring the local boards in certain counties to establish at least a certain number of early voting polling places for each primary or general election;* requiring the Governor to allocate certain resources to implement this Act; requiring the State Board of Elections to adopt certain regulations and guidelines by a certain date; making certain provisions of law applicable to early voting; and generally relating to early voting in elections in the State.

BY adding to

Article – Election Law

Section 10–301.1

Annotated Code of Maryland

(2003 Volume and 2004 Supplement)

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

Article – Election Law

10–301.1.

(A) EXCEPT AS PROVIDED UNDER TITLE 9, SUBTITLE 3 OF THIS ARTICLE, A VOTER SHALL VOTE:

(1) IN THE VOTER'S ASSIGNED PRECINCT ON ELECTION DAY; OR

(2) IN AN EARLY VOTING POLLING PLACE AS PROVIDED IN THIS SECTION.

(B) EACH EARLY VOTING POLLING PLACE SHALL BE OPEN FOR VOTING:

(1) BEGINNING THE ~~EIGHTH DAY~~ *TUESDAY* BEFORE A PRIMARY OR GENERAL ELECTION THROUGH THE ~~FRIDAY~~ *SATURDAY* BEFORE THE ELECTION; AND

(2) 8 HOURS EACH DAY DURING THE PERIOD SPECIFIED UNDER PARAGRAPH (1) OF THIS SUBSECTION~~, INCLUDING EACH SATURDAY AND SUNDAY~~.

~~(C) (1) WITH THE ADVICE OF THE LOCAL ELECTION DIRECTOR, THE STATE ADMINISTRATOR SHALL SET THE NUMBER OF EARLY VOTING POLLING PLACES THAT EACH LOCAL BOARD MUST ESTABLISH.~~

~~(2) (I) THE GEOGRAPHIC LOCATION OF EARLY VOTING POLLING PLACES SHALL BE SELECTED IN EQUAL PROPORTIONS BY:~~

~~(I) 1. THE PRINCIPAL MAJORITY POLITICAL PARTY; AND~~

~~(II) 2. THE PRINCIPAL MINORITY POLITICAL PARTY; AND~~

~~3. THE LOCAL BOARD BASED ON THE RECOMMENDATION OF RECOGNIZED NONPRINCIPAL POLITICAL PARTIES AND OTHER PUBLIC INTEREST GROUPS.~~

~~(II) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS PARAGRAPH, EACH LOCAL BOARD HAS THE FINAL AUTHORITY TO SELECT THE GEOGRAPHIC LOCATIONS FOR THE NUMBER OF EARLY VOTING POLLING PLACES DESIGNATED BY THE STATE ADMINISTRATOR FOR THAT COUNTY.~~

~~(3) IF THE NUMBER OF POLLING LOCATIONS EARLY VOTING POLLING PLACES SET BY THE STATE ADMINISTRATOR FOR A LOCAL BOARD IS NOT EQUALLY DIVISIBLE BY THREE:~~

~~(I) THE NUMBER OF GEOGRAPHIC LOCATIONS SELECTED BY THE PRINCIPAL PARTIES SHALL BE EQUAL; AND~~

~~(II) THE NUMBER OF GEOGRAPHIC LOCATIONS SELECTED BY THE LOCAL BOARD SHALL BE LESS THAN, BY NO MORE THAN TWO, THE NUMBER SELECTED BY ONE PRINCIPAL PARTY.~~

(C) (1) EACH LOCAL BOARD SHALL ESTABLISH THE EARLY VOTING POLLING PLACES IN ITS COUNTY.

(2) (I) IN THE FOLLOWING COUNTIES, THE LOCAL BOARD SHALL ESTABLISH AT LEAST THREE EARLY VOTING POLLING PLACES FOR EACH PRIMARY OR GENERAL ELECTION:

1. ANNE ARUNDEL;

2. BALTIMORE CITY;

3. BALTIMORE COUNTY;

4. HARFORD;

5. HOWARD;

6. MONTGOMERY; AND

7. PRINCE GEORGE'S.

(II) IN EACH COUNTY OTHER THAN A COUNTY SPECIFIED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE LOCAL BOARD SHALL ESTABLISH AT LEAST ONE EARLY VOTING POLLING PLACE FOR EACH PRIMARY OR GENERAL ELECTION.

~~(4)~~ ~~(I)~~ *(3)* POLLING PLACES ESTABLISHED BY A LOCAL BOARD UNDER THIS SECTION SHALL MEET THE REQUIREMENTS OF § 10–101 OF THIS TITLE.

~~(II) IF A LOCAL BOARD CANNOT ESTABLISH A POLLING PLACE IN THE GEOGRAPHIC LOCATION REQUESTED UNDER THIS SUBSECTION, THE REQUESTING ENTITY MAY MAKE ANOTHER REQUEST.~~

(D) (1) A VOTER MAY VOTE AT ANY EARLY VOTING POLLING ~~LOCATION~~ PLACE IN THE VOTER'S COUNTY OF RESIDENCE.

(2) THE LOCAL BOARD SHALL ENSURE THAT EVERY BALLOT STYLE USED IN THE COUNTY FOR THE ELECTION IS AVAILABLE AT THE EARLY VOTING POLLING ~~LOCATIONS~~ PLACES.

(E) ON OR BEFORE JANUARY 1, 2006, THE STATE BOARD SHALL ADOPT REGULATIONS AND GUIDELINES FOR THE CONDUCT OF EARLY VOTING.

(F) ANY PROVISION OF THIS ARTICLE THAT APPLIES TO ELECTION DAY ALSO SHALL APPLY TO EARLY VOTING.

SECTION 2. AND BE IT FURTHER ENACTED, That the Governor shall allocate the resources required to implement the requirements of this Act, including any gift received by the State for the purposes of this Act under § 2–201 of the State Finance and Procurement Article, or, except for federal funds received by the State to implement the requirements of the Help America Vote Act 2002, any federal or other funds or grant received by the State in accordance with federal and State law for the purposes of this Act by fiscal year 2007 and each fiscal year thereafter.

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ June 1, 2005.

Enacted January 17, 2006.

CHAPTER 61

(House Bill 1368)

AN ACT concerning

Election Law – Voter Bill of Rights

FOR the purpose of requiring a local board of elections to establish, under certain circumstances, a separate precinct to serve certain institutions of higher education; requiring each institution at which a precinct is established to provide certain facilities and services to the local board; requiring that local boards, when establishing early voting polling places, select sites that are consistent with certain guidelines and regulations established by the State Board of Elections; requiring certain polling places to be equipped with a certain computer device; ~~requiring the Governor to allocate certain resources to implement the requirements of this Act; requiring the Governor to appropriate sufficient funds to reimburse the counties for a certain portion of certain expenditures;~~ *requiring the State Administrator of Elections to ensure that selected sites for early voting have adequate infrastructure to accommodate certain computer devices; requiring early voting polling places to be open for voting during certain hours; specifying certain early voting polling sites; providing for certain alternate sites to be selected under certain circumstances; requiring the State Board and the local boards to engage in certain voter outreach activities regarding early voting prior to each primary and general election; requiring the Governor to include certain funds in the annual budget for a certain purpose; providing that certain powers and duties assigned to the State Board shall be exercised in accordance with an affirmative vote of a supermajority of the members of the Board; requiring local boards of elections to administer voter registration and absentee balloting for certain facilities in accordance with procedures established by the State Board; establishing and altering certain powers and duties of local boards of elections, the election directors of local boards, and the State Administrator of Elections; authorizing the State Administrator to file suit for injunctive relief under certain circumstances; authorizing a registered voter or applicant for registration to file suit for injunctive relief under certain circumstances; authorizing the State Administrator to take certain disciplinary actions and make interim appointments under certain circumstances; requiring certain local boards to adopt certain regulations; requiring the regulations to be adopted, reviewed, and approved before the local board may take certain actions; placing certain restrictions on the alteration of precinct boundaries and polling place locations; placing certain restrictions on the removal of registered voters from the registry and on the rejection of voter registration applications; requiring the issuance of certain reports and the Internet publication of certain lists; providing for the application of certain provisions of this Act only to jurisdictions that meet certain criteria; providing for the termination of certain provisions of this Act; generally relating to the powers and duties of election boards, local election directors, and the State Administrator of Elections;* requiring the State Administrator of Elections and the Office of the Attorney General to review and report on issues related to election day voter registration; making this Act an emergency measure; and generally relating to a voter bill of rights.

BY repealing and reenacting, with amendments,

Article – Election Law

~~Section 2-303(a) and 10-302~~

Section 2–102, 2–103, 2–202(b), 2–206, 2–301, 2–303(a), 3–501, and 10–302

Annotated Code of Maryland
(2003 Volume and 2005 Supplement)

BY repealing and reenacting, with amendments,
Article – Election Law
Section ~~10–301.1(e)(1)~~ *10–301.1(b) and (c)*
Annotated Code of Maryland
(2003 Volume and 2005 Supplement)
(As enacted by Chapter 5 of the Acts of the General Assembly of 2006)

BY adding to
Article – Election Law
Section 2–202.1
Annotated Code of Maryland
(2003 Volume and 2005 Supplement)

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

Article – Election Law

2–102.

(a) The State Board shall manage and supervise elections in the State and ensure compliance with the requirements of this article and any applicable federal law by all persons involved in the elections process.

(b) In exercising its authority under this article and in order to ensure compliance with this article and with any requirements of federal law, the State Board shall:

(1) supervise the conduct of elections in the State;

(2) direct, support, monitor, and evaluate the activities of each local board;

(3) have a staff sufficient to perform its functions;

(4) adopt regulations to implement its powers and duties;

(5) receive, and in its discretion audit, campaign finance reports;

(6) appoint a State Administrator in accordance with § 2–103 of this subtitle;

(7) maximize the use of technology in election administration, including the development of a plan for a comprehensive computerized elections management system;

(8) canvass and certify the results of elections as prescribed by law;

(9) make available to the general public, in a timely and efficient manner, information on the electoral process, including a publication that includes the text of this article, relevant portions of the Maryland Constitution, and information gathered and maintained regarding elections;

(10) subject to §§ 2–106 and 13–341 of this article, receive, maintain, and serve as a depository for elections documents, materials, records, statistics, reports, certificates, proclamations, and other information prescribed by law or regulation;

(11) prescribe all forms required under this article; and

(12) serve as the official designated office in accordance with the Uniformed and Overseas Citizens Absentee Voting Act for providing information regarding voter registration and absentee ballot procedures for absent uniformed services voters and overseas voters with respect to elections for federal office.

(C) THE POWERS AND DUTIES ASSIGNED TO THE STATE BOARD UNDER THIS ARTICLE SHALL BE EXERCISED IN ACCORDANCE WITH AN AFFIRMATIVE VOTE BY A SUPERMAJORITY OF THE MEMBERS OF THE STATE BOARD.

2–202.

(b) Each local board, in accordance with the provisions of this article and regulations adopted by the State Board, shall:

(1) oversee the conduct of all elections held in its county and ensure that the elections process is conducted in an open, convenient, and impartial manner;

(2) pursuant to the State Personnel and Pensions Article, or its county merit system, whichever is applicable, appoint an election director to manage the operations and supervise the staff of the local board;

(3) maintain an office and be open for business as provided in this article, and provide the supplies and equipment necessary for the proper and efficient conduct of voter registration and election, including:

(i) supplies and equipment required by the State Board; and

(ii) office and polling place equipment expenses;

(4) adopt any regulation it considers necessary to perform its duties under this article, which regulation shall become effective when it is filed with and approved by the State Board;

(5) serve as the local board of canvassers and certify the results of each election conducted by the local board;

(6) establish and alter the boundaries and number of precincts in accordance with § 2–303 of this title, and provide a suitable polling place for each precinct, and assign voters to precincts;

(7) provide to the general public timely information and notice, by publication or mail, concerning voter registration and elections;

(8) make determinations and hear and decide challenges and appeals as provided by law;

(9) (i) aid in the prosecution of an offense under this article; and

(ii) when the board finds there is probable cause to believe an offense has been committed, refer the matter to the appropriate prosecutorial authority; [and]

(10) maintain and dispose of its records in accordance with the plan adopted by the State Board under § 2–106 of this title; AND

(11) ADMINISTER VOTER REGISTRATION AND ABSENTEE VOTING FOR NURSING HOMES AND ASSISTED LIVING FACILITIES IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY THE STATE ADMINISTRATOR, SUBJECT TO THE APPROVAL OF THE STATE BOARD.

2–303.

(a) (1) [As] SUBJECT TO PARAGRAPH (2) OF THIS SECTION, AS it deems it expedient for the convenience of voters, a local board may:

[(1)] (I) create and alter the boundaries for precincts in the county;

[(2)] (II) designate the location for polling places in any election district, ward, or precinct in the county; and

[(3)] (III) combine or abolish precincts.

