IN THE
COURT OF APPEALS OF MARYLAND

September Term, 2017

No. 85

LINDA H. LAMONE,

Appellant,

v.

NANCY LEWIN, *et al.*,

Appellees.

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

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BRIEF OF APPELLANT

JULIA DOYLE BERNHARDT
CPF NO. 8112010024
ANDREA W. TRENTO
CPF No. 0806170247
Assistant Attorneys General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
jbernhardt@oag.state.md.us
(410) 576-7291

Attorneys for Appellant

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BRIEF OF APPELLANT

STATEMENT OF THE CASE

This appeal presents the question of whether a candidate for office can engineer his own untimely withdrawal and removal from a primary election ballot by simply cancelling his voter registration regardless of the expiration of the statutory deadlines for a candidate's withdrawal or for removal of a disqualified candidate from the ballot. Also presented here is whether the State Board of Elections has the authority to bypass the deadline. Here,

Mr. Oaks canceled his voter registration 53 days after the candidate-withdrawal deadline and 45 days after the deadline for removal of a disqualified candidate from the primary election ballot. Nonetheless, the Circuit Court for Anne Arundel County entered a preliminary injunction requiring defendant Linda H. Lamone, in her capacity as Administrator of the State Board of Elections (the "State Board"), to remove former Senator Nathaniel T. Oaks's name from "any and all ballots for elective office, in any form, to be distributed to voters" for the 2018 primary election ballot. (E. 7.)

On April 9, 2018, three registered voters, Nancy Lewin, Elinor Mitchell, and Christopher Ervin ("plaintiffs") filed this action seeking Mr. Oaks's removal from the primary ballot for both Senate and Democratic State Central Committee in Legislative District 41. (E. 73.) At that time, as plaintiffs acknowledged, Mr. Oaks was a registered voter and therefore qualified as a candidate (E. 75), but they alleged that, although Mr. Oaks would not be disqualified at the time of the primary, allowing "the name of a person who *will be disqualified* from appearing on the General Election Ballot" violates the constitutional rights of "plaintiffs, and all voters within Legislative District 41." (E. 76 (emphasis added).) The plaintiffs also pleaded a claim for a "temporary restraining order" and "preliminary injunction" (E. 78, 79). Still, they did not file a motion seeking preliminary relief until one week later, on April 16, 2016, the same day they sought a temporary restraining order. (E. 2, 141.) The circuit court denied their request for emergency relief and scheduled a preliminary-injunction hearing for Friday, April 20, 2018. (E. 8.)

At that hearing, the State Board presented evidence that removing Mr. Oaks from the ballot would be very difficult because ballot-preparation was complete and printing would begin the next business day. (E. 13, 19-30, 83-87.) At the conclusion of the preliminary-injunction hearing, the circuit court denied preliminary injunctive relief (E. 8), because at that time Mr. Oaks was qualified for office because he was a registered voter and would not begin serving a sentence of imprisonment until after the primary election (E. 42). The plaintiffs moved for an injunction pending appeal, to prevent the State Board from proceeding with election preparations, "and then we get into the situation that . . . once this process begins, there would be substantial cost . . . to change it." (E. 42-43.) The circuit court denied this relief. (E. 8, 43.)

Over that weekend, the plaintiffs secured Mr. Oaks's agreement to cancel his voter registration. (E. 102-104.) He did so on Monday, April 23, 2018 (E. 105-106), the same day ballot-printing began. (E. 89). That day, plaintiffs filed a second amended complaint and a motion for reconsideration of the order denying a preliminary injunction. (E. 45, 168.) The next day, the parties appeared before the chambers judge. With the parties' agreement, the judge ordered a shortened response time to the motion and set a hearing for the afternoon of April 26, 2018. (E. 175.)

Even though the defendant had filed an opposition and requested a hearing (E. 176, 199), the court notified the parties on the morning of April 26, 2018, that the original hearing judge would rule on plaintiffs' new request for injunction without a holding a hearing. (E. 6.) Shortly thereafter, the court granted the plaintiffs' motion on the papers and entered a preliminary injunction ordering the State Board to removed Mr. Oaks from

the ballot. (E. 6-7.) The same day, after filing an answer (E. 209), the State Board filed notices of appeal to the Court of Special Appeals and this Court. (E. 107, 109.) The State Board also filed a petition for writ of certiorari and motion for stay in this Court. (E. 220.) This Court granted both the petition and motion on April 27, 2018.

QUESTION PRESENTED

Did the circuit court err in entering a preliminary injunction that requires the defendant to remove the name of a candidate from the ballot for the 2018 primary election, where statutory deadlines have passed, laches bars the relief ordered, removal at this late date will disrupt the orderly process of the election, and other, less disruptive relief is available?

STATEMENT OF FACTS

Candidate Qualifications

With certain exceptions, not relevant here, to be qualified to be a candidate for an office of a political party or nomination by a political party, an individual must be a "registered voter affiliated with the political party. . .." Md. Code Ann., Elec. Law § 5-203(a)(2). To qualify for the office of state Senator, an individual must be a registered voter. Md. Const. art. I, § 12; Elec. Law § 5-203(a)(2)(ii). An individual is disqualified to be a registered voter if the individual "has been convicted of a felony and is currently serving a court-ordered sentence of imprisonment…." *Id.* § 3-102(b)(1).

Statutory Deadlines

For a candidate seeking nomination by primary election, the deadline for filing a certificate of candidacy was February 27, 2018. Elec. Law § 5-303(a)(1). The withdrawal deadline was March 1, 2018. *Id.* § 5-502(a).

As relevant here, "the name of any individual who files a certificate of candidacy and does not withdraw *shall appear on the primary election ballot* unless, by the 10th day after the filing deadline . . ., the individual's death or disqualification is known to the [State Board]." *Id.* § 5-504(b) (emphasis added). This requirement is restated in § 5-601, which provides in relevant part:

> The name of a candidate *shall remain on the ballot and be submitted to the voters at a primary election* if:
>
> (1) The candidate has filed a certificate of candidacy in accordance with the requirements of § 5-301 of this title and has satisfied any other requirement and has satisfied any other requirements of this article relating to the office for which the individual is a candidate, provided the candidate:
>
> (i) has not withdrawn the candidacy in accordance with Subtitle 5 of this title; [and]
>
> (ii) has not died or become disqualified, and that fact is known to the applicable board by the deadline prescribed in § 5-504(b) of this title. . . .

Id. § 5-601 (emphasis added). Thus, the name of a disqualified candidate "shall appear"—indeed, it "shall remain"—on the primary election ballot, *id.* §§ 5-504(b), 5-601(1), unless the State Board knew of the candidate's disqualification by March 9, 2018, *id.* § 5-302(b).

Under Election Law § 9-207(a)(1), the State Board must certify the ballot "*at least* 55 days before the election," whereupon the ballots are posted for public display. *Id.* §§ 9-207(a)(1) (emphasis added), 9-207(c). Unless otherwise ordered by a court, after the second day of public display, the content of the ballots may not be changed and the State

Board may begin to print the ballots. *Id.* §§ 9-207(c)-(e). Absentee ballots must be made available to military and overseas voters no later than 45 days before the election (this year, May 12, 2018). 52 U.S.C. § 20302(a)(8)(A).

The deadline for general voter registration for the 2018 primary election is June 5, 2018, Elec. Law § 3-302(a); however, voters may also register at early voting sites for the current primary election. *Id.* § 3-305(a). Early voting will take place for the 2018 primary election between June 14, 2018 and June 21, 2018. *Id.* § 10-301.1(d).

Challenges to acts or omissions relating to an election must be brought within the earlier of "10 days after the act or omission or the date the act or omission became known to the petitioner." *Id.* § 12-202(b).

The State Board's Preparations for the 2018 Primary Election

The State Board received certificates of candidacy for 2,563 candidates for the 2018 primary election by the February 27, 2018 filing deadline. (E. 83.) It received 77 certificates of withdrawal by the March 1, 2018 withdrawal deadline, of which 23 were filed in the two days between the filing deadline and withdrawal deadline. (E. 83-84.) It became aware of the death or disqualification of eight candidates by the March 9, 2018 deadline for removing the names of such candidates from the ballot. (E. 84.) Since the passing of the withdrawal deadline, the State Board has received—and rejected—requests from approximately ten other candidates to remove their names from the ballot. (E. 21.)

On March 12, 2018, after the deadlines for candidacy withdrawals and removals had passed, the State Board began creating ballot databases, importing ballot data, and laying

out the primary-election ballots. (E. 84.) On March 23, 2018, local boards received ballot-proofing packages to review and approve. (E. 84.)

On April 3, 2018, the State Board certified the ballots pursuant to Election Law § 9-207(a)(1) and posted them for public viewing on its website. (E. 84.)

On April 11, 2018, the State Board began to create the 747 PDFs for the different ballot formats that will be used in the primary. Two of these ballots, which are assigned to fifty election-day precincts and seven early-voting centers, include the Senate Democratic-primary contest for District 41. (E. 84-85.) Any change to the ballots will require redoing the PDFs of all formats of the affected ballots. (E. 85.)

On April 18, 2018, the State Board imported final ballot-style data into its MDVOTERS database. After that, local boards of election verified that styles are aligned with the correct precincts and splits. Any change to the ballots during or after this process would require reimporting the ballot styles and re-verifying all ballot styles to precinct associations. (E. 85.)

At the preliminary-injunction hearing on April 20, 2018, Natasha Walker, the State Board's Project Manager of Election Management Systems, testified that a change to the affected Baltimore City ballots would delay the ballot preparation process by approximately one week. (E. 25.) Making the change as of April 20 would be "very challenging" because it would introduce risks of non-compliance with statutory absentee ballot delivery deadlines as well as "human error" in effecting the necessary changes across all the different ballot formats and databases. (E. 26.)

