IN THE COURT OF APPEALS OF MARYLAND

JANE DOE, *ET AL.*

Appellants/Cross-Appellees,

v.

MONTGOMERY COUNTY BOARD OF ELECTIONS,

Appellee/Cross-Appellant.

Appeal from the Circuit Court for Montgomery County
(Hon. Robert A. Greenberg, Judge)

September Term, 2008
Petition Docket No. 61

BRIEF OF *AMICUS CURIAE*, MARYLAND CITIZENS FOR A RESPONSIBLE GOVERNMENT CORPORATION, SUPPORTING APPELLEE/CROSS-APPELLANT

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COMES NOW Maryland Citizens for a Responsible Government Corporation (hereinafter "MCRG"), by and through counsel, by leave of the Court, and files its brief as *Amicus Curiae* in support of the Appellee/Cross Appellants (hereinafter "Board").

STATEMENT OF THE CASE

Amicus Curiae adopts and incorporates by reference herein the statement of the case of the Board.

QUESTIONS PRESENTED FOR REVIEW

I. APPELLANTS' CONTENTION THAT THEY DID NOT HAVE NOTICE OF THE BOARD'S ACTIONS IS UNSUPPORTED BY THE FACTS AND CONFLICTS WITH THEIR OWN PUBLIC STATEMENTS.

II. DRAWING DISTINCTIONS BETWEEN ACTIVE AND INACTIVE VOTERS IS CONSISTENT WITH MARYLAND LAW AND THE PUBLIC POLICY SURROUNDING REFERENDUMS.

III. THE CITIZENS OF MONTGOMERY COUNTY CANNOT BE PENALIZED FOR THEIR REASONABLE RELIANCE UPON THE BOARD OF ELECTIONS REGARDING ITS DETERMINATION OF THE SIGNATURE THRESHOLD.

IV. THE PEOPLE OF MONTGOMERY COUNTY HAVE A RIGHT TO VOTE ON A LAW WHICH REGULATES LEGAL AND SOCIAL DISTINCTIONS REGARDING SEX TO MERE MENTAL PREFERENCES.

STATEMENT OF FACTS

Equality Maryland is a political activist group that promotes a homosexual and "transgender" agenda through legislation and the courts. *See* Equality Maryland, Who We Are, http://www.equalitymaryland.org/about_us/abouteqmd.htm (last visited August 27, 2008). Equality Maryland was intimately involved in drafting Bill 23-07 (hereinafter "the Bill"), introducing the Bill, and testifying at the legislative hearings before the Bill was approved by the Montgomery County Council (hereinafter "the Council"). (*Amicus*

Curiae Apx, pp., 33-34). Dana Beyer, an Equality Maryland Board Member and Vice President, who claims to be "transgender," is the Senior Policy and Legislative Advisor to Council Member Duchy Trachtenberg. Beyer claims on the Equality Maryland website to have "helped manage a unanimously-approved Transgender Civil Rights Law in Montgomery County in 2007." *See* Equality Maryland: Staff and Board Biographies, http://www.equalitymaryland.org/about_us/staff_board.htm (last visited August 27, 2008). Beyer is not the only Equality Maryland Board Member involved in this lawsuit. James Walker, also an Equality Maryland Board Member, is a plaintiff in this lawsuit. *See* Equality Maryland, Staff and Board Biographies, http://www.equalitymaryland.org /about_us/staff_board.htm (last visited on August 27, 2008). Thus, Equality Maryland's involvement in the this matter is direct, extensive, and unequivocal.

Beyer's website lists the resume of an activist. *See* About Dr. Dana, http://danabeyer.com/index.php/content/content/20/ (last visited August 27, 2008). Beyer is on the "Board of Directors of the National Center for Transgender Equality, the Human Rights Campaign's Board of Governors, the Obama campaign's national and state LGBT Steering Committees." *Id.* Beyer talks of founding Basic Rights Montgomery in order to fund this very lawsuit, referring to Bill opponents as "religious radicals." *Id.* Beyer is also on the Board of the National Center for Transgender Equality, and Beyer also founded teachthefacts.org, a group that was formed to advocate for sex education in public schools to promote the homosexual and "transgender" agenda. *Id.* Beyer is an accomplished advocate and may well be the leading advocate for the "transgender" agenda in Maryland. Thus, it is utterly inconceivable that Beyer, the muscle of the

"transgender" movement in Montgomery County, and an Equality Maryland Board Member, did not know at all times the status of the oppositions' petition.

