
**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

RECORD EXTRACT

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April 30, 2018

Attorneys for Appellant

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CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MD

CASE SUMMARY

CASE NO: C-02-CV-18-001013

Nancy Lewin, et al. vs. Linda Lamone

§
§
§
§

Location: Anne Arundel Circuit Court
Filed on: 04/09/2018

CASE INFORMATION

Related Cases

COA-PET-0097-2018 (Petition Filed)
COA-REG-0085-2017 (Petition Granted)

Case Type: Election Law

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number C-02-CV-18-001013
Court Anne Arundel Circuit Court
Date Assigned 04/09/2018



PARTY INFORMATION

Plaintiff

Ervin, Christopher
4301 Ridgewood Avenue
Baltimore, MD 21215

Lewin, Nancy
212 Edgevale Road
Baltimore, MD 21210

Mitchell, Elinor
2706 Sulgrave Avenue
Baltimore, MD 21215

Defendant

Lamone, Linda H
In her Official capacity as State Administrator
Maryland State Board of Elections
151 West Street
Suite 200
Annapolis, MD 21401

I, Robert P. Duckworth, Clerk of the Circuit Court for Anne Arundel County, hereby certify that this is a true copy from the record in this court. Witness the hand and seal of the undersigned this 22nd day of April 2018

Robert P. Duckworth

Circuit Court for Anne Arundel County, Maryland

Attorneys

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Retained
410-576-6472(W)

BERNHARDT, JULIA DOYLE
Retained
410-576-7291(W)

DATE

EVENTS & ORDERS OF THE COURT

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04/09/2018

Attorney Appearance - \$10 Fee
Counsel: Attorney STICHEL, HENRY MARK
For: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher


04/09/2018


Complaint / Petition
Verified Complaint for Mandamus, Declaratory Judgment and Injunctive Relief
Filer: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher.

CASE SUMMARY


CASE NO. C-02-CV-18-001013

Against: Defendant Lamone, Linda H


- 04/09/2018  Request to Issue
Request to Issue Summons


- 04/09/2018  Case Information Report Filed
Civil Case Information Report
Filed by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher


- 04/16/2018 **Hearing - Temporary Order (8:30 AM) (Judicial Officer: McCormack, Stacy Wiederle)**


- 04/16/2018  Summons Issued (Service Event)
Requested by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
Service for: Defendant Lamone, Linda H


- 04/16/2018 **Summons Issued**
Lamone, Linda H
Unserved


- 04/16/2018  Motion
Motion For Temporary Restraining Order And/Or Preliminary Injunction
Filed by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher


- 04/16/2018  Complaint - Amended
Amended Complaint
Filed by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher


- 04/16/2018  Supporting Documents
Comparison Copy
Filer: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher


- 04/16/2018  Supporting Exhibits
Exhibit A


- 04/16/2018  Supporting Exhibits
Exhibit B


- 04/16/2018  Supporting Exhibits
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- 04/16/2018  Supporting Exhibits
Exhibit D

- 04/16/2018  Supporting Exhibits
Exhibit E
















- 04/16/2018  Supporting Exhibits
Exhibit F

- 04/16/2018  Hearing Sheet / Open Court Proceedings (Judicial Officer: McCormack, Stacy Wiederle)

- 04/16/2018  Supporting Documents













CASE SUMMARY
CASE NO. C-02-CV-18-001013

Memorandum in Support of Motion For Temporary Restraining Order And/Or Preliminary Injunction




- 04/16/2018  Supporting Documents
Rule 15-504(b) Certificate
- 04/18/2018  Opposition / Response
Opposition to Motion for Temporary Restraining Order and/or Preliminary Injunction
Filed by:: Defendant Lamone, Linda H
- 04/18/2018  Order (Judicial Officer: McCormack, Stacy Wiederle)
Hearing Sheet signed as Order of Court. Copies to Atty Stichel and L Lamone. Notification emailed to Atty Stichel
- 04/18/2018  Supporting Exhibits
Exhibit A
- 04/18/2018  Supporting Exhibits
Exhibit B - Affidavit of Natasha Walker
- 04/19/2018  Reply to Opposition
Reply Memorandum in Support of Motion for Preliminary Injunction
Filed by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
- 04/19/2018  Attorney Appearance - No Fee
Counsel: Attorney HARLAN, ELIZABETH ANN
For: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
- 04/19/2018  Supporting Exhibits
Mitchell Affidavit
- 04/19/2018  Supporting Exhibits
SB 204
- 04/19/2018  Supporting Exhibits
Chapter 332
- 04/20/2018  Affidavit
Affidavit of Nancy Lewin
- 04/20/2018  Affidavit
Affidavit of Jill P. Carter
- 04/20/2018  Affidavit
Affidavit of J.D. Merrill
- 04/20/2018 **Hearing (1:30 PM) (Judicial Officer: Klavans, Glenn L.)**
- 04/20/2018  Hearing Sheet / Open Court Proceedings (Judicial Officer: Klavans, Glenn L.)
Hearing Sheet signed as Order of Court
- 04/20/2018  Motion
Motion for Relief - filed and DENIED in ope Court

CASE SUMMARY
CASE NO. C-02-CV-18-001013

Filed by: Attorney STICHEL, HENRY MARK

- 04/20/2018  Miscellaneous Document
Attorney Appearances Filed in Open Court (Appearances previously entered)
- 04/23/2018  Complaint - Amended
Second Amended Verified Complaint for Mandamus, Declaratory Judgment and Injunctive Relief
Filed by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
- 04/23/2018  Supporting Documents
Comparison Copy
Filer: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
- 04/23/2018  Motion - Reconsideration
Filed by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
- 04/23/2018  Supporting Documents
Memorandum in Support of Motion for Reconsideration
Filer: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
- 04/23/2018  Supporting Exhibits
Exhibit A to Memorandum in Support of Motion for Reconsideration
- 04/23/2018  Supporting Exhibits
Exhibit B to Memorandum in Support of Motion for Reconsideration
- 04/24/2018  Order (Judicial Officer: Klavans, Glenn L.)
Hearing sheet signed as order of court: Court denied plaintiffs complaint for Preliminary Injunction, relief pursuant to Md Rule 2-632 denied. (Copies to attys Stichel, Harlan, Trento and Bernhardt...Notification email to all attys)
- 04/24/2018  Summons Issued (Service Event)
Requested by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
Service for: Defendant Lamone, Linda H
- 04/24/2018 **Summons Issued**
Lamone, Linda H
Unservd
- 04/24/2018  Consent Motion
Consent Motion to Shorten Time
Filed by: Attorney STICHEL, HENRY MARK
- 04/25/2018  Transcript
Invoice and 1 transcript Hearing dated 4/20/18; Costs: \$296.06.
- 04/25/2018  Order (Judicial Officer: Vitale, Cathleen M.)
ORDERED that the time for Defendant's response to Plaintiff's Motion for Reconsideration is shorten to 6:00 pm on Wednesday April 25, 2018. Matter Scheduled for hearing 1:30 pm Thursday April 26, 2018. (copies mailed to Atty Stichel, Atty Bernhardt, Atty Trento and Atty Harlan-Notification by Email)
- 04/26/2018

CASE SUMMARY
CASE NO. C-02-CV-18-001013

	<p> Order (Judicial Officer: Klavans, Glenn L.) <i>ORDERED, the Motion for Preliminary Injunction is GRANTED. Linda H. Lamone, in her official capacity as State Administrator of the Maryland State Board of Elections shall immediately remove the name of Nathaniel T. Oaks from any and all ballots for elective office, in any form, to be distributed to voters in Legislative District 41, for the Democratic Party Primary Election to be held in June, 2018. This preliminary injunction shall apply to all persons under the direction of the State Administrator. No bond shall be required prior to or after the effectiveness of this Order. (Copies to attys Stichel Bernhardt, Trento and Harlan... Notification email to attys</i></p>
04/26/2018	<p>CANCELED Hearing (1:30 PM) (Judicial Officer: Mulford, William C., II) <i>Event Terminated</i></p>
04/26/2018	<p> Acknowledgement of Petition for Writ of Certiorari</p>
04/27/2018	<p> Order - Writ of Certiorari Granted <i>Order (Judge Barbera) - ORDERED, by the Court of Appeals of Maryland, that the consent motion to shorten time to respond to petitioner's motion for stay pending further review, be, and it is hereby, granted; and it is further ORDERED, that the Petition for Writ of Certiorari be, and it is hereby, granted, and a writ of certiorari to the Court of Special Appeals shall issue; and it is further ORDERED, that the motion for immediate stay pending further review be, and it is hereby, granted, and the order of the Circuit Court for Anne Arundel County entered on April 26, 2018 in Lewin, et at v. Lamone, No. C-02-CV-18-001013, entering a preliminary injunction requiring the removal of Nathaniel T. Oaks from the primary ballot for the 2018 primary election, and all further proceedings in that case, are stayed, until further Order of this Court; and it is further ORDERED, that this case shall be set in for oral arguments before the Court on May 2, 2018.</i></p>
04/27/2018	<p>Additional Notes Exist <i>**** Acknowledgement of Petition of Writ of Certiorari sent to Judge Vitale task queue ****</i></p>

DATE FINANCIAL INFORMATION

Attorney STICHEL, HENRY MARK	
Total Charges	0.00
Total Payments and Credits	0.00
Balance Due as of 4/27/2018	0.00
Plaintiff Lewin, Nancy	
Total Charges	165.00
Total Payments and Credits	165.00
Balance Due as of 4/27/2018	0.00

NANCY LEWIN

* IN THE

Plaintiff

* CIRCUIT COURT FOR

v.

* ANNE ARUNDEL COUNTY

LINDA H LAMONE

* MARYLAND

Defendant

* Case No.: C-02-CV-18-001013

* * * * *

ORDER

This matter having come before the Court for reconsideration of the denial of a preliminary injunction, and having considered said motion and the response thereto, the Court has determined that grounds exist for such reconsideration due to the fact that Nathaniel T. Oaks is now disqualified for election to the offices for which he filed certificates of candidacy, by virtue of his voluntary removal from the voter registration rolls. For the reasons expressed by the Court at the original adversary hearing in this matter, the Court finds that the Board of Elections still has adequate time to reform the ballots in Baltimore City. Any actions taken by the Board of Elections since the adversary hearing to further their printing and testing process was done after notice that the instant matter remained in active litigation and thus cannot be deemed to have further prejudiced the Board of Elections' position in this matter. The harm to the voters by way of potential confusion, inadvertence, and/or mischief by the appearance of a disqualified name on the ballot far outweighs any inconvenience to the Board of Elections. No less comprehensive remedy, such as the posting of signs at polling places, can assure that the voters' rights to effectively exercise their franchise will be protected.

04/26/18 TLM

The Court further finds that there is a likelihood that the Plaintiffs will prevail on the merits of this case, and that the Plaintiffs have raised a substantial question concerning whether the Defendant is violating Maryland law and the Maryland Constitution by the refusal to remove Mr. Oaks' name from the ballot. The Court finds the balance of convenience favors the Plaintiffs and that the public interest would be served by the issuance of a preliminary injunction; wherefore:

ORDERED, the Motion for Preliminary Injunction is GRANTED. Linda H. Lamone, in her official capacity as State Administrator of the Maryland State Board of Elections shall immediately remove the name of Nathaniel T. Oaks from any and all ballots for elective office, in any form, to be distributed to voters in Legislative District 41, for the Democratic Party Primary Election to be held in June, 2018. This preliminary injunction shall apply to all persons under the direction of the State Administrator. No bond shall be required prior to or after the effectiveness of this Order.



Judge Glenn L. Klavans

Signed: 4/26/2018 11:13 AM



Civil Hearing Sheet
IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY

NANCY LEWIN, et al.
Plaintiff / Petitioner
(STICHEL)

Case No. C-02-CV-18-1013

Date: 04/16/2018

VS

LINDA LAMONE
Defendant / Respondent
(TRENTO)

Clerk: C.Delost 2C

Case called for Hearing on TEMPORARY RESTRAINING ORDER
In Open Court before Judge STACY W. MCCORMACK

4/18/18 - jme

Counsel heard. Plaintiff's Motion for Temporary Restaining Order is DENIED.
Case set for 2 hour hearing on April 20, 2018 at 1:30pm. Defendant to filed
Response to Amended Complaint for Declaratory Judgment by April 18, 2018 at
10 am and Plaintiff to file response by April 19, 2018 at 10 am. Hearing Sheet
Signed as Order of Court.

Judge

- - - - - x
 :
 NANCY LEWIN, et al, :
 :
 Plaintiffs, : Civil No. C-02-CV-18-001013
 :
 v. :
 :
 LINDA LAMONE, :
 :
 Defendant. : Annapolis, Maryland
 :
 - - - - - x April 20, 2018

HEARING

WHEREUPON, proceedings in the above-entitled matter commenced.

BEFORE: THE HONORABLE GLENN L. KLAVANS, Judge

APPEARANCES:

FOR THE PLAINTIFF:

HENRY MARK STICHEL, Esq.
 ELIZABETH A. HARLAN, Esq.
 Astrachan, Gunst, Thomas PC
 217 East Redwood Street
 21st Floor
 Baltimore, MD 21202

FOR THE DEFENDANT:

ANDREA W. TRENTO, Esq.
 JULIA DOYLE BERNHARDT, AGC
 Office of the Attorney General
 Civil Litigation Division
 20th Floor
 200 St. Paul Plaza
 Baltimore, MD 21202

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<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>For the Defendant:</u>				
Natasha Walker	11(AF)	20(HS)	--	--

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<u>EXHIBITS:</u>	<u>FOR IDENTIFICATION</u>	<u>IN EVIDENCE:</u>
<u>For the Defendant:</u>		
??	12	12

Keynote: "----" indicates inaudible in transcript.

1 P R O C E E D I N G S

2 (Whereupon, at 1:34 p.m., the hearing began.)

3 THE COURT: You may be seated. Let me call the
4 matter of Lewin et al versus Lamone, C-02-CV-18-1013. If
5 counsel would each please state your full name and spell your
6 full name for our recorded record.

7 MR. STICHEL: Your Honor, H. Mark Stichel, M-a-r-k
8 S-t-i-c-h-e-l. Appearing for the plaintiffs, Nancy Lewin,
9 Eleanor Mitchell and Christopher Urban.

10 MS. HARLAN: Good afternoon, Your Honor, Elizabeth
11 Harlan, E-l-i-z-a-b-e-t-h H-a-r-l-a-n on behalf of the
12 plaintiffs.