(2) (I) EXCEPT AS PROVIDED UNDER SUBPARAGRAPH (III) OF THIS PARAGRAPH, A LOCAL BOARD SHALL ESTABLISH A SEPARATE PRECINCT ON CAMPUS OR WITHIN ONE–HALF MILE OF THE CAMPUS TO SPECIFICALLY SERVE A PUBLIC OR PRIVATE INSTITUTION OF HIGHER EDUCATION IF THE LOCAL BOARD DETERMINES THAT AT LEAST 500 STUDENTS, FACULTY, AND STAFF WHO ATTEND OR WORK AT THE INSTITUTION ARE REGISTERED VOTERS IN THE PRECINCT IN WHICH THE INSTITUTION IS LOCATED.

(II) IF, IN ACCORDANCE WITH SUBPARAGRAPH (I) OF THIS PARAGRAPH, A POLLING PLACE IS ESTABLISHED AT AN INSTITUTION OF HIGHER EDUCATION THAT RECEIVES STATE FUNDS, THAT INSTITUTION SHALL:

1. PROVIDE WITHOUT CHARGE TO THE LOCAL BOARD A FACILITY FOR USE AS A POLLING PLACE THAT MEETS ALL APPLICABLE REQUIREMENTS UNDER THIS ARTICLE AND AS ESTABLISHED BY THE STATE BOARD; AND

2. PROVIDE ASSISTANCE TO THE LOCAL BOARD IN RECRUITING ELECTION JUDGES TO STAFF THE POLLING PLACE.

(III) A LOCAL BOARD MAY NOT BE REQUIRED TO ESTABLISH A SEPARATE PRECINCT AS PROVIDED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IF THERE IS AN ESTABLISHED PRECINCT WITHIN ONE–HALF MILE OF THE PUBLIC OR

PRIVATE INSTITUTION OF HIGHER EDUCATION'S CAMPUS THAT SERVES THE VOTERS WHO ATTEND OR WORK AT THE PUBLIC OR PRIVATE INSTITUTION OF HIGHER EDUCATION.

10–301.1.

~~(c) (1) (I) Each local board shall establish the early voting polling places in its county.~~

~~(II) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH, WHEN ESTABLISHING THE EARLY VOTING POLLING PLACES, THE LOCAL BOARD SHALL, CONSISTENT WITH THE GUIDELINES AND REGULATIONS ESTABLISHED BY THE STATE BOARD:~~

~~1. SELECT A SITE IN THE COUNTY THAT IS GEOGRAPHICALLY CENTRAL AND EASILY ACCESSIBLE SEAT, IF ONLY ONE LOCATION IS BEING USED IN THE COUNTY; OR~~

~~2. SELECT SITES FROM RECOMMENDATIONS PROVIDED BY THE CHAIRMEN OF THE LOCAL CENTRAL COMMITTEES OF THE RECOGNIZED POLITICAL PARTIES, IF MULTIPLE LOCATIONS ARE USED IN THE COUNTY SELECT:~~

~~A. ONE SITE LOCATED IN THE COUNTY SEAT FOR EACH COUNTY;~~

~~B. AT LEAST ONE SITE LOCATED AT A COMMUNITY COLLEGE IN THE COUNTY; AND~~

~~C. ANY ADDITIONAL SITES IN THE COUNTY ONLY FROM THE RECOMMENDATIONS OF THE CHAIRMEN OF THE LOCAL CENTRAL COMMITTEES OF THE RECOGNIZED POLITICAL PARTIES.~~

~~(III) IN BALTIMORE CITY, THE LOCAL BOARD SHALL, CONSISTENT WITH THE GUIDELINES AND REGULATIONS ESTABLISHED BY THE STATE BOARD, ESTABLISH EARLY VOTING POLLING PLACES AT:~~

~~1. MORGAN STATE UNIVERSITY;~~

~~2. COPPIN STATE UNIVERSITY; AND~~

~~3. THE DUBURNS RECREATION CENTER.~~

(b) Each early voting polling place shall be open for voting:

(1) beginning the Tuesday before a primary or general election through the Saturday before the election; and

(2) [8 hours each day] DURING THE HOURS BETWEEN 7 A.M. AND 8 P.M. during the period specified under paragraph (1) of this subsection.

(c) (1) [Each] AS PROVIDED IN THIS SUBSECTION, EACH local board shall establish the early voting polling places in its county.

(2) (i) In the following counties, the local board shall establish [at least] three early voting polling places for each primary or general election AS SPECIFIED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH:

1. Anne Arundel;

2. Baltimore City;

3. Baltimore County;

4. Harford;

5. Howard;

6. Montgomery; and

7. Prince George's.

(ii) 1. [In] EXCEPT FOR CHARLES COUNTY, IN each county other than a county specified in subparagraph (i) of this paragraph, the local board shall establish [at least] one early voting polling place for each primary or general election IN THE COUNTY SEAT.

2. IN CHARLES COUNTY, THE EARLY VOTING POLLING PLACE SHALL BE ESTABLISHED IN WALDORF.

(III) EARLY VOTING POLLING PLACES SHALL BE ESTABLISHED AT THE LOCATIONS SPECIFIED IN THIS SUBPARAGRAPH FOR THE FOLLOWING COUNTIES:

1. ANNE ARUNDEL COUNTY:

A. BROOKLYN PARK SENIOR CENTER
202 HAMMONDS LANE
BALTIMORE, MD 21225;

B. WEST COUNTY LIBRARY
1325 ANNAPOLIS ROAD
ODENTON, MD 21114; AND

C. AMERICAN LEGION POST #141
1707 FOREST DRIVE
ANNAPOLIS, MD 21401;

2. BALTIMORE CITY:

A. MORGAN STATE UNIVERSITY
1700 E. COLD SPRING LANE
BALTIMORE, MD 21251;

B. COPPIN STATE UNIVERSITY
2500 NORTH AVENUE
BALTIMORE, MD 21216; AND

C. DU BURNS RECREATION CENTER
1301 S. ELLWOOD AVENUE
BALTIMORE, MD 21224;

3. BALTIMORE COUNTY:

A. RANDALLSTOWN LIBRARY
8604 LIBERTY ROAD
RANDALLSTOWN, MD 21133;

B. TOWSON UNIVERSITY
8000 YORK ROAD
TOWSON, MD 21252; AND

C. ESSEX LIBRARY
1110 EASTERN BOULEVARD
ESSEX, MD 21221;

4. HARFORD COUNTY:

A. ABERDEEN BRANCH LIBRARY
21 FRANKLIN STREET
ABERDEEN, MD 21001;

B. HARFORD COUNTY GOVERNMENT BUILDING
212 SOUTH BOND STREET
BEL AIR, MD 21014; AND

C. JOPPA BRANCH LIBRARY
655 TOWNE CENTER DRIVE
JOPPA, MD 21085;

5. HOWARD COUNTY:

A. EAST COLUMBIA LIBRARY (OWEN BROWN)
6600 CRADLEROCK WAY
COLUMBIA, MD 21045;

B. MILLER BRANCH LIBRARY
9421 FREDERICK ROAD
ELLICOTT CITY, MD 21042; AND

C. SAVAGE BRANCH LIBRARY
9525 DURNESS LANE
LAUREL, MD 20723;

6. MONTGOMERY COUNTY:

A. GERMANTOWN PUBLIC LIBRARY
12900 MIDDLEBROOK ROAD
GERMANTOWN, MD 20874;

B. SILVER SPRING PUBLIC LIBRARY
8901 COLESVILLE ROAD
SILVER SPRING, MD 20910; AND

C. ROCKVILLE CITY HALL
111 MARYLAND AVENUE
ROCKVILLE, MD 20850; AND

7. PRINCE GEORGE'S COUNTY:

A. UPPER MARLBORO LIBRARY
14730 MAIN STREET
UPPER MARLBORO, MD 20772;

B. HARMONY HALL REGIONAL CENTER
10701 LIVINGSTON ROAD
FORT WASHINGTON, MD 20744; AND

C. HYATTSVILLE PUBLIC LIBRARY
6530 ADELPHI ROAD
HYATTSVILLE, MD 20872.

(3) IF THE STATE ADMINISTRATOR DETERMINES, OR A LOCAL ELECTION DIRECTOR NOTIFIES THE STATE ADMINISTRATOR, THAT A SITE SPECIFIED UNDER THIS SUBSECTION CANNOT BE USED TO ACCOMMODATE EARLY VOTING, THE STATE ADMINISTRATOR SHALL SELECT ANOTHER SITE, PROXIMATE TO THE SITE REJECTED, THAT IS ACCESSIBLE TO VOTERS.

(4) BEGINNING 30 DAYS PRIOR TO EACH PRIMARY AND GENERAL ELECTION, THE STATE BOARD AND EACH LOCAL BOARD SHALL UNDERTAKE STEPS TO INFORM THE PUBLIC ABOUT EARLY VOTING AND THE LOCATION OF EARLY VOTING POLLING PLACES IN EACH COUNTY, INCLUDING A SERIES OF PUBLIC SERVICE MEDIA ANNOUNCEMENTS, MAILINGS TO ALL REGISTERED VOTERS, AND OTHER EFFORTS.

[(3)] (5) Polling places established by a local board under this section shall meet the requirements of § 10–101 of this title.

10–302.

(A) In a timely manner for each election, the local board shall provide for the delivery to each polling place the supplies, records, and equipment necessary for the conduct of the election.

(B) *(1)* EACH POLLING PLACE SHALL BE EQUIPPED WITH A COMPUTER DEVICE THAT CONTAINS A RECORD OF ALL REGISTERED VOTERS IN THE COUNTY AND THAT IS CAPABLE OF BEING NETWORKED TO OTHER POLLING PLACE COMPUTER DEVICES.

(2) THE STATE ADMINISTRATOR SHALL ENSURE THAT A SITE SELECTED FOR EARLY VOTING HAS ADEQUATE INFRASTRUCTURE TO ACCOMMODATE THE COMPUTER DEVICES REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland read as follows:

Article – Election Law

2–103.

(a) There is a State Administrator of Elections.

(b) The State Administrator shall:

(1) be appointed by the State Board, with the advice and consent of the Senate of Maryland, and serve at the pleasure of the State Board;

(2) receive a salary as provided in the State budget;

(3) as provided in the State budget, employ and supervise:

(i) a deputy administrator, who shall serve as State Administrator in the event the State Administrator resigns, becomes disabled, or dies, pending the appointment of a successor State Administrator; and

(ii) pursuant to the State Personnel and Pensions Article, other staff of the State Board;

(4) supervise the operations of the local boards AND, IN ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION, INITIATE A LEGAL ACTION TO ENJOIN THE ACTIONS OF A LOCAL BOARD OR THE ELECTION DIRECTOR OF A LOCAL BOARD;

(5) perform all duties and exercise all powers that are assigned by law to the State Administrator or delegated by the State Board;

(6) implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list;

(7) provided the State Board is fully constituted with five duly confirmed members, be subject to removal by the affirmative vote of four duly confirmed members of the State Board for incompetence, misconduct, or other good cause except that:

(i) prior to removal, the State Board shall set forth written charges stating the grounds for dismissal and afford the State Administrator notice and an ample opportunity to be heard; and

(ii) subsequent to a valid vote for removal by at least four duly confirmed members of the State Board, the State Administrator is authorized to continue to serve until a successor is appointed and confirmed by the Senate of Maryland; and

(8) be the chief State election official.

(C) (1) THE STATE ADMINISTRATOR MAY FILE SUIT IN A COURT OF COMPETENT JURISDICTION TO ENJOIN A LOCAL BOARD OR ITS ELECTION DIRECTOR FROM VIOLATING ANY PROVISION OF THIS ARTICLE OR OF A REGULATION, GUIDELINE, OR PROCEDURE ADOPTED UNDER THIS ARTICLE.

(2) A REGISTERED VOTER OR AN APPLICANT FOR VOTER REGISTRATION MAY PETITION THE STATE ADMINISTRATOR TO FILE A SUIT UNDER PARAGRAPH (1) OF THIS SUBSECTION.

(3) A VOTER OR APPLICANT WHO HAS PETITIONED UNDER PARAGRAPH (2) OF THIS SUBSECTION MAY FILE THE SUIT FOR INJUNCTIVE RELIEF IF THE STATE ADMINISTRATOR DECLINES OR FAILS TO FILE SUIT:

(I) WITHIN 10 BUSINESS DAYS AFTER THE PETITION IS SUBMITTED; OR

(II) DURING THE PERIOD THAT IS LESS THAN 20 DAYS BEFORE AN ELECTION, WITHIN 3 BUSINESS DAYS AFTER THE PETITION IS SUBMITTED.

[(c)] (D) Before taking office, the appointee to the office of State Administrator shall take the oath required by Article I, § 9 of the Maryland Constitution.

2–202.1.

(A) EACH LOCAL BOARD SHALL ADOPT REGULATIONS RELATING TO:

(1) PROCEDURES TO BE FOLLOWED BY THE BOARD UNDER § 3–301 OF THIS ARTICLE IN DETERMINING WHETHER AN APPLICANT IS QUALIFIED TO BECOME A REGISTERED VOTER; AND

(2) PROCEDURES TO BE FOLLOWED BY THE BOARD IN ADMINISTERING TITLE 3, SUBTITLE 3 OF THIS ARTICLE, INCLUDING:

(I) PROCEDURES AND TIMETABLES FOR OBTAINING, RECEIVING, AND PROCESSING INFORMATION ABOUT VOTERS' CHANGES OF ADDRESS OR CHANGES IN ELIGIBILITY STATUS; AND

(II) PROCEDURES AND TIMETABLES FOR REMOVING VOTERS FROM THE VOTER REGISTRY.

(B) NOTWITHSTANDING § 2–202 OF THIS SUBTITLE, BEFORE A LOCAL BOARD, OR AN EMPLOYEE OF THE BOARD, ALTERS PRECINCT BOUNDARIES OR ALTERS THE LOCATION OF A POLLING PLACE, THE LOCAL BOARD SHALL:

(1) ISSUE PUBLIC NOTICE OF THE PROPOSED ALTERATION AT LEAST 90 DAYS BEFORE THE DATE OF THE ELECTION TO WHICH THE ALTERATION WOULD APPLY;

(2) ACCEPT PUBLIC COMMENTS ON THE PROPOSED ALTERATION;

(3) SUBMIT THE PROPOSED ALTERATION, AND ANY COMMENTS RECEIVED, TO THE STATE ADMINISTRATOR FOR THE STATE ADMINISTRATOR'S REVIEW; AND

(4) RECEIVE THE APPROVAL OF THE STATE ADMINISTRATOR

2–206.

(A) Subject to the requirements of this article and the policies and guidance of the local board, the election director [may]:

(1) MAY appoint the employees of the local board;

(2) MAY train judges of election;

(3) MAY give notice of elections;

(4) MAY, upon the request of an elderly or disabled voter whose polling place is not structurally barrier free, provide an alternate polling place to the voter;

(5) MAY issue voter acknowledgment notices and voter notification cards;

(6) MAY receive certificates of candidacy;

(7) MAY verify nominating petitions;

(8) MAY receive and maintain campaign finance reports;

(9) MAY, in consultation with the local board, conduct the canvass following an election; [and]

(10) subject to § 9–306 of this article, MAY process and reject absentee ballot applications;

(11) SHALL PUBLISH ON AN INTERNET WEBSITE, NOT LATER THAN 30 DAYS BEFORE THE CLOSE OF REGISTRATION PRIOR TO AN ELECTION, A LIST OF ANY PROPOSED DELETIONS OF REGISTRANTS FROM THE VOTER REGISTRY; AND

(12) SHALL ENSURE THAT THERE IS AT LEAST ONE WORKING VOTING MACHINE OR DEVICE FOR EVERY 200 REGISTERED VOTERS AT EACH POLLING PLACE.

(B) THE ELECTION DIRECTOR SHALL MAKE REGULAR PUBLIC REPORTS, ON A SCHEDULE DETERMINED BY THE STATE ADMINISTRATOR, REGARDING:

(1) THE NUMBER AND TYPES OF VOTER REGISTRATION APPLICATIONS RECEIVED;

(2) THE NUMBER OF VOTER REGISTRATION APPLICATIONS ACCEPTED AND REJECTED; AND

(3) THE REASONS THE APPLICATIONS WERE REJECTED.

2–301.

(a) This section applies to:

(1) a member of the State Board;

(2) a regular or substitute member of a local board;

(3) the State Administrator;

(4) an employee of the State Board or of a local board, including the election director of a board;

(5) counsel appointed under § 2–205 of this title; and

(6) an election judge.

(b) (1) An individual subject to this section may not, while holding the position:

(i) hold or be a candidate for any elective public or political party office or any other office created under the Constitution or laws of this State;

(ii) use the individual's official authority for the purpose of influencing or affecting the result of an election; or

(iii) except as provided in paragraph (2) of this subsection, as to any candidate or any matter that is subject to an election under this article:

1. be a campaign manager;

2. be a treasurer or subtreasurer for a campaign finance entity; or

3. take any other active part in political management or a political campaign.

(2) Notwithstanding paragraph (1)(iii) of this subsection, an election judge may engage in the activities of a political campaign, except:

(i) while performing official duties on election day; and

(ii) by serving as a campaign manager for a candidate or as the treasurer for a campaign finance entity.

(C) IF THE STATE ADMINISTRATOR DETERMINES THAT AN INDIVIDUAL IS IN VIOLATION OF THIS SECTION, THE STATE ADMINISTRATOR:

(1) SHALL SUSPEND THE INDIVIDUAL FROM DUTY UNTIL THE COMPLETION OF THE NEXT ELECTION; AND

(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, MAY MAKE AN INTERIM APPOINTMENT TO ENSURE THE ORDERLY ADMINISTRATION OF THIS ARTICLE.

3–501.

(A) 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;

(2) upon determining, based on information provided pursuant to § 3–503 of this subtitle, that the voter is no longer eligible because:

(i) the voter is not qualified to be a registered voter as provided in § 3–102(b) of this title; or

(ii) the voter is deceased; or

(3) if the voter has moved outside the State, as determined by conducting the procedures established in § 3–502 of this subtitle.

(B) AN ELECTION DIRECTOR MAY NOT REMOVE A VOTER FROM THE LIST IN ACCORDANCE WITH SUBSECTION (A)(2) OR (3) OF THIS SECTION DURING THE PERIOD THAT:

(1) BEGINS 30 DAYS BEFORE THE CLOSE OF REGISTRATION BEFORE AN ELECTION; AND

(2) ENDS AT THE CLOSE OF THE POLLS ON THE DAY OF THE ELECTION.

SECTION ~~2.~~ *3.* AND BE IT FURTHER ENACTED, That the State Administrator of Elections and the Office of the Attorney General shall:

(1) review the efficacy of, and any legal impediments to, implementing a system of election day voter registration that would allow eligible unregistered voters, commencing with the 2008 primary election, to register and then vote on election day;

(2) (i) consult with local election officials in Maryland to ascertain the impact and assess any administrative challenges associated with implementing a statewide system of election day voter registration in this State; and

(ii) query election officials in any other states around the country that have implemented statewide election day voter registration about their experiences with such a system;

(3) note any legal impediments to implementing a statewide system of election day voter registration and identify any changes to State statutory or constitutional law that would be required to implement such a system;

(4) estimate the additional cost to the State and to the counties to implement a system of election day voter registration; and

(5) on or before December 31, 2006, submit a report of its findings and recommendations to the Governor, and, in accordance with § 2–1246 of the State Government Article, to the General Assembly.