The press and controversy on this Bill began long before the County approved it. On October 31, 2007, an article in the Gazette described the Bill, stated that Council Member Tranchtenberg (Beyer's employer) was the Bill's sponsor, and included a quote from an opponent to the Bill. *See* Equality Maryland: Current Press Releases and News Articles, http://www.equalitymaryland.org/news_2007 /news2007.10.31.htm (last visited August 27, 2008). Opposition to the Bill has existed from its inception as one harmful to people who claim rights in the name of "gender identity" (a political concept embracing the fiction that a person can define their sex via temporally-unrestricted mental or emotional preferences, and without regard to how they were created). This concept puts the desires of a few individuals, who chose to live their lives pretending to be a separate sex from their created sex, over the rights and safety of the rest of society. Bill opponents also testified at the same legislative hearings. (*Amicus Curiae* Apx, pp., 50-53). The clear opposition to the Bill has been well documented by Equality Maryland. *See* Equality Maryland: Current Press Releases and News Articles, http://www.equalitymaryland.org/news_2007/news2007.11.11.htm (last visited August 27, 2008).

Equality Maryland claimed "victory" on November 13, 2007, the day the Council approved the Bill, after "[a] three-year campaign" to add "gender identity" to the Montgomery County anti-discrimination ordinance. *See* Equality Maryland: Current Press Releases and News Articles, http://www.equalitymaryland.org/pr_2007

/pr2007.11.13.htm (last visited August 27, 2008). On November 22, 2007, a Washington Post article discussing the Bill and its opposition stated "[o]pponents said they planned to gather signatures for a referendum to overturn" the Bill. *See* Equality Maryland: Current Press Releases and News Articles, http://www.equalitymaryland.org/news_2007 /news2007.11.22.htm (last visited on August 27, 2008). On January 15, 2008, a story was on television. *See* Controversial Law on Gender Identity Tested, http://cfc.wjla.com/videoondemand.cfm?id=7230 (last visited on August 27, 2008). The Washington Blade, also ran an article on November 11, 2007, about the Bill and its opposition, saying that MCRG would need 25,000 signatures for a referendum. *See* Conservative groups challenge Mont. Co. trans bill, http://www.washblade.com/2007/11-22/news/localnews/11608.cfm (last visited August 27, 2008). The article contained a picture of Beyer, and a quote claiming that voters would not overturn the Bill should the referendum be successful. *Id.* An article in The Gazette, on November 28, 2007, discussed MCRG's intent to gather the proper number of signatures in order to refer the Bill to Montgomery County voters. *See* Transgender discrimination ban is official, http://www.gazette.net/stories/112807/montnew50231_32356.shtml (last visited August 27, 2008). In that article, a Bill opponent stated that citizens intended to collect the "25,000" signatures necessary to refer the Bill to the voters. *Id.* "To place a referendum on the ballot, [MCRG] must collect valid signatures from 5 percent — or 24,957 — of the county's registered voters within 90 days." *Id.*

From at least November 28, 2007, it was public knowledge that the number of signatures to be submitted would only include registered voters as defined by the Board,

and that the number did not include inactive voters. If this information was readily available to the Gazette, certainly Equality Maryland, who had pushed for this ordinance for "three years," also knew how many signatures the Board determined were needed to gain ballot access. On February 8, 2008, the Gazette published the fact that Bill opponents had submitted its first set of petition signatures for review to the Board. *See* Opponents of transgender bill meet first deadline for referendum, http://www.gazette.net/stories/020808/polinew204427_32367.shtml (last visited on August 27, 2008). It was public and common knowledge, especially to an advocacy group like Equality Maryland, that referendum proponents had submitted the first set of petition signatures, and that the required number of signatures only included active registered voters. Anyone who did not know this information could have discerned it with a simple phone call.