On April 23, 2018, the State Board sent PDFs of test decks and ballots to the printer, and printing began. It takes approximately two days to lay out the ballot styles and create the metal printing plates for each ballot style. When ballot styles change, new ballot-style PDFs must be sent to the printer, and the pre-print production process must be redone. (E. 86, 89.)

Test decks are sets of pre-filled ballots used to test the vote tabulation machines, to ensure that the tabulators are properly configured to count votes for every candidate in a given contest. (E. 23.) It takes approximately two weeks to print the test decks used to test these machines. (E. 24.) The testing process itself takes approximately one month, and testing must be complete for the primary election by June 12, 2018. COMAR 33.10.02.14.A(2)(a).

After printing begins, changes to ballots are costly and disruptive. (E. 86.) The State Board has ordered sufficient paper to print 4,000,000 ballots and expects to print between 3,000,000 and 3,500,000 ballots. (E. 91.) The printing process itself takes three weeks. (E. 86.) A change to the ballots during or after the printing process in a large jurisdiction such as Baltimore City could require the State Board to reprint the ballots for the entire jurisdiction. (E. 91.) This would entail ordering specialized ballot paper. There is a four-week lead-time for such orders. (E. 91-92.)

On April 25, 2018, the State Board finalized the ballot-style process in the MDVOTERS database by assigning voters who have requested an absentee ballot to the current election. (E. 89.) A change to the ballots after this takes place would require absentee voters to be re-assigned to the election, which cannot be done without intervention

from the MDVOTERS development team. It would take five days to complete that process. (E. 86, 89.)

Also as of April 25, in addition to the commencement of printing and the assigning of absentee voters to the current election through the MDVOTERS database described above, the State Board had done the following:

> (1) Distributed final databases, specimen ballot PDFs and eleven-inch ballot PDFs to the local board of elections;
>
> (2) Distributed final poll book exports to the poll book team;
>
> (3) Distributed ballot PDFs, XML files and reports to the post-election-audit vendor;
>
> (4) Generated PDFs of sample ballots, and sent them to the voter-services developer, and made sample ballots available to voters through the State Board's voter services website;
>
> (5) Imported ballot data for the ballot delivery system and ballot duplication software and generated test ballot PDFs;
>
> (6) Generated preliminary news-feed data and sent it to the Baltimore Sun for their initial testing; and
>
> (7) Created test election result files and sent them to EMS development team to start election result testing.

(E. 89-90.)

On April 26, 2018, the State Board was scheduled to begin testing its web-delivery system, a two-week process that must be complete before the May 12, 2018 deadline for making absentee ballots available to military and overseas voters. (E. 86-87.) The testing process cannot begin until absentee ballots are assigned to voters. (E. 87.) A five-day delay occasioned by the need to reassign absentee voters to the current election because of

a change to the ballots, will risk non-compliance with the May 12, 2018 federal deadline. (E. 86-87.)

Factual Background

On April 7, 2017, Mr. Oaks was charged with one count of wire fraud in violation of federal law in the United States District Court for the District of Maryland. *See United States v. Oaks*, No. 1:17-cr-00288-RDB, Crim. Compl. (D. Md. May 31, 2017); J. Fenton & Luke Broadwater, *Longtime Baltimore Legislator Oaks Charged with Federal Wire Fraud*, The Balt. Sun, Apr. 7, 2017, *available at* http://www.baltimoresun.com/news/maryland/baltimore-city/politics/bs-md-ci-oaks-charged-20170407-story.html. A nine-count superseding indictment dated May 31, 2017 added additional charges including wire fraud, honest-services wire fraud, and violation of the Travel Act in violation of federal law. *See United States v. Oaks*, No. 1:17-cr-00288-RDB, Indictment (D. Md. May 31, 2017). At the time of his indictment, Mr. Oaks was a member of the Maryland Senate representing Legislative District 41. (E. 49.)

On or before February 27, 2018, despite his pending criminal charges, Mr. Oaks filed a certificate of candidacy to seek the Democratic nomination for re-election, and for election to the Democratic State Central Committee, representing his same district. (E. 46.) Mr. Oaks did not withdraw either candidacy by the statutory deadline of March 1, 2018, *see* Elec. Law § 5-502(a), and was not known by the State Board to be disqualified by March 9, 2018, *see id.* § 5-504(b).

On March 29, 2018, Mr. Oaks pleaded guilty to wire fraud in violation of federal law, and he resigned from the Senate. (E. 49.) Mr. Oaks's sentencing will take place after

the primary. (E. 47.) Despite his guilty plea, Mr. Oaks remained eligible to be a candidate in the 2018 primary because he was a registered voter and not "currently serving a court-ordered sentence of imprisonment for the conviction." Elec. Law § 3-102(b); *see id.* § 5-203(a)(2)(ii).

On April 9, 2018, the day plaintiffs filed this action, Mr. Oaks executed an affidavit "consent[ing] to have [his] name removed from the ballot for the primary election on June 26, 2018." (E. 49.) Two weeks later, at plaintiffs' request, Mr. Oaks cancelled his voter registration. (E. 102-106.)

Procedural Background

On April 9, 2018—six days after the State Board had certified ballots and posted them for public viewing—plaintiffs filed this action in the Circuit Court for Anne Arundel County. (E. 1, 73.) In their initial pleading, plaintiffs acknowledged that the State Board was constrained to act by §§ 5-504(b) and 5-601(1)(ii) of the Election Law Article (E. 76), but pleaded that those statutes established unconstitutional "artificially early deadline[s] for removal of a disqualified candidate's name from the Primary Election Ballot" (E. 77-78). The complaint also acknowledged that a person must be a registered voter to be qualified as a candidate, that Mr. Oaks's conviction alone did not disqualify him to be a registered voter, and that he would not begin serving his disqualifying sentence of imprisonment until after the primary. (E. 75.) But, even so, the plaintiffs claimed that allowing on the primary ballot "the name of a person who *will be disqualified* from appearing on the General Election Ballot" violates the constitutional rights of "plaintiffs, and all voters within Legislative District 41." (E. 76 (emphasis added).) Even though the

complaint also pleaded a claim for a "temporary restraining order" (E. 78), the plaintiffs did not file a motion seeking emergency relief until a week later (E. 2, 141).

On April 11, 2018—the same day the State Board began to create the 747 PDFs for the different ballot formats that will be used in the primary—the parties learned that a parallel proceeding had been filed seeking substantially the same relief. Attached to that complaint was an affidavit from Mr. Oaks consenting to his removal from the ballot. (E. 113.) Later that day, defendant's counsel advised plaintiffs about the ballot-preparation schedule and encouraged plaintiffs to file their motion for a temporary restraining order the next day. Specifically, defendant's counsel advised plaintiff's counsel that "putting this off until next week adds unnecessary delay in a process that is already extremely tight." (E. 95.) Instead, on Thursday, April 12, 2018, plaintiffs unsuccessfully sought relief from the State Board at a public meeting of the State Board. (E. 50.)

It was not until the following Monday, April 16, 2018—two days before the State Board began to import ballot-style data into its MDVOTERS database—that plaintiffs moved for emergency relief.[1] Plaintiffs also filed an amended complaint repleading their constitutional claims but also asserting that §§ 5-504(b) and 5-601(1)(ii) should be construed to be "directory" rather than "mandatory," and that it was arbitrary and capricious for the State Board not to exercise discretion to remove Mr. Oaks's name from the ballot. (E. 66.) The same day, the circuit court denied plaintiffs' request for a

[1] The plaintiffs also filed an amended complaint incorporating allegations of Mr. Oaks consent to the removal of his name, and the State Board's refusal to act on Plaintiffs' direct request for relief. (App. 59, 62-63.)

temporary restraining order and scheduled a preliminary-injunction hearing for April 20, 2018. (E. 8.)

The Circuit Court Holds a Hearing and Denies Preliminary Injunctive Relief

At the preliminary-injunction hearing, the State Board presented evidence that removing Mr. Oaks from the ballot at this late date would be difficult and disruptive to the orderly process of the election. (E. 13, 19-30, 83-87.) Among other things, the State Board made clear that (1) on April 23, 2015, it would begin ballot-printing; (2) on April 25, 2018, it would assign absentee voters to this primary election through the MDVOTERS database; (3) on April 26, 2018, it would commence testing its web-delivery application for absentee ballots so that absentee ballots could be delivered on time to military and overseas voters by the May 12, 2018 deadline. (E. 19, 86-87.)

At the conclusion of the hearing, the circuit court denied preliminary injunctive relief. (E. 42.) The court concluded that it was "constrained by the singular fact while it is virtually certain that Mr. Oakes [sic] will become disqualified prior to the general election, it remains legally speculative today." (E. 42.) The plaintiffs promptly moved for an injunction pending appeal, "just so Monday morning [April 23] the process doesn't start and then we get into the situation that Ms. Walker said in her affidavit that once this process begins, there would be substantial cost . . . to change it." (E. 42-43.) The circuit court denied this relief. (E. 43.)

At Plaintiffs' Request, Mr. Oaks Cancels His Voter Registration and Then Plaintiffs Move for Reconsideration

After the hearing, plaintiffs requested that Mr. Oaks cancel his voter registration. (E. 102-104.) Mr. Oaks agreed and submitted his request to the Baltimore City Board of Elections on April 23, 2018. (E. 105.) The same day, plaintiffs filed a second amended complaint and motion for reconsideration of the order denying a preliminary injunction. (E. 45, 168.) On April 24, 2018, the parties agreed to a shortened response time to plaintiffs' motion, and the chambers judge set a hearing for April 26, 2018.

In opposing the motion, the State Board cited the lack of any statutory authority for that relief, the plaintiffs' unreasonable delay in seeking relief, and the disruption to the orderly process of the election if the court granted relief at that late date. (E. 176-78.) The State Board also explained that Mr. Oaks's cancellation of his voter registration did not make him ineligible as a matter of law to be a candidate on June 26, 2018, given that he can reregister to vote, either by the June 5, 2018 closing of registration or at his early voting polling site between June 14 and June 21, 2018. (E. 194-95.) The State Board also supplied an affidavit regarding the heightened burden it now faced given events occurring since the April 20 hearing, and it requested a hearing on plaintiffs' motion. (E. 88-92.)

The Circuit Court Grants a Preliminary Injunction Without Holding a Hearing

Although the chambers judge had scheduled a hearing for April 26 on plaintiffs' motion for reconsideration raising new grounds for a preliminary injunction, the circuit court cancelled the hearing, granted the motion, and entered a preliminary injunction that same day without holding a hearing. (E. 6-7.)

Without acknowledging the defense of laches, the court entered the injunction because it found that Mr. Oaks "is now disqualified for election," and that there is still "adequate time to reform the ballots in Baltimore City." (E. 6.) The court faulted the State Board for continuing with the orderly process of the election, even though the court itself had not only denied preliminary injunctive relief but also denied plaintiffs' request for injunction pending appeal. (E. 42.) Because the matter "remained in active litigation," the court found that proceeding with long-scheduled ballot-testing and printing "cannot be deemed to have further prejudiced" the State Board. (E. 6.) After discounting the proven disruption and cost to the election process (and refusing to consider any prejudice resulting from the State Board's activities following the April 20 hearing) the court found that the risk of voter confusion outweighed that inconvenience, and that providing notice to voters was not an adequate remedy. (E. 6.)

SUMMARY OF ARGUMENT

The law charts a clear course for both candidates and the State Board to follow in navigating the processes for withdrawal and removal of names from the ballot in the event of a candidate's death or disqualification. That course is constitutionally sound and permits only one outcome in this case: Because Mr. Oaks did not withdraw his candidacy by the statutory withdrawal deadline, and because he did not become disqualified by the statutory disqualification "deadline" (the date before which disqualification can still result in the removal of a candidate's name from the ballot), the preliminary injunction should not have been entered. The circuit court's entry of a preliminary injunction requiring the State Board

to remove Mr. Oaks's name from the ballot was premised on legal error and should be vacated for at least four reasons.

First, laches bar the new claims on which the court based the preliminary injunction, and therefore, plaintiffs are not likely to succeed on the merits of their newly asserted claims. The new claims arose from plaintiffs' belated request to Mr. Oaks that he disqualify himself for his candidacy, a request that plaintiffs could have made weeks earlier. When they filed their initial complaint, the plaintiffs knew that, as a registered voter, Mr. Oaks remained eligible to be a candidate notwithstanding his guilty plea. Despite that knowledge, they waited two weeks before asking Mr. Oaks to take steps to engineer his disqualification. Because plaintiffs' delay prejudiced defendant substantially in this compressed election calendar, laches bars the relief they seek.

Second, in addition to being untimely, plaintiffs have not established a probability of success on the merits of any of their claims. The plaintiffs' claim that the State Board acted arbitrarily and capriciously in declining to remove Mr. Oaks's name from the ballot is without merit, because §§ 5-504(b) and 5-601(1) of the Election Law Article do not allow for the exercise of discretion in making such determinations. Where, as here, a candidate has not withdrawn within two days of the candidacy filing deadline, and has not become disqualified within ten days of the deadline, the candidate's name "*shall remain on the ballot* and be submitted to the voters." Elec. Law § 5-601(1) (emphasis added).

The plaintiffs' theory that "shall" is directory rather than mandatory, if applied throughout the Election Article, would invite inconsistency in the administration of elections, an area of the law to which certainty and uniformity are vital. As applied here,

their theory is inconsistent with these provisions' legislative history, is at odds with the circumstances in which this Court has interpreted other statutes to impose directory rather than mandatory obligations, and would impose on the State Board an unworkable process for addressing post-deadline candidate withdrawals and disqualifications. Given the inherent discretion that plaintiffs' interpretation would introduce to the State Board's determinations, it was also reasonable for the State Board to take the position that early, clear deadlines ultimately benefit the public by facilitating the efficient and accurate preparation of ballots and eliminating opportunities for candidates to use their influence to cause rivals or other candidates to withdraw. Moreover, the circuit court's ruling that post-deadline disqualification *requires* removal of a candidate's name from the ballot—even where the disqualification is self-engineered (as was that of Mr. Oaks)—would impermissibly read the Election Law Article's withdrawal provisions right out of the statute.

And even if plaintiffs' proposed statutory interpretation were correct (though it is not), they cannot prove that the State Board's action was arbitrary and capricious, because the State Board acted reasonably and with a rational basis in declining to remove Mr. Oaks's name from the ballot. Until April 23, 2018, Mr. Oaks was not disqualified, and by the time he was disqualified, the printing of ballots had already begun. Given the difficulties attendant with reversing and restarting that process, the State Board acted reasonably and with a rational basis in declining to remove Mr. Oaks's name from the ballot.

Nor are plaintiffs' constitutional claims meritorious, because plaintiffs remain free to associate with and vote for the candidate of their choosing. Because the burden that the statutory withdrawal and disqualifications deadlines place on the plaintiffs' voting rights is negligible, those "reasonable" and "nondiscriminatory" statutes need only be supported by "important regulatory interests," *Burdick v. Takushi*, 504 U.S. 428, 434 (1992), which are met by the State Board's interests in the orderly administration of elections.

But even under heightened constitutional scrutiny, these provisions survive. Given the intricate sequence of events involved in the preparation of ballots and testing of voting systems, and the potential for chaos were the statutory withdrawal and disqualification deadlines to be relaxed, the record in this case shows that the deadlines serve compelling interests that would not be possible to achieve in their absence. A floating deadline for candidacy-withdrawal and removal would be unworkable.

Finally, because plaintiffs must establish all four of the preliminary injunction factors, the plaintiffs' failure to establish a likelihood of success on the merits is fatal to their claims. Even so, plaintiffs did not establish the other preliminary-injunction factors, either. The plaintiffs cannot establish that they will be irreparably harmed by the absence of an injunction, because the harm that they face is negligible to begin with and is speculative in any event. By contrast, the harm faced by the State Board because of the preliminary injunction is undeniable: ballot printing began April 23, absentee ballots were assigned April 25, testing of the absentee web-delivery system was set to begin April 26, all in advance of a deadline of May 12 to transmit absentee ballots to military and overseas voters. The circuit court's refusal to consider the State Board's prejudice because the State

Board continued with its ballot preparation activities during the pendency of the litigation (as was its right to do) was wrong as a matter of law, and therefore an abuse of discretion. Finally, the public interest supports the orderly administration of elections as well as the clear and even-handed enforcement of a workable statutory regime for handling candidacy withdrawals and disqualifications.

ARGUMENT

I. THIS COURT REVIEWS THE CIRCUIT COURT'S ORDER GRANTING PRELIMINARY INJUNCTIVE RELIEF FOR LEGAL CORRECTNESS AND ABUSE OF DISCRETION.

In reviewing an order granting a preliminary injunction, this Court considers the following factors: (1) the likelihood that the plaintiff will succeed on the merits; (2) whether greater injury would be done to the defendant by granting the injunction than would result by its refusal; (3) whether the plaintiff will suffer irreparable injury absent the grant of preliminary injunction relief; and (4) the public interest. *Schade v. Maryland State Bd. of Elections*, 401 Md. 1, 36 (2007). Although this Court generally reviews a trial court's decision to "grant or deny a request for injunctive relief under an 'abuse of discretion' standard," *El Bey v. Moorish Sci. Temple of Am., Inc.*, 362 Md. 339, 354 (2001), a "trial court must exercise its discretion in accordance with correct legal standards," *Ehrlich v. Perez*, 394 Md. 691, 708 (2006) (internal quotation marks omitted). Thus, in reviewing questions of law, including the plaintiffs' likelihood of success on the merits, this Court conducts a *de novo* review. *See id.*

A plaintiff seeking a preliminary injunction must demonstrate a "real *probability* of prevailing on the merits, not merely a remote *possibility* of doing so." *Fogle v. H & G*

Restaurant, Inc., 337 Md. 441, 456-57 (1995) (emphasis in original); *see also Eastside Vend Distributors, Inc. v. Pepsi Bottling Grp., Inc.*, 396 Md. 219, 241 (2006) ("It is well accepted that an interlocutory injunction should not be granted unless the party seeking it demonstrates a likelihood of success on the merits."). Moreover, "the party seeking the injunction must prove the existence of *all four* of the factors . . . in order to be entitled to preliminary relief." *Fogle*, 337 Md. at 456. A "failure to prove the existence" of this factor, or any of the other factors required for a preliminary injunction, "'will preclude the grant of preliminary injunctive relief.'" *Schade*, 401 Md. at 36 (citation omitted); *see Fuller v. Republican Cent. Comm. of Carroll Cty.*, 444 Md. 613, 636 (2015); *Schisler v. State*, 394 Md. 519, 534 (2006).

II. PLAINTIFFS FAILED TO DEMONSTRATE A LIKELIHOOD OF SUCCESS BECAUSE THEIR CLAIMS ARE BARRED BY LACHES.

The plaintiffs' motion for reconsideration should have been denied because of their unreasonable delay both in seeking injunctive relief after the filing of this action, and in causing Mr. Oaks to disqualify himself by canceling his voter registration.[2]

The doctrine of laches applies when "'unreasonable delay in the assertion of one's rights'" causes "'prejudice to the opposing party.'" *Liddy v. Lamone*, 398 Md. 233, 244 (2007) (citation omitted). In the elections context in particular, "'any claim against a state electoral procedure must be expressed expeditiously'" and "without unreasonable delay." *Id.* at 245 (quoting *Ross v. State Bd. of Elections*, 387 Md. 649, 671 (2005)). Thus, laches

[2] The circuit court made no findings and did not rule on defendant's laches argument (E. 6-8), which was raised in opposition (E. 205) to plaintiffs' motion for reconsideration (E. 182-83), also by answer (E. 225).

can bar an election-law claim even when the "delay in seeking judicial relief [is] measured in days," *Baker v. O'Malley*, 217 Md. App. 288, 296 (2014), and where the action would otherwise be timely under Election Law § 12-202(b); *see Lamone v. Schlakman*, 451 Md. 468, 484 (2017) (where equitable relief is sought, the proper focus is on "laches," rather than Election Law § 12-202). Both prongs of the laches doctrine are met here—unreasonable delay and prejudice to the defendant.