~~SECTION 3. AND BE IT FURTHER ENACTED, That the Governor shall allocate the resources required to implement the requirements of this Act, including any gift received by the State for the purposes of this Act under § 2–201 of the State Finance and Procurement Article, and except for federal funds received by the State~~

~~to implement the requirements of the Help America Vote Act of 2002, any federal or other special funds or grant received by the State in accordance with federal and State law for the purposes of this Act.~~

~~SECTION 4. AND BE IT FURTHER ENACTED, That in fiscal year 2008, the Governor shall appropriate sufficient funds to reimburse each county at a rate of 50% of the total expenditures made during fiscal year 2007 to implement early voting, including expenditures made for the purchase of electronic poll books.~~

SECTION 4. AND BE IT FURTHER ENACTED, That the regulations required to be adopted by a local board of elections under § 2–202.1(a) of the Election Law Article, as enacted by Section 2 of this Act, must be submitted to, reviewed by, and approved by the State Administrator of Elections before the local board:

(1) denies any application for registration on or after the effective date of this Act; or

(2) removes any voter from the registration list on or after the effective date of this Act.

SECTION 5. AND BE IT FURTHER ENACTED, That Sections 2 and 4 of this Act shall apply only to jurisdictions of the State in which, based on data from the 2000 Decennial Census:

(1) less than 60 percent of the population lives in owner–occupied dwellings; and

(2) the median income is less than $40,000 per year.

SECTION 6. AND BE IT FURTHER ENACTED, That the Governor shall include each year in the State budget sufficient State general funds to implement the requirements of § 10–302(b) of the Election Law Article.

SECTION 7. AND BE IT FURTHER ENACTED, That Sections 2, 4, and 5 of this Act shall remain effective until the end of June 30, 2008 and, at the end of June 30, 2008, with no further action required by the General Assembly, Sections 2, 4, and 5 of this Act shall be abrogated and of no further force and effect.

SECTION ~~4.~~ ~~5.~~ *8.* AND BE IT FURTHER ENACTED, That this Act ~~shall take effect June 1, 2006~~ is an emergency measure, is necessary for the immediate preservation of the public health or safety, has been passed by a yea and nay vote supported by three–fifths of all the members elected to each of the two Houses of the General Assembly, and shall take effect from the date it is enacted.

Enacted April 10, 2006.

Section 17. Governor to approve or disapprove bills passed by legislature; reconsideration of vetoed bills by legislature; disapproval of items in bills making appropriations.

(a) To guard against hasty or partial legislation and encroachment of the Legislative Department upon the co-ordinate Executive and Judicial Departments, every Bill passed by the House of Delegates and the Senate, before it becomes a law, shall be presented to the Governor of the State. If the Governor approves he shall sign it, but if not he shall return it with his objections to the House in which it originated, which House shall enter the objections at large on its Journal and proceed to reconsider the Bill. Each House may adopt by rule a veto calendar procedure that permits Bills that are to be reconsidered to be read and voted upon as a single group. The members of each House shall be afforded reasonable notice of the Bills to be placed on each veto calendar. Upon the objection of a member, any Bill shall be removed from the veto calendar. If, after such reconsideration, three-fifths of the members elected to that House pass the Bill, it shall be sent with the objections to the other House, by which it shall likewise be reconsidered, and if it passes by three-fifths of the members elected to that House it shall become a law. The votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the Bill shall be entered on the Journal of each House respectively.

(b) If any Bill presented to the Governor while the General Assembly is in session is not returned by him with his objections within six days (Sundays excepted), the Bill shall be a law in like manner as if he signed it, unless the General Assembly, by adjournment, prevents its return, in which case it shall not be a law.

(c) Any Bill presented to the Governor within six days (Sundays excepted), prior to adjournment of any session of the General Assembly, or after such adjournment, shall become law without the Governor's signature unless it is vetoed by the Governor within 30 days after its presentment.

(d) Any Bill vetoed by the Governor shall be returned to the House in which it originated immediately after the House has organized at the next regular or special session of the General Assembly. The Bill may then be reconsidered according to the procedure specified in this section. Any Bill enacted over the veto of the Governor, or any Bill which shall become law as the result of the failure of the Governor to act within the time specified, shall take effect 30 days after the Governor's veto is over-ridden, or on the date specified in the Bill, whichever is later. If the Bill is an emergency measure, it shall take effect when enacted. No such vetoed Bill shall be returned to the Legislature when a new General Assembly of Maryland has been elected and sworn since the passage of the vetoed Bill.

(e) The Governor shall have power to disapprove of any item or items of any Bills making appropriations of money embracing distinct items, and the part or parts of the Bill approved shall be the law, and the item or items of appropriations disapproved shall be void unless repassed according to the rules or limitations prescribed for the passage of other Bills over the Executive veto. (1890, ch. 194, ratified Nov. 3, 1891; 1949, ch. 714, ratified Nov. 7, 1950; 1959, ch. 664, ratified Nov. 8, 1960; 1974, ch. 883, ratified Nov. 5, 1974; 1988, ch. 793, ratified Nov. 8, 1988.)

CHAPTER 883

(House Bill 413)

AN ACT concerning

Legislative Bills – Presentment, Signing, Veto, and Effective Date [[and Referendum]]

FOR the purpose of making certain changes relating to the presentment, signing, veto, and effective date [[and referendum]] of bills that have passed the General Assembly, correcting certain language, and providing for the submission of these amendments to the qualified voters of the State of Maryland for their adoption or rejection.

By proposing an amendment to the Constitution of Maryland

Article II – Executive Department
Section 17

By proposing an amendment to the Constitution of Maryland

Article III – Legislative Department
Section 30 and 31

[[By proposing an amendment to the Constitution of Maryland

Article XVI – The Referendum
Section 1(a), 2 and 3(b)]]

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, (Three-fifths of all the members elected to each of the two Houses concurring), That the following be and the same is hereby proposed as an amendment to Section 17 of Article II – Executive Department, of the Constitution of Maryland, the same, if adopted by the legally qualified voters of the State, as herein provided, to become a part of the Constitution of Maryland:

Article II – Executive Department

17.

To guard against hasty or partial legislation and encroachment of the Legislative Department upon the co-ordinate Executive and Judicial Departments, every Bill which shall have passed the House of Delegates[[,]] and the Senate shall, before it becomes a law, [[BE SEALED WITH THE GREAT SEAL, AND]] be presented [[BY THE PRESIDING OFFICER OF THE HOUSE IN WHICH IT ORIGINATED]] to the Governor of the State; [;] [[WITHIN SIX DAYS OF PASSAGE IF THE GENERAL ASSEMBLY IS IN SESSION. ANY BILL PASSED DURING THE LAST TEN DAYS OF A REGULAR OR SPECIAL SESSION SHALL BE SEALED WITH THE GREAT SEAL AND PRESENTED BY THE PRESIDING OFFICER OF THE HOUSE IN WHICH IT

ORIGINATED TO THE GOVERNOR NO LATER THAN 15 DAYS AFTER ADJOURNMENT. WITHIN 30 DAYS AFTER PRESENTMENT,]] if [he] [[THE GOVERNOR]] he approves he shall sign it, but if not he shall return it with his objections to the House in which it originated, which House shall enter the objections at large on its Journal and proceed to reconsider the Bill; if, after such reconsideration, three-fifths of the members elected to that House shall pass the Bill, it shall be sent with the objections to the other House, by which it shall likewise be reconsidered, and if it pass by three-fifths of the members elected to that House it shall become a law; but in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill PRESENTED TO THE GOVERNOR WHILE THE GENERAL ASSEMBLY IS IN SESSION shall not be returned by [[the Governor]] HIM WITH HIS OBJECTIONS within six days (Sundays excepted), [[after it shall have been presented to him, WHILE THE GENERAL ASSEMBLY IS IN SESSION,]] the same shall be a law in like manner as if he signed it[, unless the General Assembly shall, by adjournment, prevent its return, in which case it shall not be a law] , unless the General Assembly shall, by adjournment, prevent its return, in which case it shall not be a law.

ANY BILL PRESENTED TO THE GOVERNOR WITHIN SIX DAYS (SUNDAYS EXCEPTED) , PRIOR TO ADJOURNMENT OF ANY SESSION OF THE GENERAL ASSEMBLY, OR AFTER SUCH ADJOURNMENT, SHALL BECOME LAW WITHOUT THE GOVERNOR'S SIGNATURE UNLESS IT SHALL BE VETOED BY THE GOVERNOR WITHIN 30 DAYS AFTER ITS PRESENTMENT.

Any bill [[which is]] SO vetoed by the Governor [[following the adjournment of the General Assembly]][, or any bill which fails to become a law by reason of not having been signed by the Governor following the adjournment of the General Assembly,] shall be returned to the House in which it originated, immediately after said House shall have organized at the next regular or special session of the General Assembly. Said bill may then be reconsidered according to the procedure specified hereinabove. [[If the bill is]] ANY BILL [passed] ENACTED over the veto of the Governor, [[it]] OR ANY BILL WHICH SHALL BECOME LAW AS THE RESULT OF THE FAILURE OF THE GOVERNOR TO ACT WITHIN THE TIME HEREIN ABOVE SPECIFIED, shall take effect [on June 1 following,] 30 DAYS AFTER THE GOVERNOR'S VETO IS OVER-RIDDEN, OR ON THE DATE SPECIFIED IN THE BILL, WHICHEVER IS LATER, unless the bill is an emergency measure [[to]] , IN WHICH EVENT IT SHALL take effect when [passed] ENACTED. No such vetoed Bill shall be returned to the Legislature when a new General Assembly of Maryland has been elected and sworn

since the passage of the vetoed Bill.

[[IF THE GOVERNOR NEITHER SIGNS NOR VETOES THE BILL WITHIN THE TIME HEREIN PRESCRIBED, THE BILL SHALL BECOME LAW.]]

The Governor shall have power to disapprove of any item or items of any Bills making appropriations of money embracing distinct items, and the part or parts of the Bill approved shall be the law, and the item or items of appropriations disapproved shall be void unless repassed according to the rules or limitations prescribed for the passage of other Bills over the Executive veto.

SECTION 2. AND BE IT FURTHER ENACTED, (Three-fifths of all the members elected to each of the two Houses concurring), That the following be and the same is hereby proposed as an amendment to Section 30 and 31 of Article III - Legislative Department, of the Constitution of Maryland, the same, if adopted by the legally qualified voters of the State, as herein provided, to become a part of the Constitution of Maryland:

Article III - Legislative Department

30.

Every bill, when passed by the General Assembly, and sealed with the Great Seal, shall be presented BY THE PRESIDING OFFICER OF THE HOUSE IN WHICH IT ORIGINATED to the Governor[, who,] FOR HIS APPROVAL. [[WITHIN SIX DAYS OF PASSAGE IF THE GENERAL ASSEMBLY IS IN SESSION. ANY BILL]] ALL BILLS PASSED DURING [[THE LAST TEN DAYS OF]] A REGULAR OR SPECIAL SESSION SHALL BE PRESENTED TO THE GOVERNOR FOR HIS APPROVAL NO LATER THAN [[15]] 20 DAYS AFTER ADJOURNMENT. WITHIN 30 DAYS AFTER PRESENTMENT, [[THE GOVERNOR,]] if [[he]] THE GOVERNOR approves [[it,]] THE BILL, HE shall sign the same in the presence of the presiding officers and Chief Clerks of the Senate and House of Delegates. Every Law shall be recorded in the office of the Court of Appeals, and in due time, be printed, published and certified under the Great Seal, to the several Courts, in the same manner as has been heretofore usual in this State.

31.

[No Law passed by the General Assembly shall take effect, until the first day of June, next after the Session, at which it may be passed, unless it be otherwise expressly declared therein.] A LAW PASSED BY THE GENERAL ASSEMBLY SHALL TAKE EFFECT THE FIRST DAY OF JUNE NEXT AFTER THE SESSION AT WHICH IT MAY BE PASSED,

UNLESS IT BE OTHERWISE EXPRESSLY DECLARED THEREIN OR PROVIDED FOR IN THIS CONSTITUTION.

[[THE GENERAL ASSEMBLY MAY BY PUBLIC GENERAL LAW ESTABLISH A UNIFORM EFFECTIVE DATE FOR ALL BILLS WHICH IT PASSES AND WHICH ARE SIGNED BY THE GOVERNOR. IN NO EVENT SHALL ANY BILL TAKE EFFECT PRIOR TO 30 DAYS AFTER IT HAS BEEN SIGNED BY THE GOVERNOR UNLESS IT IS AN EMERGENCY MEASURE TO TAKE EFFECT WHEN ENACTED, AND THE GENERAL ASSEMBLY MAY ESTABLISH A LATER EFFECTIVE DATE IN ANY BILL WHICH IT PASSES. IF THE GOVERNOR NEITHER SIGNS NOR VETOES THE BILL WITHIN THE TIME HEREIN PRESCRIBED, THE BILL SHALL BECOME LAW.

BILLS PASSED OVER THE GOVERNOR'S VETO SHALL TAKE EFFECT 30 DAYS AFTER THE GOVERNOR'S VETO IS OVER-RIDDEN OR AT A LATER DATE IF SPECIFIED IN THE BILL.

SECTION 3. AND BE IT FURTHER ENACTED, (Three-fifths of all the members elected to each of the two Houses concurring), That the following be and the same is hereby proposed as an amendment to Section 1(a), 2 and 3(b) of Article XVI - The Referendum, of the Constitution of Maryland, the same, if adopted by the legally qualified voters of the State, as herein provided, to become a part of the Constitution of Maryland:

Article XVI - The Referendum

1.

(a) The people reserve to themselves power known as The Referendum, by petition to have submitted to the registered voters of the State, to approve or reject at the polls, any Act, or part of any Act of the General Assembly, if approved by the Governor,]] [or,] [[if passed by the General Assembly over the veto of the Governor; OR IF THE BILL BECOMES LAW WITHOUT THE SIGNATURE OF THE GOVERNOR.]]

[[2.]]

[No law] [[ANY BILL enacted by the General Assembly shall take effect]] [until the first day of June next after the session at which it may be passed,] [[30 DAYS AFTER IT HAS BEEN SIGNED BY THE GOVERNOR, OR AT A LATER DATE IF SPECIFIED IN THE BILL, unless it]] [contain] [[CONTAINS a Section declaring such law an emergency law and necessary for the immediate preservation of the public health or safety, and passed upon a yea and nay vote supported by three-fifths of all the members elected to each of the two Houses of the General Assembly; provided, however, that said period of suspension may be

extended as provided in Section 3 (b) hereof. If]] [before said first day of June] [[, WITHIN 30 DAYS OF EITHER THE SIGNING BY THE GOVERNOR, OR THE OVERRIDING OF THIS VETO, OR WITHIN 30 DAYS AFTER THE BILL BECOMES LAW WITHOUT THE SIGNATURE]] [[OF THE GOVERNOR, OR PRIOR TO THE LATER EFFECTIVE DATE SPECIFIED IN THE BILL, there shall have been filed with the Secretary of]] [the] [[State a petition to refer to a vote of the people any law or part of a law capable of referendum, as in this Article provided, the same shall be referred by the Secretary of State to such vote, and shall not become a law or take effect until thirty days after its approval by a majority of the electors voting thereon at the next ensuing election held throughout the State for Members of the House of Representatives of the United States. An emergency law shall remain in force notwithstanding such petition, but shall stand repealed thirty days after having been rejected by a majority of the qualified electors voting thereon; provided, however, that no measure creating or abolishing any office, or changing the salary, term or duty of any officer, or granting any franchise or special privilege, or creating any vested right or interest, shall be enacted as an emergency law. No law making any appropriation for maintaining the State Government, or for maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose, shall be subject to rejection or repeal under this Section. The increase in any such appropriation for maintaining or aiding any public institution shall only take effect as in the case of other laws, and such increase or any part thereof specified in the petition, may be referred to a vote of the people upon petition.]]

[[3.

(b) If more than one-half, but less than the full number of signatures required to complete any referendum petition against any law passed by the General Assembly, be filed with THE Secretary of State]] [before the first day of June,] [[WITHIN 30 DAYS AFTER IT HAS EITHER BEEN SIGNED BY THE GOVERNOR OR THE GOVERNOR'S VETO IS OVERRIDDEN, OR WITHIN 30 DAYS AFTER IT HAS BECOME LAW WITHOUT THE GOVERNOR'S SIGNATURE, the time for the law to take effect, and for filing the remainder of signatures to complete the petition shall be extended]] [to the thirtieth day of the same month,] [[FOR THIRTY DAYS THEREAFTER, with like effect.]]

SECTION [[4]] 3. AND BE IT FURTHER ENACTED, That the aforegoing section hereby proposed as an amendment to the Constitution of Maryland, at the next general election to be held in this State in November, 1974,

shall be submitted to the legal and qualified voters thereof for their adoption or rejection in pursuance of directions contained in Article XIV of the Constitution of this State. At that general election, the vote on this proposed amendment to the Constitution shall be by ballot, and upon each ballot there shall be printed the words "For the Constitutional Amendments" and "Against the Constitutional Amendments", as now provided by law. Immediately after the election, all returns shall be made to the Governor of the vote for and against the proposed amendment, as directed by Article XIV of the Constitution, and further proceedings had in accordance with Article XIV.

Approved May 31, 1974.

SENATE BILL 639 HOUSE BILL

SENATE JOINT RESOLUTION HOUSE JOINT RESOLUTION

THE COMMITTEE WOULD APPRECIATE ANY WRITTEN STATEMENTS YOU MAY WISH TO ADD TO THE FILES FOR REFERENCE MATERIALS.

PROPONENTS - Name, Affiliation, and Phone Number

Robert Woodworth,

Maude-Ellen Zimmerman - Md. Petition Committee.

Dr. Moore's

Mrs. Zimmerman--Sen. Stone has put in for six years but have not passed in Senate because time ran out. Would allow petition drive to put bill on ballot. This bill, in Section 3 would change perjury if someone says they are registered and are not. Number of signatures has been kept the same. Part B on page 3, instead of 1/2 signatures by June 1, will be to get in 1/3 and then remainder before end of June.

OPPONENTS - Name, Affiliation, and Phone Number

There is an extension in case would be extension of legislature (line 183). Would no longer have to wait for governor to sign. Has been so ruled by Court of Appeals. Wagaman, line 207 and 208, what if problem in getting summary? Koos, what happens if have special session after July 1? Would assume have until June 1 of the next year. Do not think should make 30 days after because summer life is disrupted and would be hard to get signatures.

Mr. Woodworth--have been involved in petition drives before. These two bills have been worked on very carefully and believe have come up to compromise amendments.

Willard Morris-- Have included accurate summary in case of long bills.