From the very beginning of the petition process, Equality Maryland opposed citizen efforts to provide all of the citizens of Montgomery County the opportunity to vote on the Bill. Beyer even went so far as to canvas the public places where referendum supporters were gathering signatures in order to have them expelled from the property. *See* Equality Maryland: Current Press Releases and News Articles, http://www.equalitymaryland.org/news_2008/news2008.02.21b.htm (last visited on August 27, 2008); YouTube.com: Council Woman's Aide Harassing Petitioner, http://uk.youtube.com/watch?v=uYqz2rffZ0w (last visited on August 27, 2008). In the same February 21, 2008, news story by Equality Maryland, where Beyer discusses organized efforts to interfere with the core political speech of others, and preventing

citizens from gathering signatures, the first set of petition signatures is mentioned, along with the required number of "12,500." *See* Equality Maryland: Current Press Releases and News Articles, http://www.equalitymaryland.org/news_2008/news2008.02.21b.htm (last visited on August 27, 2008). Beyer is quoted in another story in the Sentinel discussing the interference; "'In all but one place we talked to the management of these grocery stores and the management had them removed,' Beyer said." *See* Battle Heats up over CRG Petition Drive, http://www.thesentinel.com/297002578875068.php (last visited August 27, 2008). In other words, Plaintiff James Walker and his organization, Equality Maryland, knew the exact number from the beginning and never sought to challenge it.

Since its tactics of disrupting the signature gathering process were unsuccessful, Equality Maryland decided to pursue another route to prevent the citizens of Montgomery County from voting on their own laws. On February 22, 2008, Equality Maryland publicly announced that they hired Attorney Jonathan S. Shurberg to investigate the referendum and review all of the submitted signatures. *See* Equality Maryland: Current Press Releases and News Articles, http://www.equalitymaryland.org/news_2008 /news2008.02.22.htm (last visited on August 27, 2008); Transgender Bill Supporters Sue Board of Elections, http://maryland-politics.blogspot.com/2008/03/transgender-bill-supporters-sue-board.html (last visited August 27, 2008); (*See* Affidavit of Anna Lucas; E 188-89). But by this date, Equality Maryland was too late to challenge the Board's interpretation of Section 114 and the first set of petition signatures, just as the trial court held. (*See* Opinion; E 603,). "[A] judicial challenge to the fixing of the denominator should have been filed on or before February 20, 2008, ..." *Id.*

As to the procedural history of the case, and the facts which followed the filling of the petition herein, *Amicus Curiae* adopts and incorporates by reference the Statement of Facts of the Board.

ARGUMENT

I. APPELLANTS' CONTENTION THAT THEY DID NOT HAVE NOTICE OF THE BOARD'S ACTIONS IS UNSUPPORTED BY THE FACTS AND CONFLICTS WITH THEIR OWN PUBLIC STATEMENTS.

A. This Lawsuit Is The Product Of Equality Maryland, A Political Activist Group Who Was Instrumental In Passing Bill 23-07 And Continually Aware Of All Public Opposition.

From the very beginning, the Bill generated considerable press and almost every press release and news article includes Equality Maryland, Beyer, and MCRG at the same event, speaking to the same audience, or talking about the Bill from their prospective sides. The Appellants can hardly expect anyone to believe that they were blindsided at trial with the "revelation" that the Board did not include inactive voters when calculating the percentage of signatures required to refer the Bill.

As demonstrated in the Statement of Facts herein, Equality Maryland has been intimately involved with the Bill since its inception. Mr. Walker, an Equality Maryland Board Member, is even a Plaintiff in this lawsuit. In Appellants' opening brief, they claim that the trial court erred in applying a constructive notice standard to all determinations made by the Board before the last and final certification of the referendum on March 6, 2008. (Appellants' Opening Brief at pp. 40-41). Appellants further claim that there is no evidence in the record that they were on inquiry notice of any pre-March

6 determinations, and that to apply the statute of limitations to any determinations before that date is fundamentally unfair. *Id.*

In making these arguments, Appellants avoid discussion of their actual notice of every move made by Bill opponents in gathering signatures, the number of signatures required, and their success in the submission of the required first set of petition signatures. Actual notice supersedes and makes irrelevant any question of constructive notice. Actual notice is exactly the notice Appellants always enjoyed.

B. The Discovery Rule Does Not Apply When Actual Notice Exits.

In *Poffenberger v. Risser,* this Court first extended the Discovery Rule from its classic application in claims against professionals to "all [civil] actions." *Poffenberger,* 290 Md. 631, 636, 431 A.2d 677, 680 (2000). This Court explained the meaning of the Discovery Rule:

> [T]he discovery rule contemplates actual knowledge that is express cognition, or awareness implied from knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry (thus, charging the individual) with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued.