13 MR. TRENTO: Thank you, Your Honor. Andrea Trento,
14 A-n-d-r-e-a T-r-e-n-t-o from the Office of the Attorney
15 General on behalf of defendant, Linda Lamone.

16 MS. BERNHARDT: Good afternoon, Your Honor, Julia
17 Doyle Bernhardt, J-u-l-i-a D-o-y-l-e B-e-r-n-h-a-r-d-t,
18 Assistant Attorney General on behalf of the defendant.

19 THE COURT: All right, we are here today on the
20 plaintiff's amended verified complaint for Mandamus,
21 declaratory judgement and injunctive relief. I have had an
22 opportunity to review all of the pleadings that have been
23 filed in this matter and in the short amount of time that I
24 have had since yesterday afternoon about 4:00 to digest what I
25 can. And I am ready to hear from you. I would like to try to

1 limit presentations to 30 minutes each if at all possible.
2 Someone may want to run down the street before the end of the
3 day.

4 MR. STICHEL: Your Honor, Mark Stichel on behalf of
5 the plaintiffs. First before we begin, this morning we filed
6 three additional affidavits through the MDECK system. I have
7 given copies to Mr. Trento. I don't know if they have made it
8 to you yet or not, so I have paper copies here.

9 THE COURT: If they have been filed, I can accept
10 those. All right, let me take paper copies because I think
11 the last affidavit that I have -- was the Eleanor Mitchell
12 ones. So these are in addition to that?

13 MR. STICHEL: Correct, Your Honor.

14 THE COURT: All right. All right.

15 MR. STICHEL: Your Honor, you mentioned that we
16 would have 30 minutes each side to present. We have an
17 affidavit that Your Honor probably saw as well from Natasha
18 Walker --

19 THE COURT: Yes.

20 MR. STICHEL: -- we would like to move that and we
21 don't have objection from counsel but move that in as actual
22 testimony -- direct testimony on the record for Ms. Walker
23 with an additional opportunity to request to be able to put
24 Ms. Walker on the stand for 5 to 10 minutes of additional
25 testimony.

1 THE COURT: Is there any objection to that?

2 MR. TRENTO: I have no objection, Your Honor, with
3 the caveat that we would also ask if -- to verify complaint in
4 all of the affidavits that we be submitted also be considered
5 part of the evidentiary record for this hearing.

6 THE COURT: And I will do that and I will judicially
7 notice the entire record in this case -- in reaching the ---
8 all right.

9 MR. TRENTO: Thank you, Your Honor.

10 THE COURT: Very well, you may proceed.

11 MR. STICHEL: Your Honor, would you prefer that I
12 stand here or at the --

13 THE COURT: Wherever you are comfortable.

14 MR. STICHEL: I will stay here. Thank you, Your
15 Honor. Today's case is very simple. There is a candidate
16 that is going to appear on the ballot unless this Court orders
17 otherwise in District 41 who has pleaded guilty to crimes in
18 Federal Court. It is a virtual certainty that he will be
19 disqualified in the time of the general election and he has
20 also filed an affidavit in a related case in this Court
21 requesting that his name be taken off the ballot.

22 The State Board of Elections has taken the position
23 that because of the statutory language in the election code,
24 the State Board and State Administrator have no discretion
25 whatsoever that the ballot becomes frozen within 10 days of

1 the filing deadline which was back on February 27 and that is
2 that.

3 That construction makes no sense. We are going to
4 have someone on the ballot who will be unable to serve and
5 having his name on the ballot will cause a great deal of
6 confusion and will cause voters to cast votes that will be
7 wasted and it is argument that that situation deprives voters
8 of their Constitutional rights to vote which is protected by
9 both the Maryland Constitution and the United States
10 Constitution.

11 There is a construction of a statute that we believe
12 is correct, that this Court could use that would allow for
13 there to be come give here. And that is statutes can be
14 interpreted two different ways if you employ the word,
15 "Shall". The word "shall" can be construed as being
16 mandatory which would be the construction that the defendant
17 would put on it and that is there is just no discretion
18 whatsoever. We are stuck with this very difficult situation.

19 We contend that the -- in this situation, the
20 statute should be construed as being directory. That is that
21 it would allow some wiggle room -- some room here to correct a
22 situation like this which is a truly extraordinary situation.
23 You have read our papers. In 1963, the Court of Appeals held
24 that a withdrawal deadline was directory. Now there has been
25 a course of litigation and statutory changes since then.

1 It is our position that in 1998 when the General
2 Assembly rewrote the election laws, it took out what then was
3 a provision in the withdrawal provisions that said that they
4 were mandatory. It is our contention that by doing that, the
5 General Assembly left the field open for this Court to
6 construe the statute as being directory.

7 There are several reasons why the Court should do
8 that. One, is that allowing the discretion here to do that
9 would definitely serve the public good and would also prevent
10 a potential Constitutional issue. There have been a series of
11 cases beginning with Anderson versus Celebrese in 1980 where
12 the Federal Court has said that arbitrary early filing
13 deadlines are unconstitutional because they impact voters,
14 they affect a meaningful vote.

15 I will concede that I am aware of no case that has
16 flipped that and said that arbitrarily early withdrawal
17 deadlines or arbitrary early dates for freezing the ballot are
18 unconstitutional. But I think if you look at the reasoning of
19 those cases, it should apply here in this situation. There is
20 no reason whatsoever why Mr. Oakes name should appear on the
21 ballot other than defendant's arbitrary just very kind of
22 narrow view that the statute says shall and we have no choice
23 whatsoever but to live with this very bad situation.

24 Should the Court rule that Mr. Oakes' name should be
25 taken off of the ballot, it would not -- it would serve a very

1 public purpose but it would also prejudice no one. Right now,
2 there are three names on the ballot. Mr. Oakes and then J.D.
3 Merrill and Jill Carter. Among the two -- among the
4 affidavits that I have submitted to the Court today, the
5 affidavits from Ms. Carter and Mr. Merrill, both of them state
6 explicitly that they have no objection to the removal of
7 Mr. Oakes' name from the ballot.

8 I can't think of anyone else that could object.
9 Neither the candidates in the race, both of the other
10 candidates want his name off and Mr. Oakes wants his name off,
11 my clients want his name off. There is no one that wants
12 Mr. Oakes' name on the ballot except for the defendants who
13 say we just can't do it, our hands are tied. And we are here
14 to ask the Court to untie their hands.

15 There has also been an affidavit submitted from the
16 defendants in argument about the difficulty in changing the
17 ballot at this date. The statutory deadlines for changing a
18 ballot are still several weeks down the road. In this case,
19 we are dealing with the ballots in legislative district. I
20 think there are two ballots in the sense or maybe variations
21 but of the 400 some odd ballots that the State Board of
22 Elections have to contend with, we are talking with two
23 ballots.

24 I just find it very hard to believe that taking one
25 name off of two ballots is something that is so onerous that

1 it can't be accomplished at this date or even some date
2 reasonably thereafter. So therefore, Your Honor, we have read
3 the papers based on what we have said there, what I have said
4 here today and you know I would urge the Court to grant us the
5 relief we seek which is to order the State Board of Elections
6 to remove Mr. Oakes' name from the primary elections ballot.

7 THE COURT: And in that regard, what is your
8 suggestion as to a relief specifically I should grant should
9 it be a preliminary injunction? Should it be a declaratory
10 judgement or both?

11 MR. STICHEL: I guess, Your Honor, I would like the
12 belt with suspenders approach, Your Honor, which would be to
13 declare that the statute is directory and not mandatory. And
14 to grant a preliminary injunction with respect to the relief
15 we seek. I guess the other thing that I would say which I
16 have not discussed with opposing counsel, the rules governing
17 preliminary injunctions allow the Court to advance the trial
18 on the merits with the preliminary injunctions hearing.

19 Given the situation in which we face, which is that
20 the election is June 26, the deadline for sending military
21 ballots is May -- I think May 12 or something around there, I
22 think May 12 and 13, we are dealing with a relatively narrow
23 time frame. And it is my expectation that whoever loses here
24 today is probably going to seek to appeal the case, so I think
25 it would make sense after today's case for the Court to --

1 today for the Court to advance the trial on the merits so that
2 we get a final judgement.

3 We can appeal from the grant or the denial of the
4 injunction but --

5 THE COURT: That is what is unclear to me. Because
6 I am -- thought that Judge McCormick's order of two days ago
7 effectively advanced everything to today. That is what I am
8 trying to determine what the parties believe is the case.

9 MR. STICHEL: I don't have a belief one way or the
10 other as to what her order did. But I would have no objection
11 to the Court advancing the trial of the matter to today so
12 that we can final judgement.

13 THE COURT: Okay. Mr. Trento?

14 MR. TRENTO: Thank you, Your Honor. As we indicated
15 earlier, we would like to put on some testimony. I am happy
16 to address the Court's questions about where we are in the
17 case procedurally. First if the Court --

18 THE COURT: Why don't you do that first then.

19 MR. TRENTO: Okay. We would object to advancing the
20 trial on the merits today, Your Honor. As we understand it,
21 the motion that was filed on Monday was a motion for a
22 temporary restraining order or in the alternative, preliminary
23 injunction. Our view is that that part of the motion that
24 sought the TRO was denied on Monday but that motion is what is
25 pending before the Court today.

1 A Hello.

2 Q Can you tell me a little bit about what your role as
3 project manager of Election Management System entails?

4 A Yes. So I am responsible for our internal agency
5 election management system which builds our ballots. I am in
6 the process of building the new election management system. I
7 lay out the ballots and I am responsible for sending all of
8 the ballot material to the printers. And I also manage the
9 website.

10 Q Thank you. And you are familiar with -- you are
11 aware that your testimony that was provided in an affidavit
12 has now been entered into evidence in this case, right?

13 A Yes.

14 (The document referred to was
15 marked for identification as
16 Defendant's Exhibit ?? and was
17 received in evidence.)

18 BY MR. TRENTO:

19 Q Do you recall testifying about the number of
20 candidates who have withdrawn their candidacies in this
21 election?

22 A Yes.

23 Q And do you remember what that number is?

24 A 77. Or 73, I am sorry. 70 something. 77 I believe
25 it is.

1 Q 70 something. And then there was a certain number
2 that was withdrawn -- certain number of candidates withdrew
3 their candidacies after the candidate filing deadline?

4 A 23.

5 Q And the candidate filing deadline was February 27?

6 A Correct.

7 Q And was there a deadline by which they had to
8 withdraw their candidacies?

9 A March 1, 2018.

10 Q So they had two days after the filing deadline?

11 A Yes, um hum.

12 Q Are you aware of any requests to withdraw
13 candidacies that have come in to the office since March 1?

14 A Approximately 10.

15 Q And what did the board do -- what did the State
16 Board do with those requests?

17 A We denied those requests.

18 Q Okay because?

19 A Because they didn't meet the deadline.

20 Q Okay. Now, one allegation in this case as you have
21 probably heard by now is that this withdraw deadline is too
22 early? It is arbitrarily early. And in this case, are you
23 aware of -- let me strike that, are you aware of when Mr.
24 Oakes plead guilty?

25 A I am not aware of that.

1 Q Let me ask you this, if the deadline were to have
2 been extended to April 1, about a month after the current
3 deadline. What kind of impact would that have had on the
4 ballot preparation process?

5 A I would not have started the ballot preparation
6 process.

7 Q Why not?

8 A Because it -- you would have too many risks
9 introduced with that process. Because you are dealing with
10 separate independent systems. So you would have to make all
11 of those changes after you import into the voting system
12 manually.

13 Q So all of the steps that you have testified to that
14 took place during that period of -- I believe you testified
15 that you started preparing the ballots on March 12, so those,
16 the 19 or 20 days worth of steps you would not have undertaken
17 until after April 1 is that right?

18 A Correct. And actually would be further because of
19 the deadline to fill vacancies, I wait for that too.

20 Q And what does that refer to?

21 A So there is a deadline for --- to fill vacancies and
22 that happens after.

23 Q And if a withdrawal were to create a vacancy, then
24 that vacancy then there would be a period of time after the
25 withdrawal period for that vacancy to be filled?

1 A Yes, correct.

2 Q Okay, shifting gears. Do you recall testifying
3 about a test deck(sic)?

4 A Yes.

5 Q Can you tell the Court what is a test deck?

6 A So a test deck is a set of ballots, there is
7 multiple copies of each ballot style that the local Board of
8 Elections use to test their voting equipment. And it is
9 basically each ballot has an oval filled out for each
10 candidate so one ballot style can potentially have 20 copies
11 of it where each candidate has their vote basically.

12 And it also has a set of expected results. So it is
13 used during logic and accuracy testing of the voting system.
14 So we know that the voting system is properly tabulating.

15 Q So if I am understanding right, these are physical
16 ballots?

17 A Physical ballots.

18 Q And when you say test the voting system, what aspect
19 of the voting system do these test?

20 A So the ballots are scanned on the DS200 scanners
21 that are in the polling locations. And it is just -- they
22 print the tapes and compare them to the expected results that
23 are associated to that test deck.

24 Q And is every scanner tested in this manner?

25 A Yes.

1 Q Where are we today in the process of preparing test
2 decks?

3 A I have already prepared all of the test decks and --

4 Q The physical test decks?

5 A No, no the files that go to the printer so the
6 printer is expected to begin the process on Monday. Which is
7 the 23rd I believe -- whatever this upcoming Monday is. The
8 23rd.

9 THE COURT: That would be the 23rd.

10 THE WITNESS: 23rd okay.

11 BY MR. TRENTO:

12 Q And how long will that printing process take?

13 A It takes about two weeks.

14 Q So for the test decks alone, it takes two weeks?

15 A Yes.

16 Q And what happens next? What happens after the test
17 decks get printed?

18 A So the test decks get printed and sent to the Board
19 of Elections and once they have that -- those physical
20 ballots, they can begin that logic and accuracy testing. So
21 they start creating the media for the voting equipment and
22 start scanning these ballots.

23 Q If the Court were to order today that the ballots
24 affected by the removal of former Senator Oakes needed to be
25 changed to reflect that he was being removed from the ballot,

1 what would need to be done to effectuate that?

2 A So all of the ballots are produced from the same
3 data base. So it is not like you can go ahead and change one
4 or two ballots that are impacted. You have to make the change
5 to that contest and then regenerate the ballots in the voting
6 system software. I would have to do the same thing in my
7 election management system software and then the counties
8 would have to proof all of those ballots because again you
9 have to make sure that that regeneration of ballots didn't
10 impact the precinct to Ballot Style Associations because all
11 of that information is kind of fed into the other systems that
12 we have.