First, after filing their complaint within ten days of Mr. Oaks's guilty plea, plaintiffs waited another week before asking the court for the preliminary relief that they pleaded in their complaint. They waited all that week despite the State Board's warning that they were "add[ing] unnecessary delay in a process that is already extremely tight." (E. 95.) Because the statutory deadline for removing a candidate had long since passed, and the State Board had already certified the ballot and posted it for public viewing, plaintiffs unreasonably delayed by waiting an additional week to seek emergency preliminary relief.

Second, plaintiffs unreasonably waited until after the preliminary-injunction hearing (and the day the ballot printing began) to cause Mr. Oaks to cancel his registration. (Ep. 102-104.) Nothing had prevented plaintiffs from making that request of Mr. Oaks earlier; they could have done so before they filed this action on April 9. The plaintiffs knew when they filed their initial complaint (if not before) that Mr. Oaks was not disqualified as a legal matter. (E. 76 (stating that the State Board violated the law by allowing "a person *who will be disqualified*" to remain on the ballot (emphasis added).) They also knew that his status as a registered voter was one of the prerequisites to his being a candidate. (E. 75.) Yet plaintiffs did not attempt to secure Mr. Oaks's disqualification

until *after* the court denied their initial preliminary-injunction motion, at prejudice to the State Board's ability to carry out the orderly preparation of the ballots.

By the time that plaintiffs filed suit, the State Board had already certified and posted the ballots for viewing. Five days before plaintiffs moved for preliminary injunctive relief (the same day the State Board's counsel advised the plaintiffs to file their motion promptly, given the compressed election calendar) the State Board began the process of creating the PDFs of the 747 primary election ballots for each of the different ballot formats that will be used in the primary election. On the day that plaintiffs filed their motion, the State Board was only one week away from sending the ballots to the printer. Two days after that, the State Board imported the final ballot-style data into its MDVOTERS database, so that local boards could verify that styles are aligned with the correct precincts and splits. Any changes to the ballots from that point would require reimporting the ballot styles and re-verifying all ballot-styles-to-precinct associations. On April 23, three days after the circuit court denied preliminary injunctive relief and denied plaintiffs' motion for injunction pending appeal, the State Board began printing ballots. That same day, plaintiffs filed a second amended complaint and moved for reconsideration of the circuit court's order. On April 25, the State Board assigned absentee voters to the current election through the MDVOTERS database, a process that cannot be reversed and corrected without intervention from the MDVOTERS development team, which would cause at least a five-day delay. Timely assignment of absentee voters matters because web delivery testing cannot begin until absentee voters have been assigned to the current election, and that two-week testing process must be complete by the May 12, 2018 absentee ballot delivery

deadline. It is for this reason that, when asked on April 20, 2018, whether the preparation process could accommodate a one-week delay to build in time for appellate review, Ms. Walker testified:

> The problem is, it is larger than me. Changing the physical ballots and producing the files, that is doable but we are scheduled on April 25 to pull the absentees in our [MDVOTERS] which is our voter registration application. And once we do that, it cannot be undone. And that process has to be done within a time frame that allows us to test our ballot delivery system. And that requires two weeks and we can't start that process until the absentees have been pulled because we test with real absentee voters. So you know, it is a matter of everything has to be pushed back and *we don't have the time*.

(E. 30 (emphasis added).)

The plaintiffs' failure to secure Mr. Oaks's voter registration cancellation and move for preliminary relief immediately was unreasonable, and prejudiced the defendant. The circuit court abused its discretion when it did not apply the doctrine of laches, and the preliminary injunction should be vacated.

III. THE PLAINTIFFS ALSO FAILED TO DEMONSTRATE A LIKELIHOOD OF SUCCESS BECAUSE THE STATE BOARD NEITHER ERRED NOR ABUSED ITS DISCRETION WHEN IT COMPLIED WITH MANDATORY STATUTORY PROVISIONS THAT SERVE IMPORTANT REGULATORY PURPOSES.

In addition to being untimely, the plaintiffs' claims alleging that the State Board's application of the pertinent statutes was "arbitrary and capricious" and/or violated the United States and Maryland Constitutions lack merit on both the law and the facts.

A. The State Board's Application of §§ 5-504(b) and 5-601(1)(i) Was Not Arbitrary and Capricious.

The State Board's application of §§ 5-504(b) and 5-601(1)(i) was not arbitrary and capricious: Those provisions leave no discretion to the State Board to apply them in any

other way. In other words, they are "mandatory" and not "directory," and thus Plaintiffs' statutory claim fails as a matter of law. Moreover, even if the Court were to construe those statutes to be "directory," thereby affording the State Board some (unspecified) discretion to disregard the statutes' "directory" charge in (unspecified) appropriate circumstances, the State Board's determinations were reasonable and amply supported by a rational basis. *See Harvey v. Marshall*, 389 Md. 243 (2005).

1. Sections 5-504(b) and 5-601(1) Are Mandatory, and the Board Therefore Lacked Discretion to Deviate from Them.

As a purely statutory matter, the State Board could not have acted arbitrarily and capriciously in declining to remove Mr. Oaks's name from the primary election ballot, because §§ 5-504(b) and 5-601(1) did not allow for any other outcome.

Section 5-601(1) provides, in relevant part, that "[t]he name of a candidate *shall remain on the ballot* and be submitted to the voters at a primary election," so long as the candidate:

> (i) has not withdrawn the candidacy in accordance with Subtitle 5 of this title; [or]
>
> (ii) has not died or become disqualified, and that fact is known to the applicable board by the deadline prescribed in § 5-504(b) of this title . . . .

Elec. Law § 5-601(1)(i)-(ii) (emphasis added).[3] Section 5-504(b) reiterates this requirement and supplies the "deadline" referenced in § 5-601(1)(ii):

[3] Other conditions set forth in § 5-601(1) pertaining to whether the candidate "seek[s] nomination by petition," Elec. Law § 5-601(1)(iii), or is a "write-in candidate," *id.* § 5-601(1)(iv), are not applicable.

> [T]he name of any individual who files a certificate of candidacy and does not withdraw *shall appear on the primary election ballot* unless, by the 10th day after the filing deadline specified under § 5-303 of this title [i.e. February 27, 2018], the individual's death or disqualification is known to the applicable board with which the certificate of candidacy was filed.

Id. § 5-504(b) (emphasis added). The withdrawal provisions of Subtitle 5 require (among other things) that a certificate of withdrawal be filed "within two days" after the February 27, 2018 filing deadline. *Id.* § 5-502(a). Taken together, these provisions admit of only one outcome under the circumstances of this case: Because Mr. Oaks did not withdraw his candidacy by March 1, 2018,[4] and because his putative disqualification was not "known to the applicable board" until the cancellation of his voter registration on April 23, 2018—*forty-five days* after the March 9, 2018 deadline referenced in the statute—his name "shall appear" (under § 5-504(b)) or "shall remain" (under § 5-601) on the primary election ballot.

"When a legislative body commands that something be done, using words such as 'shall' or 'must,' rather than 'may' or 'should,' we must assume, absent some evidence to the contrary, that it was serious and that it meant for the thing to be done in the manner it directed." *Walzer v. Osborne*, 395 Md. 563, 580 (2006) (internal quotation marks and citation omitted). Plaintiffs assert—contrary to the State Board's interpretation[5]—that the

[4] Even if Mr. Oaks's "consent" to have his name removed from the ballot (E. 49), which became known to the State Board on April 11, 2018, was construed as an attempt to withdraw his candidacy, it was proffered in this case *41 days* after the withdrawal deadline of § 5-502.

[5] When this Court interprets a statute that governs an administrative body, "a degree of deference should often be accorded the position of the administrative agency," and the "agency's interpretation and application of the statute which [it] administers should ordinarily be given considerable weight by reviewing courts." *Marzullo v. Kahl*, 366 Md. 158, 172 (2001).

use of the term "shall" in these provisions should be construed to be directory rather than mandatory, but this position has no support in the statutes' legislative history or in the case law around which this distinction in the way that "shall" is interpreted has developed.

a. The Legislative History Confirms that §§ 5-504(b) and 5-601(1) Are Mandatory.

The legislative history of §§ 5-504(b) and 5-601(1) makes clear that the General Assembly intended the provisions to be mandatory.

These provisions were enacted in their current form in 1998, as part of the General Assembly's implementation of the recommendations set forth in the Report of the Commission to Revise the Election Code (Dec. 1997) (the "Garber Commission Report").[6] The Garber Commission was formed "to make a comprehensive revision of the Election Code, based on a full review of the current Code and the election process in all of its respects." Garber Comm'n Rep. 2. Prior to the 1998 reorganization of the Election Code, a candidate seeking to withdraw could do so "within 10 days" after the candidacy filing deadline, Md. Ann. Code art. 33, §9-1(b) (1996), and "[t]he name of any person who files a certificate of candidacy, is opposed, and does not withdraw *shall appear on the ballot* unless he dies or is disqualified and his death or disqualification is known to the board . . . on or before the seventh day prior to the filing deadline," *id.* § 9-1(c) (emphasis added).[7]

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[6] The Garber Commission Report is available at http://msa.maryland.gov/megafile/msa/speccol/sc5300/sc5339/000113/004000/004416/unrestricted/20071254e.pdf (last visited Apr. 30, 2018).