Id. at 637, 431 A.2d at 681. Thus, if there are facts that are reasonable enough to suggest a cause of action, any potential plaintiff has the duty to investigate those facts. In this Court's words, "a purchaser cannot fail to investigate when the propriety of the investigation is naturally suggested by circumstances known to him . . . ." *Id.*

In *Moreland v. Aetna U.S. Healthcare, Inc.,* to subvert the statute of limitations, a plaintiff asserted the Discovery Rule, claiming that while they were completely aware of the facts surrounding their claim, they were ignorant of the legal implications. *Moreland,*

152 Md. App. 288, 297, 831 A.2d 1091, 1096 (2003). The Court of Special Appeals rejected that argument. "Knowledge of *facts,* however, not actual knowledge of their legal significance, starts the statute of limitations running." *Id.* at 298, 831 A.2d at 1096. "The discovery rule, in other words, applies to discovery of *facts,* not to discovery of *law.* Knowledge of the law is presumed." *Id.*

In this case, the Appellants knew all along that Montgomery County citizens were collecting 25,001 signatures in order to refer the Bill for a vote. Moreover, Appellants are charged with knowledge of the legal requirements imposed Montgomery law, as ignorance of the law is never an excuse. *Id.* It is undisputed that referendum supporters submitted at least 12,501 signatures on February 4, 2008. (*See* Appellants' Complaint ¶ 28; E 213). This fact was known publicly to Equality Maryland, as it regularly shadowed the volunteer citizens who collected signatures. *See* Opponents of transgender bill meet first deadline for referendum, http://www.gazette.net/stories/020808/polinew204427_32367.shtml (last visited on August 27, 2008). For Appellants to now claim that, after a "three-year campaign" struggle to pass the Bill, they did not know what was happening is completely disingenuous. If the citizens of Montgomery County failed to submit enough petition signatures on or before February 4, 2008, then the petition would have ended immediately and unsuccessfully, certainly resulting in another "victory" style press release from Equality Maryland.

Notice does not require an understanding of the legal implications of the facts, but merely knowledge of them. *Moreland,* 152 Md. App. at 298, 831 A.2d at 1096. By the time Appellants filed their lawsuit, the statute of limitations to challenge the quantity and

quality of the first set of petition signatures had long passed. Evident in the Board's actions and the first submission of petition signatures was the fact that the Board was appropriately using only active registered voters to determine the number of signatures required for citizens to continue collecting signatures in the referendum process.

Appellants claim that if the statute of limitations applies to their claims, then the Discovery Rule delays the inception of the statute period until Appellants discovered, or should have discovered, that the Board did not use inactive registered voters in its calculation of the required number of signatures. (Appellants' Opening Brief at p. 40.) However, as demonstrated above, Appellants were at all times intimately associated with the petition efforts and the certification of the first set of petition signatures. Appellants knew everything at all times and cannot now pretend to the contrary.

C. Appellants Failed To Fulfill Their Duty To Inquire.

Inquiry notice is a two-prong test: 1) would a reasonable person investigate the issues, 2) would such an investigation give notice of the facts. *Pennwalt Corp. v. Nasios,* 314 Md. 433, 450-52, 550 A.2d 1155, 1164-65 (1988). Once on inquiry notice, one has a duty to seek out facts supporting a cause of action. *Edwards v. Demedis,* 118 Md. App. 541, 553, 703 A.2d 240, 246 (1997).

All of the facts in this case were public and readily available to any person interested in investigating or challenging the veracity of the efforts of the referendum proponents, or determinations by the Board. Anyone interested in mounting such a challenge, like Appellants, needed only to compare the number of active and inactive voters to determine the numeric denominator being used by the Board. This process

would take mere minutes. Alternatively, one could simply call the Board and ask for the denominator used and how that number was selected. Again, such a phone call would have taken mere minutes. This is not a case where the facts were unknown, or unavailable, only to be discovered later.

In a traditional Discovery Rule case, like a latent injury or a faulty roof that begins leaking after the first severe rain, a person does not know of the potential injury and has no reasonable basis to investigate the facts. In this case, Equality Maryland never stopped investigating every fact, from the identity of the petition proponents to where they were collecting signatures. Claims of ignorance to any details are disingenuous and contrary to the facts.