13 So pretty much for Baltimore City you would have to
14 start from the beginning of proofing their ballot, proofing
15 everything.

16 Q What kind of delay would that impose into the
17 system?

18 A Significant delay. I would say. Around a week I
19 would expect.

20 Q Does that mean that the test decks for those
21 jurisdictions in Baltimore City would not be printed until a
22 week later than the current?

23 A Correct.

24 Q And when do those ballots need to be printed by --
25 those test deck ballots?

1 A Well Baltimore City is scheduled to begin L&A I
2 believe around sometime in the beginning of May. I believe
3 early second week I am not sure. So obviously that would push
4 them back.

5 Q Is it even possible to accomplish this at this
6 point?

7 A It is very challenging. It just introduces a lot of
8 risks. It is doable but there are many risks involved.

9 Q And what kind of risks are you thinking of when you
10 say that?

11 A Well, the timeline -- it pushes back everything. So
12 we have to -- if this gets pushed back then the amount of
13 testing that can be done our ballot delivery system also gets
14 pushed back. And that has to be done by May 12 in order for
15 the ballot to go out to the military voters. So if you are
16 compressing the testing time there, you are impacting them.
17 You are impacting the possibility of absentees not being
18 polled in --- voters which and my testimony is, one of those
19 things that cannot be undone without the intervention of a
20 developer.

21 And obviously I have already generated everything.
22 I already have my different versions of all of the exports and
23 PDFs. So then you also are dealing with the human error
24 aspect where your version controls and you know there is like
25 22 different folders of exports and PDFs that I have to manage

1 each election and that is where you -- because you can't just
2 pull those two ballot styles. It is everything for that
3 county.

4 Q Shifting gears, last topic. Are you familiar with a
5 process by which nominees can decline the nomination after
6 they win a primary?

7 A Yes.

8 Q And so obviously that would happen after the
9 primary?

10 A Correct.

11 Q Do you know how many times that has happened in
12 recent years?

13 A 63 that I can account for going back to the late
14 90s.

15 Q Going back to the late 90s so in the last 20 years
16 or so 10 years worth of -- roughly 10 years worth of
17 elections, there have been 63 times where the voters choice
18 for an election, for a nomination withdrew from that
19 nomination?

20 A Correct.

21 Q I think you heard Mr. Stichel argue to the Court
22 that it is just a question of taking one name off of two
23 ballots. Do you agree with that statement?

24 A No.

25 Q Why not?

1 A Because again like I said, it is not about just
2 removing the name from the ballots. The ballots are the first
3 piece to the election puzzle and the removal of him from just
4 those two ballots impacts the other ballot styles in that
5 county because again everything is being produced from the
6 same application. You are having to regenerate everything.
7 You have to redo the audio ballot that we also have to produce
8 and the counties have to proof everything and you know, once
9 ballots are done and final then it feeds to all of the other
10 systems. So yes that is the most common misconception is that
11 changing a ballot is easy. They don't see what goes into
12 everything else.

13 Q Thank you very much, Ms. Walker, I don't have no
14 further questions.

15 THE COURT: Cross examination?

16 MR. STICHEL: Oh yes.

17 CROSS EXAMINATION

18 BY MR. STICHEL:

19 Q Ms. Walker, I am going to direct your attention to
20 what was Exhibit 1 to the amended verified complaint.

21 MR. STICHEL: Can I approach the witness, Your
22 Honor.

23 THE COURT: You may.

24 BY MR. STICHEL:

25 Q Ms. Walker, can you identify what I have shown you?

1 A It looks like the ballots that are posted on our
2 website, the Democratic Ballot Style 9.

3 Q And as far as that ballot, what we were seeking was
4 to remove just one name, the line with Nathaniel Oakes. And
5 are you saying to me that just removing that one little line
6 would cause all of this host of problems that you have
7 described here today?

8 A Yes. It is about the timeline. Because you can't
9 remove that line and not move up the contents below it. So
10 every single candidate where the voting system thinks that
11 candidate is is now different. So you can't just remove it
12 from the PDF or -- you have to go into the certified voting
13 system, remove that ballot, regenerate the ballots, export all
14 of the ballots and again it impacts all of the different
15 systems.

16 Q Could you just put a line through that name on the
17 ballot without changing everything else?

18 A I have never done that. I am not sure. I --

19 Q But it is possible?

20 A I don't know. I have never even tried to do that.

21 Q Ms. Walker, you walked us through kind of a schedule
22 and Mr. Trento asked you if a change could be made at a later
23 date and you testified that it would be very challenging but
24 doable?

25 A Um hum.

1 Q Were this Court to issue a ruling one way or the
2 other today and you had to wait until April 30 to give a week
3 for an appellate court to look at this and render a decision,
4 would you be able to make the change or not make the change if
5 your start date were April 30 rather than April 23?

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

17 Q But if you had to push things back by a week, it
18 would be challenging but you could be do it?

19 MR. TRENTO: Objection, asked and answered.

20 THE COURT: I think it has been asked and answered.

21 THE WITNESS: And I can't speak to what --

22 MR. STICHEL: There is no question.

23 THE WITNESS: Okay. Sorry.

24 MR. STICHEL: I have no further questions of the
25 witness, Your Honor.

1 THE COURT: All right, any redirect?

2 MR. TRENTO: I have no redirect, Your Honor.

3 THE COURT: All right, you may step down. Thank
4 you.

5 THE WITNESS: Thank you.

6 (Witness is excused.)

7 MR. TRENTO: Thank you, Your Honor, may it please
8 the Court. We, the defendant are not without sympathy to the
9 frustrations of the plaintiffs. This is not an ideal
10 circumstance and it is not something -- it is something that
11 we wish wasn't the case. But at this point, Your Honor we
12 are -- there is simply nothing in the code that allows us to
13 make the changes being requested of us.

14 Elections inevitably involve the drawing of lines
15 and in this case the lines have been drawn in a way clearly by
16 the legislature to preclude exceptions to the filing deadlines
17 and the withdrawal deadlines that are set forth in the
18 Election Law Article. There is no basis for the plaintiff's
19 statutory claims. We will go through the statutory language,
20 we will go through the legislative history and we will go
21 through this theory of mandatory versus directory that the
22 plaintiffs are seeking to impose on the statute and show that
23 none of it is well founded.

24 There is no basis for the plaintiff's Constitutional
25 claims. They are articulating a theory of Constitutional harm

1 that we have been unable to find a court -- a single court
2 recognize the cases that they cite from the Supreme Court are
3 cases that are in opposite. They deal with different
4 circumstances that frankly aren't at issue here. Finally, we
5 think that the -- those legal grounds demonstrate a clear
6 unlikelihood of success such that the Court does not need to
7 reach the other issues involved in analyzing whether
8 preliminary injunctions should be entered but should the Court
9 reach those issues we believe that the record reflects that
10 they too counsel a denial of preliminary injunction.

11 I think plaintiffs concede that the literal
12 application of the laws preclude the relief that they are
13 seeking. It is hard to imagine how legislatures in fact could
14 have been more clear than they were when drafting these
15 statutes. And section 5-504(b) addresses the effect of
16 withdraw. And it speaks specifically to the issue of whether
17 a name shall remain on the ballot.

18 This isn't whether somebody should remain eligible,
19 this isn't whether somebody shall be declared ineligible and
20 what the effects of that -- the language refers to the ballot.
21 And I quote, "The name of any individual who files a
22 certificate of candidacy and does not withdraw shall appear on
23 the primary election ballot unless by the 10th day after the
24 filing deadline specified under Section 5-303, that is the
25 February 27 deadline, the individual's death or

1 disqualification is known to the applicable board with which
2 their certificate of candidacy was filed.”

3 In this case, there hasn't been a withdrawal under
4 the terms of Section 5. And there is not a disqualification
5 of the legislatures reference to names appearing on the ballot
6 are dispositive to this issue. Ultimately the mandatory
7 versus directory cases that the plaintiffs are seeking to
8 enlist in support of their claims ultimately the analysis
9 there and the question is there as to what the intent of the
10 legislature is.

11 And we would submit that the legislature could not
12 be more clear here. In any event, those cases deal with
13 circumstances that don't remotely resemble the ones here.
14 They tend to deal with circumstances where an agency is
15 charged with adjudicating a claim and a statute requires the
16 agency with language that says "Shall" to render its decision
17 within 30 days of submission. It parallels to similar
18 language in the Maryland Constitution which directs the
19 Circuit Court and the Courts of Appeal to issue opinions or to
20 render decisions that they shall issue opinions or shall
21 render decisions within a certain period of time.

22 Courts have consistently held those statutes to be
23 directory because what happens is the posture in which they
24 are presented is a party who is adversely effected by a ruling
25 seeks to invalidate it on the basis of the fact that it didn't

1 comply with apparently mandatory language requiring that those
2 decisions be rendered within a certain period of time.

3 And the courts have carved out an exception to the
4 rule that shall is a mandatory verb when those circumstances
5 present themselves. We don't have that here. Here the agency
6 is again, it is clear on its face. The statute refers to --
7 the statutes refer to when a name shall appear on the ballot
8 and when it shall be removed and we don't think that there is
9 any room for the use of this doctrine in this case.

10 THE COURT: I am more interested in the
11 Constitutional argument quite frankly. That there is a
12 potential disenfranchisement of voters if they were confused
13 or cast a ballot for someone who is functionally disqualified
14 in sense of taking office. So how do we balance that against
15 the technical needs of the board?

16 MR. TRENTO: Well I think there is an interesting
17 issue as to what functionally disqualified means in Your
18 Honor's question. Because as of the date of the primary,
19 former Senator Oakes is not going to be disqualified. He is a
20 eligible candidate after that date. Barring something
21 happened between now and then that would render him
22 ineligible.

23 But what we have here, the posture of this case is,
24 yes he is likely to be sentenced in July and that sentencing
25 is likely to render him ineligible from that point forward but

1 what we have here is Mr. Oakes indicating a desire to remove
2 himself from the candidacy at a time that is well passed the
3 withdrawal deadline in this case.

4 THE COURT: So it is your position that he is not
5 ineligible by virtue of the guilty pleas alone?

6 MR. TRENTO: That is the position that we believe
7 the statute requires. The statute of eligibility, the
8 relevant statute regarding eligibility flows from his
9 eligibility as a registered voter. And a registered voter in
10 this state, in order to be ineligible because of a criminal
11 record, one must be actually serving a term of imprisonment
12 for that felony to be ineligible as a voter. And Mr. Oakes as
13 of June 26, will not be.

14 THE COURT: All right.

15 MR. TRENTO: And then in terms of -- in terms of the
16 rights of voters to have their -- to have -- to not have other
17 eligible candidates who voted for because of their likely
18 ineligibility at a later date, there is just nothing in the
19 law that would support that. So we would submit that the
20 Constitutional arguments similar are just not well founded.
21 The case -- the principal case in this line of cases has to do
22 with a yes an early filing deadline with regard to the 1980
23 Presidential election brought by independent Presidential
24 candidate John Anderson and some of his supporters.

25 But the issue there was not just the early filing

1 deadline but the early filing deadline as applied to an
2 independent candidate. He was required to file for -- file
3 his candidacy papers at the same time that the candidates for
4 the main parties were required even though he did not have to
5 compete in a primary. So he was required to file papers, 9 or
6 10 months -- I don't know what the exact date was but well in
7 advance in the general -- far advance in the general such that
8 the Supreme Court held he was actually being -- there was a
9 desperate treatment issue that was involved in that case.
10 That just isn't present here.

11 And so we would submit that these lines of cases
12 just generally don't address the issues that were confronted
13 here. Even if they did, the Constitutional analysis under
14 that Anderson and that verdict line of cases is one that
15 shifts based on the burden -- the burden on voting rights that
16 is imposed by the regulation. Every election regulation
17 imposes burdens. In this case, the burden as we articulate in
18 our papers, there is not a cognizable Constitutional right
19 along the lines of what they are asking for and what they are
20 beseeching the Court.

21 And so the burden on their voting rights, they can
22 continue to vote for the candidate of their desire. They can
23 continue to campaign on behalf of that candidate and can
24 campaign and say this guy is going to be ineligible and he
25 shouldn't be voted for. But their right to franchise is not

1 affected by the filing deadline in this case as it has been
2 applied.

3 Because the burden on their rights is relatively
4 minimal, more leeway is given to the State to regulate in this
5 area. The State just has to regulate in a way that supports
6 important State interests and otherwise is reasonable, modest
7 and non-discriminatory. As I said, Judge, it is clear that
8 the case law supports this. Every -- every election
9 regulation involves some form of line drawing where there are
10 going to be circumstances that don't seem to make sense. And
11 unfortunately this is one of those circumstances. But the
12 lines in this case are pretty clear.

13 You saw the testimony from Ms. Walker and both on
14 the stand and that is in the record, that there are ample
15 grounds to support the early filing deadline that is in place
16 here, such that it is certainly not an unconstitutional
17 arbitrary deadline. So we would submit that the
18 Constitutional claims are also not well founded.

19 Other factors also support the denial of the
20 preliminary injunction here. Judge, we don't believe that
21 there is an irreparable harm because it is hard to understand
22 what the plaintiff's harm is. They can continue to vote for
23 the candidates that they wish to vote for and campaign for the
24 candidates that they wish to campaign for. And so we don't
25 believe that there is much harm, much less any irreparable

1 harm on point 1.

2 The balance of interest on the other hand weigh
3 heavily in favor of the defendant's case here. You heard from
4 Ms. Walker, the difficulty that would entail having to change
5 the ballot at this late hour, again we accept that it is
6 doable but it gives rise to the possibility of error and it
7 would be a rushed situation that could impact voting rights in
8 other ways that we can't foresee right now. So we think the
9 ballots of interest weighs in favor of the defendants and for
10 the same reason the public interest weighs in favor of the
11 defendants.

12 Not only for the risk of error that would entail
13 from the entry of the PI here but also we believe that the
14 rules as they are written -- you know make for a clear,
15 understandable set of rules about filing and withdraw. It
16 eliminates the possibility of game playing. If the deadline
17 were to be extended, it would be more difficult for the
18 elections workers and the office here to do the work that they
19 need to do to prepare ballots. And would create uncertainty
20 with regard to how they would -- how they would be tasked with
21 exercising their discretion in those instances where somebody
22 comes forward with a pretty good reason for why their name
23 should be removed from the ballot after the filing deadline.