[7] The General Assembly shortened the period in which candidates were permitted to withdraw their candidacies from ten days to two days, as part of a series of legislative fixes designed to ensure the State's compliance with the federal Military and Overseas Voter Empowerment Act. *See* 2011 Md. Laws ch. 169 § 1 (amendment to Elec. Law § 5-

The statute further provided that "[t]he times designated in subsections (b) and (c) of this section for declining nominations and for withdrawal of certificates of candidacy . . . *are mandatory*," *id.* § 9-1(a) (emphasis added). Thus, as with a prior version of the statute, the law did not authorize election officials to alter the deadlines. *See McGinnis v. Board of Supervisors of Elections of Harford County*, 244 Md. 65, 68 (1966) (holding that candidacy filing and withdrawal deadlines "are mandatory and leave no discretion in either the election officials or the courts"). *See also Pumphrey v. Stockett*, 187 Md. 318, 322 (1946) (in strictly applying the 65-day withdrawal deadline then in effect, holding that the candidate had met the deadline).[8]

In the 1998 reorganization of the Election Code, the provision establishing the filing and withdrawal deadlines to be "mandatory" was not included in the revised Article 33, but this omission did not signify an intent to transform the statutes to "directory" ones. To the contrary, it confirms the drafters' intent to preserve the substantive status quo. The Garber Commission Report catalogued all the "substantive changes" it proposed to be made to Article 33 in an appendix, *see* Garber Comm'n Rep. 51-62 (App'x C), and also prepared an appendix of separate bills that it "deemed to be potentially controversial."

502(a)). The period for which death or disqualification, once known to the State Board, could result in the removal of the candidate's name from the ballot was changed from seven days to ten days *prior* to the candidate-filing deadline as part of the implementation of the Garber Commission's recommendations. *See* Garber Comm'n Rep. 54; 1998 Md. Laws ch. 585, at 2740. The word "prior" was changed to "after" in the General Assembly's *Annual Corrective Bill*, 1999 Md. Laws ch. 34, at 321.

[8] Shortly after the ruling in *McGinnis*, the General Assembly included the provision that the candidacy filing and withdrawal provisions would be "mandatory" in a 1967 "complete[] revis[ion]" of the Election Code. *See* 1967 Md. Laws ch. 392, at 825, 859-60.

Garber Comm'n Rep. 4, 63-64 (App'x D). Neither Appendix C nor Appendix D referred to the removal of this provision, evidencing that the Garber Commission did not believe this change to be "substantive." *See id.* at 51-64; *see also id.* at 2 (noting statutory charge to remove "archaic" provisions of the former code).

Accordingly, the legislative history supports the interpretation that §§ 5-504(b) and 5-601(1) are mandatory provisions that do not allow for discretion in their application.

b. This Court's Jurisprudence Confirms that Sections 5-504(b) and 5-601(1) Are Mandatory.

Next, the Election Law Article provisions at issue in this case bear little resemblance to the statutes that this Court has held to be "directory."

This Court has identified "reasonable continuity in the line of cases dealing with interpretation of the word 'shall' directed toward an arbiter's time constraints for issuing a decision." *In re Adoption of Jayden G.*, 433 Md. 50, 80 (2013) (quoting *G & M Ross Enters., Inc. v. Board of License Comm'rs*, 111 Md. App. 540, 544 (1996)). Under this line of cases, "if a statute governs the actions of an arbiter, [be it a court or an administrative agency,] its use of the word 'shall' will generally be interpreted as directory, rather than mandatory." *Id.* (quoting *G & M Ross Enters.*, 111 Md. App. at 545). Thus, in *Resetar v. State Board of Education*, 284 Md. 537 (1979), this Court found a provision stating that the Board of Education "shall . . . render a decision . . . within thirty (30) days" in the context of a discharge hearing to be directory rather than mandatory, concluding that the purpose of the provision was "to have prompt decisions of cases," rather than "strip[] the County Board of authority" to effect discharges when the statutory time period is not met.

Id. 284 Md. at 547, 550. This Court has reached the same conclusion as to analogous provisions in the Maryland Constitution "directing" that the courts render their decisions within specified periods of time. *See Resetar*, 284 Md. at 548 (citing cases).[9] These narrow circumstances have no application to the facts of this case.

In other contexts, this Court has employed a "two-prong test in various contexts in order to determine whether the statute or rule-based deadline is directory in nature rather than mandatory, emphasizing the lack of explicit consequences for non-compliance with time limitations." *Downes v. Downes*, 388 Md. 561, 583 (2005). But the relevant directive in §§ 5-504(b) and 5-601 is not for the State Board to act within a certain time limitation, but instead to act to place a candidate's name on the ballot. Section 5-504(b) directs that the name of a candidate who does not withdraw "shall appear" on the ballot "unless" the candidate's death or disqualification is known to the State Board within ten days of the filing deadline. The effect of interpreting "shall" to be directory in this provision is to make the placing of a candidate's name on the ballot discretionary in *all circumstances*, not just where the disqualification becomes known after the expiration of the ten-day window.[10] The cases cited in *Downes* simply do not speak to these circumstances. *See*

[9] *See* Md. Const. art. IV, § 15 ("In every case an opinion [of the Court of Appeals], in writing, shall be filed within three months after the argument, or submission of the cause."); *id.* art. IV, § 23 ("The Judges of the respective Circuit Courts of this State shall render their decisions, in all cases argued before them, or submitted for their judgment, within two months after the same shall have been so argued or submitted.").

[10] The same is true of § 5-601, which provides that the name of a candidate "shall remain" on the ballot if the candidate has not withdrawn, and "has not died or become disqualified" within ten days of the filing deadline. Elec. Law § 5-601(1)(i)-(ii). The State

Maryland State Bar Ass'n v. Frank, 272 Md. 528, 533 (1974) (statute requiring bar association or state's attorney on judge's order to prosecute charges of professional misconduct not more than sixty days from the date of order was directory rather than mandatory); *Director, Patuxent Inst. v. Cash*, 269 Md. 331, 344 (1973) (statutory reporting provision deadline for persons awaiting examination and evaluation at Patuxent was directory and not mandatory).

In any event, the Court has also stressed that "the absence of a penalty is not dispositive of whether the use of the word 'shall' is mandatory." *State v. Rice*, 447 Md. 594, 625 (2016). Instead, the inquiry "turns upon the intention of the Legislature as gathered from the nature of the subject matter and the purposes to be accomplished." *Id.* (internal quotation marks omitted). Here, the pertinent provisions expressly contemplate circumstances where a candidate does not withdraw within two days of the filing deadline, or where a candidate's disqualification does not become known to the State Board until *after* the ten-day period following the candidacy filing deadline. They provide that, in such instances, the candidate's name "shall remain" on the ballot. In *Andrews v. Secretary of State*, 235 Md. 106 (1964), this Court stated that "where the election statutes fix a date for filing petitions or certificates of candidacy, such documents must be filed before the expiration of the time fixed, and that the election officials *may not exercise any discretion in the matter*." *Id.* at 108 (emphasis added; internal quotation marks omitted). In *McGinnis*, this Court held that "the rationale of *Andrews* controls not only the time for

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Board is not being directed to act within a specified period; it is being directed to leave the candidate's name on the ballot.

filing but the time for withdrawing under Code." 244 Md. at 68. The inquiry need proceed no further. The case law shows that these provisions are "mandatory" and not "directory."

c. The Interpretation Advanced by Plaintiffs and the Circuit Court Proposes an Unworkable Rule That Would Lead to Absurd Results If Applied Uniformly to Candidates Who Decide to Disqualify Themselves by Canceling Their Voter Registration.

Finally, the lower court's decision has implications beyond this case. The plaintiffs' interpretation that §§ 5-504(b) and 5-601(1) are directory would create an unworkable rule both for the public—candidates could attempt to withdraw at will, at any point during the election cycle—and an unworkable process for the State Board to determine whether post-deadline withdrawals, disqualifications and deaths should result in the removal of a candidate from the ballot. Moreover, the specific iteration of this theory that was accepted by the circuit court—that a disqualified candidate must be removed from the ballot *regardless* of any deadline for doing so—would impermissibly read the withdrawal provisions of the Election Law Article right out of the statute. The plaintiffs' interpretation should be rejected.

"This Court has said repeatedly that construction of a statute which is unreasonable, illogical, unjust, or inconsistent with common sense should be avoided." *D & Y, Inc. v. Winston*, 320 Md. 534, 538 (1990). The plaintiffs' interpretation would throw the State Board's carefully calibrated ballot-preparation sequence into tumult, not only by inviting candidates to withdraw even after the passing of the withdrawal deadline (while ballots are actively being prepared), but by requiring the State Board to exercise discretion in each such instance to determine whether removal of that candidate's name would be appropriate

under the particular circumstances presented. In this election cycle alone, ten candidates have asked to have their names removed from the ballot since the passing of the withdrawal deadline. In the abstract, each individual request—depending on when it was presented—could conceivably be accommodated. But requiring the State Board to accommodate *ten* of these requests over the span of several weeks, requiring ballot preparation to essentially start over for the affected ballots in each such instance, would be unworkable and "inconsistent with common sense."

Moreover, the circuit court's narrowing of the theory to only those instances where a candidate has become "disqualified" is, in fact, not a narrowing at all. Rather, because Mr. Oaks was permitted to engineer his own disqualification by "withdrawing" from the voter rolls, the circuit court has effectively read the withdrawal provisions of the Election Law Article out of the statute. Under § 5-502, a candidate "may withdraw the candidacy by filing a certificate of withdrawal on the form prescribed by the State Board within 2 days after the [candidacy filing date]." Elec. Law § 5-502(a). Under § 5-601(1)(i), a candidate who "has not withdrawn the candidacy in accordance" with this provision "shall remain on the ballot and be submitted to the voters at a primary election." In interpreting a statute, the Court "'read[s] the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory." *Fisher v. Eastern Corr. Inst.*, 425 Md. 699, 706 (2012) (quoting *Moore v. State*, 424 Md. 118, 127 (2011)). The circuit court's interpretation of the law would effectively eliminate not just the deadline provisions of § 5-502 ("Time for Withdrawal"), but Subtitle 5 of the Election Law article in its entirety ("Withdrawal of Candidacy After Filing but Before Primary

Election"). This absurd and sweeping result should be rejected by this Court. *See Patterson Park Pub. Charter Sch., Inc. v. Baltimore Teachers Union*, 399 Md. 174, 200 (2007) (rejecting interpretation that "would lead to the absurd result that all of Title 9's provisions could be waived, rendering the entire Title nugatory").

In summary, the statutes at issue are mandatory, and the State Board was without discretion to remove Mr. Oaks's name from the ballot at any point after his March 29, 2018 guilty plea. Accordingly, the State Board failure to do remove his name was legally correct, and thus neither arbitrary nor capricious.

2. Even if §§ 5-504(b) and 5-601(1) Could Be Construed to Be Directory, the Board's Actions Were Neither Arbitrary nor Capricious.

The implication of the statutory argument advanced by the plaintiffs is that the State Board's action with regard to whether a candidate's name "shall appear" or "shall remain" on the primary ballot is (at least to some degree) committed to its discretion. Discretionary actions are reviewed by Maryland courts under an "arbitrary or capricious" standard, which this Court has held "is best understood as a reasonableness standard." *Harvey*, 389 Md. at 297 (quoting Arnold Rochvarg, *Maryland Administrative Law* § 4.38 at 128 (2001 & Supp. 2004.)). Thus, "[i]f the agency has acted unreasonably or without a rational basis, it has acted in an arbitrary or capricious manner." *Id.*

The State Board acted reasonably and with a rational basis in declining to remove Mr. Oaks's name from the ballot. Even had the law given the State Board discretion to ignore the deadlines in §§ 5-504(b) and 5-601(1), the fact remains that Mr. Oaks was *not disqualified* until he decided to cancel his registration on April 23, 2018—the day the State

Board started printing ballots for the 2018 primary election. The statutes direct the State Board to place a candidate's name on the ballot ("shall appear") unless the candidate has withdrawn, has died, or has become disqualified. Until April 23, Mr. Oaks had not withdrawn, died, or become disqualified. Thus, interpreting "shall appear" to be "should appear" in § 5-601 (as plaintiffs would have this Court do) would merely have placed with the State Board the discretion to decide whether to waive the deadline, and so it does nothing to advance plaintiffs' claim. At that late stage in ballot preparation, the State Board would have been acting well within its discretion to leave Mr. Oaks's name on the ballot.

Thus, even under plaintiff's theory that the deadlines are merely directory, the State Board would not have been *required* to exercise its discretion to remove Mr. Oaks from the ballot once he disqualified himself. Having already begun the printing process, the State Board could reasonably have followed the (hypothetically) directory charge in the statute for candidates to appear on primary ballots unless their disqualification was known within ten days of the filing deadline. This is particularly so given that Mr. Oaks's disqualification was (and remains) reversible until the last day of early voting on June 21, 2018—just five days before the primary election.

Given the inherent discretion that the plaintiffs' interpretation would introduce to the State Board's determinations whether to remove a candidate's name from the ballot, it was also reasonable for the State Board to take the position that early, clear deadlines ultimately benefit the public by facilitating the efficient and accurate preparation of ballots and eliminating opportunities for candidates to use their influence to cause rivals or other candidates to withdraw. A statutory scheme that vests the State Board with discretion in

this area makes the State Board the potential target of influence as well, and it is reasonable for the State Board to believe that a clear policy of abiding by the letter of the candidate disqualification and withdrawal provisions would help to avoid that possibility.

B. Plaintiffs Cannot Succeed on Their Constitutional Claims Because They Have Suffered No Injury and Because the State Board's Actions Survive Constitutional Scrutiny in Any Event.

The plaintiffs' challenge to the constitutionality of the State Board's application of the early disqualification deadlines in §§ 5-504(b) and 5-601(1)(ii) under the First and Fourteenth Amendments and Articles 7 and 24 of the Declaration of Rights fails as a matter of law. The plaintiffs contend—and the circuit court agreed—that the State Board's failure to remove now-disqualified Mr. Oaks from the primary election ballot would cause voters to be "constructively disenfranchised" (in the circuit court's words (E. 41)), or would deny them their right "to cast effective ballots" (in plaintiffs' words (E. 52)). But these plaintiffs are not prevented from supporting the candidate of their choosing and the State Board's application of the statutory deadlines was appropriately tailored to achieve the State Board's important and compelling interest in the orderly administration of elections. The plaintiffs therefore cannot succeed on their constitutional claims.

Constitutional voting rights flow from the associational rights guaranteed by the First Amendment, *see Anderson v. Celebrezze*, 460 U.S. 780, 787 (1983) ("[I]t is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." (quoting *NAACP v. Alabama*, 357 U.S. 449, 460 (1958)). "The First Amendment . . . protects the right to cast an effective vote by

prohibiting restrictions on ballot access that impair the ability of citizens to express their political preferences, or that limit the opportunity for citizens to unite in support of the candidate of their choice." *Republican Party of N.C. v. Martin*, 980 F.2d 943, 959-60 (4th Cir. 1992). This Court has held that Article 7 of the Maryland Declaration of Rights is "more protective of rights of political participation than the provisions of the federal Constitution." *Maryland Green Party v. Maryland Bd. of Elections*, 377 Md. 127, 150 (2003).

But the regulations at issue here are not related to political participation or ballot access. Instead, they are reasonable regulations governing deadlines for candidate withdrawal and removal that serve important regulatory purposes. A floating deadline for candidacy-withdrawal and removal is unworkable administratively and contrary to the public interest. Administratively, this is because the ballot-creation process cannot even *begin* until deadlines for withdrawal and death/disqualification pass. (E. 22, 84). And, the public interest would not be served by a rule that would facilitate belated withdrawals at the will of the candidates.

All elections regulations "invariably impose some burden upon individual voters." *Burdick*, 504 U.S. at 433. "[A]s a practical matter, there must be substantial regulation of elections if they are to be fair and honest and if some order, rather than chaos, is to accompany the democratic process." *Storer v. Brown*, 415 U.S. 724, 730 (1974). Accordingly, "[a] court considering a challenge to a state election law must weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interests

put forward by the State as justifications for the burden imposed by its rule,' taking into consideration 'the extent to which those interests make it necessary to burden the plaintiff's rights.'" *Burdick*, 504 U.S. at 434 (quoting *Anderson*, 460 U.S. at 789). "[W]hen those rights are subjected to 'severe' restrictions, the regulation must be 'narrowly drawn to advance a state interest of compelling importance." *Burdick*, 504 U.S. at 434 (quoting *Norman v. Reed*, 502 U.S. 279, 289 (1992)). "But when a state election law provision imposes only 'reasonable, nondiscriminatory restrictions' upon the First and Fourteenth Amendment rights of voters, 'the State's important regulatory interests are generally sufficient to justify' the restrictions." *Id.* (quoting *Anderson*, 460 U.S. at 788); *accord Burruss v. Board of County Commissioners of Frederick County*, 427 Md. 231, 253 (2012) ("[W]e first consider, in a realistic light, the extent and nature of the burden placed upon voters when determining what level of scrutiny to apply to a constitutional challenge that implicates voting and associational rights," and applying "rational basis scrutiny" where "the burden placed on the voters . . . is minimal").

Here, the injury to plaintiffs' voting rights is not substantial. That is because the only injury they claim is the one that would allegedly result from the continued presence on the primary ballot of a candidate who became disqualified a month-and-a-half after the deadline for when his name could have been removed from the ballot. But the "mere inclusion of a rival [candidate] does 'not impede the voters from supporting the candidate of their choice' and thus does not cause the legally cognizable harm necessary for standing.'" *Hollander v. McCain*, 566 F. Supp. 2d 63, 69 (D.N.H. 2008) (quoting *Gottlieb v. Federal Election Comm'n*, 143 F.3d 618, 622 (D.C. Cir. 1998)); *see also Becker v.*

Federal Election Comm'n, 230 F.3d 381, 390 (1st Cir. 2000) (voters lack cognizable injury where "[t]he only derivative harm . . . [they] can possibly assert is that their preferred candidate now has less chance of being elected"); *Berg v. Obama*, 586 F. 3d 234, 239-40 (3d Cir. 2009) ("As a practical matter, Berg was not directly injured because he could always support a candidate he believed was eligible."); *Haynes v. Ottley*, No. CV 2014-70, 2014 WL 5469308, at *4 (D.V.I. Oct. 28, 2014) ("Haynes has not been directly injured because he remains able to support a candidate that he believes is eligible."). Mr. Oaks's presence on the ballot, "whatever his eligibility, is 'hardly a restriction on voters' rights' because it in no way prevents [plaintiffs] from voting for somebody else." *Hollander*, 566 F. Supp. 2d at 69 (quoting *Becker*, 230 F.3d at 390). Here, plaintiffs remain able to vote and campaign for their desired candidates and to unite and associate with other voters in doing so. Mr. Oaks's continued presence on the ballot does not impair any of these rights, and the fact that he may receive votes during the primary election to the detriment of the plaintiffs' preferred candidates is not an injury that courts have recognized.[11]

In sum, "the State's important regulatory interests are generally sufficient" for the early candidate-withdrawal deadline at issue here to survive constitutional scrutiny. The

[11] The notion that plaintiffs will be "constructively disenfranchised" because of Mr. Oaks's presence on the ballot also ignores the numerous other circumstances in Maryland in recent years in which the primary winner has *declined the nomination* after winning. Since the late 1990s, 63 candidates in Maryland have collectively rendered thousands of votes ineffective by declining their respective nominations. (E. 27.) This relatively mundane occurrence underscores that the voting right at issue here—the right to have ballots exclude the names of candidates who, no longer wishing to run after the expiration of the relevant withdrawal deadline, have found a way to disqualify themselves from the election, so that other voters will not mistakenly vote for them—is not one that courts have generally recognized.

statutes at issue are neutral and non-discriminatory, and, typically, when "content-neutral, nondiscriminatory regulations" are "reasonably related to the purpose of administering an honest and fair initiative procedure," a plaintiff's "First Amendment claim is without merit." *Taxpayers United for Assessment Cuts v. Austin*, 994 F.2d 291, 297 (6th Cir. 1993); *see Burruss*, 427 Md. at 253 (applying "rational basis scrutiny" where "the burden placed on the voters" by the law or regulation "is minimal"). Here, the State Board's early withdrawal and disqualification deadlines for candidates are rationally related to its overarching and important regulatory interests in the consistent application of the election laws to all candidates and the orderly administration of the election—specifically, "the need for election ballots to be timely and accurately prepared." *De La Fuente v. Kemp*, No. 1:16-CV-2937-MHC, 2016 WL 9023598, at *6 (N.D. Ga. Aug. 30, 2016), *aff'd in part, dismissed in part*, 679 F. App'x 932 (11th Cir. 2017); *see also Wood v. Meadows*, 207 F.3d 708, 715 (4th Cir. 2000) ("Administrative convenience readily falls under the rubric of a state's 'regulatory interests,' the importance of which the Supreme Court has repeatedly recognized."). Accordingly, the deadlines satisfy the modest constitutional scrutiny counseled by both *Anderson* and *Burdick* as well as this Court's decision in *Burruss*.

Even under a heightened level of scrutiny, however, the State Board's application of these provisions would survive. Where the impact of an elections regulation on voting rights is substantial, the State Board must show that the regulation is "reasonably necessary to the accomplishment of legitimate governmental objectives, . . . or necessary to promote a compelling governmental interest." *Nader for President 2004 v. Maryland State Bd. of*

Elections, 399 Md. 681, 699 (2007) (internal quotation marks and citations omitted); *see also Burdick*, 504 U.S. at 434 (holding that a "severe" restriction on voting rights must be "narrowly drawn to advance a state interest of compelling importance"). As the record shows, given the sequence of steps that the State Board must undertake between the candidate filing deadline and the date by which absentee ballots must be provided to military and overseas voters, the ballot preparation process is complicated and time-consuming. (E. 19-31, 83-92.) Approximately 2,563 certificates of candidacy were filed by the February 27, 2018 deadline, and 77 certificates of withdrawal were filed by the March 1, 2018 withdrawal deadline. (E. 83-84.). An additional eight candidates were determined to be deceased or disqualified by the March 9, 2018 deadline for removing those candidates from the ballot, and from that point on, the State Board has been working diligently to prepare the 747 different ballots that will be in use during the 2018 primary election. (E. 84.) Among other things, the State Board:

- Began creating ballot databases, importing ballot date, and laying out the different ballots that will be in use for this primary election (E. 84);
- Provided ballot proofing packages for local boards of election to review and approve (a process that can take approximately one week) (E. 84);
- Certified ballots and placed ballots for public viewing on its website on April 3, 2018 (E. 84);
- Created PDFs of all 747 primary election ballots for each of the different formats that will be in use, including specimen ballots, election day ballots, test deck ballots, absentee ballots, 11-inch ballots for web delivery, and duplication ballots for automated duplication of certain absentee ballots not capable of being processed by tabulation machines (a process that takes approximately eight days). (E. 85);

- Imported final ballot-style data into its MDVOTERS database on April 18 (E. 85);

- Began printing ballots on April 23 (E. 90); and

- Assigned absentee voters to this election in the MDVOTERS database on April 25 (E. 90), so that it had sufficient time to conduct the two-week testing of its web-delivery system in advance of the May 12 military voter deadline. (E. 86, 90.)

A candidacy-withdrawal deadline that extended materially into the timeframe over which the steps described above are to take place would introduce delay in the calendar as well as the risk of confusion and error. (E. 85-86.) Also, the risk of confusion and error—and, ultimately, non-compliance with statutory ballot delivery deadlines—would be substantial. (E. 22, 84-86.).

Moreover, plaintiffs' "as-applied" challenge to the statutory deadlines for disqualification and withdrawal is premised on the theory that they are unconstitutionally early by *45 days* and *53 days*, respectively. Mr. Oaks did not barely miss these deadlines; they passed *weeks* ago, during which period the State Board has completed practically all its ballot-preparation tasks, culminating in the commencement of printing on the very day that Mr. Oaks purported to disqualify himself. (E. 88-90.) Now, the State Board is performing various testing regimens that are only possible now that ballots are complete, and on a schedule designed to permit compliance with the May 12 deadline for delivering military absentee voters and the June 12 deadline for the completion of voting system testing with test deck ballots. (E. 23-26, 86-87, 89.) *See* COMAR 33.10.02.14.A(2)(a). The State Board's application of these deadlines to decline to remove Mr. Oaks from the primary election ballot is supported by compelling government interests that would not

reasonably be achievable had it taken any other course. While "[a]ny filing deadline imposes some burden on constitutional rights," *Wood*, 207 F.3d at 714, the interests that support the withdrawal deadline here are more than sufficient to overcome constitutional scrutiny in this case. Accordingly, plaintiffs are not likely to succeed on their constitutional claims.

IV. THE PLAINTIFFS FAILED TO MEET THE OTHER REQUIREMENTS FOR ISSUANCE OF AN INJUNCTION.

Given the plaintiffs' failure to establish a likelihood of success on the merits, the Court need not consider the issues of irreparable harm, the balance of hardships, or the public interest. *See Department of Transp., Motor Vehicle Admin. v. Armacost*, 299 Md. 392, 405 (1984) (vacating interlocutory injunction where "appellees have little chance of prevailing on the merits of their various claims," without reaching other factors).

"[I]rreparable harm must be neither remote nor speculative, but actual and imminent." *Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F. 2d 802, 812 (4th Cir. 1991) (cited in *Schade*, 401 Md. at 39). The continued presence of Mr. Oaks on the primary ballot causes plaintiffs no cognizable harm, because it does not impede plaintiffs from voting or associating with their chosen candidate. Moreover, it is speculative whether Mr. Oaks' presence on the ballot would mislead other voters, or how they would otherwise vote in his absence.

The plaintiffs' failure to establish "actual and imminent" irreparable harm in the absence of relief is outweighed by the concrete harm that the State Board will face if the Court upholds the injunction. *See Schade*, 401 Md. at 36 ("the 'balance of convenience'

[is] determined by whether greater injury would be done to the defendant by granting the injunction than would result by its refusal"). Given the exigencies of the election calendar, the ballot-printing process has begun, and any changes from this point forward "would be costly and disruptive." (E. 86, 89.) For any affected ballots, the State Board would be required to redo the two-day pre-print production process, and discard all previously printed (and now erroneous) ballots. (E. 86.) The State Board would also need to re-print affected test deck ballots, potentially upsetting the one-month timeframe for testing vote tabulation machines for which test decks are necessary. (E. 23-27.) In addition, with a large jurisdiction like Baltimore City, it is possible that additional, specialized ballot paper would need to be ordered, which requires *four weeks* of lead-time. (E. 91-92.) These delays would also impact the process of assigning absentee ballots to voters and testing the State Board's web-delivery system, which began on April 25, 2018 and which can take over two weeks to complete. (E. 86-87, 89.) Reassigning absentee ballots due to a change in the ballot content would take approximately five days. (E. 86.) Given the May 12, 2018 deadline for the delivery of absentee ballots to military and overseas voters, the risk that an eleventh-hour ballot change could impose significant hardship on the State Board is substantial—including affecting its ability to meet the federal May 12 deadline. Other election preparations are also well underway, and will be disrupted by affirmance of the preliminary injunction entered by the circuit court. (E. 30, 87, 90-91.)

The circuit court was wrong as matter of law to refuse to weigh these factors, on the ground that "actions taken by the Board of Elections since the adversary hearing to further their printing and testing process" could be disregarded because the State Board was on

"notice that the instant matter remained in active litigation." [12] (E. 6.) Six days earlier, the circuit court had expressly permitted the State Board to continue to prepare for the election by denying both a preliminary injunction and an injunction pending appeal under Rule 2-632(f). In the absence of an injunction, the State Board had a duty to continue its long-scheduled activities necessary for orderly preparation for the primary election, many of which are imposed by law. There mere pendency of litigation, particularly where the plaintiff was not likely to succeed on the merits, could not possibly mean that the State Board should cease to prepare for the election.

An otherwise discretionary decision premised upon legal error, is itself an abuse of discretion because "the court's discretion is always tempered by the requirement that the court correctly apply the law applicable to the case." *Arrington v. State*, 411 Md. 524, 552 (2009). The circuit court's refusal to consider the prejudice to the State Board occasioned by the entry of a preliminary injunction on plaintiffs' motion for reconsideration was reversible error.

Finally, the public interest supports the dissolution of the preliminary injunction. It is not in the public interest to disrupt the State Board's orderly schedule for achieving

[12] Indeed, the circuit court erred as a matter of law in refusing to hold an adversary hearing on plaintiffs' motion for reconsideration, despite the defendant's request for one. (E. 199.) *See* Md. Rule 15-505(a) ("A court may not issue a preliminary injunction without notice to all parties and an opportunity for a full adversary hearing on the propriety of its issuance."). Not only was the reconsideration motion based on both new facts and a new theory of relief (indeed, a new amended complaint was filed along with the motion), the defendant's burden was materially different by the date for which the hearing was originally set. A preliminary injunction entered without affording the defendant the opportunity for such a hearing "must be reversed." *LOOC, Inc. v. Kohli*, 347 Md. 258, 268 (1997).

necessary election-preparation tasks. Moreover, perpetuating the preliminary injunction will have an impact that extends well beyond the current election, and that is inimical to the public interest. It would open the door to unfettered post-deadline requests for withdrawal or (as here) manufactured disqualifications, requiring the State Board to devote significant resources to both evaluating these requests and (at minimum) accommodating the disqualifications. Although the State Board might in the abstract be able to accommodate some untimely requests for withdrawal or disqualification, having a floating deadline, and requiring the State Board to evaluate dozens of these requests during each cycle, would, at a minimum, introduce uncertainly and delay into the election calendar. At worst, it could grind the ballot-preparation processes to a halt. The public interest supports the orderly administration of elections provided by clear and evenly enforced withdrawal and disqualification deadlines.

CONCLUSION

The order of the Circuit Court for Anne Arundel County granting a preliminary injunction should be reversed.

Respectfully submitted,

JULIA DOYLE BERNHARDT
CPF No. 8112010024
ANDREA W. TRENTO
CPF No. 0806170247
Assistant Attorneys General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
jbernhardt@oag.state.md.us
(410) 576-7291
(410) 576-6955 (facsimile)

Attorneys for Appellants

CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 12,777 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

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

/s/ Julia Doyle Bernhardt
_____
Julia Doyle Bernhardt

TEXT OF PERTINENT PROVISIONS
(Rule 8-504(a)(8))

Annotated Code of Maryland, Election Law Article (LexisNexis 2017)

§ 3-102. Qualifications for voter registration.

(a) *In general.* — (1) Except as provided in subsection (b) of this section, an individual may become registered to vote if the individual:

(i) is a citizen of the United States;

(ii) is at least 16 years old;

(iii) is a resident of the State as of the day the individual seeks to register; and

(iv) registers pursuant to this title.

(2) Notwithstanding paragraph (1)(ii) of this subsection, an individual under the age of 18 years:

(i) may vote in a primary election in which candidates are nominated for a general or special election that will occur when the individual is at least 18 years old; and

(ii) may not vote in any other election.

(b) *Exceptions.* — An individual is not qualified to be a registered voter if the individual:

(1) has been convicted of a felony and is currently serving a court-ordered sentence of imprisonment for the conviction;

(2) is under guardianship for mental disability and a court of competent jurisdiction has specifically found by clear and convincing evidence that the individual cannot communicate, with or without accommodations, a desire to participate in the voting process; or

(3) has been convicted of buying or selling votes.

§ 3-302. Registration closing.

(a) *When registration is closed.* — Except as provided under § 3-305 of this subtitle, registration is closed beginning at 9 p.m. on the 21st day preceding an election until the 11th day after that election.

(b) *Receipt of applications after registration is closed* — Generally. — A voter registration application received when registration is closed shall be

accepted and retained by a local board, but the registration of the applicant does not become effective until registration reopens.

(c) *Receipt of applications after registration is closed* — Exceptions. — A voter registration application that is received by the local board after the close of registration shall be considered timely received for the next election provided:(1) there is sufficient evidence, as determined by the local board pursuant to regulations adopted by the State Board, that the application was mailed on or before registration was closed for that election; or

(2) the application was submitted by the voter to the Motor Vehicle Administration, a voter registration agency, another local board, or the State Board prior to the close of registration.

§ 3-305. Early voting registration.

(a) *In general*. — During early voting, an individual may appear in person at an early voting center in the individual's county of residence and apply to register to vote or change the voter's address on an existing voter registration.

(b) *Requirements for proof of residency*. — (1) When applying to register to vote during early voting, the applicant shall provide proof of residency.

(2) The applicant shall prove residency by showing the election judge:(i) a Maryland driver's license or Maryland identification card that contains the applicant's current address; or

(ii) if the applicant does not have a driver's license or identification card that contains the applicant's current address, a copy of an official document that:1. meets the requirements established by the State Board; and

2. contains the applicant's name and current address.

(c) *Duties of election judge*. — (1) When an individual applies to register to vote at an early voting center, the election judge shall determine whether the applicant resides in the county in which the applicant applied and is qualified to become a registered voter.

(2) If the voter is a resident of the county and is qualified to register to vote, the election judge shall:(i) issue the voter a voter authority card;

(ii) have the voter sign the voter authority card; and

(iii) issue the voter a ballot.

(d) *Change of address*. — (1) When a voter applies to change the voter's address during early voting, the election judge shall determine whether the voter resides in the county in which the voter seeks to vote.

(2) If the voter is a resident of the county, the election judge shall:

(i) issue the voter a voter authority card;

(ii) have the voter sign the voter authority card; and

(iii) issue the voter the appropriate ballot for the voter's new address.

(e) *Regulations and procedures*. — The State Board shall adopt regulations and procedures in accordance with the requirements of this section for the administration of voter registration during early voting.

§ 5-203. Voter registration and party affiliation.

(a) *Voter* registration *required*. —

(1) This subsection does not apply to a candidate for:

(i) President or Vice President of the United States; or

(ii) any federal office who seeks nomination by petition.

(2) Unless the individual is a registered voter affiliated with the political party, an individual may not be a candidate for:

(i) an office of that political party; or

(ii) except as provided in subsection (b) of this section, nomination by that political party.

(b) *Party affiliation* — Exception for judicial and county board of education candidates. — The requirements for party affiliation specified under subsection (a) of this section do not apply to a candidate for:

(1) a judicial office; or

(2) a county board of education.

§ 5-302. Filing.

(a) *On form*. — A certificate of candidacy shall be filed under oath on the prescribed form.

(b) *Filing with State Board*. — The certificate of candidacy shall be filed with the State Board if the candidacy is for:

(1) an office to be voted upon by the voters of the entire State;

(2) the General Assembly of Maryland;

(3) Representative in Congress;

(4) the office of judge of the circuit court for a county; or

(5) an office of elected delegate to a presidential national convention provided for under Title 8, Subtitle 5 of this article.

(c) *Filing with local board.* — (1) If the candidacy is for an office other than an office described in subsection (b) of this section, the certificate of candidacy shall be filed with the local board of the applicable county.

(2) In accordance with regulations adopted by the State Board, each local board shall provide the name and other required information for each candidate to the State Board.

§ 5-303. When filed.

(a) *In general.* — Except as provided in subsections (b) and (c) of this section:

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

(2) for any other regularly scheduled election, a certificate of candidacy shall be filed not later than 9 p.m. on the Wednesday that is 83 days before the day on which the primary election will be held.

(b) *Special election.* — A certificate of candidacy for an office to be filled by a special election under this article shall be received and filed in the office of the appropriate board not later than 5 p.m. on the Monday that is 3 weeks or 21 days prior to the date for the special primary election specified by the Governor in the proclamation for the special primary election.

(c) *Write-in candidate.* — The certificate of candidacy for the election of a write-in candidate shall be filed by the earlier of:

(1) 7 days after a total expenditure of at least $ 51 is made to promote the candidacy by a campaign finance entity of the candidate; or

(2) 5 p.m. on the 7th day preceding the start of early voting for which the certificate is filed.

§ 5-502. Time for withdrawal.

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

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

§ 5-504. Effect of withdrawal of candidacy.

(a) *In general*. — If a certificate of withdrawal is filed under this subtitle:

(1) the certificate of candidacy to which the certificate of withdrawal relates is void;

(2) the name of the candidate may not be submitted to the voters for nomination and election to the office to which the certificate relates unless the individual files a new certificate of candidacy within the time limit prescribed for filing; and

(3) except as provided in § 5-402 of this title, the filing fee for the certificate of candidacy may not be refunded.

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

§ 5-601. Candidates qualifying.

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

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

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

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

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

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

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

§ 9-207. Ballots — Certification; display; printing.

(a) *Time of certification*. — The State Board shall certify the content and arrangement of each ballot:

(1) for a primary election, at least 55 days before the election;

(2) for a general election, at least 55 days before the election;

(3) for a special primary election, at least 18 days before the election; and

(4) for a special general election, not later than a date specified in the Governor's proclamation.

(b) *Exception* — Later date set by Court of Appeals. — The Court of Appeals, on petition of the State Board, may establish a later date in extraordinary circumstances.

(c) *Delivery to local boards*. — Within 24 hours after certification, the State Board shall publicly display the content and arrangement of each certified ballot on its Web site.

(d) *Preparation of ballot; public display*. — Except pursuant to a court order under § 9-209 of this subtitle, or as provided in § 9-208 of this subtitle, the content and arrangement of the ballot may not be modified after the second day of the public display.

(e) *Printing of ballots*. — Unless a delay is required by court order, the State Board may begin to print the ballots after 2 days of public display and correct any noted errors.

§ 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.

LINDA H. LAMONE,	*	IN THE
Appellant,	*	COURT OF APPEALS
v.	*	OF MARYLAND
NANCY LEWIN, *et al*.,	*	September Term, 2018
Appellees.	*	No.

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CERTIFICATE OF SERVICE

I certify that on this 30th day of April 2018, the Brief of Appellants and the Record Extract in the captioned case were filed and served electronically on the MDEC system, sent by electronic mail to, and two copies will be hand-delivered on May 1, 2018 to:

H. Mark Stichel, Esq.
Elizabeth A. Harlan, Esq.
Astrachan Gunst Thomas, P.C.
217 East Redwood Street, 21st Floor
Baltimore Maryland 21202
hmstichel@agtlawyers.com
eharlan@agtlawyers.com

Attorneys for Plaintiffs

/s/ Julia Doyle Bernhardt
_____
Julia Doyle Bernhardt