MARIROSE JOAN CAPOZZI, *et al.*	*	IN THE
Plaintiff,	*	CIRCUIT COURT
v.	*	FOR
STATE OF MARYLAND, *et al.*	*	ANNE ARUNDEL COUNTY
Defendant.	*	Case No. C – 06 – 115807

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MEMORANDUM OPINION

This matter came before the Court on August 8, 2006. The Court heard argument regarding the Defendants' Motion to Dismiss and their defense of laches, including a proffer of testimony agreed upon by the parties. The Court also heard argument regarding the parties' positions on whether the Court should proceed in accordance with Maryland Rule 15-505(b). The Defendants' Motion to Dismiss, insofar as the Defendants sought dismissal of the State of Maryland as a party, was granted. The Court held that the defense of laches would not bar the Plaintiffs' Complaint.[1] The Court then proceeded in accordance with Maryland Rule 15-505(b), which allows the Court to order that a trial on the merits be advanced and consolidated with the preliminary injunction hearing.[2] Subsequent to this hearing on the Plaintiff's Verified Complaint for Declaratory and Injunctive Relief, the matter was held *sub curia*.[3]

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[1] The Court finds, having received and reviewed the proffer of evidence that the only factual issues in this case relate to the Defendants' laches defense. The Court finds that the substantive issues raised in the Plaintiffs' Verified Complaint for Injunctive and Declaratory Relief raise purely questions of law, and that there are no material facts in dispute. Having rejected the Defendants' argument for laches, for the reasons stated on the record, the only remaining issues are therefore questions of law.

Upon consideration of the arguments of the parties and the evidence admitted, the Court presents its conclusions below.

BACKGROUND

The Plaintiffs in this case are Queen Anne's County, Maryland, taxpayers and residents. On July 17, 2006, Plaintiffs filed a Verified Complaint for Declaratory and Injunctive Relief, a Motion for a Temporary Restraining Order and Preliminary Injunction, and a Motion for Summary Judgment in the Circuit Court for Queen Anne's County. Plaintiffs requested in their Complaint that the Court declare as void Chapter 5 of the 2006 Laws of Maryland and portions of Chapter 61 of the 2006 Laws of Maryland,[4] and enjoin the Defendants from implementing these laws. The Plaintiffs have sued the State of Maryland, the Maryland State Board of Elections, and Linda Lamone, in her capacity as the Administrator of the Maryland State Board of Elections.

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[2] A temporary restraining order, by definition, is an injunction granted without the opportunity for a full adversary hearing; whereas, a preliminary injunction may be granted after the opportunity for a full adversary hearing. Md. Rule 15-501.

[3] Because the Court proceeded to hear the parties on the merits, by default, the issue of summary judgment becomes moot.

[4] Chapter 5 of the 2006 Laws of Maryland was introduced as Senate Bill 478 during the 2005 session. It created a new § 10-301.1 of the Election Law Article of the Maryland Code. The bill was passed by both houses of the General Assembly, and vetoed by the Governor on May 20, 2005. Both houses overrode the veto on January 17, 2006, and legislation was subsequently enacted on February 10, 2006. The bill was codified as Chapter 5 of the 2006 Laws of Maryland, found in the Advance Sheets, Volume 1, at pages 20-22. See Plt.'s Compl., Ex. C.

Chapter 61 of the 2006 Laws of Maryland was introduced as House Bill 1368 during the 2006 session. It repealed and reenacted § 10-301.1(b) and (c) with certain amendments and specified other necessary action for implementation of early voting. The bill was passed as emergency legislation by both houses of the General Assembly, then vetoed by the Governor. Both houses overrode the veto, and the legislation was subsequently enacted on April 10, 2006. The bill was codified as Chapter 61 of the 2006 Laws of Maryland, found in the Advance Sheets, Volume 1, at pages 388-402. See Plt.'s Compl., Ex. D.

In response to the Plaintiff's Complaint, the Defendants, collectively through the Attorney General, filed a Motion for Transfer of Venue on July 24, 2006. On July 28, 2006, the Circuit Court for Queen Anne's County, ordered that the matter be transferred to the Circuit Court for Anne Arundel County.[5]

Upon transfer to this Court, a conference call for scheduling was held. The parties agreed to set a hearing on August 8, 2006. On August 4, 2006, the Defendants filed, through the Attorney General's office, a Motion to Dismiss the Complaint, a Memorandum in Opposition to the Plaintiffs' Motion for a Temporary Restraining Order, a Motion for Extension of Time to respond to the Plaintiffs' Motion for Summary Judgment, and a request for a hearing on their Opposition to Plaintiffs' Motion for a Temporary Restraining Order. Upon receipt of these materials, a second conference call was held and it was agreed that the Defendants would submit a proffer of evidence with regard to their laches defense and it was further decided that a determination would be made at the hearing on how to proceed after argument regarding laches was heard.

After reviewing the pleadings and submission of counsel, and after hearing from counsel, this Court concluded that it would be appropriate and expedient to advance and consolidate the merits with the hearing being held on the preliminary injunction and laches, as permitted by Md. Rule 15-505(b), particularly inasmuch as the remaining issues involved purely legal matters. Plaintiff consented to this action. Defendants opposed consolidation, arguing that discovery needed to be concluded and that they were not sure how things would "play out." The Court

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[5] Judge Ross wrote in his Memorandum and Order, that the Defendants and their offices are located in Anne Arundel County, and "[c]learly, it is not only the most convenient forum, it is the proper venue for this suit under the statute and serves the interest of justice." The Court also cited the relevant venue statutes in the Maryland Code.

indicated a willingness to allow additional time, if needed, for follow-up legal research or response. No such request has been made.

Plaintiffs contend that Chapter 5 of the 2006 Laws of Maryland and portions of Chapter 61 of the 2006 Laws of Maryland (generally referred to as the "early voting acts," or "early voting statutes"), violate the Maryland Constitution. In essence, the early voting acts allow Maryland voters to cast their ballots on days other than the traditional election day by polling in certain designated areas "beginning the Tuesday before a primary or general election through the Saturday before the election."[6] Plt.'s Compl., Ex. C. In certain counties, the local board of election is required to establish at least three early voting polling places, and in the remaining counties, at least one early voting polling place must be established. The acts further state that "a voter may vote at any early voting polling place in the voter's county of residence." *Id*. at Ex. C., p. 22 (section 10-301.1(D) of the Act).

Article III, Section 49 of the Maryland Constitution sets forth the power of the Legislature to regulate elections. In its entirety, it reads:

> 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.

MD. CODE ANN., CONST. ART. III, § 49.

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[6] As set forth in Senate Bill 478, the legislation was enacted:

> 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; 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 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.

The Plaintiffs argue that the joint effect of the acts is to allow "every voter in Maryland… to vote in every primary and 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;" and that this effect is in derogation of the Maryland Constitution.[7] Pl.'s Compl. at ¶¶ 16, 17. Specifically, Plaintiffs maintain that the acts are inconsistent with the following sections of the Maryland Constitution because of the location and dates upon which these laws allow elections to be held:

MD. CODE ANN., CONST. ART. I, § 1:

> Elections to be by ballot; qualifications of voters; election districts.
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> 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.

MD. CODE ANN., CONST. ART. XV, § 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.

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[7] The Plaintiffs also emphasize the political positions regarding the acts, stating that Governor Ehrlich vetoed each bill, and that the necessary overrides of the Governor's vetoes were "party-line votes; not a single Republican delegate or state senator voted in favor of either of the overrides. In effect, therefore, the General Assembly of Maryland, in highly partisan fashion, has presumed to alter by legislation the organic law of Maryland…." Pl.'s Compl. at p. 7, ¶ 21.

While the Plaintiffs presented this information in their pleadings, the Court agrees with the Defendants that such political commentary should have and, in fact, it has not had any influence upon the Court's consideration of the purely legal issues presented. The political posture involved is irrelevant to the ultimate Constitutional analysis.

Plaintiffs also claim that Sections 1 and 2 of Article XVII, titled Quadrennial Elections, have been violated:

> Section 1. Purpose of article; "officers" defined.
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> 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.
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> 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.

Defendants contend that the early voting acts were validly passed pursuant to the plenary power of the General Assembly. They note that the "…statutes do not compel the plaintiffs - - or anyone else - - to vote early, or to vote outside of their ward or district…" Def.'s Op. Mem. at p. 2. Briefly, the Defendants' arguments are set forth below and will later be detailed in the discussion section.

Regarding the Plaintiffs' challenge to the location of early voting polling places based on Article I, Section 1,[8] the Defendants maintain that language related to where a voter casts his vote simply indicates an *entitlement* to vote in his district or ward, not a *requirement* that a voter cast his vote in his district or ward.

Regarding the Plaintiffs' challenge to the dates for early voting, the Defendants maintain that an election is not defined as the day upon which one casts his vote. Instead, the election itself is the "point of transition" when the votes have been cast and the collection may begin. Def.'s Oral Argument. However, the Defendants noted that tabulation itself "isn't the key" to the definition of election. *Id*. The Defendants in support of their argument defer and rely upon a Supreme Court case, *Foster v. Love*, 522 U.S. 67 (1997), and opinions from several federal circuit courts citing *Foster*. See *Voting Integrity Project, Inc. v. Bomer*, 199 F.3d 773 (5th Cir. 2000), *Millsaps v. Thompson*, 259 F.3d 535 (6th Cir. 2001), *Voting Integrity Project, Inc. v. Keisling*, 259 F.3d 1169 (9th Cir. 2001).[9]

DISCUSSION

Having reviewed the written submissions of each party, all exhibits, the Defendants' proffer and the arguments presented, this Court finds that the General Assembly exceeded its Constitutional authority in enacting the early voting statutes. For the reasons discussed below, the Defendants are enjoined from further implementing any portion of the subject statutes related to early voting.

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[8] Unless otherwise indicated, citations to Articles herein refer to MD. CODE ANN., CONST. (2003 Repl. Vol.).

[9] In addition to these arguments, the Defendants expounded upon the perceived benefits to early voting. While there may be a multitude of arguments opposing or supporting early voting, these factors are irrelevant to the ultimate Constitutional analysis. The Court's focus remains on whether the Legislature exceeded its authority in passing the early voting acts.

The Court shall first discuss the issue regarding election districts and shall next discuss the issue regarding the date for holding elections. Relevant to the Court's analysis in this case is the language of the Court of Appeals in *Buchholtz v. Hill*:

> While statutes are sometimes hastily and unskillfully drawn, a Constitution imports the utmost discrimination in the use of language. Chief Justice Marshall declared that the patriots who framed the Federal Constitution must be "understood to have employed words in their natural sense, and to have intended what they have said." *Gibbons v. Ogden*, 9 Wheat. 1, 188, 6 L.Ed. 23, 68. The Maryland Constitution was carefully written and solemnly adopted by the Constitutional Convention of 1867, and approved by the people of the State; we should therefore be careful not to depart from the plain language of the instrument.

178 Md. 280, 285-286 (1940).

Article III, Section 49, gives the General Assembly the power to enact laws that relate to the time, place and manner of elections. However, that power is specifically constrained by the clause that those laws must not be "inconsistent with [the Maryland] Constitution." Art. III, § 49.

A. Election Districts.

This Court finds that the provisions in early voting that would allow some voters to cast their votes in a district or ward other than the one in which they reside are inconsistent with the language of Article I, Section 1. In this section, the Constitution first sets forth the qualifications one must possess in order to be eligible to vote. This section next states that each voter "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." Art. I, § 1.

The Plaintiffs rely on the plain meaning of this language and the legal principle of *expression unius est exclusion alterius*, meaning that the "expression of one thing is the exclusion of another." They cite a multitude of cases where the Court of Appeals has applied this legal principle to Constitutional issues. See Plt.'s Trial Mem. at pp. 11 – 12. Applied to Article I, Section 1, the "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." Plt.'s Trial Mem. at 11. They urge the Court to find that residence is a voting "qualification that can't be changed by emergency legislation." Plt.'s Oral Argument.

The Defendants argued that the physical place *where* you vote is not a qualification. In their opinion, the Constitution only requires that all elections be by ballot, that one be a U.S. citizen over the age of 18, and a resident of the state at the specified time of registration. They assert the fact that the remainder of Article I, Section 1 simply sets forth the entitlement to vote for those meeting these qualifications, and secures to voters the *entitlement* to vote *in their district* – not a requirement that they do so. The Defendants briefed the legislative history regarding Article I, Section 1. Succinctly put, the Defendants propose that this language was merely another safeguard to afford voters a convenient venue in which to cast their ballot. In other words, the goal was not to restrict voters from voting outside of their district, but to prevent the Legislature from forcing voters to travel great distances – especially in the times of horse and buggy – to exercise their franchise.

This Court must rely on the holdings in two cases where the Court of Appeals clearly interpreted the language of Article I, Section 1 regarding the location where one must vote. In

Kemp v. Owens, 76 Md. 235, 24 A. 606, 607 (1892), the Court states:

> Having the requisite qualifications, he may move from place to place within a legislative district or county; but he can only vote in the ward or election district in which he resides at the time he offers to vote, provided he be duly registered in that ward or election district. As a consequence of this, it follows that **[one] cannot lawfully vote in a ward or election district in which he does not reside, even though that ward or election district be within the legislative district or county where he has his residence….** (emphasis added)

Kemp was cited in *Smith v. Hackett*, 129 Md. 73 (1916), where the Court wrote:

> The constitutional qualifications of the right of suffrage are said to restrict its exercise to the precinct in which the voter is registered…. **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….** This court has had occasion to emphasize the fact that the Constitution has conferred upon citizens of the state, otherwise qualified, the right to vote in the election district of their residence. (emphasis added)

Based on these decisions, the Court finds that the Constitution entitles qualified voters to cast their votes only in the "ward or election district in which he resides." This language is not permissive, but mandatory. Voting in the ward or district is not a matter of choice that can be waived as Defendants' counsel suggests.

In addition to the principal issue regarding whether voters may Constitutionally cast their votes outside of their district, the Defendants also argued that Article I, Section 1 is only applicable to the general election, and not the primary. This Court notes that such a reading could lead to an absurd result, as it would eliminate *all* Constitutional qualifications for primary elections. Thus, a 12 year-old, non-U.S. citizen, residing in Virginia, would not be barred by the Constitution from voting in the Maryland primary election. The Court again recognizes that the plain language of Article I, Section 1, begins with the phrase "*all* elections." The Court must

"…lean in favor of that construction which will render all words operative, rather than the construction which may make some words nugatory." *Reed v. McKeldin*, 207 Md. 553, 561 (1955). Therefore, on its face, and pursuant to the plain language, this clause raises no doubt that the qualifications it sets forth are applicable to primaries, as well as the general election.[10]

B. Timing of Elections.

To the extent that the subject acts expand the time for holding the general election, the acts are again inconsistent with Article XV, Section 7. This section states that "*[a]ll* 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." (emphasis added) See also Art. XVII, § 2, Art. II, § 2.

Plaintiffs maintain that where Article XV, Section 7 states that the election "shall be held on the Tuesday next after the first Monday," it refers to a single day. The word "held," they argue, indicates that an event begins and ends during a particular time frame.[11]

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[10] For support of their proposition that Article I, Section 1 of the Constitution does not apply to the primary, Defendants cite a line of cases, which begins with *Jackson v. Norris*, 195 Md. 579 (1937). The issue in these cases concerns the validity of write-in votes in reference to the ballot. Recall that Article I, Section 1 states that "[a]ll elections shall be by ballot." The holding in *Jackson* was not made "applicable to primary elections nor to municipal elections other than those of the city of Baltimore." 195 Md. at 603. The Court stated that "[t]his exception must be made since the provisions of article 1, § 5 of the Constitution have been held to apply solely to the right to vote at federal and state elections, and municipal elections in the city of Baltimore." *Id*. at 603-4. *Jackson* cited *Smith v. Stephan*, 66 Md. 381 (1887), as precedent for this exception. Article I, § 5 provided that "no person shall vote at any election, federal or state, or at any municipal election in the city of Baltimore, unless his name appears in a list of registered voters." *Smith* held that Article I, § 5 did not apply to local municipal elections in other towns in the state.

This Court reads these decisions to be limited to the development of the constitutionality of write-in votes during primary elections and other local elections; not for the proposition that the qualification requirements in Article I, Section 1 do not apply to primaries. On point is *Hennegan v. Geartner*, 186 Md. 551, 559 (1946), where it was said, "[t]here is no fundamental right in any voter to participate in the primaries or conventions of parties other than the one to which he belongs." Implicit is the holding that voters do have the Constitutional right to vote in primaries, and the foundation for that right is found in Article I, Secition 1.

For the Defendants, this issue turns on the meaning of the word "election." They argue that the word "election," as used in the Constitution, refers not only to the date upon which a ballot is cast, but the date upon which voting is concluded and the transition to tabulating the votes begins.[12] The Defendants find support in *Foster*, where the Supreme Court stated, "[w]hen the federal statutes speak of 'the election' of a Senator or Representative, they plainly refer to the combined actions of voters and officials meant to make a final selection of an officeholder…. By establishing a particular day as 'the day' on which these actions must take place, the statute simply regulates the time of the election, a matter on which the Constitution explicitly gives Congress the final say." *Foster*, 522 U.S. at 71-2.

This issue is one of first impression in Maryland. While this Court certainly respects the analysis of the federal judiciary with regard to a federal statute,[13] until the Court of Appeals rules otherwise, this Court must adhere to the guiding principle set forth at the beginning of this opinion: the judiciary should "be careful not to depart from the plain language of the instrument." *Buchholtz*, 178 Md. at 286. The Court of Appeals has instructed the trial courts that, "the words used in the Constitution should be given the meaning which would be given to

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[11] As illustration, during oral argument, Plaintiffs used the example of a convention that might be held between certain dates. If the convention is advertised to be "held" on the last day of that period, it would be unlikely that anyone would attend that convention during the other days. The plain meaning of the word "held" indicates the definite time period on which an event shall occur. Regarding the Constitution, the Plaintiffs argued that the election is held on Tuesday.

[12] As illustration, during oral argument, Defendants used the example of a tsunami that may hypothetically disrupt the election, two days after early voting has commenced. The Defendants argued that, even if the votes from the two days of early voting been salvaged, no one would logically conclude that an election had been held. Rather, the election process culminates in the completion of collecting the votes and the transition to the tabulation stage.

[13] See *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604 (2002) (The fact that a state constitutional provision is in *pari materia* with a federal one or has a federal counterpart does not mean that the provision will always be interpreted or applied in the same manner as its federal counterpart.)

them in common and ordinary usage by the average person interpreting them with respect to everyday affairs." *Norris v. Mayor of Baltimore*, 172 Md. 667 (1937).

The Court finds that the common sense meaning of the phrase an election is "held" on Tuesday refers to the day upon which voters cast their ballots. The argument set forth in the Plaintiffs' Pre-trial Memorandum is persuasive, that election means "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…" Plt.'s Pre-trial Mem. at 15, quoting WEBSTER'S DICTIONARY (1828). Clearly, there are ministerial obligations of the election board to prepare for election day prior to the "Tuesday next after the first Monday in the month of November," and there are administrative tasks necessary to tabulate the votes subsequent to that day. The reference to "election" in Article XV, Section 7 could not possibly have been intended by the framers to refer to the entire election process, which would include those tasks. The election as referred to in Article XV, Section 7 refers to the date when voters cast their ballots. To suggest that the framers intended that the entire election process would be concluded on the "Tuesday next after the first Monday in the month of November" ignores the historical reality. Even in today's world with automobiles, trains, planes, and computers, this cannot be done in most instances. Certainly, in the days of the horse and buggy, it could not be done. So, it is clear to this Court that the framers, by setting forth the date of the election, intended to refer to the date that all qualified voters could appear at the polls to cast their ballots.

The language and grammar of the clause in Article XV, Section 7, appears to explicitly single out one precise day on which all general elections shall occur. If one refers to the history of this clause, as briefed by the Defendants, the discussions of the framers evidences that

choosing Tuesday as election day was not an arbitrary decision.[14] Nevertheless, when a Constitutional provision's plain meaning is clear and unambiguous, it is unnecessary for the trial court to look beyond those words to interpret its meaning. Here, while Article III, Section 49 gives the General Assembly the power to regulate the "time, place and manner of holding elections," its very terms specifically subordinate that power to the other provisions of the Constitution. Therefore, the date set for the general election in Article XV, Section 7 is controlling and may not be abrogated by the General Assembly. "It is a familiar principle in the construction of a constitution that the construction should be upon the whole instrument, and effect given to every part of it, if that be possible, and that, unless there be some reason to the contrary, no part of the fundamental law should be disregarded, or rejected as inoperative." *Beall v. State*, 131 Md. 669 (1917). Thus, to the extent that the early voting statutes expand the dates for casting ballots, they are inconsistent with the Constitution.

The Court also finds that Foster and its progeny are inapposite. All *Foster* stands for is the proposition that the voting system utilized by a state may not produce a winner as to the federal Senators and Representatives prior to the first Tuesday following the first Monday of November. The three Federal Circuit Court cases which follow *Foster* all dealt with early voting within the umbrella of absentee ballot provisions. The statutes in question in this proceeding were not enacted pursuant to the authority granted to the Legislature in Maryland's Constitution at Article I, Section 3 to pass laws for "qualified voters of the State of Maryland who are absent

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[14] See Def.'s Op. Mem. at pp. 32-35. For example, during the 1850 Convention, "[o]ther considerations mentioned in the timing of elections were… that elections not be held on Monday as that had in the past led to unseemly electioneering on the Sabbath." *Id.* at 34. And in 1864, "[t]he provision was originally to set all elections on the first Wednesday of November and the language was changed to coincide with the language used for Presidential elections." *Id.* at 35. This history evidences that the framers did not select Tuesday arbitrarily.

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" that would "provide… for the manner in which and the time and place at which such absent voters may vote, and for canvass and return of their votes." Art. I, § 3. There is no indication that the General Assembly intended early-voters to be considered absentee voters. In fact, the act specifically states that "*except* as provided under title 9, subtitle 3 of this article [the subtitle captioned "Absentee Voting"], a voter shall vote… in the voter's assigned precinct on election day; or… in an early voting polling place as provided in this section." See § 10-301.1(A) of the early voting statute (emphasis added). And, nowhere does the early voting act limit its breadth to those "who are absent at the time of any election" or "who are unable to vote personally." Thus, the early voting acts are inconsistent with and exceed the authority granted in Article I, Section 3.

The Defendants argued that, instead of titling the acts as "early voting," had the Legislature used the "magic words" naming these provisions "no excuse, in person, absentee voting," these statutes would be Constitutional. In light of the explicit language that specifically distinguishes absentee voting provisions from the early voting acts, this Court finds that this argument is without merit.

This Court further rejects the argument of Defendants that, notwithstanding the inartful drafting of these bills, and the lack of any reference to tie early voting to absentee voting, the authority to enact early voting legislation is found in Article I, Section 3. As drafted, early voting goes far beyond the specifically authorized absentee voting language, creating a "no excuse" needed category for voters who need not be absent or unable to vote personally. This is inconsistent with the plain language of Article I, Section 3.

C. Granting Injunctive Relief

Lastly, the Court wishes to address the issue raised by the Defendants regarding the Plaintiffs' requested relief. The Defendants stated in their closing "one thing that is wholly missing from [Plaintiffs'] argument is the standard for summary judgment on a permanent injunction." Def.'s Oral Argument. The Defendants maintain that this Court should consider whether a final injunction is appropriate in accordance with the standard set forth by the Supreme Court in *eBay Inc. v. MercExchange, L.L.C.*, __ U.S. __, 126 S.Ct. 1837, 1839 (2006):

> According to well-established principles of equity, a plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

The Defendants stated that they could find no Maryland precedent regarding the appropriate standard to use. Given the Constitutional importance of this case and the need for a speedy hearing, see MD. CODE ANN., CTS. & JUDC. PROC. § 3-409(e), this Court shall incorporate the guidance offered in the Maryland Rules Commentary, that after "the court determines to collapse the determination of the propriety of a preliminary injunction with the determination on the merits of the case… then the four-factor test for a preliminary injunction is reduced to the simpler determination applicable for permanent injunctions, whether the plaintiff will suffer irreparable harm from something that is wrongful and needs to be enjoined." NIEMEYER PAUL V. & LINDA M. SCHUETT, MARYLAND RULES COMMENTARY 619 (3d ed. 2003); and see *Cmty. and Labor United for Baltimore Charter Comm., v. Baltimore City Bd. of Elections*, 377 Md. 183 (2003); *Stysley v. Carroll County Bd. of Elections*, 371 Md. 186 (2002).

The Defendants maintain that "the risk of an injunction is that it will interfere, in part because of the plaintiff's delay and in part because of the complexities of modern society, it will interfere with the rights of people to exercise their franchise as they choose to do when those people have no notice of this suit, are not part of this suit." Def.'s Oral Argument. However, this Court finds that, not only would the named plaintiffs suffer irreparable harm, but so would all citizens of the State of Maryland, if an illegal election is held. Clearly, an election that is carried out by unconstitutional means is something that is wrongful and needs to be enjoined.[15] To the extent that this Court may be required to balance the rights of the parties, as argued by the Defendants, the need to preserve the integrity of the election process consistent with constitutional principles is paramount. Simply stated, there is no reason why the 2006 primary and general elections cannot proceed without early voting. Any waste of resources is regrettable but does not justify allowing unconstitutional procedures to be implemented.

As recently stated by Judge Eldridge in *Bienkowski v. Brooks*, 386 Md. 516, 546 (2005), "the constitutional authority to implement a constitutional provision, such as set forth in the last clause of Article IV, § 22, does not authorize the General Assembly by statute or this Court by rule to contradict or amend the Constitution." The Constitution sets forth limits on the General Assembly's ability to regulate elections by demanding that laws passed are not inconsistent with its framework. Laws such as the early voting acts, that are passed without amending that framework or otherwise acting within the power granted, threaten the integrity of the Constitution itself – despite the benign purpose intended.

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[15] See also 43A C.J.S. Injunctions § 212. ("Moreover, injunction will lie to restrain the conduct of an election which is affected by illegal conduct on the part of the election officers, or is conducted pursuant to an illegal statutory procedure.")

CONCLUSION

For the reasons set forth in this memorandum opinion, the Court shall enter the order attached hereto.

_____ _____

Ronald A. Silkworth, Judge Date
Circuit Court for Anne Arundel County

MARIROSE JOAN CAPOZZI, *et al.*	*	IN THE
Plaintiff,	*	CIRCUIT COURT
v.	*	FOR
STATE OF MARYLAND, *et al.*	*	ANNE ARUNDEL COUNTY
Defendant.	*	Case No. C – 06 – 115807

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ORDER

Upon consideration of the Verified Complaint for Declaratory Judgment and Injunction, including Defendants' response thereto, as well as the evidence, and arguments presented, in accordance with the foregoing memorandum opinion, it is on this _____ day of August, 2006, by the Circuit Court for Anne Arundel County, Maryland,

ORDERED that Chapter 5 of the 2006 Laws of Maryland and the portions of Chapter 61 of the 2006 Laws of Maryland insofar as they purport to allow "early voting," as well as any other implementing legislation, are unconstitutional and are hereby declared VOID; and it is further,

ORDERED that Defendants are hereby ENJOINED from further implementing and/or enforcing the above-referenced laws; and it is further,

ORDERED that, consistent with this Court's Memorandum Opinion, Defendants' Motion to Dismiss is GRANTED as to the State of Maryland, and DENIED as to all remaining Defendants; and it is further,

ORDERED that all other motions or request for relief are hereby DENIED, resulting in a resolution of all pending matters before this Court; and it is further,

ORDERED that the costs be assessed against Defendants.

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Ronald A. Silkworth, Judge
Circuit Court for Anne Arundel County