The Appellants also seek to convince this Court that they did not have inquiry notice, or any reason to inquire into the source of the number of signatures necessary to refer the Bill to voters before the trial. They erroneously claim that there was no "publically available information by which Appellants or anyone else could have determined" that the Board used only active registered voters in determining the required number of signatures. (Appellants' Opening Brief at p. 41). Yet, at all times, the public knew that the Board required the referendum proponents to submit half of the 25,000 signatures on February 4, 2008. In their supplemental brief to the trial court, Appellants submitted as Exhibit 7, twenty-four months of voter registration activity reports for Maryland, including the report for November 30, 2007. (E 427-450). Each report lists total active voters and the total inactive voters. A simple math calculation reveals that the Board was using active voters to determine the required number for access by a

referendum. This information was at all times public and accessible. Equality Maryland waited too long to act and in this important, time-sensitive election matter, this Court should not create a special exception just for them.

D. Appellants' Interpretation Of The Statute Of Limitations Runs Contrary To Public Policy.

Time is of the essence for judicial challenges to petitions and elections matters. Anyone who wishes to challenge any determination made by the Board concerning a petition must do so within ten-days of that determination. Md. Code Ann., Elec. Law, § 2-210(e)(1) (2006). The courts must expedite these challenges in order to comply with election deadlines. Md. Code Ann., Elec. Law, § 2-209(b) (2006). The time frame for challenging determinations made by the Board is necessarily expedited so the fundamental rights of democracy, which belong to all citizens, are not held hostage by a single lawsuit.

The judicial process is also expedited in an effort to preserve the people's resources. The government expends considerable funds in printing ballots. A legal challenge to a petition could result in it either being placed on the ballot or removed from the ballot. The County and State should not have to bear the cost of multiple printings while a lawsuit takes the snail's way through the courts.

Given these facts, the General Assembly still provided an extremely generous amount of time in giving ten days for opponents to bring a challenge. In an election context, ten days can be a lifetime. Additionally, if there was no statute of limitations, the opposition of a referendum could just sit on their hands until the referendum was

approved, and then "discover" some alleged violation in the referendum and challenge it in court. Allowing the possibility of such a process is antithetical to the principles of democracy where the people are to have the final word.

Finally, the Appellants stretch beyond reason their reading of *Poffenberger.* As this Court is aware, not all causes of action require specific notice. For example, in a libel action, the publication of the false statement is notice in and of itself, and the Discovery Rule does not apply. *See Harnish v. Herald-Mail Co.,* 264 Md. 326, 286 A.2d 146 (1972). The author of the libel does not have a duty to send the publication directly to the person it addresses. But once the words are published, the statute of limitation begins to run. There is no notice requirement because the information is public, just like the Board's determinations concerning the Bill were always public. The Appellants do not want the statute of limitations to apply to them because it bars their claims, but the statute of limitations supports the public policy of holding elections without the threat of post-election lawsuits and wasted public resources.

II. DRAWING DISTINCTIONS BETWEEN ACTIVE AND INACTIVE VOTERS IS CONSISTENT WITH MARYLAND LAW AND THE PUBLIC POLICY SURROUNDING REFERENDUMS.

A. Referendums Are Designed To Test Political Interest In A Particular Topic, Which Generally Does Not Include Inactive Voters.

Referendums are unique tools of democracy. Located only twenty-six states, these modalities for the people's direct participation in government exist only where the citizens of a particular locality choose to retain some legislative power. They are important checks on legislative power. Where they exist, the citizens can continually

remind their elected legislators that the people are always the final word on any piece of legislation.

The power of referendum does not exist free from administrative burdens. In Maryland, part of the Election Law Code and COMAR deal directly with the State's duty to administer the referendum, and in Montgomery County there are several code sections that direct the Board's action in referendum administration. Those burdens do not override constitutional provisions, but they will allow the government room for determining the level of public interest in a matter in order to prevent a single disgruntled voter from referring any given piece of legislation to the ballot.

The requirement of a referendum as a prerequisite to an issue being placed onto a ballet is designed to test the relative "temperature" of the voting pool on any given piece of legislation. Much like a chef who is tasting her latest dish to determine whether it is fit for service to her customers, the referendum is designed to "taste" a sample of the politically-active population to determine whether or not the legislation is sufficient as is, or whether it requires further effort (a vote). Accordingly, if 5% of Montgomery County's politically-active population signs a petition (within the very narrow window of only ninety-days), it is well-understood that the legislation is not sufficient "as is," but definitely requires further investigation.[1] The 5% requirement is a reasonable restriction

[1] On its face, 5% may seem like a small percentage, but when placed into context, it is extremely large. The context here is the 90-day time component. To collect 25,001 signatures in only 90 days, petition proponents must collect almost 278 signatures per day, almost 28 per hour (assuming a 10-hour day), or approximately one signature every two minutes. This is an extremely tall task, and where 5% is collected, it is indicative of extremely high public interest in a particular piece of legislation, thereby warranting a vote. That this highly-controversial bill

on ballot access. Otherwise, there is the unreasonable potential for hundreds if not thousands of referendums each election cycle to appear on the County ballot.

Inactive voters, while registered to vote, become inactive generally by moving out of the county or otherwise ceasing any level of continued participation in the county's democratic process. Accordingly, in gauging the relative "temperature" of Montgomery County on any particular issue, a "taste" of only those who are politically active is appropriate. Understanding this basic concept, the "temperature" of Montgomery County was taken from those who regularly participate in the political process and are actually likely to show up on election day.

In this regard, inactive voters are no different from children or the insane (or other citizens who are not politically active and will not participate on election day). The Board would gain no useful information in polling children on whether or not a particular bill should appear on a ballot. Children do not vote. The Board's emphasis on active voters is consistent with the nature and intent of a referendum, and the applicable laws herein. The petition is merely a means to a vote, not an actual vote by the entire population of the County.

The Appellants suggest that the Board violated the constitutional rights of inactive voters by excluding them from the number of signatures required for a referendum to reach the ballot. (Appellants' Opening Brief at p. 30.) This is untrue. Appellants erroneously claim that signing a petition is a vote for a referendum, just as not signing the

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easily collected the necessary signatures is no surprise to anyone involved in this process, and the citizens of Montgomery County have clearly earned their fundamental right to vote on this matter.

petition is a vote *against* the referendum. *Id.* However, this argument fails in two regards. First, inactive voters were not prevented from signing the referendum, nor were the signatures of inactive voters excluded by the Board. Inactive voters can participate just like everyone else. Secondly, not every citizen who signs a referendum is necessarily in favor or against the legislation at issue. Many voters routinely sign every petition they see, regardless of its topic. These citizens believe that all matters should be voted on by the people and take their referendum rights seriously.

Moreover, the Board's distinction between inactive and active voters does not disenfranchise inactive voters. Inactive voters can still vote and sign referendums. The State places registered voters who do not participate in the political process on the inactive status list, and state law prohibits the use of inactive voters for administrative purposes. Md. Code Ann., Elec. Law, § 3-503(d) (2006). Thus, this Board cannot include inactive voters in their administration of the petition process.

Prior to the 2005 amendments to Maryland Election Law,[2] the State placed inactive voters on a nonregistered voter list and did not allow them to participate in the political process. This creation of two lists violated the State Constitution in *Maryland Green Party v. Maryland Bd. of Elections,* 377 Md. 127, 832 A.2d 214 (2003). After *Maryland Green Party*, the 2005 amendments created an inactive status for registered voters who have not participated in the political process for several election cycles. Thus, while the state cannot count those voters for official administrative purposes, voters with

[2] In 2005, in response to changes in the federal laws and the *Maryland Green Party* case, the Maryland legislators redrafted many of their election laws, hereinafter referenced as "the 2005 amendments."

an inactive status are clearly permitted to participate in all democratic forums in Maryland. Unlike Appellants' argument, this interpretation *protects* inactive voters from disenfranchisement.

B. The Board's Administration Of The Referendum Is Consistent With Maryland Law And Public Policy.

The administration of elections and the democratic process is a burden to the government. Yet, while the government must guarantee a democratic process to its citizens, the government is entitled to manage the democratic process in a way that minimizes its burden while still affording democracy to all. *See Burdick v. Takushi*, 504 U.S. 428 (1992); *Nader for President 2004 v. Maryland State Bd. of Elections*, 399 Md. 681, 926 A.2d 199 (2007).

Such is the design behind the General Assembly's distinction between active and inactive voters. It is the active voters who are likely to exercise their democratic rights in elections. In preparing for a democratic exercise, like an election, the government only prepares for the likely voter turnout in order to not waste valuable state resources. If the state were required to setup polling places on the theoretic expectation of 100% voter turnout, state resources would be wasted. [3] While inactive voters are not prohibited from participating in the democratic process they are inactive for a reason — they do not

[3] For example, on October 12, 2004, there were 3,105,370 registered voters in Maryland. *See* http://elections.state.md.us/pdf/vrar/0004_10_i.pdf (last visited August 27, 2008). Yet only 2,395,791 Maryland voters actually made it to the polls. *See* http://elections.state.md.us/elections/2004/general/turnout/turnout1.html (last visited August 27, 2008). This is only 77.15%. Thus, knowing that less than 100% of voters will participate on election day, is the State required to use valuable resources to prepare for 100% voter turnout, or is the State permitted to reasonably estimate its expenditures based on experience and expected turnout?

generally participate in the democratic process (or fail to do so in the location that they are registered).