24 So unless the Court has questions we will submit.

25 THE COURT: I do not.

1 MR. TRENTO: Thank you.

2 THE COURT: Mr. Stichel, any final response?

3 MR. STICHEL: Yes, Your Honor.

4 THE COURT: Let me ask you to address the issue of
5 the provisional nature of Mr. Oakes' disqualification.

6 MR. STICHEL: Your Honor, it is correct. He is not
7 currently disqualified. Now he could withdraw his voter
8 registration and then he would be disqualified. But that has
9 not happened. He has filed an affidavit asking that his name
10 be taken off of the ballot but I would say effectively however
11 we look at this, he will be disqualified and he will not be
12 able to appear on the general election ballot. He will not be
13 able to serve.

14 Judge Bennett in his comments which were reported in
15 the press and I believe there is a letter in the Federal Court
16 file that makes it pretty clear that Mr. Oakes is not going to
17 be able to serve. So I think given that background, we are in
18 a situation where this case really does cry out for his name
19 to be removed from the ballot. I would just like to address
20 the practicalities that have come up through Ms. Walker's
21 testimony.

22 As I pointed out in the reply memorandum that I
23 filed, the dates for preparation for the ballot used to be
24 earlier. And in 2015, when the primary election date was
25 changed, the State Board agreed in fact, I think probably

1 drafted the bill that said that the certification and content
2 of the ballot shall be at least 55 days before the election.
3 If they have such concerns about timing, they could have put
4 in their bill a much earlier date which they didn't do.

5 I think it is Ms. Walker's testimony that -- that
6 she testified -- it would be great if they could do everything
7 beginning on Monday but if there was some additional time they
8 can accomplish the task and I think given the significant
9 issue here presented by Mr. Oakes' name being on the ballot,
10 that the case cries out for the relief that we seek and you
11 know as a practical matter, this case can be resolved very
12 quickly and then the printing of the ballots can go on.

13 And the other thing is I have to say and I don't
14 have any evidence here to dispute it but I still find it hard
15 to believe that taking one line out of one ballot some how
16 unravels the whole state election system. And if that is the
17 case, that isn't something that should be held against my
18 clients. If the state board has designed a system that is so
19 complex and so inflexible that taking one little line of print
20 off of a ballot undoes 400 and some ballots in the State of
21 Maryland, if there is a problem with that, that is the burden
22 that the state board should make because it should have
23 designed a better system. But that is all I have, Your Honor.

24 THE COURT: All right, thank you. Well I want to
25 give you some finality on the issue shortly so I am going to

1 take a brief recess and I expect to be about 20 minutes and
2 then I will render a decision.

3 MR. TRENTO: Thank you, Your Honor

4 (Whereupon, at 2:16 p.m., a brief recess was taken
5 and at 2:42 p.m. the case was recalled.)

6 THE COURT: We are resuming in Lewin et al versus
7 Lamone, C-02-CV-18-1013. And I am prepared to render a
8 decision in this matter as to the request for a preliminary
9 injunction. As we stand here today, Nathaniel Oakes is not
10 yet disqualified from holding the offices for which he is a
11 candidate. I can understand why Mr. Oakes would join if not
12 in this litigation in another case to put forth the -- his
13 assertion that he wishes to be removed from the ballot.

14 He has to stand up again before a Federal judge and
15 I am sure he would wish it to be clear that he does not intend
16 to participate or hold further office. I don't think that
17 point is dispositive of the issue. If he was currently
18 disqualified I believe that the interest of the voters in
19 District 41 particularly -- their interest to avoid the
20 potential of being constructively disenfranchised is quite
21 important. The harm attended(sic) to the rights of voters to
22 cast a meaningful vote for a qualified candidate rather than
23 potentially casting a meaningless vote by mistake or
24 inadvertence or election year mischief or a disqualified
25 candidate who cannot take the office would be in this case

1 greater than the minimal harm to the election process caused
2 the uncomfortable but adequate timing to reform the ballot in
3 this case.

4 But I am constrained by the singular fact while it
5 is virtually certain that Mr. Oakes will become disqualified
6 prior to the general election, it remains legally speculative
7 today. And close only counts in horseshoes. I cannot
8 determine such a fundamental voting issue with such a central
9 speculative fact and therefore I must reluctantly deny the
10 request for preliminary injunction in this matter. All right
11 and that will be my order as on the hearing sheet, as an order
12 of the Court. I thank you all and I know it is an interesting
13 issue -- yes, counsel?

14 MR. STICHEL: Your Honor, at this point I would like
15 to move for relief pursuant to Maryland Rule 2-3632 which
16 allows the Court to enter an injunction pending appeal. I
17 have a copy of the motion that I can hand up to the Court.

18 THE COURT: You may do so.

19 MR. STICHEL: Your Honor, the relief that I am
20 seeking in the motions is an injunction with respect to the
21 printing of the ballots basically to allow until Monday for me
22 to approach the Court of Appeals should my clients elect to
23 file those appeals to get further relief but just so Monday
24 morning the process doesn't start and then we get into the
25 situation that Ms. Walker said in her affidavit that once this

1 process begins, there would be substantial cost and whatever
2 to change it.

3 THE COURT: Your position counsel?

4 MR. TRENTO: Your Honor, we oppose the relief
5 requested.

6 THE COURT: I will decline to grant the motion. You
7 should, counsel take that up with the Court of Appeals or
8 Court of Special Appeals.

9 MR. STICHEL: Okay.

10 THE COURT: All right, thank you. Thank you all,
11 that will conclude this hearing.

12 (Whereupon, at 2:46 p.m., the hearing concluded.)
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CERTIFICATE OF TRANSCRIBER

I hereby certify that the proceedings in the matter of Nancy Lewin, et al versus Linda Lamone, Civil Number C-02-CV-18-001013, heard in the Circuit Court for Anne Arundel County, Maryland on April 20, 2018, were recorded by means of digital recording.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 35 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness whereof, I have affixed my signature of this 25th day of April, 2018.

By:

Lisa Contreras

Lisa N. Contreras
Certified Transcriber
Certificate No. CET**D-474

NANCY LEWIN
212 Edgevale Road
Baltimore, Maryland 21210

* IN THE
* CIRCUIT COURT

ELINOR MITCHELL
2706 Sulgrave Avenue
Baltimore, Maryland 21215

* FOR
* ANNE ARUNDEL COUNTY

and,

*

CHRISTOPHER ERVIN
4301 Ridgewood Avenue
Baltimore, Maryland 21215

* Case No. C-02-CV-18-001013
*

Plaintiffs,

*

v.

*

LINDA H. LAMONE, in her official
capacity as State Administrator,
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, Maryland 21401

*
*
*
*
*

Defendant.

* * * * *

**SECOND AMENDED VERIFIED COMPLAINT FOR MANDAMUS,
DECLARATORY JUDGMENT and
INJUNCTIVE RELIEF**

Nancy Lewin, Elinor Mitchell, and Christopher Ervin, Plaintiffs, by their attorneys bring the following action against Linda H. Lamone, in her official capacity as State Administrator, Maryland State Board of Elections, and allege as follows:

Parties

1. Nancy Lewin (“Lewin”) is a registered voter in Maryland’s Legislative District 41.

2. Elinor Mitchell (“Mitchell”) is a registered voter in Maryland’s Legislative District 41 and a candidate for the Democratic State Central Committee for Legislative District 41.

3. Christopher Ervin (“Ervin”) is a registered voter in Maryland’s Legislative District 41 and a candidate for the Democratic State Central Committee for Legislative District 41.

4. Linda H. Lamone (“Lamone” or “State Administrator”) is the State Administrator, Maryland State Board of Elections (“State Board”).

Facts Common to All Counts

6. Nathaniel T. Oaks (“Oaks”) filed certificates of candidacy for Maryland State Senate, Legislative District 41, and Maryland Democratic State Central Committee, Legislative District 41, for the Democratic Party Primary Election to be held on June 26, 2018.

7. The State Board has listed Oaks on its website as being a candidate for election to the Maryland State Senate, Legislative District 41, and Maryland Democratic State Central Committee for the Democratic Primary to be held on June 26, 2018.

8. The State Board has listed Oaks on proof sample ballots that is has published on its website. See http://elections.state.md.us/elections/2018/primary_ballots/baltimorecity.pdf (last accessed on April 15, 2018). See also Exhibit A attached hereto.

9. On March 29, 2018, Oaks pleaded guilty to Counts Three and Four of the Superseding Indictment against him that was filed in the United States District Court for the District of Maryland in *United States v. Oaks*, Criminal No. RDB-17-0288 (“Federal Criminal Case”).

10. Count Three charged Oaks with wire fraud in violation of 18 U.S.C. §1343.

11. Count Four charged Oaks with honest services wire fraud in violation of 18 U.S.C. §1346.

12. The maximum statutory sentence of imprisonment for both offenses is 20 years. Pursuant to the plea agreement in the Federal Criminal Case, the final adjusted offense level for Oaks' crimes is 30, which under Federal Sentencing Guidelines, would mean that the minimum sentence Oaks faces pursuant to the Guidelines is 97 months.

13. Oaks' sentencing in the Federal Case is scheduled to take place on July 17, 2018.

14. On April 23, 2018, Oaks requested that his name be removed from the statewide voter registration list pursuant to Maryland Code, Election Law §3-501(1).

15. On April 23, 2018, the Baltimore City Board of Elections removed Oaks' name from the statewide voter registration list and, thus, he no longer is a registered voter in Maryland.

16. The Baltimore Sun reported on March 30, 2018, that Jared DiMarinis, chief of candidacy for the State Board, stated that Oaks would remain on the June 26, 2018, Primary Election Ballot, notwithstanding his guilty plea, because he met the qualifications for the office he sought at the time of the filing deadline, which was February 27, 2018.

17. Maryland Constitution, Article I, § 12, provides:

Except as otherwise specifically provided herein, a person is ineligible to enter upon the duties of, or to continue to serve in, an elective office created by or pursuant to the provisions of this Constitution if the person was not a registered voter in this State on the date of the person's election or appointment to that term or if, at any time thereafter and prior to completion of the term, the person ceases to be a registered voter.

18. Maryland Code, Election Law §3-102(b)(1) provides that an individual is not qualified to be a registered voter if the individual:

(1) has been convicted of a felony and is actually serving a court-ordered sentence of imprisonment.

19. Oaks' guilty plea is the equivalent of a conviction of a felony and he will be serving a court-ordered sentence of imprisonment on the date of the General Election for the office of Maryland State Senator for Legislative District 41.

20. The By-Laws of the Maryland Democratic Party provide that member of the Democratic State Central Committee shall be disqualified for office and removed as a member upon the conviction of a felony.

21. Oaks currently is disqualified from holding the offices for which his name currently is listed on the ballot by virtue of his no longer being a registered voter in the State of Maryland.

22. Pursuant to the operation of Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii), a name of a candidate shall remain on the ballot and be submitted to the voters at a primary election unless the candidate's death or disqualification is known to the applicable election board by the 10th day after the filing deadline.

23. Nearly simultaneously with the filing of the original Complaint in the present case, Laura Harpool filed an action in this Court against the Baltimore City Elections Board, Armstead B.C. Jones in his official capacity as Elections Director of the Baltimore City Elections Board, the Maryland State Board of Elections and Linda H. Lamone in her official capacity as State Administrator of the Maryland State Board of Elections. ("Harpool Action.")

24. Filed with the Complaint in the Harpool Action is an Affidavit of Nathaniel T. Oaks. ("Oaks Affidavit.") A copy of the Affidavit is attached hereto as Exhibit B. The Oaks Affidavit affirms under the penalty of perjury the following:

1. From on or about February 10, 2017 until March 29, 2018, I served in the Maryland State Senate representing Legislative District 41.

2. I resigned my senate seat effective March 29, 2018, because I plead guilty the same day to two felony offenses in a federal criminal case pending against me in the United States District Court for the District of Maryland (*United States v. Oaks*, RDB-17-00288 (D. Md)).

3. I am currently on the ballot for the primary election, scheduled for June 26, 2018, to represent Legislative District 41 in the Maryland Senate.

4. I consent to have my name removed from the ballot for the primary election on June 26, 2018.

5. It is in the best interest of the people of Legislative District 41 that my name be removed from the ballot following my recent guilty plea on federal court.

6. I am of sound mind and body in making these statements, and no one has forced me to make them.

25. Neither the Plaintiffs in the present case nor undersigned counsel were aware of the Harpool Action or the Oaks Affidavit until Wednesday, April 11, 2018.

26. On April 11, 2018, Oaks' counsel filed a letter on his behalf in the Federal Criminal Case. A copy of the letter is attached as Exhibit C. The introductory paragraph of the letter states:

I write in regard to the advisement regarding the consequences of a felony conviction that the Court provided Mr. Oaks during his Rule 11 re-arraignment on March 29, 2018. Specifically, **this letter concerns the Court's advisement that Mr. Oaks is barred from holding elected office in the future due to his conviction in this case.** ("Emphasis added.)

27. On the evening of April 11, 2018, undersigned counsel sent a letter to Andrea Trento, Assistant Attorney General of Maryland and counsel to the State Board, requesting that the State Board or the State Election Administrator remove the name of Nathaniel T. Oaks from the ballot for the Democratic Party Primary Election to be held on June 26, 2018. Undersigned

counsel also requested the opportunity to appear before the State Board at its scheduled meeting on the next day, Thursday, April 12, 2018. A copy of the letter is attached as Exhibit D.

28. Undersigned counsel appeared before the State Board on Thursday, April 12, 2018, and requested on behalf of the plaintiffs in the present case that the State Board remove Oaks' name from the Democratic Party Primary Election ballot. The board was advised publicly by Assistant Attorney General Trento that it was his opinion at that time that the State Board did not have the authority to remove Oaks' name from the ballot. State Administrator Lamone also expressed concern during the meeting about the impact of multiple and continuing requests by candidates to change the ballot and that there had to be a deadline for changes.

29. The State Board took no action at the conclusion of undersigned counsel's presentation. On Friday, April 13, 2018, undersigned counsel sent an email to Assistant Attorney General Trento asking that he advise undersigned counsel if there had been any change in the State Board's position. On Saturday, April 14, 2018, Assistant Attorney General Trento advised undersigned counsel by email that the State Board took no further action after undersigned counsel's presentation. A copy of the email exchange is attached hereto as Exhibit E.

30. In addition to Oaks' name, the names of two additional candidates for the office of State Senator representing Legislative District 41 are listed on the ballot for the Democratic Party Primary Election to be held on June 26, 2018: Jill P. Carter ("Carter") and J.D. Merrill ("Merrill"). Both Carter and Merrill have filed affidavits in this matter stating that they have no objection to the removal of Oaks' name from the Democratic Party Primary Election ballot.

COUNT ONE
(Judicial Challenge to State Board's Refusal to Remove Oaks' Name from the Primary Election Ballot – EL § 12-202)

31. Paragraphs 1-30 above are incorporated as if recited herein.

32. The State Board's allowing on the Democratic Primary Election Ballot the name of a person who currently is disqualified from being a candidate for public office or serving in the offices that he seeks will cause confusion and cause voters to cast votes for an ineligible candidate.

33. The State Board's refusing to remove the name of a candidate who has pleaded guilty to two felony counts in Federal Court, has been advised by the Federal Judge who will be sentencing him that he will be barred from holding public office, has signed an affidavit requesting that his name be removed from the ballot, and has cancelled his voter registration will cause confusion and cause voters to cast votes for a candidate who cannot and/or will not be able to serve in the offices that he seeks.

34. Those voters who mistakenly cast votes for Oaks would cast votes for qualified candidates were Oaks' name not on the ballot.

35. The State Board's failure to remove Oaks' name from the Primary Election Ballot deprives the plaintiffs, and all voters within Legislative District 41, of their rights under Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution.

WHEREFORE, the Plaintiffs seek judicial review by this Court and an order directing Ms. Lamone in her capacity State Administrator for the State Board to remove Oaks' name from any and all ballots to be distributed to voters in Maryland Legislative District 41 for the Democratic Primary Election to be held on June 26, 2018.

COUNT TWO
(Writ of Mandamus – Maryland Rule 15-701)

36. Paragraphs 1-35 above are incorporated as if recited herein.

37. The State Board has a duty imposed by the Maryland Declaration of Rights and the United States Constitution to protect the right of the people to cast ballots in elections effectively.

38. The State Board's refusal to remove Oaks' name from the Primary Election ballot denies the voters of Legislative District 41 to cast effective ballots.

WHEREFORE, the Plaintiffs request that the Court issue a Writ of Mandamus directing Ms. Lamone in her capacity State Administrator for the State Board to remove Oaks' name from any and all ballots to be distributed to voters in Maryland Legislative District 41 for the Democratic Primary Election to be held on June 26, 2018.

COUNT THREE
(Declaratory Judgment -- Md. Cts. & Jud. Proc. Code §§ 3-401 to 3-415)

39 Paragraphs 1-38 above are incorporated as if recited herein.

40. An actual controversy exists between the Plaintiffs and the Defendant within the meaning of the Maryland Uniform Declaratory Judgment Act, Md. Cts. & Jud. Proc. Code § 3-409(a)(1).

41. Antagonistic claims are present between the Plaintiffs and the Defendant.

42. The Plaintiffs allege upon information and belief that the State Administrator's and/or the State Board's refusal to remove Oaks' name from the ballot is based upon reliance upon the advice of counsel that Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) do not allow the State Administrator and/or State Board to make any change in the primary election ballot once ten days have passed from the filing deadline.

43. The provision of the Election Law code that pertain to the dates for the withdrawal of a candidate and the removal of a candidate's name from a primary election ballot are not mandatory, but directory. The State Election Administrator and/or the State Board has the power

to remove a candidate's name from the primary election ballot under the facts and circumstances that Oaks' guilty plea, affidavit and cancellation of his voter registration present.

44. The refusal of the State Election Administrator and/or the State Board to remove Oaks' name from the Democratic Party Primary Election Ballot on the facts and circumstances of Oaks' guilty plea, request that his name be removed from the ballot and cancellation of his voter registration is arbitrary, capricious and an abuse of discretion.

45. Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) violate Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution in that they set an artificially early deadline for removal of a disqualified candidate's name from the Primary Election Ballot.

WHEREFORE, the Plaintiffs request that the Court issue a declaration that: (1) The provisions of Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) and all other provisions of the Maryland Code that pertain to the removal of a name from an election ballot are not mandatory, but are directory; (2) the refusal of the State Election Administrator and/or the State Board to remove Oaks' name from the Democratic Party Primary Election Ballot on the facts and circumstances of Oaks' guilty plea, request that his name be removed from the ballot and cancellation of his voter registration is arbitrary, capricious and an abuse of discretion; and (3) Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) as applied on the facts of the present case violate Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution.

COUNT FOUR
(Temporary Restraining Order)
(Maryland Rule 15-504)

46. The allegations of Paragraphs 1 to 44, above, are incorporated as if recited herein.

47. The actions of the State Board alleged above demonstrate that the State Board intends to distribute ballots to voters in the June 26, 2018, Democratic Primary Election that include Oaks' name as a candidate for State Senate and Democratic State Central Committee for Legislative District 41.

48. Should the State Board distribute ballots to voters in June 26, 2018, Democratic Primary Election that include Oaks' name as a candidate, the Plaintiffs will suffer immediate, substantial and irreparable harm before a full adversary hearing can be held on the propriety of a preliminary or final injunction.

49. The Plaintiffs are likely to succeed on the merits of their claims in this action.

50. The balance of convenience favors the Plaintiffs in that the statutory deadline for printing the Primary Election Ballots is May 7, 2018, and the deadline for sending absentee ballots to the overseas and military voters is not until May 12, 2018. See State Election Board 2018 Gubernatorial Election Calendar, page 3. A copy of the Calendar is attached hereto as Exhibit F. The removal of one name from the Democratic Party ballots for one Legislative District can be accomplished well within the time remaining before those deadlines.

51. The public interest would be served by the entry of a temporary restraining order in this action which involves fundamental issues of constitutional law and executive power in derogation of the rights of the people. Further, should voters be given ballots with the name of a candidate who is ineligible to be a candidate, the votes of those persons who would vote for the ineligible candidate will be disregarded. Given the strong public interest in protecting the votes of all voters, such a disregarding of ballots cast would violate public policy.

WHEREFORE, the Plaintiffs request that the Court enter a Temporary Restraining Order that enjoins the State Board from listing Oaks' name on any and all ballots to be distributed to voters in the June 26, 2018, Democratic Primary Election.

COUNT FIVE
(Preliminary Injunction)
(Maryland Rule 15-505)

52. The allegations of Paragraphs 1 to 45, above, are incorporated as if recited herein.

53. The Plaintiffs are likely to succeed on the merits of their claims in this action.

54. The Plaintiffs will suffer substantial and irreparable harm should the State Board include Oaks' name as a candidate on the June 26, 2018, Democratic Primary Election Ballot.

55. The balance of convenience favors the Plaintiffs in that the Primary Election Ballots have not been printed yet. The statutory deadline for printing ballots is May 7, 2018, and the deadline for sending absentee ballots to the overseas and military voters is not until May 12, 2018. The removal of one name from the Democratic Party ballots for one Legislative District can be accomplished well within the time remaining before those deadlines.

56. The public interest would be served by the entry of a preliminary injunction in this action which involves fundamental issues of constitutional law and executive power in derogation of the rights of the people.

WHEREFORE, the Plaintiffs request that the Court enter a Preliminary Injunction that enjoins the State Board from listing Oaks' name on any and all ballots to be distributed to voters in the June 26, 2018, Democratic Primary Election.

COUNT SIX
(Permanent Injunction)

57. The allegations of Paragraphs 1 to 56, above, are incorporated as if recited herein.

58. Should the State Board list Oaks' name on ballots to be distributed to voters in in the June 26, 2018, Democratic Primary Election, the plaintiffs will suffer irreparable injury and have no adequate remedy at law.

WHEREFORE, the Plaintiffs request that the Court enter a Permanent Injunction that enjoins the State Board from listing Oaks' name on any and all ballots to be distributed to voters in the June 26, 2018, Democratic Primary Election.

**COUNT SEVEN
(Further Relief)**

59. The allegations of Paragraphs 1 to 58 above, are incorporated as if recited herein.

60. The Plaintiffs seek all such further relief to which they are entitled at law and in equity.

WHEREFORE, the Plaintiffs request that the Court award the Plaintiffs any and all such further relief as the Court may deem just and proper, including, but not limited to attorneys' fees and costs.

/s/

H. MARK STICHEL
CLIENT PROTECTION FUND NO.
8312010443
ELIZABETH A. HARLAN
CLIENT PROTECTION FUND NO.
1101050005
ASTRACHAN GUNST THOMAS, P.C.
217 EAST REDWOOD STREET, 21ST FLOOR
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EMAIL: HMSTICHEL@AGTLAWYERS.COM

ATTORNEY FOR PLAINTIFFS

VERIFICATION

**I, NANCY LEWIN, swear under penalty of perjury that the contents of the forgoing
Complaint are true and correct**

A handwritten signature in black ink, appearing to read 'Nancy Lewin', is written over a horizontal line.

NANCY LEWIN
Dated: April 23, 2018

MARYLAND RULE 20-201(f) CERTIFICATE

I HEREBY CERTIFY that this submission does not contain any restricted information.

/s/

H. MARK STICHEL

ATTORNEY FOR PLAINTIFFS

NANCY LEWIN
212 Edgevale Road
Baltimore, Maryland 21210

* IN THE
* CIRCUIT COURT

ELINOR MITCHELL
2706 Sulgrave Avenue
Baltimore, Maryland 21215

* FOR
* ANNE ARUNDEL COUNTY

and,

*

CHRISTOPHER ERVIN
4301 Ridgewood Avenue
Baltimore, Maryland 21215

* Case No. C-02-CV-18-001013

Plaintiffs,

*

v.

*

LINDA H. LAMONE, in her official
capacity as State Administrator,
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, Maryland 21401

*

*

*

*

Defendant.

* * * * *

**AMENDED VERIFIED COMPLAINT FOR MANDAMUS,
DECLARATORY JUDGMENT and
INJUNCTIVE RELIEF**

Nancy Lewin, Elinor Mitchell, and Christopher Erwin, Plaintiffs, by their attorneys bring the following action against Linda H. Lamone, in her official capacity as State Administrator, Maryland State Board of Elections, and allege as follows:

Parties

1. Nancy Lewin ("Lewin") is a registered voter in Maryland's Legislative District 41.

2. Elinor Mitchell (“Mitchell”) is a registered voter in Maryland’s Legislative District 41 and a candidate for the Democratic State Central Committee for Legislative District 41.

3. Christopher Erwin is a registered voter in Maryland’s Legislative District 41 and a candidate for the Democratic State Central Committee for Legislative District 41.

4. Linda H. Lamone (“Lamone” or “State Administrator”) is the State Administrator, Maryland State Board of Elections (“State Board”).

Facts Common to All Counts

6. Nathaniel T. Oaks (“Oaks”) filed certificates of candidacy for Maryland State Senate, Legislative District 41, and Maryland Democratic State Central Committee, Legislative District 41, for the Democratic Party Primary Election to be held on June 26, 2018.

7. The State Board has listed Oaks on its website as being a candidate for election to the Maryland State Senate, Legislative District 41, and Maryland Democratic State Central Committee for the Democratic Primary to be held on June 26, 2018.

8. The State Board has listed Oaks on proof sample ballots that it has published on its website. See http://elections.state.md.us/elections/2018/primary_ballots/baltimorecity.pdf (last accessed on April 15, 2018). See also Exhibit A attached hereto.

9. On March 29, 2018, Oaks pleaded guilty to Counts Three and Four of the Superseding Indictment against him that was filed in the United States District Court for the District of Maryland in *United States v. Oaks*, Criminal No. RDB-17-0288 (“Federal Criminal Case”).

10. Count Three charged Oaks with wire fraud in violation of 18 U.S.C. §1343.

11. Count Four charged Oaks with honest services wire fraud in violation of 18 U.S.C. §1346.

12. The maximum statutory sentence of imprisonment for both offenses is 20 years. Pursuant to the plea agreement in the Federal Criminal Case, the final adjusted offense level for Oaks' crimes is 30, which under Federal Sentencing Guidelines, would mean that the minimum sentence Oaks faces pursuant to the Guidelines is 97 months.

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14. The Baltimore Sun reported on March 30, 2018, that Jared DiMarinis, chief of candidacy for the State Board, stated that Oaks would remain on the June 26, 2018, Primary Election Ballot, notwithstanding his guilty plea, because he met the qualifications for the office he sought at the time of the filing deadline, which was February 27, 2018.

15. Maryland Constitution, Article I, § 12, provides:

Except as otherwise specifically provided herein, a person is ineligible to enter upon the duties of, or to continue to serve in, an elective office created by or pursuant to the provisions of this Constitution if the person was not a registered voter in this State on the date of the person's election or appointment to that term or if, at any time thereafter and prior to completion of the term, the person ceases to be a registered voter.

16. Maryland Code, Election Law §3-102(b)(1) provides that an individual is not qualified to be a registered voter if the individual:

(1) has been convicted of a felony and is actually serving a court-ordered sentence of imprisonment.

17. Oaks' guilty plea is the equivalent of a conviction of a felony and he will be serving a court-ordered sentence of imprisonment on the date of the General Election for the office of Maryland State Senator for Legislative District 41.

18. The By-Laws of the Maryland Democratic Party provide that a member of the Democratic State Central Committee shall be disqualified for office and removed as a member upon the conviction of a felony.

18. Pursuant to the operation of Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii), a name of a candidate shall remain on the ballot and be submitted to the voters at a primary election unless the candidate's death or disqualification is known to the applicable election board by the 10th day after the filing deadline.

19. Nearly simultaneously with the filing of the original Complaint in the present case, Laura Harpool filed an action in this Court against the Baltimore City Elections Board, Armstead B.C. Jones in his official capacity as Elections Director of the Baltimore City Elections Board, the Maryland State Board of Elections and Linda H. Lamone in her official capacity as State Administrator of the Maryland State Board of Elections. ("Harpool Action.")

20. Filed with the Complaint in the Harpool Action is an Affidavit of Nathaniel T. Oaks. ("Oaks Affidavit.") A copy of the Affidavit is attached hereto as Exhibit B. The Oaks Affidavit affirms under the penalty of perjury the following:

1. From on or about February 10, 2017 until March 29, 2018, I served in the Maryland State Senate representing Legislative District 41.

2. I resigned my senate seat effective March 29, 2018, because I plead guilty the same day to two felony offenses in a federal criminal case pending against me in the United States District Court for the District of Maryland (*United States v. Oaks*, RDB-17-00288 (D. Md)).

3. I am currently on the ballot for the primary election, scheduled for June 26, 2018, to represent Legislative District 41 in the Maryland Senate.

4. I consent to have my name removed from the ballot for the primary election on June 26, 2018.

5. It is in the best interest of the people of Legislative District 41 that my name be removed from the ballot following my recent guilty plea in federal court.

6. I am of sound mind and body in making these statements, and no one has forced me to make them.

21. Neither the Plaintiffs in the present case nor undersigned counsel were aware of the Harpool Action or the Oaks Affidavit until Wednesday, April 11, 2018.

22. On April 11, 2018, Oaks' counsel filed a letter on his behalf in the Federal Criminal Case. A copy of the letter is attached as Exhibit C. The introductory paragraph of the letter states:

I write in regard to the advisement regarding the consequences of a felony conviction that the Court provided Mr. Oaks during his Rule 11 re-arraignment on March 29, 2018. Specifically, **this letter concerns the Court's advisement that Mr. Oaks is barred from holding elected office in the future due to his conviction in this case.** (Emphasis added.)

23. On the evening of April 11, 2018, undersigned counsel sent a letter to Andrea Trento, Assistant Attorney General of Maryland and counsel to the State Board, requesting that the State Board or the State Election Administrator remove the name of Nathaniel T. Oaks from the ballot for the Democratic Party Primary Election to be held on June 26, 2018. Undersigned counsel also requested the opportunity to appear before the State Board at its scheduled meeting on the next day, Thursday, April 12, 2018. A copy of the letter is attached as Exhibit D.

24. Undersigned counsel appeared before the State Board on Thursday, April 12, 2018, and requested on behalf of the plaintiffs in the present case that the State Board remove Oaks' name from the Democratic Party Primary Election ballot. The board was advised publicly by

Assistant Attorney General Trento that it was his opinion at that time that the State Board did not have the authority to remove Oaks' name from the ballot. State Administrator Lamone also expressed concern during the meeting about the impact of multiple and continuing requests by candidates to change the ballot and that there had to be a deadline for changes.

25. The State Board took no action at the conclusion of undersigned counsel's presentation. On Friday, April 13, 2018, undersigned counsel sent an email to Assistant Attorney General Trento asking that he advise undersigned counsel if there had been any change in the State Board's position. On Saturday, April 14, 2018, Assistant Attorney General Trento advised undersigned counsel by email that the State Board took no further action after undersigned counsel's presentation. A copy of the email exchange is attached hereto as Exhibit E.

COUNT ONE
(Judicial Challenge to State Board's Refusal to Remove Oaks' Name from the Primary Election Ballot – EL § 12-202)

26. Paragraphs 1-25 above are incorporated as if recited herein.

27. The State Board's allowing on the Democratic Primary Election Ballot the name of a person who will be disqualified from appearing on the General Election Ballot or serving in the offices that he seeks will cause confusion and cause voters to cast votes for an ineligible candidate.

28. The State Board's refusing to remove the name of a candidate who has pleaded guilty to two felony counts in Federal Court, has been advised by the Federal Judge who will be sentencing him that he will be barred from holding public office and has signed an affidavit requesting that his name be removed from the ballot will cause confusion and cause voters to cast votes for a candidate who cannot and/or will not be able to serve in the offices that he seeks.

29. Those voters who mistakenly cast votes for Oaks would cast votes for qualified candidates were Oaks' name not on the ballot.

30. The State Board's failure to remove Oaks' name from the Primary Election Ballot deprives the plaintiffs, and all voters within Legislative District 41, of their rights under Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution.

WHEREFORE, the Plaintiffs seek judicial review by this Court and an order directing Ms. Lamone in her capacity as State Administrator for the State Board to remove Oaks' name from any and all ballots to be distributed to voters in Maryland Legislative District 41 for the Democratic Primary Election to be held on June 26, 2018.

COUNT TWO
(Writ of Mandamus – Maryland Rule 15-701)

31. Paragraphs 1-30 above are incorporated as if recited herein.

32. The State Board has a duty imposed by the Maryland Declaration of Rights and the United States Constitution to protect the right of the people to cast ballots in elections effectively.

33. The State Board's refusal to remove Oaks' name from the Primary Election ballot denies the voters of Legislative District 41 to cast effective ballots.

WHEREFORE, the Plaintiffs request that the Court issue a Writ of Mandamus directing Ms. Lamone in her capacity as State Administrator for the State Board to remove Oaks' name from any and all ballots to be distributed to voters in Maryland Legislative District 41 for the Democratic Primary Election to be held on June 26, 2018.

COUNT THREE
(Declaratory Judgment Md. Cts. & Jud. Proc. Code §§ 3-401 to 3-415)

34. Paragraphs 1-33 above are incorporated as if recited herein.

35. An actual controversy exists between the Plaintiffs and the Defendant within the meaning of the Maryland Uniform Declaratory Judgment Act, Md. Cts. & Jud. Proc. Code § 3-409(a)(1).

36. Antagonistic claims are present between the Plaintiffs and the Defendant.

37. The Plaintiffs allege upon information and belief that the State Administrator's and/or the State Board's refusal to remove Oaks' name from the ballot is based upon reliance upon the advice of counsel that Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) do not allow the State Administrator and/or State Board to make any change in the primary election ballot once ten days have passed from the filing deadline.

38. The provision of the Election Law code that pertain to the dates for the withdrawal of a candidate and the removal of a candidate's name from a primary election ballot are not mandatory, but directory. The State Election Administrator and/or the State Board has the power to remove a candidate's name from the primary election ballot under the facts and circumstances that Oaks' guilty plea and affidavit present.

39. The refusal of the State Election Administrator and/or the State Board to remove Oaks' name from the Democratic Party Primary Election Ballot on the facts and circumstances of Oaks' guilty plea and request that his name be removed from the ballot is arbitrary, capricious and an abuse of discretion.

40. Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) violate Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution in that they set an artificially early deadline for removal of a disqualified candidate's name from the Primary Election Ballot.

WHEREFORE, the Plaintiffs request that the Court issue a declaration that: (1) The provisions of Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) and all other provisions of the Maryland Code that pertain to the removal of a name from an election ballot are not mandatory, but are directory; (2) the refusal of the State Election Administrator and/or the State Board to remove Oaks' name from the Democratic Party Primary Election Ballot on the facts and circumstances of Oaks' guilty plea and request that his name be removed from the ballot is arbitrary, capricious and an abuse of discretion; and (3) Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) as applied on the facts of the present case violate Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution.

COUNT FOUR
(Temporary Restraining Order)
(Maryland Rule 15-504)

41. The allegations of Paragraphs 1-40, above, are incorporated as if recited herein.

42. The actions of the State Board alleged above demonstrate that the State Board intends to distribute ballots to voters in the June 26, 2018, Democratic Primary Election that include Oaks' name as a candidate for State Senate and Democratic State Central Committee for Legislative District 41.

43. Should the State Board distribute ballots to voters in the June 26, 2018, Democratic Primary Election that include Oaks' name as a candidate, the Plaintiffs will suffer immediate, substantial and irreparable harm before a full adversary hearing can be held on the propriety of a preliminary or final injunction.

44. The Plaintiffs are likely to succeed on the merits of their claims in this action.

45. The balance of convenience favors the Plaintiffs in that the Primary Election Ballots have not been printed yet. The statutory deadline for printing ballots is May 7, 2018, and the

deadline for sending absentee ballots to overseas and military voters is not until May 12, 2018. See State Election Board 2018 Gubernatorial Election Calendar, page 3. A copy of the Calendar is attached hereto as Exhibit F. The removal of one name from the Democratic Party ballots for one Legislative District can be accomplished well within the time remaining before those deadlines.

46. The public interest would be served by the entry of a temporary restraining order in this action which involves fundamental issues of constitutional law and executive power in derogation of the rights of the people. Further, should voters be given ballots with the name of a candidate who is ineligible to be a candidate or to serve in the offices sought, the votes of those persons who would vote for the ineligible candidate will be disregarded. Given the strong public interest in protecting the votes of all voters, such a disqualification would violate public policy.

WHEREFORE, the Plaintiffs request that the Court enter a Temporary Restraining Order that enjoins the State Board from listing Oaks' name on any and all ballots to be distributed to voters in the June 26, 2018, Democratic Primary Election.

COUNT FIVE
(Preliminary Injunction)
(Maryland Rule 15-505)

47. The allegations of Paragraphs 1-46, above, are incorporated as if recited herein.

48. The Plaintiffs are likely to succeed on the merits of their claims in this action.

49. The Plaintiffs will suffer substantial and irreparable harm should the State Board include Oaks' name as a candidate on the June 26, 2018, Democratic Primary Election Ballot.

50. The balance of convenience favors the Plaintiffs in that the Primary Election Ballots have not been printed yet. The statutory deadline for printing ballots is May 7, 2018, and the

deadline for sending absentee ballots to the overseas and military voters is not until May 12, 2018. The removal of one name from the Democratic Party ballots for one Legislative District can be accomplished well within the time remaining before those deadlines.

51. The public interest would be served by the entry of a preliminary injunction in this action which involves fundamental issues of constitutional law and executive power in derogation of the rights of the people.

WHEREFORE, the Plaintiffs request that the Court enter a Preliminary Injunction that enjoins the State Board from listing Oaks' name on any and all ballots to be distributed to voters in the June 26, 2018, Democratic Primary Election.

**COUNT SIX
(Permanent Injunction)**

52. The allegations of Paragraphs 1 to 51, above, are incorporated as if recited herein.

53. Should the State Board list Oaks' name on ballots to be distributed to voters in the June 26, 2018, Democratic Primary Election, the Plaintiffs will suffer irreparable injury and have no adequate remedy at law.

WHEREFORE, the Plaintiffs request that the Court enter a Permanent Injunction that enjoins the State Board from listing Oaks' name on any and all ballots to be distributed to voters in the June 26, 2018, Democratic Primary Election.

**COUNT SEVEN
(Further Relief)**

54. The allegations of Paragraphs 1-53 above, are incorporated as if recited herein.

55. The Plaintiffs seek all such further relief to which they are entitled at law and in equity.

WHEREFORE, the Plaintiffs request that the Court award the Plaintiffs any and all such further relief as the Court may deem just and proper, including, but not limited to attorneys' fees and costs.



H. MARK STICHEL
CLIENT PROTECTION FUND NO.
8312010443


ASTRACHAN GUNST THOMAS, P.C.
217 EAST REDWOOD STREET, 21ST FLOOR
BALTIMORE, MARYLAND 21202

TELEPHONE: 410-783-3547
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EMAIL: HMSTICHEL@AGTLAWYERS.COM

ATTORNEY FOR PLAINTIFFS

VERIFICATION

I, NANCY LEWIN, swear under penalty of perjury that the contents of the forgoing Complaint are true and correct



NANCY LEWIN

Dated: April 15, 2018

MARYLAND RULE 20-201(f) CERTIFICATE

I HEREBY CERTIFY that this submission does not contain any restricted information.



H. MARK STICHEL

ATTORNEY FOR PLAINTIFFS

NANCY LEWIN
212 Edgevale Road
Baltimore, Maryland 21210

* **IN THE**
* **CIRCUIT COURT**

ELINOR MITCHELL
2706 Sulgrave Avenue
Baltimore, Maryland 21215

* **FOR**
* **ANNE ARUNDEL COUNTY**

and,

* **C-02-CV-18-001013**
* **Case No. _____**

CHRISTOPHER ERVIN
4301 Ridgewood Avenue
Baltimore, Maryland 21215

*
*
*

Plaintiffs,

*

v.

*

LINDA H. LAMONE, in her official
capacity as State Administrator,
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, Maryland 21401

*
*
*
*

Defendant.

*

* * * * *

**VERIFIED COMPLAINT FOR MANDAMUS,
DECLARATORY JUDGMENT and
INJUNCTIVE RELIEF**

Nancy Lewin, Elinor Mitchell, and Christopher Erwin, Plaintiffs, by their attorneys bring the following action against Linda H. Lamone, in her official capacity as State Administrator, Maryland State Board of Elections, and allege as follows:

Parties

1. Nancy Lewin (“Lewin”) is a registered voter in Maryland’s Legislative District 41.

2. Elinor Mitchell (“Mitchell”) is a registered voter in Maryland’s Legislative District 41 and a candidate for the Democratic State Central Committee for Legislative District 41.

3. Christopher Erwin is a registered voter in Maryland’s Legislative District 41 and a candidate for the Democratic State Central Committee for Legislative District 41.

4. Linda H. Lamone (“Lamone” or “State Administrator”) is the State Administrator, Maryland State Board of Elections (“State Board”).

Facts Common to All Counts

6. Nathaniel T. Oaks (“Oaks”) filed a certificates of candidacy for Maryland State Senate, Legislative District 41, and Maryland Democratic State Central Committee, Legislative District 41, for the Democratic Party Primary Election to be held on June 26, 2018.

7. The State Board has listed Oaks on its website as being a candidate for election to the Maryland State Senate, Legislative District 41, and Maryland Democratic State Central Committee for the Democratic Primary to be held on June 26, 2018.

8. The State Board has listed Oaks on proof sample ballots that is has published on its website. See http://elections.state.md.us/elections/2018/primary_ballots/baltimorecity.pdf (last accessed on April 9, 2018).

9. On March 29, 2018, Oaks pleaded guilty to Counts Three and Four of the Superseding Indictment against him that was filed in the United States District Court for the District of Maryland in *United States v. Oaks*, Criminal No. RDB-17-0288 (“Federal Criminal Case”).

10. Count Three charged Oaks with wire fraud in violation of 18 U.S.C. §1343.

11. Count Four charged Oaks with honest services wire fraud in violation of 18 U.S.C. §1346.

12. The maximum statutory sentence of imprisonment for both offenses is 20 years. Pursuant to the plea agreement in the Federal Criminal Case, the final adjusted offense level for Oaks' crimes is 30, which under Federal Sentencing Guidelines, would mean that the minimum sentence Oaks faces pursuant to the Guidelines is 97 months.

13. Oaks' sentencing in the Federal Case is scheduled to take place on July 17, 2018.

14. The Baltimore Sun reported on March 30, 2018, that Jared DiMarinis, chief of candidacy for the State Board, stated that Oaks would remain on the June 26, 2018, Primary Election Ballot, notwithstanding his guilty plea, because he met the qualifications for the office he sought at the time of the filing deadline, which was February 27, 2018.

15. Maryland Constitution, Article I, § 12, provides:

Except as otherwise specifically provided herein, a person is ineligible to enter upon the duties of, or to continue to serve in, an elective office created by or pursuant to the provisions of this Constitution if the person was not a registered voter in this State on the date of the person's election or appointment to that term or if, at any time thereafter and prior to completion of the term, the person ceases to be a registered voter.

16. Maryland Code, Election Law §3-102(b)(1) provides that an individual is not qualified to be a registered voter if the individual:

(1) has been convicted of a felony and is actually serving a court-ordered sentence of imprisonment.

17. Oaks' guilty plea is the equivalent of a conviction of a felony and he will be serving a court-ordered sentence of imprisonment on the date of the General Election for the office of Maryland State Senator for Legislative District 41.

18. The By-Laws of the Maryland Democratic Party provide that member of the Democratic State Central Committee shall be disqualified for office and removed as a member upon the conviction of a felony.

18. Pursuant to the operation of Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii), a name of a candidate shall remain on the ballot and be submitted to the voters at a primary election unless the candidate's death or disqualification is known to the applicable election board by the 10th day after the filing deadline.

COUNT ONE
(Judicial Challenge to State Board's Refusal to Remove Oaks' Name from the Primary Election Ballot – EL § 12-202)

19. Paragraphs 1-18 above are incorporated as if recited herein.

20. The State Board's allowing on the Democratic Primary Election Ballot the name of a person who will be disqualified from appearing on the General Election Ballot or serving in the offices that he seeks will cause confusion and cause voters to cast votes for an ineligible candidate.

21. Those voters who mistakenly case votes for Oaks would cast votes for qualified candidates were Oaks' name not on the ballot.

22. The State Board's failure to remove Oaks' name from the Primary Election Ballot deprives the plaintiffs, and all voters within Legislative District 41, of their rights under Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution.

WHEREFORE, the Plaintiffs seek judicial review by this Court and an order directing Ms. Lamone in her capacity State Administrator for the State Board to remove Oaks' name from any and all ballots to be distributed to voters in Maryland Legislative District 41 for the Democratic Primary Election to be held on June 26, 2018.

COUNT TWO
(Writ of Mandamus – Maryland Rule 15-701)

23. Paragraphs 1-22 above are incorporated as if recited herein.

24. The State Board has a duty imposed by the Maryland Declaration of Rights and the United States Constitution to protect the right of the people to cast ballots in elections effectively.

25. The State Board's refusal to remove Oaks' name from the Primary Election ballot denies the voters of Legislative District 41 to cast effective ballots.

WHEREFORE, the Plaintiffs request that the Court issue a Writ of Mandamus directing Ms. Lamone in her capacity State Administrator for the State Board to remove Oaks' name from any and all ballots to be distributed to voters in Maryland Legislative District 41 for the Democratic Primary Election to be held on June 26, 2018.

COUNT THREE
(Md. Cts. & Jud. Proc. Code §§ 3-401 to 3-415)

26 Paragraphs 1-25 above are incorporated as if recited herein.

27. An actual controversy exists between the Plaintiffs and the Defendant within the meaning of the Maryland Uniform Declaratory Judgment Act, Md. Cts. & Jud. Proc. Code § 3-409(a)(1).

28. Antagonistic claims are present between the Plaintiffs and the Defendant.

29. The Plaintiffs allege upon information and belief that the State Board's refusal to remove Oaks' name from the ballot is based upon Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii).

30. Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) violate Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution in that they set an artificially early deadline for removal of a disqualified candidate's name from the Primary Election Ballot.

WHEREFORE, the Plaintiffs request that the Court issue a declaration that Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) as applied on the facts of the present case violate Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution.

COUNT FOUR
(Temporary Restraining Order)
(Maryland Rule 15-504)

31. The allegations of Paragraphs 1 to 30, above, are incorporated as if recited herein.

32. The actions of the State Board alleged above demonstrate that the State Board intends to distribute ballots to voters in the June 26, 2018, Democratic Primary Election that include Oaks' name as a candidate for State Senate and Democratic State Central Committee for Legislative District 41.

33. Should the State Board distribute ballots to voters in June 26, 2018, Democratic Primary Election that include Oaks' name as a candidate, the Plaintiffs will suffer immediate, substantial and irreparable harm before a full adversary hearing can be held on the propriety of a preliminary or final injunction.

34. The Plaintiffs are likely to succeed on the merits of their claims in this action.

35. The public interest would be served by the entry of a temporary restraining order in this action which involves fundamental issues of constitutional law and executive power in derogation of the rights of the people. Further, should voters be given ballots with the name of a candidate who is ineligible to be a candidate, the votes of those persons who would vote for the ineligible candidate will be disregarded. Given the strong public interest in protecting the votes of all voters, such a disqualification would violate public policy.

WHEREFORE, the Plaintiffs request that the Court enter a Temporary Restraining Order that enjoins the State Board from listing Oaks' name on any and all ballots to be distributed to voters in the June 26, 2018, Democratic Primary Election.

COUNT FIVE
(Preliminary Injunction)
(Maryland Rule 15-505)

36. The allegations of Paragraphs 1 to 35, above, are incorporated as if recited herein.

37. The Plaintiffs are likely to succeed on the merits of their claims in this action.

38. The Plaintiffs will suffer substantial and irreparable harm should the State Board include Oaks' name as a candidate on the June 26, 2018, Democratic Primary Election Ballot.

39. The public interest would be served by the entry of a preliminary injunction in this action which involves fundamental issues of constitutional law and executive power in derogation of the rights of the people.

WHEREFORE, the Plaintiffs request that the Court enter a Preliminary Injunction that enjoins the State Board from listing Oaks' name on any and all ballots to be distributed to voters in the June 26, 2018, Democratic Primary Election.

COUNT SIX
(Permanent Injunction)

40. The allegations of Paragraphs 1 to 39, above, are incorporated as if recited herein.

41. Should the State Board list Oaks' name on ballots to be distributed to voters in in the June 26, 2018, Democratic Primary Election, the plaintiffs will suffer irreparable injury and have no adequate remedy at law.

WHEREFORE, the Plaintiffs request that the Court enter a Permanent Injunction that enjoins the State Board from listing Oaks' name on any and all ballots to be distributed to voters in the June 26, 2018, Democratic Primary Election.

COUNT SEVEN
(Further Relief)

42. The allegations of Paragraphs 1 to 41 above, are incorporated as if recited herein.

43. The Plaintiffs seek all such further relief to which they are entitled at law and in equity.

WHEREFORE, the Plaintiffs request that the Court award the Plaintiffs any and all such further relief as the Court may deem just and proper, including, but not limited to attorneys' fees and costs.




H. MARK STICHEL
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EMAIL: HMSTICHEL@AGTLAWYERS.COM

ATTORNEY FOR PLAINTIFFS

VERIFICATION

I, **NANCY LEWIN**, swear under penalty of perjury that the contents of the forgoing
Complaint are true and correct



NANCY LEWIN
Dated: April 9, 2018

MARYLAND RULE 20-201(f) CERTIFICATE

I HEREBY CERTIFY that this submission does not contain any restricted information.


H. MARK STICHEL

ATTORNEY FOR PLAINTIFFS

NANCY LEWIN, *et al.*

Petitioners,

v.

LINDA H. LAMONE, in her official
capacity as State Administrator,
Maryland State Board of Elections,

Respondent.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No.: C-02-CV-18-001013

* * * * *

AFFIDAVIT OF NATASHA WALKER

I, Natasha Walker, am over the age of eighteen years of age, am competent to testify, and have personal knowledge of the matters to which I testify below.

1. I have been employed by the Maryland State Board of Elections (“SBE”) since 2003. I currently serve as Project Manager of Election Management Systems and have been performing the functions of that job since July, 2015. My work requires, among other things, coordinating the preparation of ballots in advance of the primary and general elections

2. The deadline for an individual seeking to become a candidate for a public or party office in connection with the 2018 gubernatorial election was February 27, 2018, at 9:00pm. In total, 2,563 certificates of candidacy were filed by the February 27, 2018 deadline.

3. The deadline for a candidate to withdraw his or her candidacy so that his or her name would not appear on the primary ballot was March 1, 2018. In total, 77

certificates of withdrawal were filed by the March 1, 2018 deadline of which 23 were filed after the February 27, 2018 candidate filing deadline.

4. The last day for which a candidate's death or disqualification, having become known to SBE or the appropriate local board, would result in the candidate's removal from the primary ballot was Friday, March 9, 2018. In total, 8 candidates were determined to have become deceased or disqualified by the appropriate board of elections by the March 9, 2018 deadline for having their names removed from the primary ballot.

5. On Monday, March 12, 2018 – the first business day after that March 9, 2018 deadline – SBE began creating ballot databases, importing the ballot data, and laying out the different ballots that will be in use across the state for the primary election.

6. On March 23, 2018, local boards of election (“LBEs”) received ballot proofing packages to review and approve the ballots pertinent to their respective jurisdictions. This process takes approximately one week for larger jurisdictions such as Baltimore City.

7. On April 3, 2018, ballots were certified pursuant to Md. Code Ann. EL § 9-207(a)(1) and placed on SBE's website for public viewing. In total, 747 different ballots will be in use across the State during the 2018 primary election. Approximately 2 of these different ballots, which are assigned to 50 election day precincts and 7 early voting centers, include the primary contest for the Democratic nomination for Senate representing Legislative District. Any change to the ballot during the period prior to certification would have required SBE to correct the relevant databases and redo the

process of laying out affected ballots, and would have required affected LBEs to re-review and re-approve affected ballots pertinent to their jurisdictions.

8. Pursuant to Md. Code Ann. EL § 9-207(a)(1), the certification of ballots must take place “at least 55 days before the election,” which, for the 2018 primary election, imposes a deadline of May 2, 2018. However, because absentee ballots must be made available to military and overseas voters no later than 45 days before the election (this year, May 12, 2018) pursuant to 42 U.S.C. § 1973gg-1(a)(8), SBE strives to certify ballots as early as possible to allow for the completion of the several steps required to take place before the May 12, 2018 deadline.

9. On April 11, 2018, SBE began the process of creating PDFs of all 747 of the primary election ballots for each of the different ballot 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). Start to finish, this process takes approximately eight days. Any change to the ballots during this period would require PDFs of the affected ballots across all formats to be redone.

10. On April 18, 2018, SBE expects to import final ballot style data into its MDVOTERS database. Once this is done, local boards of election must verify that styles are aligned with the correct precincts and splits. For larger jurisdictions such as Baltimore City this process takes approximately one week, and any change to the ballots during or after this process would require the ballot styles to be reimported and would require affected LBEs to re-verify all ballot style to precinct associations.

11. On April 23, 2018, SBE expects to begin the printing of test decks and ballots. This process typically takes 3 weeks, and at the conclusion of the printing process approximately 1,500,000 different physical ballots will have been generated. After the date that printing begins, changes to ballots would be costly and disruptive. The pre-print production process takes approximately 2 days to lay out the ballot styles and create the metal printing plates for each ballot style. When ballot styles change, new ballot style PDF's must be sent to the printer and the pre-print production process must be redone. Any ballots printed for the impacted jurisdiction must be disposed of to ensure that the wrong ballot styles do not get sent to the jurisdiction.

12. On April 25, 2018, SBE expects to finalize the ballot style process in the MDVOTERS database by assigning voters who have requested an absentee ballot to the current election. Once the absentee voters have been assigned to the current election, there is no way to unassign them without intervention from the MDVOTERS development team. After speaking with the development team, it is my understanding that it would take approximately 5 days to return to the point where absentee voters can be assigned to the current election again.

13. On April 26, 2018, SBE expects to begin testing of its web delivery system. Under Maryland law, voters may request that absentee ballots be delivered to them via the web. In order to test SBE's web delivery system, SBE must transmit ballot style and content data to its programmer, who then performs quality assurance testing using real absentee voters. The testing process takes approximately two weeks, and must be complete before the May 12, 2018 deadline for making absentee ballots available to

military and overseas voters. Also, the testing process may not begin until absentee ballots are assigned to voters.


14. While ballots are being prepared, SBE also conducts testing of its election results site and news feed, to allow for real-time election results reporting to the public. The process draws on finalized ballot information to produce XML and CSV files of all final contest and candidate data for the purpose of producing test results files and HTML test results pages. This process begins at the time of ballot certification and takes approximately two months to complete. This testing process must be complete by June 15, 2018.

15. Early voting for the 2018 primary election is scheduled to begin June 14, 2018.

16. Election day for the 2018 primary election is June 26, 2018.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

April 18, 2018



Natasha Walker

NANCY LEWIN, *et al.*

Petitioners,

v.

LINDA H. LAMONE, in her official
capacity as State Administrator,
Maryland State Board of Elections,

Respondent.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No.: C-02-CV-18-001013

* * * * *

SUPPLEMENTAL AFFIDAVIT OF NATASHA WALKER

I, Natasha Walker, am over the age of eighteen years of age, am competent to testify, and have personal knowledge of the matters to which I testify below.

1. I have been employed by the Maryland State Board of Elections (“SBE”) since 2003. I currently serve as Project Manager of Election Management Systems and have been performing the functions of that job since July, 2015. My work requires, among other things, coordinating the preparation of ballots in advance of the primary and general elections.

2. On April 18, 2018, I executed an affidavit that was submitted in support of the Defendant’s Memorandum in Opposition to Motion for Temporary Restraining Order and/or Preliminary Injunction (the “First Affidavit”) in the above-captioned matter. In that First Affidavit, I made reference to various ballot-preparation steps that had already occurred as of the date of that affidavit, as well as several ballot- and election-preparation steps that SBE expected to commence on certain dates in the future.

3. On April 23, 2018, SBE did in fact begin the printing of test decks and ballots, as I had anticipated in paragraph 11 of my First Affidavit. Also, absentee ballot PDFs and files have been sent to the absentee printer.

4. On April 25, 2018, SBE did in fact assign absentee voters to the current election from the MDVOTERS database, as I had anticipated in paragraph 12 of my First Affidavit.

5. Tomorrow, April 26, 2018, SBE is on track to begin testing of its web delivery system, as I had anticipated in paragraph 13, of my First Affidavit.

6. Several other ballot processes are now complete:

- a. Final election databases, which are used for configuring the voting equipment for the upcoming election, were distributed to the local boards of election.
- b. Specimen ballot PDFs were distributed to the local boards of election so that they can begin the process of laying out the specimen ballot mailers.
- c. Standard length and 11 inch ballot PDFs, which are provided to absentee voters in special circumstances, were distributed to the local boards of election.
- d. Sample ballot PDFs for the SBE's voter services portal were generated and sent to the voter services developer, and are now available for voters to view through SBE's individualized voter services portal.

- e. The ballot data has been generated and imported for the ballot delivery system and ballot duplication software, which are used to deliver ballots to military and overseas voters who request to receive their ballot via web delivery and duplicate them upon return, and test ballot PDFs have been generated.
- f. Final pollbook exports that contain ballot information have been created and imported into the pollbook database and SBE is in the process of generating the test database which is used to confirm the accuracy of the polling places, precincts and ballot style assignments.
- g. Ballot PDFs have been distributed to the post-election audit vendor and all XML files and reports required for the post-election audit and for any testing in advance of the election have been sent to them.
- h. Test election result files have been created and sent to our development team to start election result testing.
- i. Preliminary news feed data has been generated and sent to the *Baltimore Sun* for their initial testing.

7. Each of the processes described above would be impacted substantially if SBE were to be required to remove a candidate's name from the ballot at this point in the election schedule. I understand that a hearing has been scheduled for tomorrow, April 26, 2018, at 1:30pm. I would be extremely concerned about SBE's ability to complete

these processes on time if it were ordered at that hearing to remove Mr. Oaks' name from the relevant ballots.

8. In my First Affidavit, at paragraph 11, I stated that approximately 1,500,000 different physical ballots will have been generated after the printing process is complete. That estimate was based on rough numbers, and I now have a more precise estimate. Now, we estimate that between 3,000,000 and 3,500,000 early voting and election-day ballots, will be printed, and enough paper for 4,000,000 ballots has been ordered.

9. If the Court were to issue an order to remove Mr. Oaks after ballots were already printed, there is a chance that we would need to reprint all the ballot styles for Baltimore City. In the past, we have encountered problems where certain ballots that are regenerated after printing do not "scan" on the voting equipment. Although this had occurred on a prior voting system that is no longer in use by the State Board, it is nevertheless risky not to send a full set of ballots for a given jurisdiction to be printed after a change is made.

10. Thus, in addition to the approximate week it would take for the State Board to reproduce the affected ballots, reproof the ballots at the local level, reassign absentee voters, re-import ballot styles, and make any ballot styles to precincts changes, we would almost certainly need to order additional ballot paper to accommodate the re-printing of a large jurisdiction like Baltimore City. Because the ballot paper needs to meet very precise specifications, the lead time for ordering additional paper is approximately four

weeks. This is another reason for why making changes to ballots after printing has begun is not feasible.

I solemnly affirm under the penalties of perjury that the contents of the foregoing paper are true to the best of my knowledge, information, and belief.

April 25, 2018

A handwritten signature in black ink, appearing to read "Natasha Walker", with a long, sweeping underline.

Natasha Walker



Maryland State Board of Elections

HB 671

The Speaker, Delegates Barve and O'Donnell
(By Request – Administration)

Federal Military and Overseas Voter Empowerment (MOVE) Act Compliance

Purpose

This bill alters the dates of the primary elections and various other candidate filing and election related deadlines to allow compliance with the mandate in the federal Military and Overseas Empowerment Act (MOVE) to send military and overseas voters ballots at least 45 days prior to an election.

Comments:

Under current law, it is nearly impossible for the State to meet the MOVE Act requirement to send ballots to military and overseas voters at least 45 days prior to an election. In primary elections, the candidate filing date is 70 days before the election, but all of the following must occur before ballots are available to mail out to voters:

- Withdrawal deadline;
- Central Committee filling vacancies;
- Challenges to a candidate's residence
- Ballot development, certification, and posting;
- Printing ballots;
- Processing ballots to mail to voters.

Currently, given all of the additional deadlines and the time needed to develop and print ballots, the MOVE Act mailing deadline cannot be met. Similarly, the current gubernatorial primary date is as few as 48 days before the general election which clearly does not provide sufficient time to meet the MOVE Act 45 day mailing deadline.

This bill solves both problems. First, the bill changes the candidate filing deadline to 90 days before the general election. The bill also shortens the amount of time for withdrawal, filling vacancies, making challenges, and public display of the ballot. Second, for the gubernatorial primary, the bill moves the primary to the second Tuesday in July. This provides 126 days between the primary and general election. Accordingly, in both instances there is sufficient time to have ballots ready to mail to military and overseas voters 45 days prior to the election.

Contact:

Ross Goldstein, Deputy Administrator
410-269-2877

LINDA H. LAMONE, ADMINISTRATOR

W&M 3/8/2011

STATE BOARD OF ELECTIONS

Trento, Andrea

From: Trento, Andrea
Sent: Wednesday, April 11, 2018 6:29 PM
To: 'H. Mark Stichel'
Cc: Jason Downs
Subject: RE: Sen Oaks

Mark –

The deadline to get onto the board agenda tomorrow was earlier this afternoon. You are welcome to transmit a letter to the Board (which I would be happy to forward along), but I cannot promise that they will be in a position to consider that letter tomorrow. Also, I don't expect that our advice to the Board on this issue is going to be any different than the position I have articulated in our conversations to date, which is to say that – with or without Mr. Oaks' consent as set forth in his affidavit you forwarded along earlier today – the Board does not have the authority at this point in the election calendar to remove Mr. Oaks' name from the primary ballot.

In light of the ballot preparation schedule that I laid out over the phone, I would encourage you to try if at all possible to file your TRO application tomorrow in the early part of the day, and perhaps try to arrange for a walk-through to chambers in the afternoon, since I understand from our conversation that Friday would not work for you. I am concerned that putting this off until next week adds unnecessary delay in a process that is already extremely tight. I am available all day tomorrow and will be in Annapolis in the afternoon. Please don't hesitate to let me know if you would like to discuss further.

Best,

Andrea

Andrea Trento
Assistant Attorney General
Office of the Attorney General
Civil Litigation Division – 20th Floor
200 St. Paul Plaza
Baltimore, MD 21202
T: 410.576.6472
M: 410.746.2535
atrento@oag.state.md.us

From: H. Mark Stichel <HMStichel@agtlawyers.com>
Sent: Wednesday, April 11, 2018 4:23 PM
To: Trento, Andrea <atrento@oag.state.md.us>
Cc: Jason Downs <Jason@downscollins.com>
Subject: RE: Sen Oaks

Thanks. I will call you then. Should I call your office number (410.576.6472) or another number?

Jason: If you want me to conference you in on the call, let me know the number at which you can be reached at 5:00 p.m.

H Mark Stichel
Principal



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Please read our [AGT blog](#).

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From: Trento, Andrea [<mailto:atrento@oag.state.md.us>]
Sent: Wednesday, April 11, 2018 4:19 PM
To: H. Mark Stichel <HMStichel@agtlawyers.com>
Cc: Jason Downs <Jason@downscollins.com>
Subject: RE: Sen Oaks

Mark and Jason – I am available after around 5 today. I'll have some more information then about where the Board is in the ballot preparation process as well.

From: H. Mark Stichel <HMStichel@agtlawyers.com>
Sent: Wednesday, April 11, 2018 3:56 PM
To: Trento, Andrea <atrento@oag.state.md.us>
Cc: Jason Downs <Jason@downscollins.com>
Subject: FW: Sen Oaks

Andrea

I just became aware this afternoon that Jason Downs has filed a case that parallels the case that I filed on Monday. I am forwarding what Jason has filed. Nathaniel Oaks' affidavit changes matters. Would you be available after 4:30 p.m. today for a conference call with Jason and me?

To give you a preview of where I am (I cannot speak for Jason): I will not be filing a TRO motion today. The Oaks affidavit changes what I had intended to say. At a minimum, Mr. Oaks' affidavit avoids the necessity of our litigating the issue of whether he is disqualified pursuant to EL §3-102(b)(1). Before I seek a TRO I would like to ask that the State

Election Administrator or the State Board agree to remove Mr. Oaks name from the ballot pursuant to his affidavit. I recognize that EL § 5-504(b) on its face appears to preclude the removal of Mr. Oaks' name. In *Black v. Board of Supervisors of Elections of Baltimore City*, 232 Md. 74, 80 , 191 A.2d 580, 583 (1963), the Court noted that: "The courts in other states have generally held that time limitations imposed upon a right to withdraw are directory and not mandatory." Although the Court of Appeals said that it did not need to go so far in *Black*, I believe that the Court's statement gives the State Administrator or the State Board an opening to take Mr. Oaks' name off of the ballot.

As I have alleged in my complaint, the arbitrary freezing of the ballot such that disqualified candidates cannot be removed from the ballot even though a disqualifying event occurs well in advance of the printing of ballots is a constitutional violation. Essentially, the early withdrawal deadline is analogous to early filing deadlines that have been found unconstitutional by the courts. See, e.g., *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992); see also *Cromer v. South Carolina*, 917 F.2d 819 (4th Cir. 1990). In 2016, Dan Sparaco challenged Maryland's early filing deadline for independent and non-principal party candidates in the United States District Court for the District of Maryland. The State Board agreed to change the filing deadline to avoid Mr. Sparaco's case and a finding that Maryland's statute was unconstitutional. In the same vein, I believe that the State Board should interpret EL 5-504(b) as being directory and not mandatory pursuant to the canon of constitutional avoidance. Further, such an interpretation would be consistent with the "Democracy Canon" of statutory construction. See Richard L. Hasen, *The Democracy Canon*, 62 STAN. L. REV. 69 (2009).

When we spoke yesterday, I inquired about the schedule for printing ballots. The State Board's 2018 Gubernatorial Election Calendar states that ballots will be printed on Monday, May 7, 2018, and that the ballots will be displayed on the State Board's website on Thursday, May 3, 2018. However, I note that draft ballots already have been posted on the State Board's website. You were not able to give me a definitive answer as to whether ballots had been printed already or if they had not been printed when they would be. My clients would like to resolve this matter with the State Board without the necessity of applying for a TRO and/or preliminary injunction. However, I also am well aware of the application of the doctrine of laches in election law cases. Given that the deadline for mailing certain absentee ballots pursuant to federal law is not until May 12, 2018, I believe that our foregoing filing for a TRO for a reasonable time to allow the State Board to consider our request in light of Mr. Oaks' affidavit is both prudent and reasonable. However, should the State Board have a date certain for printing ballots that is earlier than May 7, I would ask that you inform me of it and if no such date currently is known that you inform me of the printing date as soon as it is known.

Mark

H Mark Stichel
Principal



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Please read our [AGT blog](#).

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whose electronic mail address is named above. If you are not the intended recipient, be aware that any disclosure, copying, distribution or use of the contents of this information is prohibited. If you have received this electronic transmission in error, please notify us by telephone (410-783-3550) or by electronic mail (info@agtlawyers.com) immediately.

From: Jason Downs [<mailto:Jason@downscollins.com>]

Sent: Wednesday, April 11, 2018 2:02 PM

To: H. Mark Stichel <HmStichel@agtlawyers.com>

Subject: Fwd: Sen Oaks

Please let me know if you have trouble opening

Jason Downs
Partner
Downs Collins, P. A.
20 South Charles St.
Suite 901
Baltimore, MD 21201
(410) 462-4529

Begin forwarded message:

OFFICE OF THE FEDERAL PUBLIC DEFENDER
DISTRICT OF MARYLAND
NORTHERN DIVISION
TOWER II, 9th FLOOR
100 SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201-2705
TEL: (410) 962-3962
FAX: (410) 962-0872

JAMES WYDA
FEDERAL PUBLIC DEFENDER

LUCIUS T. OUTLAW III
SENIOR LITIGATION COUNSEL

April 11, 2018

VIA ECF

Hon. Richard D. Bennett
U.S. District Court Judge
United States District Court for the District of Maryland
101 W. Lombard Street
Baltimore, MD 21201

Re: *United States v. Oaks*, Crim. No. 17-00288-RDB

Dear Judge Bennett:

I write in regard to the advisement regarding the consequences of a felony conviction that the Court provided Mr. Oaks during his Rule 11 re-arraignment on March 29, 2018. Specifically, this letter concerns the Court's advisement that Mr. Oaks is barred from holding elected office in the future due to his conviction in this case.

The Court's advisement is of immediate concern to the defense because of the upcoming state primary election on June 26, 2018. Currently, Mr. Oaks is slated to appear on the primary ballot for the state senate seat representing Legislative District 41. Conceivably Mr. Oaks could win the primary election, after having pled guilty (to counts three and four) in this case but prior to his sentencing.

To date since the re-arraignment, defense counsel has been unable to locate a legal basis confirming the Court's advisement that Mr. Oaks is barred from holding political office in the future as a result of his conviction in this case.¹ *However, out of an abundance of caution*, and in deference to the Court's advisement and Mr. Oaks's desire to spare the people of District 41 and the Maryland Senate the confusion and uncertainty of his continuing candidacy, Mr. Oaks is exploring and pursuing ways to withdraw his name from the primary election ballot. To be clear, it is Mr. Oaks's intention and desire *not* to be on the ballot for the upcoming primary election.

Unfortunately, under Maryland law, the deadline for Mr. Oaks's name to be removed from the primary ballot by the Maryland Board of Elections has passed. Pursuant to Maryland Code, Election Law § 5-502, a candidate seeking to withdraw his candidacy in an election for state office

must file a certificate of withdrawal with the Board of Elections “within 2 days after the filing date established under § 5-303.” Under Maryland Code, Election Law § 5-303(a)(1), because this year includes the governorship election, the certificate of candidacy filing deadline was “9 p.m. on the last Tuesday in February in the year in which the primary election will be held.” Therefore, taking § 5-502 and § 5-303 together, **the deadline for Mr. Oaks to have filed a certificate of withdrawal to trigger the removal of his name from the primary ballot was March 1, 2018** (i.e., two days after the candidacy filing deadline of February 27, 2018).

I have personally confirmed with the Maryland Board of Elections that the deadline for Mr. Oaks to withdraw his candidacy from the primary election has passed, and that no other means exist for the Board to remove Mr. Oaks’s name from the primary ballot. Mr. Oaks and defense counsel are still pursuing recourse outside of the Board of Elections to remove Mr. Oaks’s name from the ballot, including supporting an emergency petition filed in the Circuit Court for Anne Arundel County that seeks to have Mr. Oaks’s name removed from the primary ballot. *See* Ex. 1. The complaint in that action includes an affidavit from Mr. