

**IN THE COURT OF APPEALS  
OF MARYLAND**

September Term, 2005  
No. 143

**LINDA H. LAMONE, et al.,**

**Appellants**

**v.**

**MARIROSE JOAN CAPOZZI, et al.,**

**Appellees**

Appeal from the Circuit Court for Anne Arundel County  
(Ronald A. Silkworth, Judge)

**BRIEF OF APPELLEES**

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## TABLE OF CONTENTS

TABLE OF CITATIONS	ii
STATEMENT OF THE CASE	1
STATEMENT OF THE QUESTIONS PRESENTED	3
STATEMENT OF THE FACTS	4
ARGUMENT	8
I. Article I, §49 of the Maryland Constitution does not confer on the General Assembly the authority to enact legislation pertaining to elections that is inconsistent with other sections of the Maryland Constitution.	8
II. Chapter 5 and portions of Chapter 61 of the 2006 Laws of Maryland are unconstitutional in that they are inconsistent with Article XV, §7 and Article XVII, §§1, 2 and 9 of the Maryland Constitution.	10
III. Chapter 5 and portions of Chapter 61 of the 2006 Laws of Maryland are unconstitutional in that they are inconsistent with Article I, §1 of the Maryland Constitution.	24
IV. Article 1, §3 of the Maryland Constitution is not a basis for the General Assembly to enact Chapter 5 and portions of Chapter 61 of the 2006 Laws of Maryland.	29
V. Injunctive relief is appropriate in this case in light of the plans of the State Board of Elections to conduct elections this fall which are in violation of the Maryland Constitution.	33
VI. Laches does not apply in this case, in which suit was filed three Months after Chapter 61 of the 2006 Laws of Maryland was enacted and in which the suit is a challenge to statutes that are intrinsically void in that they are unconstitutional.	36
CONCLUSION	42
PERTINENT CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND REGULATIONS	

## TABLE OF CITATIONS

### CASES

<i>Bainum v. Kalen</i> , 272 Md. 490 (1974) .....	26
<i>Balenson v. Maryland Airport Authority</i> , 253 Md. 490 (1969) .....	34
<i>Bell v. Board of County Commissioners of Prince George’s County</i> , 195 Md. 21 (1950) .....	30
<i>Bienkowski v. Brooks</i> , 386 Md. 516 (2005) .....	9, 12, 25
<i>Birmingham v. Board of Public Works</i> , 249 Md. 443 (1968).....	30, 34
<i>Blount v. Boston</i> , 351 Md. 360 (1998) .....	25
<i>Board of County Commissioners of Carroll County v. Stephans</i> , 286 Md. 384 (1979) .....	30
<i>Board of Elections v. Weiss</i> , 217 Md. 133 (1958) .....	28, 31
<i>Board of Supervisors of Elections of Baltimore City v. Blunt</i> , 200 Md. 120 (1952) .....	28
<i>Boitnott v. Mayor and City Council of Baltimore</i> , 356 Md. 226 (1999) .....	33, 34
<i>Brown v. Brown</i> , 287 Md. 273 (1980) .....	25, 27
<i>Buchholtz v. Hill</i> , 178 Md. 280 (1940) .....	25
<i>Chow v. State</i> , ____, Md. ____ (No. 99, September Term, 2005) (July 27, 2006) .....	27
<i>Citizens for Responsible Government v. Kitsap County</i> , 758 P.2d 1009 (Wash. App. 1988) .....	41
<i>Clark v. O’Malley</i> , 169 Md. App. 408 (2006) .....	26, 27
<i>Cohen v. Governor of Maryland</i> , 255 Md. 5 (1969) .....	25
<i>Comptroller v. Blanton</i> , 390 Md. 528 (2006).....	27
<i>County Council for Montgomery County v. Montgomery Association, Inc.</i> , 274 Md. 52 (1975) .....	9

<i>Cull v. Whelple</i> , 114 Md. 58 (1910) .....	27
<i>Davis v. Slater</i> , 383 Md. 599 (2004) .....	12
<i>Delmarva Power and Light Co. v. Public Service Commission of Maryland</i> , 371 Md. 356 (2002) .....	30
<i>DMF Leasing, Inc. v. Budget Rent-A-Car of Maryland, Inc.</i> , 161 Md. App. 640 (2005) .....	35
<i>Dua v. Comcast Cable of Maryland, Inc.</i> , 370 Md. 604 (2002) .....	21
<i>Duckworth v. Deane</i> , ___ Md. ___ (No. 101, September Term, 2004) (July 28, 2006) .....	42
<i>Eagan v. Ayd</i> , 313 Md. 265 (1988) .....	27
<i>Fish Market Nominee Corp. v. GAA, Inc.</i> , 337 Md. (1974) .....	27
<i>Fogel v. H &amp; G Restaurant, Inc.</i> , 337 Md. 441 (1995) .....	35
<i>Foster v. Love</i> , 522 U.S. 67, 118 S. Ct. 464, 139 L. Ed 2d 369 (1997) .....	22, 23
<i>Hill v. Mayor and Town Council of Colmar Manor</i> , 210 Md. 46 (1956) .....	28
<i>Howard v. Skinner</i> , 87 Md. 556 (1898) .....	25
<i>Iselin v. United States</i> , 270 U. S. 245 (1926) .....	31
<i>Kemp v. Owens</i> , 76 Md. 235 (1892) .....	25
<i>Maryland Green Party v. Maryland Board of Elections</i> , 377 Md. 127 (2003).....	24
<i>Migdal v. State</i> , 358 Md. 308 (2000) .....	30
<i>Millsaps v. Thompson</i> , 259 F.3d 535 (6 <sup>th</sup> Cir. 2001) .....	20, 21, 22, 23
<i>Murray v. Comptroller</i> , 241 Md. 383 (1986) .....	33
<i>Norris v. Mayor and City Council of Baltimore.</i> , 172 Md. 667 (1937) .....	12, 20, 25, 33
<i>Porten Sullivan Corp. v. State</i> , 318 Md. 387 (1990) .....	30

<i>Redwood v. Lane</i> , 194 Md. 91 (1949).....	34
<i>Reeder v. Board of Supervisors of Elections of Queen Anne’s County</i> , 269 Md. 261 (1973) .....	26
<i>Roskelly v. Lamone</i> , ___ Md. ___ (No. 141, September Term, 2005) (July 25, 2006) .....	37, 39
<i>Ross v. State Board of Elections</i> , 387 Md. 649 (2005) .....	37, 39, 40
<i>Schaeffer v. Anne Arundel County</i> , 338 Md. 75 (1995) .....	40, 41
<i>Simpson v. Moore</i> , 323 Md. 215 (1991) .....	31
<i>Slate v. Zitomer</i> , 275 Md. 534 (1975).....	31
<i>Smith v. Hackett</i> , 129 Md. 73 (1916) .....	24
<i>Southerland v. Norris</i> , 74 Md. 326 (1891) .....	25
<i>Space Aero Products Co., Inc. v. R. E. Darling Co., Inc.</i> , 238 Md. 93 (1965).....	35
<i>State v. Burning Tree Club, Inc.</i> , 315 Md. 254 (1984) .....	33
<i>State v. Prince Georgians For Glendening</i> , 329 Md. 68 (1993) .....	30
<i>State Administrative Board of Election Laws v. Board of Supervisors of Elections of Baltimore City</i> , 342 Md. 586 (1996) .....	25
<i>State Commission on Human Relations v. Talbot County Detention Center</i> , 370 Md. 115 (2002) .....	36
<i>State Department of Health &amp; Mental Hygiene v. Baltimore County</i> , 281 Md. 548 (1971) .....	34, 35
<i>State Tax Commission v. Potomac Electric Power Co.</i> , 182 Md. 111 (1943) .....	30
<i>Suessmann v. Lamone</i> , 383 Md. 697 (2004) .....	28
<i>Thomas v. Howard County</i> , 261 Md. 422 (1971) .....	34
<i>Voting Integrity Project v. Bomer</i> , 199 F.3d 773 (5 <sup>th</sup> Cir. 2000) .....	20, 21, 22, 23
<i>Whittington v. Polk</i> , 1 H&J 236 (1802) .....	42

<i>Wilkinson v. McGill</i> , 192 Md. 387 (1949) .....	24
---	----

**MARYLAND CONSTITUTION**

Art. 7, Md. Declaration of Rights .....	24, 26
Art. I, § 1, Md. Const. ....	1, 7, 8, 24, 25, 26, 27, 28, 33
Art. I, § 2, Md. Const. ....	24
Art. I, § 3, Md. Const. ....	14, 21, 27, 29, 31
Art. I, § 4, Md. Const. ....	24
Art. I, § 5, Md. Const. ....	24, 27
Art. I, § 6, Md. Const. ....	24
Art. I, § 7, Md. Const. ....	24
Art. I, § 8, Md. Const. ....	24
Art. II, § 2, Md. Const. ....	10
Art. III, § 29, Md. Const. ....	30
Art. III, § 49, Md. Const. ....	8, 9
Art. IV, § 3, Md. Const. ....	10
Art. XV, § 7, Md. Const. ....	1, 7, 8, 10, 14, 15, 21, 28
Art. XVII, § 1, Md. Const. ....	1, 7, 8
Art. XVII, § 2, Md. Const. ....	1, 7, 8, 10, 14, 28

Art. XVII, § 9, Md. Const. ....	8
---------------------------------	---

**MARYLAND STATUTES**

Ch. 5, 2006, Laws of Md. ....	1, 2, 3, 4, 6, 7, 10, 14, 29, 30, 31, 40, 41
Ch. 6, 2006, Laws of Md. ....	29, 31
Ch. 41, 2006, Laws of Md. ....	29
Ch. 61, 2006, Laws of Md. ....	1, 2, 3, 5, 6, 7, 10, 14, 29, 30, 31, 38, 39, 40, 41
Courts Article, §6-201 .....	2
Election Law Article, § 1-101(v) .....	12
Election Law Article, § 9-301, <i>et. seq.</i> .....	14, 31, 32
Election Law Article, § 9-305 .....	32
Election Law Article, § 9-310 .....	32
Election Law Article, § 10-301, <i>et. seq.</i> .....	32
Election Law Article, § 10-301.1 .....	1, 4, 5
Election Law Article, § 11-101 .....	18
Election Law Article, § 11-202 .....	16
Election Law Article, § 11-401 .....	19

Election Law Article, § 11-501 .....	19
Election Law Article, § 11-503 .....	19
Election Law Article, § 12-201, <i>et. seq.</i> .....	19
PL Gen Laws (Poe, ed. 1888) Article 33, Section 68 .....	16
PL Gen Laws (Poe, ed. 1888) Article 33, Section 69 .....	16
PL Gen Laws (Poe, ed. 1904) Article 33, Section 77 .....	17
PL Gen Laws (Poe, ed. 1904) Article 33, Section 78 .....	17
PL Gen Laws (Poe, ed. 1904) Article 33, Section 79 .....	17
PL Gen Laws (Poe, ed. 1904) Article 33, Section 80 .....	17

**MARYLAND REGULATIONS**

COMAR 33.08.01.04 .....	16
COMAR 33.08.01.05 .....	16, 18
COMAR 33.08.01.07 .....	18
COMAR 33.08.01.11 .....	18
COMAR 33.08.04.06 .....	18
COMAR 33.10.02.12 .....	18
COMAR 33.10.02.36 .....	18
COMAR 33.11.03 .....	32
COMAR 33.11.04 .....	18, 32
COMAR 33.11.04.03 .....	19
COMAR 33.11.04.06 .....	32
COMAR 33.11.04.15 .....	19



COMAR 33.11.05 ..... 32

COMAR 33.16.04.07 ..... 19

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**Appellee**

**BRIEF OF APPELLEES**

**STATEMENT OF THE CASE**

On July 17, 2006, the Appellees, Marirose Joan Capozzi, Bettye B. Speed and Charles W. Carter, Sr., taxpayers and registered voters in Queen Anne's County, Maryland, filed in the Circuit Court for Queen Anne's County a Verified Complaint for Declaratory and Injunctive Relief against the State of Maryland, Linda H. Lamone, in her capacity as Administrator of the Maryland State Board of Elections, and the Maryland State Board of Elections. (E. 9-18). The gravamen of the Complaint was that two statutes enacted by the Maryland General Assembly during its 2006 session (Chapter 5 and portions of Chapter 61 of the Laws of Maryland 2006, now jointly codified as §10-301.1 of the Election Law Article) establishing a system of early voting in Maryland are in derogation of Article I, § 1, Article XV, § 7 and Article XVII, §§ 1 and 2 of the

Maryland Constitution. Simultaneously with the filing of their verified Complaint, the Appellees filed a Motion for Summary Judgment and a Motion for Temporary Restraining Order and Preliminary Injunction. (E. 87-88, 90-91). Appended to each pleading was a memorandum of points and authorities. (E. 19-24, 89, 91-93).

On July 28, 2006, pursuant to §6-201 of the Courts Article, the Circuit Court for Queen Anne's County transferred this case to the Circuit Court for Anne Arundel County (E. 94-95) after the Appellants sought, by motion, haven on the Western Shore.

In the Circuit Court for Anne Arundel County, on August 4, 2006, the Appellants filed an opposition to the Appellees' Motion for Temporary Restraining Order and Preliminary Injunction (E. 96) as well as a Motion to Dismiss the Complaint on the grounds that the Appellees had failed to state a claim upon which relief may be granted. (E. 104-106). The Appellants also moved for an extension of time to respond to the Appellees' Motion for Summary Judgment. (E. 107-110).

The Circuit Court for Anne Arundel County (Ronald A. Silkworth, Judge) conducted a full hearing on August 8, 2006 on all legal issues raised by the parties. Although no testimony was adduced at the hearing, the Court accepted, subject to objection by the Appellees (E. 169), a lengthy written Proffer of Facts from the Appellants in lieu of live testimony. (E. 138-148). The Appellees presented three election maps as exhibits (E. 213), and the Appellants offered an Affidavit of a registered voter. (E. 150-152).

After the issue of laches had been fully argued by counsel, the Court below ruled from the bench that laches does not apply in this case to foreclose the Appellees' constitutional challenges to Chapter 5 and Chapter 61. (E. 189-197). The Court took all

other issues under advisement. On August 11, 2006, the Court issued a Memorandum Opinion (E. 280-298) and accompanying Order (E. 299-300) holding that Chapter 5, the portions of Chapter 61 purporting to allow “early voting” and any other implementing legislation are unconstitutional and are declared void. Judge Silkworth’s Order also: (1) granted the Appellants’ Motion to Dismiss as to the Defendant, the State of Maryland; (2) denied the Appellants’ Motion to Dismiss as to all remaining Defendants; (3) enjoined the Appellants from further implementing or enforcing the laws found to be void; and (4) denied all other motions or requests for relief. As a result of the lower court’s granting of the Appellants’ Motion to Dismiss as to the State of Maryland, this case became styled “Marirose Joan Capozzi, et al.v. Linda H. Lamone, et al.”

By consent of all parties, Judge Silkworth thereafter entered an Order staying the final judgment in this case, including all equitable relief, until such time as the appeal to this Court is resolved. (E. 301).

The Appellants immediately appealed (E. 302-303) and also filed a Petition for Certiorari, which this Court promptly granted on August 14, 2006.

### **STATEMENT OF THE QUESTIONS PRESENTED**

I. DID THE CIRCUIT COURT CORRECTLY HOLD THAT ARTICLE I, §49 OF THE MARYLAND CONSTITUTION DOES NOT CONFER ON THE GENERAL ASSEMBLY THE AUTHORITY TO ENACT LEGISLATION PERTAINING TO ELECTIONS THAT IS INCONSISTENT WITH OTHER SECTIONS OF THE MARYLAND CONSTITUTION?

II. DID THE CIRCUIT COURT CORRECTLY HOLD THAT CHAPTER 5 AND PORTIONS OF CHAPTER 61 OF THE 2006 LAWS OF MARYLAND ARE UNCONSTITUTIONAL IN THAT THEY ARE INCONSISTENT WITH ARTICLE XV, §7 AND ARTICLE XVII, §§1, 2 AND 9 OF THE MARYLAND CONSTITUTION?

III. DID THE CIRCUIT COURT CORRECTLY HOLD THAT CHAPTER 5 AND PORTIONS OF CHAPTER 61 OF THE 2006 LAWS OF MARYLAND ARE UNCONSTITUTIONAL IN THAT THEY ARE INCONSISTENT WITH ARTICLE I, §1 OF THE MARYLAND CONSTITUTION?

IV. DID THE CIRCUIT COURT CORRECTLY HOLD THAT ARTICLE 1, §3 OF THE MARYLAND CONSTITUTION IS NOT A BASIS FOR THE GENERAL ASSEMBLY TO ENACT CHAPTER 5 AND PORTIONS OF CHAPTER 61 OF THE 2006 LAWS OF MARYLAND?

V. DID THE CIRCUIT COURT CORRECTLY HOLD THAT INJUNCTIVE RELIEF IS APPROPRIATE IN THIS CASE IN LIGHT OF THE PLANS OF THE STATE BOARD OF ELECTIONS TO CONDUCT ELECTIONS THIS FALL WHICH ARE IN VIOLATION OF THE MARYLAND CONSTITUTION?

VI. DID THE CIRCUIT COURT CORRECTLY HOLD THAT LACHES DOES NOT APPLY IN THIS CASE, IN WHICH SUIT WAS FILED THREE MONTHS AFTER CHAPTER 61 OF THE 2006 LAWS OF MARYLAND WAS ENACTED AND IN WHICH THE SUIT IS A CHALLENGE TO STATUTES THAT ARE INTRINSICALLY VOID IN THAT THEY ARE UNCONSTITUTIONAL?

### **STATEMENT OF THE FACTS**

During its 2005 session, the General Assembly enacted Senate Bill 478 (“Election Law - Early Voting”), providing that, except as provided in Title 9, Subtitle 3 of the Election Law Article (dealing with absentee ballots), a voter may vote in the voter’s assigned precinct on Election Day or, alternatively, may vote in an early voting place on the Tuesday before Election Day, the Wednesday before Election Day, the Thursday before Election Day, the Friday before Election Day or the Saturday before Election Day. Governor Robert L. Ehrlich, Jr. vetoed Senate Bill 478 on May 20, 2005. On January 17, 2006, the General Assembly overrode the Governor’s veto, thus enacting Senate Bill 478. It has been codified as Chapter 5 of the 2006 Laws of Maryland (hereafter, “Chapter 5”).

Chapter 5 adds a new Section 10-301.1 to the Election Law Article. Section 10-301.1(a) states, “Except as provided under Title 9, Subtitle 3 of this article [dealing with

absentee ballots], 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." Section 10-301.1(b) then provides that the early voting is to begin on the Tuesday which is one week before a primary or general election and is to continue on the following Wednesday, Thursday, Friday and Saturday.

The 2006 General Assembly also enacted Chapter 61 (HB1368, 2006 Session) in order, *inter alia*, to deal with some of the mechanics of early voting (hereafter, "Chapter 61"). Chapter 61 was itself vetoed by Governor Robert L. Ehrlich, Jr., but the Governor's veto was overridden on April 10, 2006. Chapter 61 amends §10-301.1 of the Election Law Article, changing the hours of early voting (from 7 a.m. until 8 p.m. each day). For each of seventeen counties, Chapter 61 specifies the single community in each county in which the county is to establish an early voting place. For the six remaining counties and Baltimore City, Chapter 61 specifies, in each case, three particular addresses at which early voting places shall be established. Therefore, in the case of seventeen counties, Chapter 61 provides that there will be a single, countywide early voting location, while in the case of the six remaining counties and Baltimore City, Chapter 61 provides that there will be three early voting locations, and Chapter 61 specifies precisely where such early voting locations shall be.

At the August 8, 2006 hearing before the Circuit Court for Anne Arundel County, the Appellants, without objection, introduced three representative county election maps into evidence. Counsel for the Appellants summarized the relevant information reflected in the maps - that in Baltimore City (which, per Chapter 61, is to have three early voting locations), there are 27 wards; in Baltimore County (which, per Chapter 61, is also to

have three early voting locations), there are twelve election districts, and in Carroll County (which, per Chapter 61, is only to have a single early voting location), there are thirteen election districts. (E. 212-213).

The joint effect of Chapter 5 and the portions of Chapter 61 dealing with early voting is that every voter in Maryland will be able to vote in the 2006 primary election and in the 2006 general election on a day other than Election Day and, in most cases, at a location distant from the ward or election district where the voter resides.

The “Guidelines for the Administration of Early Voting”, issued by the State Board of Elections are attached to the Affidavit of Joan F. Beck, which is in turn attached to the Complaint in this case. (E. 62-67). They establish that early voting will be conducted in a fashion identical to voting on Election Day – the election judges will check in each voter and provide the voter with a voter access card which the voter will then insert into an electronic voting unit in order to bring the ballot onto the screen and enable the voter to cast his or her ballot electronically. Once a ballot is cast electronically, it can never be retrieved or nullified. The only departure from the normal Election Day protocol set forth in the early voting guidelines is that at the end of each early voting day, the election judges will turn off the electronic voting units without ending the election or printing a tabulation of the votes cast.

Appellees, Marirose Joan Capozzi, Bettye B. Speed and Charles W. Carter, Sr. are all residents and taxpayers in Queen Anne’s County and are registered to vote in Queen Anne’s County. The Complaint which they filed in this case did not seek to question the merits of early voting but rather was carefully focused on challenging the constitutionality of the two early voting statutes.

Thus, the Complaint in this case simply alleged that Chapter 5 and the portions of Chapter 61 dealing with early voting are unconstitutional in that they are in derogation of Article I, § 1 of the Maryland Constitution, Article XV, § 7 of the Maryland Constitution and Article XVII, §§ 1 and 2 of the Maryland Constitution.

These are the only relevant facts in this case. The Appellants' Brief relates all sorts of information which would be of moderate interest to a student of election administration – discussing how the State Board of Elections has worked hard to design the system of early voting, relating the outreach efforts of various counties to inform voters about the early voting system, touting the merits of early voting and even engaging in speculation about the possibility that, denied the right to vote early, some voters may decide to neither vote by absentee ballot nor vote on Election Day.<sup>1</sup>

None of these facts has any bearing on this constitutional challenge. Simply stated, if Chapters 5 and 61 are inconsistent with the Maryland Constitution, the State cannot conduct early voting this year, no matter how hard the State Board of Elections has worked to design the early voting system, no matter how much outreach has been done and no matter how terrific the whole concept of early voting might be.

The constitutional issues raised by the Complaint are not fact-driven. Inundating this Court with a myriad of facts would not clarify the issues involved but rather would be like a sandstorm - obfuscating and covering up the issues; indeed, counsel for the

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<sup>1</sup> The Appellants even append to their Brief a multi-page printout from the internet purporting to summarize the early voting laws (or lack thereof) in all fifty states. What the Appellants fail to point out is that Maryland is unique among the fifty states in permitting early voters to walk into any early voting location, insist on voting without providing any proof of identification and then vote on computerized touchscreen voting machines that provide no paper trail.



Appellants at the venue hearing in this case in Queen Anne's County on July 27, 2006, stated:

Your honor has been through enough cases to know that the Plaintiff always says, Your Honor, there's a clear straight road, they were going 90 miles an hour, they had a red light and they hit my client, and the defense always says, look, I got to throw all this sand in the air and there's a sand storm. That's the dynamic of litigation.

Instead of confronting the issues, Appellants, unfortunately, continue to blow sand, without ever advancing a Maryland constitutional basis for the statutes at issue or offering a convincing explanation for how the plain words of the Maryland Constitution do not mean what they most certainly say.

### ARGUMENT

#### I. ARTICLE I, §49 OF THE MARYLAND CONSTITUTION DOES NOT CONFER ON THE GENERAL ASSEMBLY THE AUTHORITY TO ENACT LEGISLATION PERTAINING TO ELECTIONS THAT IS INCONSISTENT WITH OTHER SECTIONS OF THE MARYLAND CONSTITUTION.

The Appellants claim that the power conferred on the General Assembly to regulate elections by Article III, §49 of the Maryland Constitution supports the validity of the challenged statutes. (Appellants' Brief, pages 12-14) Unaccountably, the Appellants completely ignore the provision's self-contained and pervasive limitation - - the General Assembly is given the power to "regulate by law" election matters, only so long as the legislation is "not inconsistent with this [i.e. the Maryland] Constitution." The Verified Complaint (at E. 12-16) and its companion memorandum (at E. 20-24), in direct and precise language, asserted that Chapters 5 and 61 are inconsistent with Article 1, §1, Article XV, §7, and Art. XVII, §1, 2 and 9 of the Maryland Constitution. The

Appellants' argument simply ignores the thrust of the challenges and puts forth an irrelevant case, *County Council v. Montgomery Association, Inc.*, 274 Md. 52 (1975).

In *Montgomery Association*, Judge Eldridge for this Court merely held that a county's effort to regulate campaign finances was preempted by the State election code. There is little similarity between the challenges presented here and those litigated in *Montgomery Association*. All that *Montgomery Association* stands for is that a county government cannot legislate in derogation of State election law. However, note that in footnote 6 of that opinion, 274 Md. at 61, this Court stated:

Basic provisions relating to the conduct of elections are also found in the Constitution of Maryland. Art. 1; Art XV §§4, 7, 9; Art. XVII.

In that footnote, this Court recognized that there are Maryland constitutional provisions that affect elections and constrain legislative power.

Art III, §49, on its face, limits legislative power over elections to such acts as are "not inconsistent with" the Constitution. Beyond the face of Article III, §49, we find the unremarkable case law conclusion that constitutional authority to implement "by law" a constitutional provision "does not authorize the General Assembly by Statute . . . to contradict or amend the Constitution." *Bienkowski v. Brooks*, 386 Md. 516, 546 (2005).

For purposes of this case, therefore, Article III, §49 is but a truism, requiring consideration of whether the challenged statutes are "inconsistent" with provisions of the Maryland Constitution.

II. CHAPTER 5 AND PORTIONS OF CHAPTER 61 OF THE 2006 LAWS OF MARYLAND ARE UNCONSTITUTIONAL IN THAT THEY ARE INCONSISTENT WITH ARTICLE XV, §7 AND ARTICLE XVII, §§1, 2 AND 9 OF THE MARYLAND CONSTITUTION.

Article XV, §7 of the Maryland Constitution states that “all general elections in this State shall be held on the Tuesday next after the first Monday in the month of November, in the year in which they shall occur.” Article XVII, §2 of the Maryland Constitution states that “elections by qualified voters for State and county officers shall be held on the Tuesday next after the first Monday of November, in the year nineteen hundred and twenty-six and on the same day in every fourth year thereafter.”<sup>2</sup> (Henceforth in this Brief, for simplicity’s sake, the Tuesday next after the first Monday in November shall be referred to as “Election Day”.)

Newly-enacted Chapters 5 and 61 provide that voting on the electronic voting machines in this fall’s general election (and in all ensuing general elections) is to start on the Tuesday before Election Day, continue for the four following days (Wednesday, Thursday, Friday and Saturday) and then conclude on Election Day itself. The Appellees contend that, in thus providing that all general elections from now on will be held over the course of six days, starting on the Tuesday before Election Day and ending on Election Day itself, Chapters 5 and 61 violate the constitutional mandates that “all general elections in this State shall be held on [Election Day]”. No reported Maryland case has ever interpreted Article XV, §7 or Article XVII, §2 of the Maryland Constitution. Therefore, this is a case of first impression.

The Appellants argue (at pages 14-23 of their Brief) that Chapters 5 and 61 are not at variance with the Maryland Constitution, but their reasoning is very confused and

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<sup>2</sup> In addition, Article II, §2 of the Maryland Constitution states that the “election of Governor and Lieutenant Governor, under this Constitution, shall be held on the Tuesday next after the first Monday of November”. Also, Article IV, §3 of the Maryland Constitution states that judges of the circuit courts shall be elected “at the general election to be held on the Tuesday after the first Monday in November.”

frankly very confusing. At the argument below in the Circuit Court for Anne Arundel County, counsel for the Appellants tried to explain when, in the view of the Appellants, an “election” is “held”: “We never said that tabulation is the key to when an election occurs. We say it is at the point of transition between the close of casting their ballots and the commencement of tabulating, processing and selecting the final candidate.” (E. 245). In other words, when the election “judges” at the polls bid farewell to the last voter shortly after 8:00 p.m. on Election Day, as the voter exits into the night air outside, and breathe a sigh of relief that their long day is nearly over, that moment, in the view of the Appellants, is when the “election” is “held”.

In their Brief, the Appellants seem to have changed their view a bit. In their footnote 9, they assert that “one has not participated in an ‘election’ until one’s vote has been counted and, therefore, *an election has not been held if votes are not canvassed.*” [emphasis supplied] (Appellants’ Brief, page 20) Therefore, the Appellants now have moved the time that the “election” is “held” back from “the point of transition between the close of casting their ballots and the commencement of tabulating” to the point that the canvass of the votes concludes.

Consequently, in their Brief, the Appellants claim that the “general election” this fall will not be “held” on the Tuesday before Election Day or on any of the other early voting days, even though by the reckoning of the State Board of Elections, 20% of the ballots will be cast on the early voting days. (E. 65). Rather, the Appellants argue that this Court should hold that, irrespective of all of the votes anticipated to be cast prior to Election Day this year, the “general election” should be deemed to be “held” when the canvass of the votes concludes. Thus, in the view of the Appellants, under the Maryland Constitution, the “election” is “held” when a ministerial act occurs by state officials, i.e. the canvass of the votes, not when the state’s citizens cast their votes.

This counter-intuitive argument is constructed out of whole cloth in order to try to legitimize the recently-enacted early voting statutes, but it imparts a contorted and unsustainable definition to the plain language of the Maryland Constitution.

This Court has recently held that when interpreting constitutional provisions, “we generally employ the same rules of construction that are applicable to the construction of statutory language.” *Davis v. Slater*, 383 Md. 599, 604 (2004). Thus, when attempting “to ascertain the meaning of a constitutional provision, ... we first look to the normal, plain meaning of the language.... If that language is clear and unambiguous, we need not look beyond the provision’s terms....” *Id.*, at 383 Md. 604-605. “[W]hen the meaning of a word ... in a constitutional ... provision is perfectly clear, this Court has consistently refused to give that word ... a different meaning on such theories that a different meaning would make the provision more workable, or more consistent with a litigant’s view of good public policy, or more in tune with modern times, or that the framers of the provision did not actually mean what they wrote.” *Bienkowski v. Brooks*, 386 Md. 616, 537 (2005). Finally, this Court has held, “[s]ince constitutions are the basic and organic law, and are meant to be known and understood by all the people, the words used should be given the meaning which would be given to them in common and ordinary usage by the average man in interpreting them in relation to every day affairs.” *Norris v. Mayor and City Council of Baltimore*, 172 Md. 667, 676 (1937).

The word “election” is a common and ordinary word, used regularly by average citizens. It is defined in the Election Law Article as well in every dictionary available on the shelves. §1-101(v) of the Election Law Article defines “election” as “the process by which voters cast votes on one or more contests under the laws of this State or the United States” [emphasis supplied] Thus, the General Assembly has itself provided by law that the key element of an “election” in Maryland is the casting of votes by the voters.

Every dictionary contains a definition of the word “election”, and the definitions have not materially changed over the centuries. For example, Webster’s Dictionary

(1828) defines “election” as “the act of choosing a person to fill an office or employment, by any manifestation of preference, as by ballot, uplifted hands or viva voce; as the election of a ... president....” Note the emphasis on the act of choice by the people authorized to choose, with no mention of the ministerial acts of the public employees charged with running the election machinery.

Webster’s Revised Unabridged Dictionary (1913) defines “election” as “the act of choosing a person to fill an office, or to membership in a society, as by ballot, uplifted hands, or viva voce; as, the election of a president or a mayor.” Once again, it is the actions of the members of the electorate that is the essential hallmark of an election.

Dictionaries in use today continue the emphasis on the central role of the electorate in any election. The Oxford English Dictionary (1933) contains a very long entry on “election”, but the first definition is as follows: “The formal choosing of a person for an office, dignity or position of any kind; usually by the votes of a constituent body.” Webster’s Third New International Dictionary, Unabridged defines “election” as “the act or process of choosing a person for office, position or membership by voting.” The Random House Webster’s College Dictionary (2001) states that an “election” is “the selection by vote of a candidate for office.” The Columbia Encyclopedia (6<sup>th</sup> ed., 2001-2003) defines the word as “choosing a candidate for office in an organization by the vote of those enfranchised to cast a ballot.” Even the “online” dictionaries continue the same theme - the Encarta World English Dictionary, North American Edition defines an “election” as an “event at which people vote; an organized event at which somebody is chosen by vote for something, especially a public office”. Finally, turning to a dictionary used by high school students, the Scholastic Pocket Dictionary (2005) defines “election” as “the act or process of choosing someone or something by voting.” The emphasis in all of the dictionaries on the word “vote” or “voting” is critical. An election, by definition, is centered around the voting.

Webster's Third New International Dictionary, Unabridged defines "hold" as "convene < the king held an assembly of all his courtiers ...: schedule and assemble or meet < some classes were held in the evening >" Similarly, the American Heritage Dictionary of the English Language (4<sup>th</sup> ed. 2000) defines "hold" as "to assemble for and conduct the activity of".<sup>3</sup>

Therefore, by the normal, plain meaning of the words "hold" (or "held") and "election", an "election" is "held" when voters "convene" or "assemble" in order to vote and choose a person to fill an office. Using this normal, plain definition, therefore, (1) until 2006, "general elections" in Maryland were always "held" on Election Day because that was the day in which all of the voting occurred<sup>4</sup>; and (2) Chapters 5 and 61 are at variance with the Maryland Constitution because they provide that the "general election" is to be "held" starting on the Tuesday before Election Day (when the voting will start) and then continuing on the following four days (when the voting will continue) and then concluding on Election Day itself (when the voting is to conclude).<sup>5</sup>

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<sup>3</sup> In their footnote 5, the Appellants claim that "there is no need to define 'held'". Inasmuch as the word "held" is a part of both Article XV, §7 and Article XVII, §2 of the Maryland Constitution, and the Appellants are claiming that the general election this year will not be "held" on any of the early voting days even though voters will be going to the polls on those days and will be casting their ballots electronically, in a fashion identical to the voters who go to the polls on Election Day, it is submitted that the definition of the word "held" is extremely relevant in this case.

<sup>4</sup> The Maryland Constitution (Article I, §3) makes separate provision for absentee voting, and the General Assembly has enacted absentee voting legislation pursuant to the authorization granted to it by the Constitution. The absentee voting statutes are all collected in Title 9, Subtitle 3 of the Election Law Article.

<sup>5</sup> The Appellants include in their Brief (at page 15) a hypothetical in which early voting commences and then a natural disaster prevents any voting on Election Day. Actually on September 11, 2001, this precise situation occurred in New York City. September 11, 2001 was primary election day that year for the New York City municipal elections. When the disaster occurred at the World Trade Center, voting had been proceeding at precincts all over the city since early in the morning, when the polls had opened. Following the disaster, the Mayor cancelled the election, and it was rescheduled for several weeks later. Pursuant to Chapters 5 and 61, the general election this year in Maryland is to start on the Tuesday before Election Day, continue for the following four days and then conclude on Election Day. If a disaster were to occur partway through the

Without citing any dictionary as a source, the Appellants contend that an “election” is “held” when the votes are canvassed. Absolutely nothing in the normal definitions of the words “election” or “held” suggests that an “election” should be deemed to be “held” when the votes are canvassed.<sup>6</sup> As discussed above, the definitions of “election” all focus on the acts of choice by the people authorized to choose, with no emphasis on the ministerial acts of the functionaries charged with running the election machinery. Therefore, the definition suggested by the Appellants finds no support in the dictionaries. Furthermore, even the most cursory consideration of the Appellants’ proffered definition establishes that it doesn’t either comport with Maryland history or current reality.

Article XV, §7 of the Maryland Constitution has never been amended since it was incorporated into the 1867 Maryland Constitution. Therefore, in order to prevail in their argument that an “election” should be deemed to be “held” when the votes are canvassed, the Appellants must be able to establish that such an interpretation would have stood up in 1867 as well as today.

Today, the statutes and regulations governing Maryland elections provide that the removable data storage devices from the voting equipment and other materials are to be

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process and were to lead to the cancellation of the election, only a portion of the “election” would have been “held” before the intervention of the disaster, and, as occurred in New York City, it is likely that the entire election would be rescheduled for a later date.

<sup>6</sup> An analogy may be helpful here. This year’s annual meeting of the American Bar Association was held in Hawaii from August 3 until August 8. Undoubtedly the promotional literature sent by the ABA to its members announced that the convention would be held from August 3 until August 8. If the promotional literature had instead announced that the convention in Hawaii would be “held” on August 8 (because that is when the votes cast in the House of Delegates were scheduled to be counted), attendance at the convention doubtless would have suffered. (Hawaii is a long way to go for a single-day convention.) Average men and women expect that information about when an event (a convention, an election, etc.) will be “held” will provide the beginning and ending dates of the event, not refer to a time after the event is over, when votes cast during the course of the event will be counted.



delivered to the county election boards after the polls close on Election Night (EL §11-202; COMAR 33.08.01.04). Because of modern automobiles, this immediate delivery of the critical election materials from the precincts to the central county election board offices is possible, and so the applicable regulation states that “the canvass of votes at the counting center shall ... start [on Election Day] immediately after the polls have closed and ballots have begun to arrive from the polling places.” (COMAR 33.08.01.05) Because of modern technology and modern vehicles powered by internal combustion engines, therefore, the canvass of the votes can start late in the evening on Election Day. Thanks only to this modern technology, the Appellants are able concoct their argument that an “election” is actually “held” late in the night on Election Day, at the time that the canvass of the votes cast on the computerized voting machines is performed.

In 1867, however, there were no automobiles, and ballots were cast by hand on sheets of paper. Travel was by horseback, and it would have been impossible for the election materials from all of the precincts in the counties to have been delivered to the county election boards located in the various county seats late at night on Election Day. In light of these realities, the applicable state election statute as late as 1888 provided that “the presiding judges of elections ... shall, within ten days after each election, meet at the usual place of holding the circuit court for each county, ... [and] shall cast up<sup>7</sup> the whole vote of all the districts or precincts....” Article 33, Sections 68-69, Public General Laws of Maryland (Poe, 1888) Therefore, if we were to apply the standard posited by the Appellants for determining when a general “election” is “held”, general elections in Maryland in the late nineteenth century were not “held” until up to ten days after Election Day. Of course, as the Maryland Constitution has stated since 1867 that the “election” must be “held” on Election Day, then, by the standard posited by the Appellants, all of

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<sup>7</sup> The term “canvass” does not seem to have come into vogue until a later date, hence the use of the substitute term “cast up” to refer to the vote tabulation process.

the late nineteenth century elections in Maryland are apparently to be viewed, retroactively, as unconstitutional.

Even as late as 1904, with early automobiles beginning to ply the roads of Maryland, the applicable election statute provided that each “board of canvassers” for the county or city would not begin its work until the Thursday after Election Day. Until that time all of the election materials were literally required to be kept “under lock and key”. Article 33, Sections 77-80, Public General Laws of Maryland (Poe, 1904) Are the Appellants contending that in that era, when the boards of canvassers would have followed the then-applicable election statutes and would not have begun their work until two days after Election Day, the fact that the canvass of the votes didn’t begin until two days after Election Day rendered Maryland’s general elections, viewed retroactively, as unconstitutional?

Not only would the definitions of “election” and “held” proposed by the Appellants result in the retroactive conclusion that Maryland’s elections for many decades of its existence were all unconstitutional, the definitions fail to comport with Maryland’s current election practices.

Dozens or more acts in connection with an election have always taken place on a day other than Election Day. All are ministerial and are currently set forth in the state Election Code and more particularly in COMAR, Title 33. If, as the Appellants urge, the Maryland Constitution should be interpreted as providing that the “election” is “held”, not when the voting occurs but when some ministerial act by election officials occurs, then what particular ministerial act should be selected? The Appellants isolate a single such act (the canvassing of the votes) and announce that the “election” is not “held” until that act occurs. That act, however, needs to be placed in context.

The statutes and regulations establish the following chronological series of events that occurs after the voting concludes on Election Day. First, the election judges press the print totals button on the election machines, causing each electronic voting machine to automatically print out the total votes cast on the machine for each candidate (COMAR 33.10.02.12). Next, as noted above, the election materials are delivered to the county election boards. The local board of elections in each county organizes itself as the “Board of Canvassers” for the county (§11-101 of the Election Law Article). The initial canvass of votes starts at the offices of the county election board as the election materials begin to arrive from the polling places (COMAR 33.08.01.05) and essentially consists of aggregating the precinct counts (COMAR 33.10.02.36). Because members of the media are permitted to be present during this unofficial count (COMAR 33.08.01.07), these returns are reported by the media as the numbers are tabulated. It must be stressed that, as will be explained below, *these numbers are unofficial, incomplete numbers*. It is this unofficial, incomplete election canvass that the Defendants claim constitutes the “election” being “held”.

The official canvass of votes continues the day following Election Day (Wednesday). The county election director audits the election materials to confirm the accuracy of the election judges’ statements (COMAR 33.08.01.11). The write-in votes are tabulated (COMAR 33.10.02.36). On the second day after the election (Thursday), the initial canvass of absentee ballots begins (COMAR 33.11.04); this process can be very time-consuming and could take several days in a close election. In the Glendening-Sauerbrey gubernatorial election in 1994, for example, the absentee ballot canvass took many days. By law, the absentee canvass may not be finalized until after 4 p.m. on the

second Friday after the election (COMAR 33.11.04.15), after the second absentee ballot canvass takes place to count late-arriving absentee ballots (COMAR 33.11.04.03). On the sixth day after Election Day (the following Monday), the county Board of Canvassers begins the canvass of provisional ballots (COMAR 33.16.03.03). The unofficial results of the provisional ballot canvass are also reported on the second Friday after the election (COMAR 33.16.04.07).<sup>8</sup>

At length, on the second Friday after the election, each county Board of Canvassers transmits one certified copy of the election results in its county to the Governor and the State Board of Elections (EL §11-401). This represents the first official tabulation of complete election returns.<sup>9</sup> Thereafter, in the case of primary elections, the State Board of Elections certifies the statewide election results (EL §11-501). Within 35 days after a state general election, the Board of State Canvassers convenes and prepares a certified statement of the election results (EL §11-503). Any recounts follow such certifications (EL §12-101, et seq).

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<sup>8</sup> How do the Appellants handle the write-in votes, absentee votes and provisional ballots, which are not canvassed until long after Election Day? According to footnote 9 in the Appellants' Brief, "[n]o one would contend that they had 'voted' if their ballot had not been counted.... [O]ne has not participated in an "election" until one's vote has been counted." As the Appellants claim that, by their definition the "election" is "held" late at night on Election Day when the initial, incomplete, unofficial canvass of the votes on the electronic voting machines occurs, it would seem as if the Appellants feel that no one who votes by write-in or by absentee ballot or by provisional ballot should be deemed to have "voted" or participated in the "election" because their votes are not canvassed until long after Election Day.

<sup>9</sup> At page 15 of their Brief, the Appellants argue that an election cannot be said to have occurred until the ballots are counted. But, as mandated by COMAR, the counting process does not conclude until the second Friday after the election. The Maryland Constitution, therefore, which mandates that each general "election" be "held" on Election Day could not possibly contemplate that the election does not occur until the canvass process concludes *many days after Election Day*.

From this plethora of ministerial acts performed by election officials in connection with an election, the Appellants have plucked out a single event - the initial, incomplete, unofficial canvass of the votes cast on the electronic voting machines late in the evening on Election Day - and have asserted that it is that event that constitutes an “election” being “held”. As discussed above, this incomplete, unofficial canvass does not include the write-ins, the absentee ballots or the provisional ballots. The unofficial canvass is further subject to correction in the event of mistakes.

It seems bizarre, and certainly not intuitive, that the Appellants would claim that an “election” is “held”, pursuant to the Maryland Constitution, not when the voters cast their votes, but late at night, after all of the voters have gone home, when a group of election officials tabulates the first set of incomplete, unofficial results of the election. To use the language of the Maryland Court of Appeals quoted earlier, this is certainly not “the meaning [of the word “election”] which would be given in common and ordinary usage by the average man in interpreting [the words of the Maryland Constitution] in relation to every day affairs”. *Norris, supra*.

As noted, as support for their proffered definition of when an “election” is “held”, the Appellants do not rely on dictionary definitions of these words, nor do they rely on any Maryland case authorities. Instead, they exclusively rely on two federal court of appeals decisions which interpret a series of federal statutes specifying the Tuesday after the first Monday in November as the day on which congressmen, U. S. Senators and Presidential electors are to be elected. *Voting Integrity Project v. Bomer*, 199 F. 3d 773 (5<sup>th</sup> Cir. 2000), involving a challenge to Texas’s early voting law, and *Millsaps v.*

*Thompson*, 259 F. 3d 535 (6<sup>th</sup> Cir. 2001), involving a challenge to Tennessee’s early voting law, are both distinguishable from this case on a number of grounds.

First, *Bomer* and *Millsaps* interpret federal statutes, not the Maryland Constitution. As the Maryland Court of Appeals made clear in *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604, 621 (2002), if provisions of the Maryland Constitution have counterparts in the United States Constitution, this does not mean that the Maryland provision “will always be interpreted or applied in the same manner as its federal counterpart. [emphasis in the original] Furthermore, cases interpreting and applying a federal constitutional provision are only persuasive authority with respect to the similar Maryland provision.” If this is the rule with respect to comparisons between the Maryland Constitution and the U. S. Constitution, then the rule must apply with even more vigor to comparisons between the Maryland Constitution and mere federal statutes – Maryland courts interpreting the Maryland Constitution are not bound by federal court decisions interpreting federal law.<sup>10</sup>

Secondly, the Texas Election Code defined early voting as a form of absentee voting (Tex. Elec. Code, Section 81.001(b), and the Tennessee Election Code establishes early voting in the absentee voting section of the Code (Tenn. Code Ann., Sections 2-6-101, 2-6-102, 2-6-201. Thus, from the outset, *Bomer* and *Millsaps* focused upon early voting and absentee voting as twin means of voting on a day other than Election Day. Unlike the Maryland Constitution, which specifically provides for absentee voting in Article 1, Section 3, the federal statutes at issue in *Bomer* and *Millsaps* contain no provision for absentee voting as an exception to the general requirement that the votes for

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<sup>10</sup> It is also worthy of note that the federal statutes in question were enacted after Article XV, §7 was enacted, in 1867, as a part of the Maryland Constitution.

congressmen, U. S. Senator and Presidential elector must occur on Election Day. This being the case, the courts in both *Bomer* and *Millsaps* came to the stunning conclusion that if the effect of the federal statutes was that all voting for the federal offices must occur on Election Day, then not only the early voting statutes in Texas and Tennessee but in addition the absentee voting rules then in effect in all fifty states (permitting votes to be cast on days other than Election Day), necessarily must be declared unconstitutional due to federal pre-emption.

Because some states started to allow absentee voting over a century ago and Congress had never taken any action to curb the practice, and because Congress had in the meantime passed several statutes regulating aspects of absentee voting, thus acknowledging that Congress was familiar with the practice of absentee voting and condoned it, *Bomer* and *Millsaps* decided that they were “unable to read the federal election day statutes in a manner that would prohibit such a universal, longstanding practice of which Congress was obviously well aware.” *Bomer*, 199 F. 3d at 776.

Thirdly, the Supreme Court had previously decided *Foster v. Love*, 522 U. S. 67, 118 S. Ct. 464, 139 L. Ed. 2d 369 (1997), holding that Louisiana could not continue to hold an “open primary” for congressmen and U. S. Senators prior to Election Day because history showed that such an “open primary” more often than not decided the federal races prior to Election Day when one of the candidates garnered over 50% of the vote and thus was declared “elected”. In *Foster*, the Supreme Court had held federal elections must not be “concluded as a matter of law” before Election Day. *Bomer* and *Millsaps* seized on the *Foster* decision as a way to resolve the conundrum posed by the tension between the federal election day statutes on the one hand and both early voting

and absentee voting in federal elections on the other hand. *Bomer* and *Millsaps* held that so long as federal elections are not consummated before Election Day (and the fact that election results are not released in either Texas or Tennessee until the votes are tabulated on Election Day was viewed as establishing that the elections in those cases are not consummated before Election Day), they comply with the federal statutes. Thus *Boner* and *Millsaps* thereby validated both the absentee and early voting statutes in Texas and Tennessee with respect to federal elections.

Fourthly, because *Foster* provided the *Bomer* and *Millsaps* courts a way out of their conundrum, neither decision made any colorable attempt to analyze the definitions of the words in the federal statute. In fact, *Bomer* proudly claimed to follow the Supreme Court's refusal in *Foster* "to [pare] the term 'election' [in the federal statute] down to the definitional bone." *Bomer*, 199 F. 3d at 776. Certainly the approach taken by *Bomer* and *Millsaps* – seizing on certain language in *Foster* as a means to avoid a decision invalidating the absentee ballot laws of all fifty states, and avoiding any analysis of the common definitions of the words in the federal statutes – is not the approach mandated by this Court when analyzing the language of the Maryland Constitution.

It is respectfully submitted that the *Bomer* and *Millsaps* cases should be seen as resourceful approaches to interpreting problematic federal statutes which never made any provision for absentee ballots despite the universal use of absentee ballots in all fifty states. These decisions are not helpful in applying the careful textual analysis of the Maryland Constitution that this Court has mandated in cases such as this one.



III. CHAPTER 5 AND PORTIONS OF CHAPTER 61 OF THE 2006 LAWS OF MARYLAND ARE UNCONSTITUTIONAL IN THAT THEY ARE INCONSISTENT WITH ARTICLE I, §1 OF THE MARYLAND CONSTITUTION.

The Appellants contend (at pages 23-30 of their Brief) that the Maryland Constitution does not prevent a voter from voting at a location outside the ward or election district where the voter resides.

Article I, §1 of the Maryland Constitution clearly sets forth that Maryland citizens “shall be entitled to vote in the ward or election district in which [the voter] resides” and “shall be entitled to vote there until [the voter] shall have acquired a residence in another election district or ward in this State.” These words are crystalline.<sup>11</sup> Just as clearly, Article 7 of the Declaration of Rights provides that citizens shall have the right to vote if they have “the qualifications prescribed by the Constitution.” Those qualifications are singularly set forth in §§1-8 of Article 1 of the Maryland Constitution.

Only Article I, §1 does not provide for legislative manipulation. Article I, §§2-8 allow the enactment of laws to give sustenance to constitutional commands ranging from uniform registration to the provision for dealing with contested elections. Article I, §1 uniquely contains no provision for legislative contribution or manipulation.

This Court has held that the Maryland Constitution sets forth the “exclusive” qualifications and restrictions on the right to vote (*Maryland Green Party v. Maryland Board of Elections*, 377 Md. 127, 152 (2003)), and that the “General Assembly may

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<sup>11</sup> Indeed, in *Smith v. Hackett*, 129 Md. 73, 76-77 (1916), this Court stated, “The only condition imposed by the Constitution as to the *place* where the right to vote shall be exercised is that it must be in the election district of which the voter is a resident.” [emphasis in original] See also, *Wilkinson v. McGill*, 192 Md. 387, 393-394 (1949). In light of the clear language of Article I, §1 and the equally clear explanation of the meaning of Article I, §1 by this Court in *Hackett*, the argument of the Appellants that a voter may cast his or her vote outside of his or her election district or ward is strained, to say the least.

neither expand nor curtail the qualification necessary to vote” (*State Administrative Board of Election Laws v. City Board*, 342 Md. 586, 599 (1996)). These recent decisions, together with the precise language of Article 1, § 1, Md. Const., as well as *Kemp v. Owens*, 76 Md. 235 (1892) and *Southerland v. Norris*, 74 Md. 326 (1891), make clear that a voter shall vote in the district in which he resides - not at some distant place.

The reliance by the Appellants on this Court’s interpretation of the word “ballot” in *Norris v. Mayor and City Council of Baltimore*, 172 Md. 667 (1937) does not control this case. In *Norris*, this Court found that “ballot” had an evolving meaning. For our purposes, however, the key phrases of Article I, §1 are “ward or election district in which [the voter] resides” and “entitled to vote there until [the voter] shall have acquired [another] residence”. Most assuredly, the terms “ward”, “election district”, “residence” and “there” are not unknown, evolving or evanescent. They are precise and plain.

This Court has repeatedly and consistently asserted that unambiguous constitutional provisions are to be given their ordinary meaning and given effect as written. See, *Bienkowski v. Brooks*, 386 Md. 516, 536-537 (2005); *Brown v. Brown*, 287 Md. 273, 277-278 (1980); *Cohen v. Governor*, 255 Md. 5, 16, 21-22 (1969) (reluctantly voiding a gubernatorial effort to present constitutional amendments by a special election); *Buchholtz v. Hill*, 178 Md. 280, 286 (1940) (quoted by the court below at E. 288).

Residence for voting purposes is hardly an unknown term. In *Blount v. Boston*, 351 Md. 360, 366 ff. (1998), the Court quoted, 351 Md. at 365, *Howard v. Skinner*, 87 Md. 556, 559 (1898) for the well-recognized proposition that:

Residence, as contemplated by the framers of our Constitution, for political or voting purposes, means a place of fixed, present domicile.

Accord: *Bainum v. Kalen*, 272 Md. 490, 496 (1974). See also, *Reeder v. Board of Supervisors of Elections of Queen Anne's County*, 269 Md. Md. 261, 263 (1973) (refusing an owner of property - - domiciled elsewhere - - the right to vote in Queen Anne's County, and relying, in part, on Art. 1, § 1, Md. Const.)

Below, the Appellants argued that voters could “waive” the strictures of Article I, §1 of the Maryland Constitution by voting early away from the district of their residence and registration. The Appellants repeat that argument in another form here. The Appellants’ “waiver” argument does not take into account the language of Art. 7, Md. Declaration of Rights which provides, in pertinent part:

Every citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage.

Such “qualifications” are set forth pertinently in Article 1, § 1, Md. Const. – voters shall vote in the ward or district where they reside - not elsewhere.

This language should, of course, be read in light of the Latin maxim – *expressio unius est exclusio alterius* - which per BLACK’S LAW DICTIONARY, means: “expression of one thing is the exclusion of another”. In the Article 1, §1, Md. Const., context, expression of a citizen’s place of voting in the district or ward of his residence until the citizen acquires a new residence EXCLUDES voting elsewhere. Nothing in Article I or elsewhere provides otherwise.

The Latin maxim is hardly as dead as the Latin language. The phrase has appeared twice in Maryland appellate rulings filed since June 30, 2006. It was used by Judge Kenney in *Clark v. O’Malley*, 169 Md. App. 408, 435-436 (2006) (interpreting Article II, §5, Md. Const., Governor’s power to remove civil officers did not allow

suspension of such officer, quoting *Cull v. Whelple*, 114 Md. 58, 79-80 (1910)) and it is used for statutory interpretation by Judge Cathell, for this Court, in *Chow v. State*, \_\_\_, Md. \_\_\_ (No. 99, September Term, 2005)(July 27, 2006) in footnote 17.

“Maryland has long accepted the doctrine,” i.e. the maxim, *Comptroller v. Blanton*, 390 Md. 528, 537-8 (2006). The numerous cases are cited in a dissent by Judge Eldridge in *Eagen v. Ayd*, 313 Md. 265, 280 (1988). Furthermore, as stated in *Fish Market Nominee Corp. v. GAA. Inc.*, 337 Md. 1, 8 (1994) citing *Brown v. Brown*, 287 Md. 273, 277 (1980), the Court “generally” applies “the same principles in construing constitutional provisions” as it does “in construing statutory language.” Thus, the “long accepted” use of the maxim in Maryland applies to constitutional interpretation, as shown in *Clark v. O’Malley* and *Cull v. Whelple*.

In this case, the exclusive establishment of the place for a citizen to vote in Art. 1, §1, Md. Const., precludes the statutory establishment of another place to vote, as in the early voting statutes. Early voting can only be prescribed after amendment to the Constitution.

Furthermore, Article I, §5 of the Maryland Constitution explicitly provides that “[i]t shall be the duty of the General Assembly to pass Laws to punish, with fine and imprisonment, any person ... who shall vote in any election district, or ward, in which he does not reside ....” Clearly, the combined effect of Article I, §1 and Article I, §5 of the Maryland Constitution is clear that, aside from absentee voting, which is provided for in Article I, §3, a voter may only vote in the election district or (in Baltimore City) ward in which the voter resides.

### The Primary Election Laws

After carping below and here about the alleged problems caused by the timing of the filing of the Complaint, the Appellants argue that Maryland's constitutional provisions do not apply to primary elections. In this argument, the Appellants discover the plain words of Article XV, §7 and Article XVII, §2 of the Maryland Constitution and urge that Article I, §1 of the Maryland Constitution is "inapposite to primaries" (Appellants' Brief, page 29), based on two fifty-year old decisions of this Court – *Hill v. Mayor and Town Council of Colmar Manor*, 210 Md. 46 (1956) and *Board of Supervisors of Elections v. Blunt*, 200 Md. 120 (1952).

The holdings of these decisions have been thrown into question by statements made in *Suessmann v. Lamone*, 383 Md. 697 (2004) by Judge Cathell (in his concurring opinion at 383 Md. 734) and by Chief Judge Bell and Judge Eldridge (in their dissenting opinion at 383 Md. 750) intimating, if not stating directly, a contrary view. *Cf.* *Board of Elections v. Weiss*, 217 Md. 133 (1958). Frankly, Judge Silkworth's analysis below (at E. 290-291) is instructive and should be adopted by this Court.

Regardless of whether suffrage in a primary election is controlled by Article I, §1, as discussed *supra*, at pages 24-27, disposition of this issue does not control the issue of the constitutionality of early voting in the November, 2006 general election. Moreover, if the primary is not controlled by Article I, §1 of the Maryland Constitution, the angst and rhetoric employed by the Appellants about the alleged late filing of suit by the Appellees (discussed more fully below at pages 36-42) is just so much wasted verbiage and purposeful sand-throwing.

IV. ARTICLE 1, §3 OF THE MARYLAND CONSTITUTION IS NOT A BASIS FOR THE GENERAL ASSEMBLY TO ENACT CHAPTER 5 AND PORTIONS OF CHAPTER 61 OF THE 2006 LAWS OF MARYLAND.

As an afterthought, the Appellants have concocted the argument that Article I, §3 of the Maryland Constitution is a sufficient basis for the General Assembly to enact Chapters 5 and 61. (Appellants' Brief, pages 30-34) This "red herring" is not only belated; it has no basis in the very enactments that the Appellants now seek to protect.

Neither the title of Chapter 5 ("Election Law – Early Voting") nor the title of Chapter 61 ("Election Law – Voter Bill of Rights") articulate in any way that early voting is a form of absentee voting. Indeed, at the very outset, the text of Chapter 5 (E. 34) specifically states that a voter shall have three options to vote: (1) "in the voter's assigned precinct on Election Day"; (2) "in an early voting polling place as provided in this section"; or by absentee ballot, "as provided under Title 9, Subtitle 3 of this Article". In light of this statutory language, clearly the General Assembly did not believe that early voting was a form of absentee voting.

Nonetheless, the Appellants belatedly below (E. 208) and in their Brief (at pages 30-33), argue that "no excuse absentee voting" (E. 246) is really what Chapters 5 and 61 created. This argument is persiflage; it deserves no credibility here for a number of reasons.

First, when the General Assembly has intended to enact bills dealing with absentee voting, it has said so in the title. See, e.g., Chapter 6, 2006 Laws of Maryland (H. B. 622, "Elections - Absentee Voting on Demand"); and Chapter 41, 2006 Laws of Maryland (S. B. 124, "Election Law – Protection of Voters' Confidential Information and

Secrecy of Absentee Ballot Results”). Even if the Appellants could point out such an enactment, that would not end discussion.

Secondly, neither Chapter 5 nor Chapter 61 give any notice that the enactments are “no excuse absentee balloting”. The absence of such notice invokes Article III, §29 of the Maryland Constitution (“... every Law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title”).<sup>12</sup> The title of an enactment “sheds substantial light on what the General Assembly had in mind” when it enacts legislation. *Board of County Commissioners v. Stephans*, 286 Md. 384, 395 (1979). The titles of Chapter 5 (E. 34) and Chapter 61 (E. 42-43) offer nothing about “no excuse absentee voting”. If this disguised intent is what is meant by these enactments, they are afoul of *Bell v. Board of Commissioners*, 195 Md. 21, 32-33 (1956)<sup>13</sup> (a marked change in gambling laws must be the subject of notice in the title of an enactment, even of a bill approved by referendum) Similarly, an important change like “no excuse absentee voting” needed to be expressed in the title of the challenged enactments, but the titles of Chapters 5 and 61 are totally devoid of any mention of “no excuse absentee voting”.

Thirdly, as perhaps a corollary to the foregoing, this Court has created clear precedent holding that it would not surmise a legislative intent contrary to the letter of a statute. *State Tax Commission v. Potomac Electric Power Co.*, 182 Md. 111, 116 (1943). The concept was utilized in *Birmingham v. Board of Public Works*, 249 Md. 443, 447

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<sup>12</sup> Counsel for the Appellants have not fared well in the past two decades when trying to persuade this Court that Article III, §29 of the Maryland Constitution has not been offended. See, *Porten Sullivan Corp. v. State*, 318 Md. 387 (1990); *State v. Prince Georgians for Glendening*, 329 Md. 68 (1993); *Migdal v. State*, 358 Md. 308 (2000); *Delmarva Power and Light, Co. v. Public Service Commission*, 371 Md. 356 (2002).

<sup>13</sup> More than ten defective title cases decided by this Court are reviewed in *Bell*, 195 Md. at 28-31.

(1968), where Judge Singley, writing for the Court, adopted the language of Justice Brandeis in *Iselin v. U. S.*, 270 U. S. 245, 251 (1926), to wit:

What the government asks is not a construction of the statute but, in effect, an enlargement of it by the court so that what was omitted, presumably by inadvertence, may be included within its scope. To supply omissions transcends the judicial function.

*Accord, Slate v. Zitomer*, 275 Md. 534, 540 (1975); *Board of Elections v. Weiss*, 217 Md. 133, 138-139 (1958). The court will not rewrite a statute to accomplish an objective. *Simpson v. Moore*, 323 Md. 215, 228 (1991).

Pertinent to this case on appeal, the Court should not revise Chapter 5 and Chapter 61 simply because, after the Appellees' challenges, the Appellants are left with enactments that do not portray in text or title, the belated notion of "no excuse absentee balloting".

Fourthly, and significantly, Article I, §3 of the Maryland Constitution allows provision for voters who "are absent at the time of any election" or "who are unable to vote personally". Early voting, by the challenged enactments, requires neither. Indeed, the whole idea of early voting is that the voters personally go to the early voting locations, identify themselves and then cast their votes on the electronic voting machines. They are not "absent", nor are they "unable to vote personally". Rather, they are present, and they vote personally.

Fifthly, the recent re-codification of former Article 33 into the Election Law Article grouped all of the provisions dealing with absentee voting into Subtitle 3 of Title 9. Subtitle 3 is itself entitled, "Absentee Voting". The only other piece of legislation enacted in 2006 which impacted absentee voting (Chapter 6) repealed and re-enacted, with amendments, provisions in Subtitle 3 of Title 9. Neither Chapter 5 nor 61



purports to codify its provisions in Subtitle 3 of Title 9; rather, they add a new section to Subtitle 3 of Title 10 (dealing with polling place procedures). One must assume that the General Assembly was aware of where in the Election Code the absentee voting provisions were located, and its failure to add the early voting legislation to Subtitle 3 of Title 9 is strong proof that the General Assembly did not contemplate that the early voting bills would be construed as absentee voting bills.

Finally, Title 9, Subtitle 3 of the Election Law Article (“Absentee Voting”) and Title 33, Subtitle 11 of COMAR create all sorts of rules to apply to absentee voting, and most of them are totally inconsistent with the concept of early voting. As noted, early voting is envisioned as an opportunity for voters to personally travel to the early voting locations and then cast their votes on the electronic voting machines. Once a voter votes on an electronic voting machine, that vote can never be retrieved or nullified and goes into the homogeneous pool of all votes cast on the electronic voting machine that the voter used. By contrast, Title 9, Subtitle 3 of the Election Law Article and Title 33, Subtitle 11 of COMAR provide elaborate rules for handling all absentee ballots cast in Maryland. Written applications on official election board forms must be filled out by all prospective absentee voters. §9-305 of the Election Law Article. Absentee ballots are paper ballots, enclosed in specially printed envelopes. §9-310 of the Election Law Article; COMAR 33.11.03. The paper absentee ballots are counted starting two days after the election. COMAR 33.11.04. Bi-partisan processing teams are appointed to carefully conduct the canvass of absentee ballots. COMAR 33.11.04.06. Challenges can be made to absentee ballots, and absentee ballots can be rejected by a unanimous vote of a county election board. COMAR 33.11.05. None of these statutory provisions and rules

could possibly apply to early voting, leading to the obvious conclusion that early voting is not a form of absentee voting.

V. INJUNCTIVE RELIEF IS APPROPRIATE IN THIS CASE IN LIGHT OF THE PLANS OF THE STATE BOARD OF ELECTIONS TO CONDUCT ELECTIONS THIS FALL WHICH ARE IN VIOLATION OF THE MARYLAND CONSTITUTION.

The Appellants next argue (at pages 34-39 of their Brief) that, regardless of the unconstitutionality of the challenged enactments, no relief should be granted to the Appellees. In effect, the Appellants argue that the enactments are immune from challenge. This untenable position rests on two flaws: (a) the Appellees' alleged lack of standing, and (b) allegations that equitable principles forbid relief. Neither of these contentions can be sustained.

The Appellants Have Standing

In their initial pleading, the Appellees avowed their status as voters and taxpayers (E. 10). The initial legal memorandum filed by the Appellees (E. 19-24) addressed the standing issue and set forth case law and facts which the Appellants have neither refuted nor even discussed.

Maryland taxpayers have been recognized as having standing to challenge Maryland statutes on constitutional grounds. *See, e.g., Boitnott v. Mayor and City Council of Baltimore*, 356 Md. 226, 234 (1999); *State v. Burning Tree Club, Inc.*, 315 Md. 254, 291 (1984); *Murray v. Comptroller*, 241 Md. 383, 391 (1966). In *Norris v. Mayor and City Council of Baltimore*, 172 Md. 667 (1937), a taxpayer was unquestioned in challenging the introduction of voting machines, despite the provision in Article I, §1 of the Maryland Constitution that all elections shall be “by ballot”. *Norris* thus substantiates the standing of the Appellees in this case.

The appropriated amount subject to taxpayer challenge in Norris was \$1,250,000, a total dwarfed by the amount appropriated to fund early voting. The 2006 Budget Bill appropriating State funds for FY2007, beginning on July 1, 2006, created a “State Reserve Fund,” Yo1A02.01, “Dedicated Purpose Account” to be available immediately ... to provide funds for additional costs associated with early voting as set forth in Chapter 5 of the 2006 Session.” The appropriated amount was \$13,377,408. Laws of Maryland, 2006 Advance Sheets, Volume II, pp. 1283-1284 (E. 81-86).

In *Birmingham v. Board of Public Works*, 249 Md. 443, 445 (1968) and *Redwood v. Lane*, 194 Md. 91, 94 (1949), taxpayers challenged, without question of their standing, putatively good legislative enactments which were held to run afoul of Maryland constitutional principles. See also, *Balenson v. Maryland Airport Authority*, 253 Md. 490 (1969).

In *Thomas v. Howard County*, 262 Md. 422, 432 (1971), this Court wrote, “our predecessors have gone rather far in sustaining the standing of taxpayers to challenge illegal ... actions by public officials.” *Thomas*, in fact, is cited in *Boitnott v. Mayor and City Council of Baltimore*, 356 Md. 226, 234 (1999) where taxpayer allegations that the City “has expended twenty million dollars ... is sufficient to withstand a standing challenge.”

#### Equitable Relief

For decades, the decision in *State Dept. of Health v. Baltimore County*, 281 Md. 548 (1977) has been looked to for the “factors” that guide preliminary injunctive relief. There, 281 Md. at 554, the Court listed the following factors to determine relief: (1) likelihood of success on the merits, (2) the “balance of convenience,” (3) irreparable

injury and (4) the public interest. Recently, the Court of Special Appeals, in *DMF Leasing, Inc. v. Budget Rent-a Car of Maryland, Inc.*, 161 Md. App. 640, 648 (2005), discussed these four criteria and held that they are:

not like elements of a tort [citation omitted]. The four factors are simply that, *factors*, designed to guide trial judges in deciding whether a preliminary injunction should be issued. [emphasis in original.]

In further amplification, the intermediate appellate court produced a lengthy footnote, 161 Md. App. at 648, n. 3, which was appended to the assertion that there were “some suggestions to the contrary.” The substantive discussion in the footnote recognized the distinction between injunctive actions between private litigants and those where government entities are involved. The elaboration stated, in pertinent part:

[In cases in which government entities were involved], the Court of Appeals expressly adopted a theory that when government interests are at stake, fewer than all four factors will apply, and trial courts exercising their traditional equity powers, have broader latitude than when only private interests are involved, *See, e.g., State Dep’t of Health*, 281 Md. at 557-7 . . . . Under the Court of Appeals holdings, then, . . . when government entities are involved, courts have discretion to disband with a vigorous application of all four factors.

This analysis draws support from a careful reading of *Fogel v. H & G Restaurant, Inc.*, 337 Md. 441 (1995). There, the Court noted and stressed the four factors, but emphasized the likelihood of success on the merits, 337 Md. at 455-6. As well, the Court asserted, 337 Md. at 456-7:

in litigation between governmental and private parties, or in cases in which injunctive relief directly impacts governmental interests, the Court is not bound by strict requirements of traditional equity developed in private litigation [Citation omitted.] We have also acknowledged that “courts of equity may, and frequently do, go much farther both to give and withhold relief than they are accustomed to do when only private interests are involved.” *Space Aero Products Co., Inc. v. R.E. Darling Co., Inc.*, 283 Md. 93, 128 . . . cert den., 382 U.S. 843 . . . (1965)

This exposition of the vagaries of injunctive adjudication means, at least, here, that determination of the constitutional issues, presented in the Verified Complaint and argued in the Memorandum of Points and Authorities accompanying the Verified Complaint, are the ultimate and pervasive dispositive “factor.” That determination is not fact driven; it arises directly from the statutes and their constitutional bars. Early voting contravenes the clear constitutional provisions.

Irreparable injury means that money damages are not a true balm, see, *State Commission on Human Relations v. Talbot County Detention Center*, 370 Md. 115, 140 (2002). Damages are no remedy for the charged constitutional error. The public interest, moreover, can only mean upholding the constitutional provisions.

Below, Judge Silkworth articulated very well the grant of injunction relief (E. 296-297). This Court should heed his thoughtful analysis. The Appellees adopt his analysis and the language of his opinion.

VI. LACHES DOES NOT APPLY IN THIS CASE, IN WHICH SUIT WAS FILED THREE MONTHS AFTER CHAPTER 61 OF THE 2006 LAWS OF MARYLAND WAS ENACTED AND IN WHICH THE SUIT IS A CHALLENGE TO STATUTES THAT ARE INTRINSICALLY VOID IN THAT THEY ARE UNCONSTITUTIONAL.

The Appellants conclude their Brief (at pages 39-43) with the untenable argument that the constitutional claims raised by the Appellees are barred because the Appellees failed to file their Complaint until three months following the final enactment of the unconstitutional legislation. They call this delay in filing “inexcusable” and invoke the principle of laches.

During the argument below, Judge Silkworth inquired when the Appellants felt the Complaint in this case should have been filed in order for it to have been timely. (E.

182). Noting that Chapter 61 had been enacted on April 10<sup>th</sup>, counsel for the Appellants responded that the case should have been filed “within three or four or five or six days after that”. (E. 183). When the Court responded, “It sounds like you’re suggesting that the plaintiff should have acted instantaneously”, counsel for the Appellants replied, “The answer is, Your Honor, the Court of Appeals in *Ross* said a person challenging an election has a duty, an obligation, to do it promptly. Now what is prompt? I can’t tell Your Honor it’s one day or five days.” (E. 131-132).

Thus, it is apparently the position of the Appellants that when the Maryland General Assembly enacts a bill that is at variance with the Maryland Constitution, the citizens of this State have perhaps as few as 24 hours to initiate legal proceedings to protect their fundamental constitutional rights, or laches will forever bar them from seeking to preserve, protect and defend their constitution. The Appellants cite no case authorities in support of this remarkable proposition.<sup>14</sup>

Rather, the Appellants focus on the “mechanics of an immediate election” and suggest that to enjoin early voting at this juncture might in some way “threaten” the 2006 primary election in September as well as the 2006 general election scheduled to be held over two months from now, in November. The Appellants fail to point to any “mechanics” related to early voting that could not be immediately halted for the primary election, much less for the general election.

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<sup>14</sup> The Appellants seem to acknowledge that the case of *Roskelly. v. Lamone*, \_\_\_ Md. \_\_\_ (No. 141 September Term, 2005)(July 25, 2006), which was filed on June 27<sup>th</sup>, was timely. (Appellants’ Brief, footnote 16) The instant case was filed just twenty days after *Roskelly*, on July 17<sup>th</sup>. The Appellants make no effort whatsoever to explain why such a twenty day delay was inexcusable or to detail what, if any, prejudice might have occurred due to such twenty day delay.

Indeed, Chapter 61 contains an explicit directive that,

“[b]eginning 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.” [emphasis supplied]

The Appellants have never claimed that these required notification efforts have begun, but clearly Chapter 61 both contemplates and directs that the principal efforts to inform the voters about early voting *may not even begin* until “30 days prior to each primary and general election”. In the case of the primary election, therefore, the critical 30 day notification period did not begin until August 13<sup>th</sup>, two days *after* Judge Silkworth issued his Memorandum Opinion and Order in this case.

One of the forms of notification required by Chapter 61 is “mailings to all registered voters”. In light of their oft-expressed concern about how the cancellation of early voting at this juncture could disrupt the elections this fall, it is passing curious that the Appellants failed to suggest to this Court that such required mailings could be used as a suitable vehicle to inform the voters that early voting has been ruled unconstitutional and therefore will not occur during this fall’s elections. Such mailings should easily solve the problem with “mechanics” that so concerns the Appellants.<sup>15</sup>

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<sup>15</sup> Furthermore, in the event that a few voters might fail to open their mail and might present themselves at the early voting locations to vote on designated early voting days, the State Board or county boards could station a representative at each early voting location to explain the situation and suggest that the voter consider voting by absentee ballot in the event the voter apprehended that he or she might be unable to vote in person on Election Day. The absentee ballot statutes provide that a voter may request an absentee ballot up until the closing of the polls on Election Day. §9-305(c) of the Election Law Article. According to the “Early Voting Guidelines” promulgated by the State Board of Elections, each early voting location is to be staffed by at least four election judges (E. 65), so the cancellation of early voting will mean that if one person were to be stationed at each early voting location to intercept errant voters, the election

Nonetheless, the Appellants argue that, because the Appellees delayed filed this case for three months after the enactment of Chapter 61<sup>16</sup>, and because during such three month period, the State Board of Elections spent time and money preparing for early voting, the Appellees' legal challenge to the constitutionality of the early voting statutes should be disallowed, thus enabling the State Board of Elections to spend considerably more time and money implementing the unconstitutional legislation.

In support of this counter-intuitive proposition, the Appellants principally rely upon *Ross v. State Board of Elections*, 387 Md. 649 (2005). In *Ross*, a Green Party candidate, who lost an election in a Baltimore City councilmanic district to a Democratic Party candidate 79% to 12%, waited until *three days after the general election* to file suit against the winning candidate. The gravamen of the suit was that, during the period before the general election, the Democrat had failed to file campaign finance reports required by state statute. In *Ross*, this Court held that the losing candidate himself was guilty of missing a statutory deadline - he was required by state statute to file his petition seeking judicial redress over a week before the general election. By waiting until after his statutory deadline had passed and waiting until after the general election was over, this Court held that the doctrine of laches barred his suit.

Of course, the facts in *Ross* were quite different from the facts in this case. In this case, there is no state statute setting a deadline for the filing of a suit challenging the

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boards would still be able to dispense with the services of at least three other employees at that site, doubtless resulting in a measurable cost savings for the election boards.

<sup>16</sup> Counsel for the Appellees stated on the record below that this case was filed on July 17<sup>th</sup> because "that's when the plaintiffs had hired us and we were ready to file". (E. 186) The Appellants' darkly suggest that the Appellees may have "made a tactical decision to delay filing suit while *Roskelly, et al. v. Lamone, et al.*, ... was pending." (Appellants' Brief, footnote 17); however, the instant case was filed on July 17<sup>th</sup>, while the decision of this Court in *Roskelly* wasn't released until July 25<sup>th</sup>.



constitutionality of Chapters 5 and 61; the only arguable statute of limitations is Maryland's generally applicable three-year statute; and, far from filing their suit *after* the general election, the Appellees initiated this case on July 17, 2006, *over eight weeks before* the primary election scheduled for September 12, 2006 and *over sixteen weeks before* the general election scheduled for November 7, 2006.<sup>17</sup>

There is, however, yet a more compelling reason why neither *Ross* nor the defense of laches applies in this case - this case involves a constitutional challenge to a statute that is intrinsically void and therefore is not subject to a laches defense. In *Ross*, the defendant had failed to adhere to certain procedural requirements contained in a statute. In such a circumstance, this Court held that laches could apply in order to bar the plaintiff's suit. Writing for the Court, however, Judge Battaglia included footnote 9, citing the earlier decision of this Court in *Schaeffer v. Anne Arundel County*, 338 Md. 75 (1995), which had applied laches to a claim based upon a procedural defect in the enactment of an ordinance. Footnote 9 specifically noted that *Schaeffer* had held that laches "would not apply if the ordinance were intrinsically void". *Ross*, 387 Md. 649, 671, footnote 9. Thus *Ross* recognized the rule in Maryland that laches does not apply if a legal challenge is to a public enactment that is intrinsically void.

*Schaeffer* presented a challenge to a county ordinance dealing with the county's retirement plan for its appointed and elected officials. The plaintiff waited until over four years after the ordinance had been enacted and then filed a complaint contending that the

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<sup>17</sup> In fact, the Appellants have explicitly acknowledged that the Plaintiffs' Complaint in this case was filed early enough that the courts should be able to resolve this case in a timely fashion. In a letter to The Honorable Thomas Ross dated July 19, 2006, contained in the record of this case, counsel for the Appellants stated, "Early voting will not commence until September 5, 2006. Thus, because the act sought to be enjoined is not imminent, there is no need for ... speed [in the handling of the case]."

publication of notices of the ordinance in the county newspapers at the time of the enactment, required by Article XI-A, Section 3 of the Maryland Constitution, had been defective. The decision of this Court, by Judge Karwacki, held that laches could apply in a case challenging an ordinance as void due merely to a procedural defect in its enactment, with no substantive objection to its validity. This Court also emphasized, however, that “the challenge in this case must be distinguished from a claim that the ... ordinance is intrinsically void”. *Schaeffer*, 338 Md. at 80. Thus, “we cannot allow plaintiffs to take a ‘wait and see’ approach to ordinances, challenging an ordinance many years after enactment on procedural grounds”; however, citing *Citizens for Responsible Government v. Kitsap County*, 52 Wash. App. 236, 239, 758 P. 2d 1009, 1011 (1988), “an ordinance that is clearly a usurpation of power ... can be attacked at any time....”

Actually, the full quote from *Citizens for Responsible Government v. Kitsap County* is even more compelling than the portion excerpted by Judge Karwacki:

An ordinance that is clearly a usurpation of power, inconsistent with constitutional ... provisions ... is void and incapable of being validated. It can be attacked at any time, regardless of previous acquiescence or the amount of time since its passage.

Chapters 5 and 61 fall precisely into the category defined by Judge Battaglia and Judge Karwacki in *Ross* and *Schaeffer* on behalf of this Court. They are statutes that represent usurpations of power placed off-limits by the Maryland Constitution. They are flatly inconsistent with three separate provisions of the Maryland Constitution and therefore are intrinsically void. Therefore, laches does not apply in this case. To put it simply and colloquially, if the General Assembly passes legislation that is at variance

with the Maryland Constitution, the State may not prevent its citizens from challenging its constitutionality by claiming that they did not get to the courthouse in time.

### CONCLUSION

On July 28, 2006, this Court filed Duckworth v. Deane, \_\_\_, Md. \_\_\_ (No. 101, September Term, 2004)(July 28, 2006), where, in conclusion, Judge Eldridge reprised the judicial role in testing legislation and quoted extensively from Chief Judge Chase in Whittington v. Polk, 1 H&J 236 (1802). The Appellees note in particular Judge Eldridge's quotation of Judge Chase:

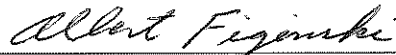
The Legislature, being the creature of the Constitution, and acting within a circumscribed sphere, is not omnipotent, and cannot rightfully exercise any power, but that which is derived from that instrument.

\* \* \*

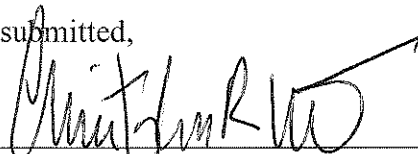
It is the office and province of the Court to decide all questions of law which are judicially brought before them, according to the established mode of proceeding, and to determine whether an Act of the Legislature, which assumes the appearance of a law, is clothed with the garb of authority, is made pursuant to the power vested by the Constitution in the Legislature; for if it is not the result emanation of authority derived from the Constitution, it is not law, and cannot influence the judgment of the Court in the decision of the question before them.

Below the Appellees concluded their Trial Memorandum with this quotation. The Appellees again conclude on this note and respectfully request this Court to affirm the well-reasoned rulings of Judge Silkworth below.

Respectfully submitted,



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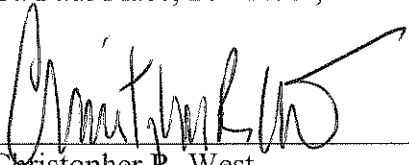


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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that on this 23rd day of August, 2006, a copy of the foregoing Appellees' Brief was sent by email and two copies of the foregoing Appellee's Brief were served by hand delivery on: J. Joseph Curran, Jr. and Michael D. Berman, Esquire, Office of the Attorney General, 200 St. Paul Place, 20<sup>th</sup> Floor, Baltimore, Maryland 21202, Attorneys for Appellants.

  
\_\_\_\_\_  
Christopher R. West  
Attorney for Appellees

**PERTINENT CONSTITUTIONAL PROVISIONS, STATUTES, RULES AND  
REGULATIONS**

**MD. CONSTITUTION**

Maryland Declaration of Rights

**Article 7. Elections to be free and frequent; right of suffrage.**

That the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government; for this purpose, elections ought to be free and frequent; and every citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage. (1971, ch. 357, ratified Nov. 7, 1972.)

Article I.

**Section 1. Elections to be by ballot; qualifications of voters; election districts.**

All elections shall be by ballot. Every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which he resides at all elections to be held in this State. A person once entitled to vote in any election district, shall be entitled to vote there until he shall have acquired a residence in another election district or ward in this State. (1904, ch. 96, rejected Nov. 7, 1905; 1908, ch. 26, rejected Nov. 2, 1909; 1956, ch. 99, ratified Nov. 6, 1956; 1969, ch. 784, ratified Nov. 3, 1970; 1977, ch. 681, ratified Nov. 7, 1978.)

**Section 2. Registration of voters.**

The General Assembly shall provide by law for a uniform Registration of the names of all the voters in this State, who possess the qualifications prescribed in this Article, which Registration shall be conclusive evidence to the Judges of Election of the right of every person, thus registered, to vote at any election thereafter held in this State; but no person shall vote, at any election, Federal or State, hereafter to be held in this State, or at any municipal election in the City of Baltimore, unless his name appears in the list of registered voters; the names of all persons shall be added to the list of qualified voters by the officers of Registration, who have the qualifications prescribed in the first section of this Article, and who are not disqualified under the provisions of the second and third sections thereof. (1956, ch. 99, ratified Nov. 6, 1956; 1977, ch. 681, ratified Nov. 7, 1978.)

### **Section 3. Absentee voting.**

The General Assembly of Maryland shall have power to provide by suitable enactment for voting by qualified voters of the State of Maryland who are absent at the time of any election in which they are entitled to vote and for voting by other qualified voters who are unable to vote personally and for the manner in which and the time and place at which such absent voters may vote, and for the canvass and return of their votes. (1918, ch. 20, ratified Nov. 5, 1918; 1953, ch. 480, ratified Nov. 2, 1954; 1956, ch. 100, ratified Nov. 6, 1956; 1974, ch. 881, ratified Nov. 5, 1974; 1977, ch. 681, ratified Nov. 7, 1978.)

### **Section 4. Right to vote of persons convicted of certain crimes and persons under guardianship.**

The General Assembly by law may regulate or prohibit the right to vote of a person convicted of infamous or other serious crime or under care or guardianship for mental disability. (1972, ch. 368, ratified Nov. 7, 1972; 1977, ch. 681, ratified Nov. 7, 1978.)

### **Section 5. Change of residence for purpose of voting; illegal voting.**

It shall be the duty of the General Assembly to pass Laws to punish, with fine and imprisonment, any person, who shall remove into any election district, or precinct of any ward of the City of Baltimore, not for the purpose of acquiring a bona fide residence therein, but for the purpose of voting at an approaching election, or, who shall vote in any election district, or ward, in which he does not reside, (except in the case provided for in this Article,) or shall, at the same election, vote in more than one election district, or precinct, or shall vote, or offer to vote, in any name not his own, or in place of any other person of the same name, or shall vote in any county in which he does not reside. (1977, ch. 681, ratified Nov. 7, 1978.)

*Cited in* Hanrahan v. Alterman, 41 Md. App. (1979); *In re Legislative Districting*, 370 Md. 71, 396 A.2d 272, cert. denied, 284 Md. 744 312, 805 A.2d 292 (2002).

### **Section 6. Buying and selling votes.**

If any person shall give, or offer to give, directly or indirectly, any bribe, present or reward, or any promise, or any security, for the payment or delivery of money, or any other thing, to induce any voter to refrain from casting his vote, or to prevent him in any way from voting, or to procure a vote for any candidate or person proposed, or voted for as the elector of President, and Vice President of the United States, or Representative in Congress or for any office of profit or trust, created by the Constitution or Laws of this State, or by the Ordinances, or Authority of the Mayor and City Council of Baltimore, the person giving, or offering to give and the person receiving the same, and any person who gives or causes to be given, an illegal vote, knowing it to be such, at any election to be hereafter held in this State, shall, on conviction in a Court of Law, in addition to the penalties now or hereafter to be imposed by law, be forever disqualified to hold any office of profit or trust, or to vote at any election thereafter. But the General Assembly may in its discretion remove the above penalty and all other penalties upon the vote seller so as to place the penalties for the purchase of votes on the vote buyer alone. (1912, ch. 602, ratified Nov. 4, 1913; 1977, ch. 681, ratified Nov. 7, 1978.)

**Section 7. Laws to be passed for preservation of purity of elections.**

The General Assembly shall pass Laws necessary for the preservation of the purity of Elections. (1977, ch. 681, ratified Nov. 7, 1978.)

**Section 8. Legislature to make provisions for contested elections.**

The General Assembly, shall make provisions for all cases of contested elections of any of the officers, not herein provided for. (1977, ch. 681, ratified Nov. 7, 1978.)

Article II

**Section 2. Time, place and manner of holding election for Governor and Lieutenant Governor; qualifications of voters.**

An election for Governor and Lieutenant Governor, under this Constitution, shall be held on the Tuesday next after the first Monday of November, in the year nineteen hundred and seventy-four, and on the same day and month in every fourth year thereafter, at the places of voting for Delegates to the General Assembly; and every person qualified to vote for Delegate, shall be qualified and entitled to vote for Governor and Lieutenant Governor; the election to be held in the same manner as the election of Delegates, and the returns thereof, under seal, to be addressed to the Speaker of the House of Delegates, and enclosed and transmitted to the Secretary of State, and delivered to said Speaker, at the commencement of the session of the General Assembly, next ensuing said election. (1956, ch. 99, ratified Nov. 6, 1956; 1970, ch. 532, ratified Nov. 3, 1970.)

### Article III

#### **Section 29. Style and titles of laws; laws to embrace but one subject; revival or amendment; amendment of Code; enactment of laws not amendatory of Code.**

The style of all Laws of this State shall be, "Be it enacted by the General Assembly of Maryland:" and all Laws shall be passed by original bill; and every Law enacted by the General Assembly shall embrace but one subject, and that shall be described in its title; and no Law, nor section of Law, shall be revived, or amended by reference to its title, or section only; nor shall any Law be construed by reason of its title, to grant powers, or confer rights which are not expressly contained in the body of the Act; and it shall be the duty of the General Assembly, in amending any article, or section of the Code of Laws of this State, to enact the same, as the said article, or section would read when amended. And whenever the General Assembly shall enact any Public General Law, not amendatory of any section, or article in the said Code, it shall be the duty of the General Assembly to enact the same, in articles and sections, in the same manner, as the Code is arranged, and to provide for the publication of all additions and alterations, which may be made to the said Code.

#### **Section 49. Power of legislature to regulate elections.**

The General Assembly shall have power to regulate by Law, not inconsistent with this Constitution, all matters which relate to the Judges of election, time, place and manner of holding elections in this State, and of making returns thereof.



## Article IV

### **Section 3. Election of judges; term of office; retirement.**

Except for the Judges of the District Court, the Judges of the several Courts other than the Court of Appeals or any intermediate courts of appeal shall, subject to the provisions of Section 5 of this Article of the Constitution, be elected in Baltimore City and in each county, by the qualified voters of the city and of each county, respectively, all of the said Judges to be elected at the general election to be held on the Tuesday after the first Monday in November, as now provided for in the Constitution. Each of the said Judges shall hold his office for the term of fifteen years from the time of his election, and until his successor is elected and qualified, or until he shall have attained the age of seventy years, whichever may first happen, and be reeligible thereto until he shall have attained the age of seventy years, and not after. In case of the inability of any of said Judges to discharge his duties with efficiency, by reason of continued sickness, or of physical or mental infirmity, it shall be in the power of the General Assembly, two-thirds of the members of each House concurring, with the approval of the Governor to retire said Judge from office. (1931, ch. 479, ratified Nov. 8, 1932; 1953, ch. 607, ratified Nov. 2, 1954; 1966, ch. 10, ratified Nov. 8, 1966; 1969, ch. 791, rejected Nov. 3, 1970; 1976, ch. 542, ratified Nov. 2, 1976; 1977, ch. 681, ratified Nov. 7, 1978.)

## Article XV

### **Section 7. Time for holding general elections.**

All general elections in this State shall be held on the Tuesday next after the first Monday in the month of November, in the year in which they shall occur. (1956, ch. 99, ratified Nov. 6, 1956.)

## Article XVII

### **Section 1. Purpose of article; "officers" defined.**

The purpose of this Article is to reduce the number of elections by providing that all State and county elections shall be held only in every fourth year, and at the time provided by law for holding congressional elections, and to bring the terms of appointive officers into harmony with the changes effected in the time of the beginning of the terms of elective officers. The administrative and judicial officers of the State shall construe the provisions of this Article so as to effectuate that purpose. For the purpose of this Article only the word "officers" shall be construed to include those holding positions and other places of employment in the state and county governments whose terms are fixed by law, but it shall not include any appointments made by the Board of Public Works, nor appointments by the Governor for terms of three years. (1922, ch. 227, ratified Nov. 7, 1922; 1977, ch. 681, ratified Nov. 7, 1978; 1999, ch. 119.)

### **Section 2. When elections for State and county officers to be held.**

Except for a special election that may be authorized to fill a vacancy in a County Council under Article XI-A, Section 3 of the Constitution, elections by qualified voters for State and county officers shall be held on the Tuesday next after the first Monday of November, in the year nineteen hundred and twenty-six, and on the same day in every fourth year thereafter. (1922, ch. 227, ratified Nov. 7, 1922; 1996, ch. 81, ratified Nov. 5, 1996; 1999, ch. 119.)

### **Section 9. Provisions inconsistent with article repealed or abrogated.**

In the event of any inconsistency between the provisions of this Article and any of the other provisions of the Constitution, the provisions of this Article shall prevail, and all other provisions shall be repealed or abrogated to the extent of such inconsistency. (1922, ch. 227, ratified Nov. 7, 1922; 1977, ch. 681, ratified Nov. 7, 1978.)

MD. STATUTES

Ch. 5

2006 LAWS OF MARYLAND

CHAPTER 5

(Senate Bill 478)

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) (3) POLLING PLACES ESTABLISHED BY A LOCAL BOARD UNDER THIS SECTION SHALL MEET THE REQUIREMENTS OF § 10-101 OF THIS TITLE.

(H) 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 6  
(House Bill 622)

AN ACT concerning

Elections - Absentee Voting on Demand

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

BY repealing and reenacting, with amendments,

Article - Election Law

Section 9-304, 9-305, and 10-102

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

9-304.

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

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

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

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

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

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

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

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

9-305.

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

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

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

(3) in a written request that includes:

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

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

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

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

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

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

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

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

10-102.

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

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

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

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

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

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

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

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

Enacted January 18, 2006.

**CHAPTER 41**  
**(Senate Bill 124)**

AN ACT concerning

**Election Law - Protection of Voter's Confidential Information and Secrecy  
of Absentee Ballot Results**

FOR the purpose of creating an exception to the requirement to verify residence address of a voter whose personal information has been deemed confidential by a local board; requiring an election judge to conduct a certain alternative voter verification under certain circumstances; providing that certain absentee ballot election results may not be reported by precinct; making this Act an emergency measure; and generally relating to protecting confidential voter information and the secrecy of certain absentee ballot results.

BY repealing and reenacting, with amendments,

Article - Election Law

Section 10-310(a) and 11-402(b)

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**

10-310.

(a) For each individual who seeks to vote, an election judge, in accordance with instructions provided by the local board, shall:

(1) locate the individual's name in the precinct register and locate the preprinted voting authority card and then authorize the individual to vote a regular ballot;

(2) (i) if the individual's name is not found on the precinct register, search the inactive list and if the name is found, authorize the individual to vote a regular ballot; or

(ii) if the individual's name is not on the inactive list, refer the individual for provisional ballot voting under § 9-404 of this article;



(3) establish the identity of the voter by requesting the voter to state the month and day of the voter's birth and comparing the response to the information listed in the precinct register;

(4) (I) EXCEPT IF A VOTER'S PERSONAL INFORMATION HAS BEEN DEEMED CONFIDENTIAL BY THE LOCAL BOARD, verify the address of the voter's residence; OR

(II) CONDUCT AN ALTERNATIVE VERIFICATION AS ESTABLISHED BY THE STATE BOARD, IF THE VOTER'S PERSONAL INFORMATION HAS BEEN DEEMED CONFIDENTIAL BY THE LOCAL BOARD;

(5) if any changes to the voting authority card are indicated by a voter, make the appropriate changes in information on the card or other appropriate form; and

(6) have the voter sign the voting authority card and either issue the voter a ballot or send the voter to a machine to vote.

11-402.

(b) The statement prepared by the board of canvassers under [subsection (a) of] this section may not report the absentee vote separately by precinct.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act 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 7, 2006.

Ch. 61

2006 LAWS OF MARYLAND

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.

2-308.

(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.

(e) (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 (II) 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  
ELLCOTT 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.

(2) 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 ye 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.



## Courts Article

### § 6-201. General rule.

(a) *Civil actions.*- Subject to the provisions of §§ 6-202 and 6-203 and unless otherwise provided by law, a civil action shall be brought in a county where the defendant resides, carries on a regular business, is employed, or habitually engages in a vocation. In addition, a corporation also may be sued where it maintains its principal offices in the State.

(b) *Multiple defendants.*- If there is more than one defendant, and there is no single venue applicable to all defendants, under subsection (a), all may be sued in a county in which any one of them could be sued, or in the county where the cause of action arose.

## Election Law Article

### § 1-101. Definitions.

(a) *In general.*- In this article the following words have the meanings indicated unless a different meaning is clearly intended from the context.

(v) *Election.*-

(1) "Election" means the process by which voters cast votes on one or more contests under the laws of this State or the United States.

(2) "Election" includes, unless otherwise specifically provided in this article, all general elections, primary elections, and special elections.

(3) "Election" does not include, unless otherwise specifically provided in this article, a municipal election other than in Baltimore City.

### § 9-301. In general.

(a) *Applicability.*- This subtitle applies to every election governed by this article.

(b) *Forms.*- The State Board shall prescribe all forms required to comply with:

(1) this subtitle; and

(2) any requirements of relevant federal law.

### **§ 9-302. Documentation by local boards.**

Each local board shall maintain a full record of absentee voting in the county, including, for each absentee voter:

- (1) the date and time of the board's receipt of an application for an absentee ballot;
- (2) the action taken with regard to the application;
- (3) the appropriate ballot style;
- (4) the date of issuance of a ballot;
- (5) if mailed, the address to which the ballot is sent;
- (6) the date and time of the receipt of a voted absentee ballot; and
- (7) any other information specified by the State Board.

### **§ 9-303. Guidelines.**

(a) *Established by State Board.*- The State Board shall establish guidelines for the administration of absentee voting by the local boards.

(b) *Content.*- The guidelines shall provide for:

- (1) the application process;
- (2) late application for absentee ballots;
- (3) ballot security, including storage of returned ballots;
- (4) determining timeliness of receipt of applications and ballots, including applications and ballots for overseas voters;
- (5) the canvass process;
- (6) notice of the canvass to candidates, political parties, campaign organizations, news media, and the general public;
- (7) observers of the process;
- (8) review of voted ballots and envelopes for compliance with the law and for machine tabulation acceptability;

(9) standards for disallowance of ballots during the canvass; and

(10) storage and retention of ballots following canvass and certification.

(c) *Periodic assessment and revision of guidelines.*- The State Board shall:

(1) in consultation with the local boards, assess the guidelines before each primary election; and

(2) revise the guidelines if indicated.

#### **§ 9-304. Qualification for absentee voting.**

(a) *In general.*- A registered voter may vote by absentee ballot at an election if the voter:

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

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

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

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

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

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

(b) *Compliance with federal law.*- An individual may vote by absentee ballot if authorized under an applicable federal law.

#### **§ 9-305. Applications for absentee ballot.**

(a) *Application.*- An application for an absentee ballot, signed by the voter, may be made:

- (1) on a form produced by the local board and supplied to the voter on request;
- (2) on a form provided under federal law; or
- (3) in a written request that includes:
  - (i) the voter's name and residence address;
  - (ii) the address to which the ballot is to be mailed, if different from the residence address; and
  - (iii) the reason, as authorized in § 9-304 of this subtitle, for absentee voting.

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

(c) *Late application.*-

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

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

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

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

**§ 9-306. Review of application; issuance or rejection.**

(a) *Review of application.*- Promptly after receipt of an application, the election director shall review the application and determine whether the applicant qualifies to vote by absentee ballot.

(b) *Transmittal of ballot.*- If the applicant qualifies to vote by absentee ballot, the local board shall send the ballot:

(1) as soon as practicable after receipt of the request; or

(2) if the ballots have not been received from the printer, as soon as practicable after the local board receives delivery of the ballots.

(c) *Rejection of application.*-

(1) If the members of the local board determine that the applicant is not entitled to vote by absentee ballot, the local board shall notify the applicant as soon as practicable after receipt of the application of the reasons for the rejection.

(2) (i) The local board may delegate the determination under paragraph (1) of this subsection to the staff of the local board.

(ii) If the determination has been delegated, the applicant may appeal the rejection to the members of the local board, who shall decide the appeal as expeditiously as practicable.

(d) *Number of ballots issued to a voter.*- Not more than one absentee ballot may be issued to a voter unless the election director of the local board has reasonable grounds to believe that an absentee ballot previously issued to the voter has been lost, destroyed, or spoiled.

**§ 9-307. Use of an agent in absentee ballot process.**

(a) *Use authorized.*- A qualified applicant may designate a duly authorized agent to pick up and deliver an absentee ballot under this subtitle.

(b) *Qualifications of agent.*- An agent of the voter under this section:

(1) must be at least 18 years old;

- (2) may not be a candidate on that ballot;
- (3) shall be designated in a writing signed by the voter under penalty of perjury; and
- (4) shall execute an affidavit under penalty of perjury that the ballot was:
  - (i) delivered to the voter who submitted the application;
  - (ii) marked and placed in an envelope by the voter, or with assistance as allowed by regulation, in the agent's presence; and
  - (iii) returned to the local board by the agent.

**§ 9-308. Assistance in marking ballot.**

(a) *In general.*- A voter who requires assistance in casting an absentee ballot by reason of disability, inability to write, or inability to read the ballot may be assisted by any individual other than:

- (1) a candidate who is on that ballot;
- (2) the voter's employer or an agent of the employer; or
- (3) an officer or agent of the voter's union.

(b) *Certification of assistance.*- An individual rendering assistance under this section shall execute a certification as prescribed by the State Board and included in the instructions under § 9-309 of this subtitle.

**§ 9-309. Instructions.**

An absentee ballot shall be accompanied by instructions, prescribed by the State Board, for marking and returning the ballot.

### **§ 9-310. Envelopes.**

(a) *Required; prescribed by State Board.*- An absentee ballot shall be enclosed in specially printed envelopes, the form and content of which shall be prescribed by the State Board.

(b) *Optional procedures.*-

(1) A local board may use either two envelopes or three envelopes.

(2) If two envelopes are used, the inner envelope shall be designated the "ballot/return envelope", and, when issued, it shall fit inside the envelope designated the "outgoing envelope".

(3) If three envelopes are used, the innermost envelope shall be designated the "ballot envelope", which shall fit inside the envelope designated the "return envelope", both of which, when issued, shall fit inside the envelope designated the "outgoing envelope".

(c) *Oath.*- When voted and returned to the local board, an absentee ballot shall be enclosed in a ballot envelope or ballot/return envelope, on which has been printed an oath prescribed by the State Board.

### **§ 9-311. Additional compensation and expenses.**

(a) *In general.*-

(1) The members of a local board shall each be entitled to extra compensation, in addition to their regular compensation, for duties actually performed under this subtitle.

(2) Except as provided in paragraph (3) of this subsection, the amount of the extra compensation shall be \$10 per day, or a greater amount set by the governing body of the county.

(3) In Baltimore City, the members of the local board shall receive \$200 per election for duties under this subtitle.

(b) *Additional expenses.*- The governing body of a county shall provide to the local board of the county an amount that is reasonable and necessary to pay for expenses, including the employment of temporary personnel, required for performing the duties required under this subtitle.

(c) *Payment to be the same as other appropriations.*- Payments under this section shall be made by the county governing body in the same manner that other funding is provided to the local board.



**§ 9-312. Penalty for offenses relating to absentee voting.**

Any person who is convicted of a violation of any of the provisions of this subtitle is subject to a fine of not more than \$1,000 or imprisonment for not more than 2 years or both.

**§ 10-301. Hours for voting.**

(a) *Hours - In general.*- On an election day, a polling place shall be open from 7 a.m. until 8 p.m.

(b) *Closing hour.*- A voter who has appeared at a polling place by the closing hour to cast a ballot shall be allowed to vote.

**§ 10-302. Delivery of equipment and supplies.**

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.

**§ 10-303. Authority and duties of election judges.**

(a) *In general.*- Under the supervision of a chief judge, an election judge shall:

(1) carry out the tasks assigned by the local board, including those set forth in any election judge instruction manual developed in accordance with § 10-206 of this title, during the period of time that begins before the election through the close of the polls and the return of materials to the local board; and

(2) take measures throughout election day to assure that:

- (i) each voter's right to cast a ballot in privacy is maintained;
- (ii) the integrity of the voting process is preserved;
- (iii) the accuracy of the counting process is protected;
- (iv) order in the polling place is maintained; and
- (v) all election laws are observed.

(b) *Wearing badge on election day.*- While serving as an election judge on an election day, an election judge shall wear a badge that:

- (1) is in plain view;
- (2) identifies the person as an election judge; and

(3) identifies the person by name and by the ward and precinct or election district for which the person is an election judge.

(c) *Authority to keep order in the polling place.*- An election judge shall:

- (1) keep the peace; and
- (2) order the arrest of any person who:
  - (i) breaches the peace;
  - (ii) breaches any provision of this article; or

(iii) interferes with the work of the judges in conducting the election and carrying out their assigned tasks.

(d) *Protection of challengers and watchers.*-

(1) An election judge shall protect a challenger or watcher in the exercise of the rights of a challenger or watcher as provided in § 10-311 of this subtitle.

(2) (i) An election judge is not required to admit a challenger or watcher to a polling place before the polls open if the challenger or watcher was not present at the polling place at least one-half hour before its opening.

(ii) An election judge may require challengers and watchers to leave a polling place before it opens if a majority of the election judges present agrees that the presence of the challengers and watchers will prevent the timely opening of the polling place.

(3) An election judge shall designate reasonable times for challengers and watchers to examine polling lists.

**§ 10-304. Duties of police officers.**

(a) *In general.*-

(1) A police officer who is on duty at a polling place shall obey the order of an election judge for that polling place.

(2) A police officer making an arrest under an order of an election judge is fully protected in so doing as if the police officer received a valid warrant to make the arrest.

(b) *Protection of challengers and watchers.*- A police officer who is on duty at a polling place shall protect a challenger or watcher in the discharge of the duties of the challenger or watcher.

**§ 10-305. Vacancy in polling place staff during voting hours.**

(a) *Appointment of substitute election judge.*- If there is a vacancy in the polling place staff during voting hours:

(1) the local board may fill the vacancy with a substitute election judge who has been recruited and trained; or

(2) an election judge who is present at the polling place may fill the position of the absent election judge by appointing a person registered with the same party affiliation as the absent election judge.

(b) *Procedures.*- If a substitute election judge is appointed under subsection (a) of this section:

(1) either the election director, the election director's designee, or the election judge making the substitute appointment shall administer the oath required under § 10-204 of this title; and

(2) a chief election judge shall document any change in the polling place staff in the records of the polling place.

**§ 10-306. Information for voters at polling place.**

*(a) Development of instructions; preparation of materials.-*

(1) The State Board, in consultation with the election directors of the local boards, shall specify and produce the following informational materials to be posted in each polling place:

(i) a specimen ballot for that precinct;

(ii) instructions relating to the availability of assistance to elderly and disabled voters;

(iii) information regarding the date of the election and the hours during which the polling places will be open;

(iv) instructions on how to vote, including how to cast a vote;

(v) instructions for mail-in registrants and first-time voters;

(vi) general information on voting rights under applicable federal and State laws and instructions on how to contact the appropriate local board if these rights are alleged to have been violated;

(vii) information regarding provisional voting, including:

1. information on the right of an individual to cast a provisional ballot;

2. how to fill out the provisional ballot application and cast the provisional ballot; and

3. the standards that will be applied in determining whether a provisional ballot will be counted; and

(viii) general information on federal and State laws regarding prohibitions on acts of fraud and misrepresentation.

(2) A local board may produce other materials appropriate for the polling places in the county.

*(b) Posting of information.-* Before the polls open, the election judges for each precinct shall post all information specified under subsection (a) of this section.

**§ 10-307. Responsibilities of the local board.**

(a) *In general.*- The members of each local board shall be available as needed on an election day.

(b) *Assistance to polling place staff.*- The local board shall provide the staff of each polling place with the means to contact and obtain support from the office of the local board on election day.

**§ 10-308. Access to voting room.**

(a) *Individuals allowed to have access to voting room.*- An election judge shall allow the following individuals to have access to the voting room at a polling place:

- (1) a voter;
- (2) an individual who accompanies a voter in need of assistance in accordance with § 10-310(c) of this subtitle;
- (3) polling place staff;
- (4) a member or other representative of the State Board or local board;
- (5) an accredited watcher or challenger under § 10-311 of this subtitle;
- (6) an individual under the age of 13 who accompanies a voter in accordance with § 10-310(c) of this subtitle, provided that the individual is in the care of the voter and does not disrupt or interfere with normal voting procedures; and
- (7) any other individual authorized by the State Board or local board.

(b) *Limitation.*- Notwithstanding the provisions of subsection (a)(6) of this section, not more than two individuals under the age of 13 may accompany a voter in accordance with § 10-310(c) of this subtitle.

**§ 10-309. Responsibilities of election judges on election day - Before the polls open.**

(a) *In general.*- In accordance with instructions provided by the election director, an election judge shall arrive at the polling place and, under the direction of the chief judge, set up the polling place to assure that the polls will be open and operational at 7 a.m.

(b) *Admission of challengers and watchers.*- Except as provided in § 10-303(d)(2)(ii) of this subtitle, an election judge shall admit an accredited challenger or watcher one-half hour before the polling place is open.

**§ 10-310. Same - Voting hours.**

(a) *Qualification of voters.*- For each individual who seeks to vote, an election judge, in accordance with instructions provided by the local board, shall:

(1) locate the individual's name in the precinct register and locate the preprinted voting authority card and then authorize the individual to vote a regular ballot;

(2) (i) if the individual's name is not found on the precinct register, search the inactive list and if the name is found, authorize the individual to vote a regular ballot; or

(ii) if the individual's name is not on the inactive list, refer the individual for provisional ballot voting under § 9-404 of this article;

(3) establish the identity of the voter by requesting the voter to state the month and day of the voter's birth and comparing the response to the information listed in the precinct register;

(4) verify the address of the voter's residence;

(5) if any changes to the voting authority card are indicated by a voter, make the appropriate changes in information on the card or other appropriate form; and

(6) have the voter sign the voting authority card and either issue the voter a ballot or send the voter to a machine to vote.

(b) *Right to vote.*- On the completion of the procedures set forth in subsection (a) of this section, a voter may vote in accordance with the procedures appropriate to the voting system used in the polling place.

(c) *Instruction of and assistance to voters.*-

(1) Before a voter enters a voting booth, at the request of the voter, an election judge shall:

(i) instruct the voter about the operation of the voting system; and

(ii) allow the voter an opportunity to operate a model voting device, if appropriate to the voting system in use.

(2) (i) 1. After a voter enters the voting booth, at the request of the voter, two election judges representing different political parties shall instruct the voter on the operation of the voting device.

2. An election judge may not suggest in any way how the voter should vote for a particular ticket, candidate, or position on a question.

3. After instructing the voter, the election judges shall exit the voting booth and allow the voter to vote privately.

(ii) A voter may take into the polling place any written or printed material to assist the voter in marking or preparing the ballot.

(3) (i) Except as provided in subparagraph (ii) of this paragraph, a voter who requires assistance in marking or preparing the ballot because of a physical disability or an inability to read the English language may choose any individual to assist the voter.

(ii) A voter may not choose the voter's employer or agent of that employer or an officer or agent of the voter's union to assist the voter in marking the ballot.

(4) If the voter requires the assistance of another in voting, but declines to select an individual to assist, an election judge, in the presence of another election judge that represents another political party, shall assist the voter in the manner prescribed by the voter.

(5) An individual assisting a voter may not suggest in any way how the voter should vote for a particular ticket, candidate, or position on a question.

(6) If a voter requires assistance under paragraph (4) or (5) of this subsection, the election judge shall record, on a form prescribed by the State Board, the name of the voter who required assistance and the name of the individual providing assistance to the voter.

(7) Except as provided in paragraph (3) or (4) of this subsection, an individual over the age of 12 years may not accompany a voter into a voting booth.

### **§ 10-311. Challengers and watchers.**

(a) *Designation and removal of challengers and watchers.-*

(1) The following persons or entities have the right to designate a registered voter as a challenger or a watcher at each place of registration and election:

(i) the State Board for any polling place in the State;

- (ii) a local board for any polling place located in the county of the local board;
- (iii) a candidate;
- (iv) a political party; and
- (v) any other group of voters supporting or opposing a candidate, principle, or proposition on the ballot.

(2) A person who appoints a challenger or watcher may remove the challenger or watcher at any time.

(b) *Rights of challengers and watchers.*- Except as provided in § 10-303(d)(2) of this subtitle and subsection (d) of this section, a challenger or watcher has the right to:

- (1) enter the polling place one-half hour before the polls open;
- (2) enter or be present at the polling place at any time when the polls are open;
- (3) remain in the polling place until the completion of all tasks associated with the close of the polls under § 10-314 of this subtitle and the election judges leave the polling place;
- (4) maintain a list of registered voters who have voted, or individuals who have cast provisional ballots, and take the list outside of the polling place; and
- (5) enter and leave a polling place for the purpose of taking outside of the polling place information that identifies registered voters who have cast ballots or individuals who have cast provisional ballots.

(c) *Certificate.*-

(1) (i) A certificate signed by any party or candidate shall be sufficient evidence of the right of a challenger or watcher to be present in the voting room.

(ii) The State Board shall prescribe a form that shall be supplied to the challenger or watcher by the person or entity designating the challenger or watcher.

(2) A challenger or watcher shall be positioned near the election judges and inside the voting room so that the challenger or watcher may see and hear each person as the person offers to vote.

(d) *Prohibited activities.*-

(1) A challenger or watcher may not attempt to:

- (i) ascertain how a voter voted or intends to vote;
- (ii) converse in the polling place with any voter;



(iii) assist any voter in voting; or

(iv) physically handle an original election document.

(2) An election judge may eject a challenger or watcher who violates the prohibitions under paragraph (1) of this subsection.

(e) *Individuals other than accredited challengers or watchers.*-

(1) Except as provided in paragraphs (2) and (3) of this subsection, an election judge shall permit an individual other than an accredited challenger or watcher who desires to challenge the right to vote of any other individual to enter the polling place for that purpose.

(2) A majority of the election judges may limit the number of nonaccredited challengers and watchers allowed in the polling place at any one time for the purpose of challenging the right of an individual to vote.

(3) A nonaccredited challenger or watcher shall leave the polling place as soon as a majority of the election judges decides the right to vote of the individual challenged by the challenger or watcher.

(4) In addition to restrictions provided under this subsection, all restrictions on the actions of an accredited challenger or watcher provided under this subtitle apply to a nonaccredited challenger or watcher.

#### **§ 10-312. Challenge of an individual's right to vote.**

(a) *Grounds for challenge.*- The right of an individual to vote may be challenged at the polls only on the grounds of identity.

(b) *In general.*- A challenge to an individual's right to vote shall be made before the individual is issued a ballot or a voting authority card.

(c) *Procedure at time of challenge.*- If a challenge is made, the election judge receiving the challenge shall:

(1) require the challenger to provide in writing, under penalty of perjury, the reasons for the challenge;

(2) offer the challenged individual the opportunity to:

(i) cast a provisional ballot; and

- (ii) submit an attestation, witnessed by the election judge, of the individual's identity; and
- (3) submit the provisional ballot and other materials related to the challenge to the local board.

(d) *Local board determination.*- During the canvass of provisional ballots, the local board shall determine, based on the information submitted by the challenger and the challenged individual, whether the challenged individual is:

- (1) the registered voter he or she claims to be; and
- (2) otherwise qualified to vote.

### **§ 10-313. Write-in voting.**

(a) *Write-in voting permitted in certain elections.*- In any general election or special general election, a voter may write in a name for any office.

(b) *Responsibility of election judge.*-

(1) When requested by a voter, an election judge shall provide information on write-in voting.

(2) (i) If a voter requests information on write-in voting, an election judge shall assure that the voter is fully informed of the procedure before voting.

(ii) If a voter is unable to write, the voter may have assistance as provided in § 10-310(c) of this subtitle.

### **§ 10-314. Closing of the polls.**

(a) *Procedures.*-

(1) The local board shall provide election judges with detailed procedures for the closing of the polls, specific to the voting system used.

(2) The procedures shall include directions on:

(i) the tabulation, recording, and reporting of votes if these activities are undertaken in the polling place;

- (ii) the preparation, signing, and sealing of documents and other election materials;
- (iii) the security of all equipment and materials in the polling place; and
- (iv) the return of equipment and materials to the local board.

(b) *Admission of watchers to hear election results.*- If election results are produced in the polling place, the election judge shall admit watchers to hear the announced results.

(c) *Release of election judge from duty.*- A chief judge shall release an election judge from duty after the completion of the election judge's assigned tasks.

#### **§ 10-315. Time off for employees to vote.**

(a) *In general.*- Every employer in the State shall permit any employee who claims to be a registered voter in the State a period not to exceed 2 hours absence from work on election day in order to cast a ballot if the employee does not have 2 hours of continuous off-duty during the time that the polls are open.

(b) *Paid leave.*- The employer shall pay the employee for the 2 hours absence from work.

(c) *Proof of voting required.*-

(1) Each employee shall furnish to the employer proof that the employee has voted or attempted to vote.

(2) The proof that an employee has voted or attempted to vote shall be on a form prescribed by the State Board.

#### **§ 11-101. Definitions.**

(a) *In general.*- In this title the following words have the meanings indicated.

(b) *Board of canvassers.*- "Board of canvassers" means the local board of elections in a county after the local board organizes itself for the purpose of canvassing the vote after an election in that county.

(c) *Canvass.*-

(1) "Canvass" means the entire process of vote tallying, vote tabulation, and vote verification or audit, culminating in the production and certification of the official election results.

(2) For absentee ballots, the "canvass" includes the opening of any envelope accompanying an absentee ballot and the assembly and review of absentee ballots in preparation for vote tallying.

(3) For provisional ballots, the "canvass" includes the review of the provisional ballot applications described in § 11-303 of this title and the assembly and review of provisional ballots in preparation for vote tallying.

(d) *Counting center.*- "Counting center" means one or more central locations designated by a local board to conduct the canvass.

(e) *Removable data storage device.*- "Removable data storage device" means a read-only memory device that is programmed to record votes as they are cast on an electronic voting system.

(f) *Unofficial returns.*-

(1) "Unofficial returns" means a vote tabulation reported on election night after the polls close.

(2) "Unofficial returns" does not include the absentee ballot count or the provisional ballot count.

(g) *Vote tabulation or vote counting.*- "Vote tabulation" or "vote counting" means the aggregation of the votes cast by individual voters to produce vote totals at any level.

(h) *Vote tallying.*- "Vote tallying" means the recording of votes cast by individual voters on a certified voting system whether done by:

- (1) a mechanical lever voting machine;
- (2) an electronic voting device; or
- (3) making marks manually on a tally sheet.

### **§ 11-202. Election judges - Procedures for vote counting.**

(a) *In general.*-

(1) Each qualified voter present at the polls at 8 p.m. on election day shall be allowed to vote before the election judges commence their duties under this section.

(2) In accordance with the provisions of this article and regulations adopted by the State Board, after the last voter has voted in an election, the election judges shall follow the instructions issued by the election director for closing the polls and for performing the tasks required in the postclosing period.

(b) *Specific duties.*- In accordance with this section, the election judges shall:

(1) secure the voting system to prevent further voting;

(2) if appropriate to the voting system, record the vote, produce vote totals for the polling place, and announce results to those present;

(3) complete all documents, records, and reports required by law or regulation after the closing of the polls;

(4) perform any other tasks assigned by the election director;

(5) assemble and account for materials to be returned to the local board, including, if applicable for the voting system used in that election:

(i) removable data storage devices from voting equipment;

(ii) voted ballots;

(iii) precinct registers;

(iv) voting authority cards;

(v) signs and posters;

(vi) records, reports, logs, affidavits, certificates, and other documents;

(vii) keys to voting devices;

(viii) poll books; and

(ix) any other materials specified by the election director;

(6) assure that equipment and materials left in the polling place for retrieval at a later time are stored in a secure manner; and

(7) deliver materials and equipment to the local board and obtain receipts from the board certifying the delivery of the items.

(c) *Observation of judges while performing their duties.*- Judges may be observed, while performing their duties under this section, until they have finished their work and leave the premises by:

(1) authorized challengers, watchers, and observers in accordance with § 10-311 of this article;

(2) any candidate; and

(3) any other person lawfully present.

**§ 11-401. Certified copies of results.**

*(a) Distribution of certified copies.-*

(1) After each election, each board of canvassers shall transmit one certified copy of the election results in its county, attested by the signatures of the chairperson and secretary of the board of canvassers, to:

(i) the Governor;

(ii) the State Board; and

(iii) the clerk of the circuit court for the appropriate county.

(2) The statement may be mailed or delivered in person.

*(b) Statement of votes cast for write-in candidates.-* After each general election in which votes have been cast for a write-in candidate, each board of canvassers shall transmit a statement of returns of the votes cast for write-in candidates who have filed a certificate of candidacy.

*(c) Time for transmittal.-*

(1) The transmittal shall be made on the second Friday after a primary or general election or, if the canvass is completed after that date, within 48 hours after the completion of the canvass.

(2) (i) Except as specified in subparagraph (ii) of this paragraph, after a special primary or special election, the transmittal shall be made as soon as possible, but no later than the second Thursday after the election.

(ii) After a special primary or special election that is held at the same time as a primary or general election, the transmittal shall be made in accordance with paragraph (1) of this subsection.

*(d) Entry by clerk of the circuit court.-* The clerk of the circuit court shall record the election results filed with the court under this section.

**§ 11-501. State Board - Canvass of primary election results.**

*(a) Duties.-* Following each gubernatorial primary or special primary election to fill a vacancy in the office of Representative in Congress, the State Board shall:

(1) convene within 2 days after the certified official election results are received from the local boards;

(2) if a majority of the members of the State Board is not present, adjourn for not more than 1 day;

(3) determine which candidates, by the greatest number of votes, have been nominated to

each office and which questions have received a sufficient number of votes to be adopted or approved; and

(4) prepare and certify statewide election results based on the certified copies of the statements made by the boards of canvassers.

(b) *Dissent by a Board member - Written statement required.-*

(1) If a member of the State Board dissents from a determination of an election result or reasonably believes that the conduct of a Board member or Board proceeding was not in compliance with applicable law or regulation or was otherwise illegal or irregular, the member shall prepare and file with the Board a distinct written statement of the reasons for the dissent or concern.

(2) The State Board shall maintain a file of the written statements submitted under this subsection by members of the Board.

**§ 11-503. Same - Canvass of election results.**

(a) *Duties.-* The Board of State Canvassers shall:

(1) (i) convene only after a presidential primary election, a State general election, or a general or special general election that includes a candidate for member of the Congress of the United States;

(ii) convene within 35 days of that election; and

(iii) if a majority of members of the Board of State Canvassers is not present, adjourn for not more than 1 day;

(2) determine which candidates, by the greatest number of votes, have been elected to each office and which questions have received a sufficient number of votes to be adopted or approved;

(3) prepare statewide election results for each candidate and question, based on the certified copies of the statements made by the boards of canvassers; and

(4) prepare and transmit a certified statement of the election results to the State Board of Elections.

(b) *Dissent by a Board member - Written statement required.*-

(1) If a member of the Board of State Canvassers dissents from a determination of an election result or reasonably believes that the conduct of a Board member or Board proceeding was not in compliance with applicable law or regulation or was otherwise illegal or irregular, the member shall prepare and transmit a distinct written statement of the reasons for the dissent or concern to the State Board of Elections.

(2) The State Board of Elections shall maintain a file of the written statements submitted under this subsection by members of the Board of State Canvassers.

**§ 12-201. Scope of subtitle.**

This subtitle applies to an issue arising in an election conducted under this article.

**§ 12-202. Judicial challenges.**

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

- (1) is inconsistent with this article or other law applicable to the elections process; and
- (2) may change or has changed the outcome of the election.

(b) *Place and time of filing.*- A registered voter may seek judicial relief under this section in the appropriate circuit court within the earlier of:

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

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



### § 12-203. Procedure.

(a) *In general.*- A proceeding under this subtitle shall be conducted in accordance with the Maryland Rules, except that:

(1) the proceeding shall be heard and decided without a jury and as expeditiously as the circumstances require;

(2) on the request of a party or sua sponte, the chief administrative judge of the circuit court may assign the case to a three-judge panel of circuit court judges; and

(3) an appeal shall be taken directly to the Court of Appeals within 5 days of the date of the decision of the circuit court.

(b) *Expedited appeal.*- The Court of Appeals shall give priority to hear and decide an appeal brought under subsection (a) (3) of this section as expeditiously as the circumstances require.

### § 12-204. Judgment.

(a) *In general.*- The court may provide a remedy as provided in subsection (b) or (c) of this section if the court determines that the alleged act or omission materially affected the rights of interested parties or the purity of the elections process and:

(1) may have changed the outcome of an election already held; or

(2) may change the outcome of a pending election.

(b) *Act or omission that changed election outcome.*- If the court makes an affirmative determination that an act or omission was committed that changed the outcome of an election already held, the court shall:

(1) declare void the election for the office or question involved and order that the election be held again at a date set by the court; or

(2) order any other relief that will provide an adequate remedy.

(c) *Act or omission that may change outcome of pending election.*- If the court makes an affirmative determination that an act or omission has been committed that may change the outcome of a pending election, the court may:

(1) order any relief it considers appropriate under the circumstances; and

(2) if the court determines that it is the only relief that will provide a remedy, direct that the election for the office or question involved be postponed and rescheduled on a date set by the court.

(d) *Clear and convincing evidence.*- A determination of the court under subsection (a) of this section shall be based on clear and convincing evidence.

PL Gen Laws (Poe, ed. 1888), Article 33

**68.** The presiding judges of elections, or in case of inability to attend, either of the other judges shall, within ten days after each election, under the penalty of five hundred dollars, meet at the usual place of holding the circuit court for each county, or at the usual place of holding the superior court of Baltimore city, in the city of Baltimore, with the books of the polls and the certificates aforesaid.

Ibid. sec. 30. 1805, ch. 97, sec. 15. 1860, ch. 10, sec. 3. 1865, ch. 143.

**69.** The said judges so assembled shall cast up the whole vote of all the districts or precincts, and shall make out two plain, fair and distinct statements and certificates of the number of votes which shall have been given for each candidate, for each of the officers voted for at said election, one of which certificates shall be delivered to the clerk of the court to which they are directed to make their returns, and the other, except in elections for governor and State's attorneys, shall be transmitted by mail to the governor; and in case of elections for governor and State's attorneys, the said statements and certificates, instead of being transmitted to the governor, shall, in case of governor, be transmitted to the secretary of State, and in the case of State's attorneys, shall be transmitted to the judge of the court having criminal jurisdiction in the circuit in which State's attorneys are respectively elected; and from the returns so made, the governor shall issue commissions to the different persons elected, according to the provisions of the constitution.

**Canvassing Boards.**

Ibid. sec. 72.

77. It shall be the duty of the said county commissioners, clerks of court and mayor, respectively, to keep safely, under lock and key, the said original statements or returns until the board of canvassers for the county or city, as the case may be, shall have assembled and been organized according to law, as hereinafter provided; whereupon the clerks of court, county commissioners and mayor shall immediately deliver or transmit to such board of canvassers the said statements or returns in the sealed envelopes.

1896, ch. 202, sec. 73.

78. The supervisors of elections shall constitute a board of canvassers for their county or city, as the case may be.

Ibid. sec. 74.

79. On the Thursday next following every election between the hours of 12 o'clock noon and 1 o'clock in the afternoon, the board of county canvassers shall meet at the usual place for holding the circuit court for the county, and the board of canvassers for Baltimore city shall meet at the usual place for holding the superior court, and shall, respectively, elect a chairman and secretary from their number. Each member of the board shall take an oath, which shall be administered and recorded by the clerk of the said court, to truly canvass, add up and declare the votes as required by law. At their first meeting a majority of the whole board shall be a quorum. If a majority shall not attend on the Thursday aforesaid, the canvassers present shall adjourn to the next day, when they shall meet again between the same hours, and the canvassers then attending, although less than a majority of the whole number, shall organize themselves as a board, and shall perform the duties required by law, and all questions arising in the course of their proceedings shall be determined by a majority of the canvassers so attending. All the sessions, deliberations and proceedings of the board shall be public, and the candidates and their counsel shall have the right to attend and to inspect the original statements and returns, and all other documents and records.

Ibid. sec. 75.

80. The board of canvassers shall upon being duly organized open all the original statements and returns delivered or transmitted to them, and shall canvass and add up the votes and make abstracts or statements thereof in the following manner, as the case may require, namely: All votes for governor shall be written out in words at length on one sheet, and,

in like manner, all votes for other State officers on another sheet ; all votes for presidential electors on another sheet ; all votes for representatives in congress on another sheet ; all votes for judges of courts on another sheet ; all votes for the clerk of the court of appeals on another sheet ; all votes for senators and delegates to the general assembly on another sheet ; all votes for county or city officers on another sheet ; all votes for any other officers on a separate and appropriate sheet ; all votes for and against any proposition which may be submitted to a vote of the people on another sheet.

## MARYLAND REGULATIONS

### **COMAR 33.08.01.04 Closing Polls.**

After the last individual has voted, as authorized by Election Law Article, § 10-301(b), Annotated Code of Maryland, the election judges shall proceed to close the polls and to secure and deliver equipment and materials to the board, as provided in Election Law Article, §§ 10-314 and 11-202, Annotated Code of Maryland, and in COMAR 33.10. 3

**COMAR 33.08.01.05 Stages of Canvass.**

A. Election Night--Precinct Count. If a precinct tabulator is used, the precinct count shall be conducted as provided in COMAR 33.10.

B. Election Night--Central Count. The canvass of votes at the counting center shall:

(1) Start immediately after the polls have closed and ballots have begun to arrive from the polling places; and

(2) Be conducted as provided in this subtitle.

C. Absentee Canvass. The canvass of absentee ballots shall be conducted as provided in:

(1) This subtitle; and

(2) COMAR 33.11.

D. Provisional Canvass. The canvass of provisional ballots shall be conducted as provided in:

(1) This subtitle; and

(2) COMAR 33.16.

**COMAR 33.08.01.07 Public Attendance at Canvass.**

A. In General. Throughout the canvass, all sessions, deliberations, and proceedings shall be open to the public and the media.

B. Election Night. For the election night canvass, the local board shall establish a separate, clearly delineated area for members of the public and the media so that they can reasonably observe all phases of the canvass without obstructing or hindering the process.

**COMAR 33.08.01.10 Post-Election Audit.**

A. Required.

(1) Beginning on the day after the election, the election director shall audit the election materials to confirm the accuracy of the election judges' statements.

(2) The election director shall first audit the precincts selected for verification under COMAR 33.10.02.38.

B. Materials To Be Audited. The election materials to be audited shall include:

(1) Signed voter authority cards;

(2) Precinct registers;

(3) Temporary certificates;

(4) Ballot stubs;

(5) Voted ballots;

(6) Spoiled ballots; and

(7) Official returns.

C. Voting Units Audit. If any discrepancies arise that cannot be reconciled, the voting

**COMAR 33.08.01.11 Certification of Results.**

A. The local board or State Board, as the case may be, shall certify the election results as provided in Election Law Article, § 11-401, 11-501, or 11-603, Annotated Code of Maryland.

B. Upon receipt of the official returns from a referendum vote concerning a law enacted by the General Assembly, the State Administrator shall certify the results of the vote.

C. The State Administrator shall forward a copy of the certification to:

(1) The Clerk of the Court of Appeals; and

(2) The Department of Legislative Services, so that the Department can carry out its responsibilities under State Government Article, § 2-1243(a), Annotated Code of Maryland.

D. Promptly after receiving certification under Election Law Article, § 11-605, Annotated Code of Maryland, of the results of a referendum vote on a law, ordinance, or resolution held in a county, municipal corporation, or other political subdivision, the State Administrator shall forward the certification to the Department of Legislative Services so that the Department can carry out its responsibilities under State Government Article, § 2-1243(a), Annotated Code of Maryland.

**COMAR 33.08.04.06 Write-In Votes.**

**A. In General.**

(1) The report of votes cast, as produced by the system's automatic tabulating equipment, shall indicate the number of marks in write-in positions for each contest.

(2) The local board shall manually tally and record all votes cast for write-in candidates.

**B. Requisites for Validity.** A write-in vote is not valid and may not be counted or recorded unless the voter:

(1) Wrote the name of the individual for whom the vote is cast on the blank line provided for write-in voting; and

(2) Marked the voting position on the same line as that on which the name is written.

**C. Reporting.** The reporting of write-in votes as part of the official returns shall be as the State Board requires.



**COMAR 33.10.02.12 Ballot Totaling and Reporting.**

A. Voting Unit Totals. When the end election button and the print totals report button are pressed, the voting unit shall automatically tabulate and print out the total votes cast on the voting unit for each candidate and for or against each question.

B. Central Tabulating. The Election Management System shall:

(1) Tabulate and report the total votes cast for each candidate and for or against each question by precinct and by groups of precincts, such as districts, wards, and countywide; and

(2) Tabulate and report the total votes cast in each contest and in write-in voting positions.

**COMAR 33.10.02.36 Aggregating Precinct Counts.**

A. Local Board to Develop Procedures. The local board shall develop and, with the approval of the State Board, issue written procedures for:

- (1) Assembling the voting unit memory cards from each polling place;
- (2) Transferring votes from the voting unit memory cards to the Election Management System;
- (3) Tabulating write-in votes;
- (4) Manually entering absentee ballot results into the Election Management System;
- (5) Aggregating the vote count for the entire county, including both polling place totals and absentee ballot totals;
- (6) Securing the premises where vote tabulation and aggregation are being conducted; and
- (7) Who may be admitted to the premises while vote tabulation is taking place.

B. Tabulating Write-In Votes (General Election).

- (1) In a general election, the results report produced by the voting unit shall indicate the number of votes cast in each write-in position for each contest.
- (2) The results memory card shall contain the names of the individuals for whom voters cast write-in votes and shall copy those names to the Election Management System.
- (3) After all memory cards from all voting units have been read, the central tabulating system shall produce on its printer a write-in report that lists all write-in votes and the voting units from which they came.
- (4) From this write-in report, the local board shall tally and record the write-in votes cast.
- (5) Write-in votes shall be reported as part of the official returns in accordance with State Board instructions.

**COMAR 33.11.03.01 Ballot Content.**

The content of the absentee ballot issued to a voter shall:

- A. Be identical to the ballot used in the precinct of the voter's residence; and
- B. Contain in a clear space at the top the words "Official Ballot" printed in large letters.

**COMAR 33.11.03.02 Marking Precinct Register.**

A. Marking Required. When issuing an absentee ballot, the election director shall record the issuance in the appropriate precinct register.

B. Voting at Polls after Receiving Absentee Ballot. A voter who has been issued an absentee ballot may cast a provisional ballot at the polling place for the precinct of the voter's residence on election day.

**COMAR 33.11.03.03 Ballot Instructions.**

A. Instructions Required. Absentee ballots shall be accompanied by instructions for marking and returning the ballots.

B. Form and Content. The form and content of the instructions shall be as the State Board prescribes.

**COMAR 33.11.03.04 Envelopes.**

A. Special Envelopes Required. Absentee ballots sent by mail shall be enclosed in specially printed envelopes.

B. Form and Content. The form and content of the printing on the envelopes shall be as the State Board prescribes.

C. Local Options.

(1) Except as provided in § C(2) of this regulation, a local board shall use three envelopes.

(2) A local board may use two envelopes if the board has received prior approval from the State Administrator.

**COMAR 33.11.03.05 Issuance of Ballots.**

An absentee ballot may be issued only to the voter or the voter's authorized agent.

**COMAR 33.11.03.06 Return of Ballot.**

A. Date and Time Stamp Return Envelope. Whenever an absentee ballot is received by a local board office, the election director shall stamp the return envelope with the date and time received.

B. Ballots Returned Without Return Envelope. If an absentee ballot is returned in the ballot envelope only, the election director shall immediately:

- (1) Seal it in a return envelope;
- (2) Enter the appropriate information on the return envelope; and
- (3) Stamp the return envelope with the date and time received.

C. Ballots Returned to Wrong Board.

(1) If an absentee ballot is received by the wrong board office, that board's election director shall immediately:

- (a) Stamp the envelope with the date and time received; and
- (b) Send the ballot to the appropriate local board office, with the ballot envelope unopened and, except for the date-and-time stamp, unmarked and unchanged in any way.

(2) The date and time stamped on the envelope under § C(1)(a) of this regulation are the official date and time of receipt of that ballot.

**COMAR 33.11.03.07 Filing and Securing.**

A. Filing. The election director shall file all ballots timely received in such a manner that, in the event of a challenge, applications can be matched with the appropriate ballot return envelopes.

B. Securing Ballots. Until the canvass begins, every absentee ballot shall:

- (1) Remain sealed in both the ballot envelope and, if one is used by the local board, the return envelope; and
- (2) Be placed in a secure location to which the public does not have access.

**COMAR 33.11.03.08 When Ballots Are Timely.**

A. United States.

(1) "United States" means the several states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(2) "United States" does not include American Samoa, the Canal Zone, Guam, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, an Army Post Office address, or a Fleet Post Office address.

B. In General. An absentee ballot is considered to have been timely received only if:

- (1) The ballot is received by the local board office before the polls close on election day; or

(2) The ballot:

(a) Is received by the local board office from the United States Postal Service or a private mail carrier:

(i) On or before 4 p.m. on the Wednesday after the election;

(ii) On or before 10 a.m. on the second Wednesday after the election if mailed from outside the United States in a primary election preceding a gubernatorial election; or

(iii) On or before 10 a.m. on the second Friday after the election if mailed from outside the United States in a general or special election or in a primary election preceding a presidential election; and

(b) Was mailed before election day, as verified:

(i) By a postmark of the United States Postal Service, an Army Post Office, a Fleet Post Office, or the postal service of any other country; or

(ii) By the voter's affidavit that the ballot was completed and mailed before election day, if the return envelope does not contain a postmark or the postmark is illegible.

C. Untimely Ballots. A ballot that is not timely received as provided in this regulation may not be counted.

**COMAR 33.11.04.01 Conduct Generally.**

A. Separate From Polling Place Ballots. The review, inspection, and tabulation of absentee ballots shall:

- (1) Begin as provided in Regulation .03 of this chapter;
- (2) Be conducted separately from the review, inspection, and tabulation of polling place ballots; and
- (3) Otherwise be conducted in the same manner as for polling place ballots, insofar as those procedures are appropriate.

B. Uniformity for All Absentee Ballots. The canvass procedures in this chapter shall be followed for both the regular absentee canvass and the military and overseas citizens absentee canvass.

**COMAR 33.11.04.02 Board Responsibility.**

The canvass of absentee ballots shall be conducted by the local board, in its role as a board of canvassers, as provided in Election Law Article, Annotated Code of Maryland, in Subtitle 08 of this Title, and elsewhere in this Subtitle.

**COMAR 33.11.04.03 Start of Canvass.**

A. When Required.

(1) Except as provided in § A(2) of this regulation, the board shall start to canvass the absentee ballots at 10 a.m. on the Thursday after the election.

(2) The board shall start the second absentee ballot canvass at:

- (a) 10 a.m. on the second Wednesday after a Gubernatorial Primary Election; or
- (b) 10 a.m. on the second Friday after any other election.

B. Opening Ballots. Neither the absentee ballots nor their return envelopes may be opened until the start of the canvass.

**COMAR 33.11.04.04 Board Counsel.**

A. Presence During Decision Sessions.

(1) During the absentee canvass, the board's counsel shall be present at any time the board is deciding questions or otherwise making decisions on the legality or acceptability of absentee votes or absentee ballots.

(2) The board may specifically schedule decision periods, as long as the schedule is announced at the start of each day of the absentee canvass.

B. Presence When Absentees May Be Deciding Factor. The board's counsel shall be present throughout all canvass sessions if it appears that the absentee ballots could decide the outcome of a contest or a question.

**COMAR 33.11.04.05 Hold Back of Ballots.**

A. Required Hold Back. To preserve the secrecy of provisional ballots and absentee ballots, the local board shall withhold, from the initial canvass:

(1) At least five absentee ballots of each ballot style to be canvassed during the provisional ballot canvass; and

(2) At least five absentee ballots of each ballot style to be canvassed during the second absentee ballot canvass.

B. Later Canvasses. The absentee ballots withheld under this regulation shall be included and canvassed with the:

(1) Provisional ballots; or

(2) Timely ballots later received on or before the deadline for absentee ballots from outside the United States.

**COMAR 33.11.04.06 Bipartisan Processing Teams.**

A. In General.

(1) Before the canvass begins, the board shall arrange for as many teams as it considers necessary to conduct the canvass.

(2) When practicable, the teams shall be bipartisan.

B. Identification Numbers. The board shall assign an identification number to each team.

**COMAR 33.11.04.07 Opening Return Envelopes--Distribution and Opening.**

A. Batch Distributions.

(1) When directed by the board, the election director shall issue to each team a batch of returned ballots.

(2) Each batch shall consist of a controllable number of ballots (for example, 25) of the same ballot style.

B. Verifying Timeliness.

(1) The team shall first verify timeliness by checking the date-and-time stamp on the return envelope.

(2) If the date-and-time stamp is missing, the team shall check the postmark on the return envelope to verify timeliness.

(3) If the postmark is missing or illegible, the team shall open the return envelope and check the signature and date on the ballot envelope.

(4) If a ballot's timeliness cannot be verified, the team shall refer the ballot to the board.

C. Removing Ballot Envelopes.

(1) The team shall open the return envelope and remove the ballot envelope, keeping both in the same sequence.

(2) An electric letter opener may be used for this purpose.

**COMAR 33.11.04.08 Opening Return Envelopes--Inspection and Referrals.**

A. Signature and Seal.

(1) The team shall verify that the ballot envelope is signed and sealed.

(2) If a ballot envelope is unsigned or unsealed, the team shall refer the ballot to the board.

B. Loose or Extra Ballots.

(1) The team shall make sure that no loose ballots and not more than one ballot envelope is in any return envelope.

(2) If a return envelope contains a loose ballot or more than one ballot envelope, the team shall refer the ballot to the board.

C. Certificates of Voter Assistance. The team shall remove any certificates of voter assistance and place them in separate stacks.

D. Completion of Batch. When a team has completed a batch, the election director shall:

(1) Retrieve the materials;

(2) File the return envelopes away;

(3) File the sealed ballot envelopes separately; and

(4) Issue a new batch to the team, unless all return envelopes already have been opened.

**COMAR 33.11.04.09 Opening Return Envelopes--Board Ruling on Referrals.**

A. Board to Rule. The board shall rule on all referrals made to it under Regulations .07 and .08 of this chapter.

B. Rejected Ballots. Each ballot that the board rejects shall be retained by the board at the board table.

C. Accepted Ballots. Each ballot that the board accepts shall be returned to the referring team and refiled in appropriate order.

**COMAR 33.11.04.10 Opening Ballot Envelopes--Distribution and Opening.**

A. Batch Distributions.

(1) After all return envelopes have been opened, the election director shall issue to each team a batch of ballot envelopes.

(2) Each batch shall consist of a controllable number of ballots (for example, 25) of the same ballot style.



B. Preparing for Ballot Removal. The team shall:

- (1) Open each ballot envelope by any means that will not damage the contents; and
- (2) Place the envelope face down on the table without removing its contents.

C. Removing Ballots. After all the ballot envelopes in the batch have been opened and placed face down, the team shall remove the ballots from the envelopes one at a time, taking care that each envelope remains face down so the voter's name and signature cannot be seen.

D. Setting Aside Envelopes. After all ballots have been removed from the envelopes in the batch, the team shall set aside the ballot envelopes, still face down.

#### **COMAR 33.11.04.11 Opening Ballot Envelopes--Inspection and Referrals.**

A. Ballot Inspection. The team then shall inspect each ballot for compliance and tabulating acceptability.

B. Ballots To Be Referred. The team shall refer to the board any ballot that:

- (1) Appears to have been intentionally marked for the purpose of identifying the ballot;
- (2) Appears to have been corrected, whether by correction tape, correction fluid, mark-overs, cross-throughs, or the like;
- (3) Contains any tear, fold, food spill, stray mark, or the like, that might:
  - (a) Render the ballot unacceptable for machine tabulation, or
  - (b) Raise a question of voter intent.

C. Identifying Referrals. The team shall place each ballot referred to the board in a plain envelope, and mark the envelope with:

- (1) The team number;
- (2) Information that identifies the group or unit to which the ballot belongs; and
- (3) The reason for the referral.

D. Completion of Batch. When a team has completed a batch, the Election Director shall:

- (1) Retrieve the ballots and ballot envelopes;
- (2) File the ballot envelopes away;
- (3) Put the ballots in appropriate groups for tabulation; and
- (4) Issue a new batch to the team, unless all ballots already have been removed from their envelopes.

#### **COMAR 33.11.04.12 Opening Ballot Envelopes--Board Ruling on Referrals.**

A. Board to Rule. The board shall rule on all referrals made to it under Regulation .11 of this chapter.

B. Rejected Ballots. Each ballot that the board rejects shall be retained by the board at the board table.

C. Accepted Ballots. Each ballot that the board accepts shall be, as appropriate:

- (1) Returned to the referring team and placed in the appropriate group for tabulation; or

(2) Sent to a bipartisan duplication team.

D. Duplication. When a ballot needing duplication has been duplicated, the duplicated ballot shall be placed in the appropriate group for tabulation.

#### **COMAR 33.11.04.13 Grouping Ballots Processed by Board.**

A. In General. After all the absentee ballots have been opened and processed by the board, they shall be placed in the following groups:

- (1) Ballots found to be acceptable for tabulation;
- (2) Ballots accepted by the board but objected to by a contesting party; and
- (3) Ballots rejected by the board.

B. Treatment of Groups.

(1) Ballots grouped under A(1) of this regulation shall be tabulated separately from ballots grouped under A(2) of this regulation.

(2) However, only the combined total of those two ballot groups may be:

- (a) Reported as the "Unofficial Absentee Count"; or
- (b) Added to the "Unofficial Returns".

#### **COMAR 33.11.04.14 Ballot Tabulation.**

A. When Started. The tabulation of the ballots shall follow their removal from the ballot envelopes, without unreasonable delay.

B. Tabulation Procedures. Each board shall:

- (1) Adopt written procedures for the tabulation of absentee ballots; and
- (2) Submit these procedures to the State Board before they become effective.

#### **COMAR 33.11.04.15 Close of Canvass in General, Special, or Presidential Primary Elections.**

In a general or special election or in a primary election preceding a presidential election, the absentee canvass may not be finalized until after 4 p.m. on the second Friday after the election.

#### **COMAR 33.11.04.16 Unofficial Absentee Count.**

The unofficial results of the absentee canvass shall be released when the tabulation is completed.

#### **COMAR 33.11.05.01 Vote Required.**

A. Except as provided in § B of this regulation, neither an absentee ballot nor any vote on it may be rejected except by unanimous vote of all members of the local board.

B. An absentee ballot shall be rejected if a majority of the board determines:

- (1) That the oath on the ballot envelope was not signed;
- (2) Before the ballot is canvassed, that the voter died before election day;
- (3) That the board received more than one ballot from the same individual for the same election in the same ballot envelope; or
- (4) That the ballot was intentionally marked with an identifying mark that is clearly evident and placed on the ballot for the purpose of identifying the ballot.

#### **COMAR 33.11.05.02 Voter Intent.**

A. Scope. This regulation applies whenever a ballot is not marked specifically in accordance with the instructions provided to the voter; for example, where the instructions call for marking a choice with an "x" in a box, and the voter uses a "check mark"; or the instructions call for filling in a circle, but the voter marks the choice with an asterisk; or the voter marks a box rather than removing a pre-scored hole.

B. Board's Duties. In the situations described in § A of this regulation, the board shall:

- (1) Attempt to determine the intent of the voter; and
- (2) Appropriately mark or duplicate the ballot for tabulating acceptability, if it is able to do so.

#### **COMAR 33.11.05.03 Ballot Rejection--Basic Grounds.**

The board shall reject an absentee ballot if:

- A. The ballot was not timely received;
- B. A majority of the board makes a determination under Regulation .01B of this chapter;
- C. The ballot was issued to an agent and was not in a sealed envelope when returned; or
- D. The voter was required to submit personal identification information under COMAR 33.11.02.07 but failed to submit that information before the absentee ballot canvass began, in which case the absentee ballot shall be treated as a provisional ballot properly applied for and canvassed insofar as possible under the procedures in COMAR 33.16.04.06B and C, 33.16.04.07, and 33.16.05.

#### **COMAR 33.11.05.04 Ballot Rejection--Multiple Ballots from the Same Individual.**

The board shall reject multiple absentee ballots as follows:

A. If a single ballot envelope contains more than one ballot from the same individual for the same election, all ballots from that individual shall be rejected; and

B. If more than one ballot is received from the same individual in different ballot envelopes:

(1) If the signed oaths on the envelopes have different dates, only the ballot with the later date shall be counted,

(2) If the signed oath on one envelope is dated and the signed oath on the other envelope is either undated or indecipherably dated, the undated or indecipherably dated ballot shall be rejected, and

(3) If the signed oaths on the envelopes all have the same dates or all have indecipherable dates, all ballots shall be rejected.

#### **COMAR 33.11.05.05 Ballot Rejection--Unusual Marking Device.**

A. Duplication.

(1) Absentee ballots may be marked by any kind of pencil or ink.

(2) Certain types of pencil or ink, however, might not be readable by optical scanning equipment. Accordingly, ballots not marked with the appropriate pencil or ink should be referred by the board to the duplication team.

B. Possible Rejection. In a specific case, the board may consider the particular pencil or ink used to be unusual enough to be considered an attempt to intentionally identify the ballot.

#### **COMAR 33.11.05.06 Ballot Rejection--Unsealed Ballot Envelope.**

The board may not reject a ballot solely because its ballot envelope was unsealed unless:

A. The ballot had been issued to an agent; or

B. There is some indication that the integrity of the electoral process has been compromised.

#### **COMAR 33.11.05.07 Vote or Contest Rejection.**

A. Person No Longer a Candidate. If an absentee ballot is voted for an individual who has ceased to be a candidate, the vote for that individual may not be counted but does not invalidate the rest of the ballot.

B. Damaged or Marked Ballot. If an absentee ballot is damaged or otherwise marked so that the board cannot determine the voter's intent in a specific contest, the board shall reject that contest on the ballot.

C. Erasures or Alterations. If an absentee ballot has erasures or has been altered or repaired:

(1) For all contests where the voter's intent is clear, the board shall process the ballot or, if necessary, have it duplicated and processed; and

(2) For any contest where the board cannot determine the voter's intent, the board shall reject

that contest on the ballot.

**COMAR 33.16.04.07 Reporting Results.**

The unofficial results of the provisional ballot canvass shall be included as part of the second absentee ballot count.