The clear public policy guiding the delineation between active and inactive voters also guides the Board's interpretation of Section 114. Moreover, using inactive voters as part of the percentage threshold defeats the purpose of the threshold — determining county-wide interest from those who participate in the political process to justify placing a matter on the ballot. The Board's determination of what constituted 5% both fulfilled the spirit of the referendum process and abided by a clear state law mandate regarding the usage of only active registered voters for "official administrative purposes."

III. THE CITIZENS OF MONTGOMERY COUNTY CANNOT BE PENALIZED FOR THEIR REASONABLE RELIANCE UPON THE BOARD OF ELECTIONS REGARDING ITS DETERMINATION OF THE SIGNATURE THRESHOLD.

MCRG relied on the Board's interpretation of Section 114. MCRG and its supporters expended thousands of hours and substantial funds collecting signatures in order to meet the governmentally imposed requirement of 25,001 signatures. MCRG's strategy for signature gathering was built upon the Board's representation that 25,001 signatures was the requirement for ballot access. MCRG did not have paid signature gatherers, but found the volunteers necessary to get the job done. What was done through the leadership of MCRG epitomizes the true spirit of what a referendum is all about — a grass-roots signature drive by concerned citizens who value their rights of democracy, and desired to put an important Bill on the ballot so that everyone can vote (even those who support the Bill).

MCRG organized their signature collection process based on the Board's interpretation of Section 114. There was widespread support in Montgomery County for referring HB 23-07 to the ballot. MCRG submitted over 25,001 signatures. (*See* Margaret Jurgensen, Election Director, Certification of the petition; E 88-89)[4] Montgomery County citizens, previously unaffiliated with MCRG, volunteered to collect signatures. If MCRG knew that the signature requirement was greater than 25,001, they would have recruited more circulators and set alternative strategies to gather those additional signatures. Because of the widespread support for the referendum, the necessary additional signatures would have been easily collected. However, MCRG relied on the Board's representation and affirmation that the required number of signatures was 25,001. Thus, this Court should not permit that number to be changed when the time for submitting signatures has expired.

Alternatively, if this Court agrees with Appellants' interpretation of Section 114, the litigation in this matter will unfortunately not conclude. A decision from this Court contrary to the Board would prompt a new decision from the Board, thereby starting a new ten-day statute of limitations. Referendum supporters would then be new "person[s] aggrieved," and institute their own timely lawsuit under § 6-209 seeking, *inter alia*, a declaration that the signature threshold in this matter cannot be altered given MCRG's

[4] Additionally, the Board never informed MCRG the total number of verified signatures from their petition submission. It is possible that the Board stopped verifying signatures once they reached the threshold number, meaning that the petition is adequate even under the Appellants' legal theories.

detrimental reliance thereon.[5] The absence of any such relief would result in a substantial injustice to the citizens of Montgomery County.

Section 6-209 of the Maryland Election Law states in pertinent part: "A person aggrieved by a determination made under . . .§ 6-208(a)(2) of this subtitle may seek judicial review:. . . (ii) . . . in the circuit court for the county in which the petition is filed." Md. Code Ann., Elec. Law, § 6-209(a)(1) & (a)(1)(ii) (2006). According to § 6-208(a)(2) the Board has a duty to inform the petition proponent of any deficiencies in their submitted referendums. This would include an insufficient number of signatures. Md. Code Ann., Elec. Law, § 6-208(a)(2) (2006).

MCRG believes that this Court should uphold the trial court's ruling barring the Appellants' attack on the number of signatures required to place the Bill on the ballot. But if this Court does not uphold the trial court's ruling and the Board is forced to issued a new determination that sufficient signatures were not collected, such a new determination would make MCRG a new "person aggrieved," triggering a new statute of limitations.[6] In the interests of justice, the County must be allowed to vote on the Bill.

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[5] In Maryland, government bodies and their agents are generally immune from estoppel claim. There are, however, exceptions to this rule. These exceptions often concern property interests where a citizen has substantially changed their position in reliance on a previous promise by the government. *Sycamore Realty Co., v. People's Counsel of Baltimore County*, 344 Md. 57, 66, 684 A.2d 1331, 1335-36 (1996). This principle also exists in Maryland's election laws where, under § 6-209, a "person aggrieved" by an action of the Board has a remedy (if brought within ten days).

[6] Each determination by the Board begins the statute of limitations for judicial review. "A person aggrieved by the [Board's] determination either as to sufficiency of the petition or the number of signatures 'may seek judicial review.' A petition for judicial review of such a determination, however, 'shall be sought by the 10th day following the determination to which it relates.'" (*citing* § 6-210(e)(1)) *Roskelly v. Lamone,* 396 Md. 27, 45, 912 A.2d 658, 669 (2006) (internal citations omitted).

IV. THE PEOPLE OF MONTGOMERY COUNTY HAVE A RIGHT TO VOTE ON A LAW WHICH REGULATES LEGAL AND SOCIAL DISTINCTIONS REGARDING SEX TO MERE MENTAL PREFERENCES.

The Bill at issue makes the population of Montgomery County vulnerable to anti-discrimination claims for merely maintaining a belief that one's sex is a biological fact, and not a fluid personal choice. The genuine medical and psychiatric issues associated with this Bill were not fully developed or considered by the Council, and the people of Montgomery County are entitled to have their say on the Bill's true nature. This Bill ignores the real and serious medical and physiological problems associated with Gender Identity Disorder (GID) and prevents honest dialogue about those issues. Rather, groups like Equality Maryland and Lambda Legal routinely and surreptitiously remove the "D" from Gender Identity Disorder and add to their political agenda the disorders of those afflicted with GID who need serious medical help, not political absolution.

GID is a recognized physiological condition. *American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders*, 576-582, Fourth ed., (2000). A person with GID has a strong and persistent identification as the opposite sex and the desire to be the opposite sex. *Id.* at 576. This desire is not just the desire to have the social benefits of the opposite sex or traditional transsexualism (which is a sexual fetish, found mostly in heterosexual men), but a bona fide yet erroneous belief that they are the opposite sex. *Id.* GID is almost always accompanied with same-sex attraction. *Id.* at 578. A person with GID will spend most of their time obsessing about their condition and misguided desire to be the opposite sex. *Id.* A person with GID is likely to suffer

depression, anxiety, and other mental health issues coupled with their delusion that they were born the wrong sex. *Id.*

As a surgeon that has performed over 700 sex reassignment surgeries stated: "I don't change men into women. I transform male genitals *into genitals that have a female aspect. All the rest is in the patient's mind.*" *B v. B.,* 355 N.Y.S. 2d 712, 717 (N.Y. App. Div. 1974) (citation omitted) (emphasis added). Or as the Kansas Supreme Court observed in discussing whether a male-to-female transsexual was a woman after sex reassignment surgery: "[t]here is no womb, cervix, or ovaries, nor is there any change in his chromosomes . . . . the transsexual still inhabits . . . a male body in all aspects other than what the physicians have supplied." *In re Gardinger,* 273 Kan. 191, 42 P.3d 120 (Kan. 2002), *quoting Littleton v. Prange,* 9 S.W.3d 223, 231 (1999). Amputating appendages or removing body parts does not change a person's sex. Thus, the citizens of Montgomery County are entitled to question the motive behind any attempt to ignore, blur, or destroy them.

The ability to discuss GID openly, without fear of being sued for discrimination, is important to citizens, physicians, psychologists, and those who seek treatment for GID or other problems associated with the disorder. Everyone should be treated with respect, and regardless of how one may feel about GID, the people of Montgomery County have a right to voice their opinion on this controversial addition to their laws.

CONCLUSION

For the reasons stated above, *Amicus Curiae* request that this Court uphold the trial court's order that the referendum of Bill 23-07 be placed on the November 4, 2008

ballot in Montgomery County. The statute of limitations bars the Appellants' claims, and the citizens of Montgomery County are entitled to vote either for or against Bill 23-07.

Respectfully submitted this the 27th day of August, 2008.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of August, 2008, I sent a true copy of the foregoing via US First Class mail to the following:

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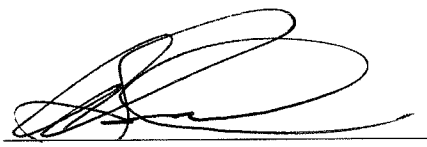

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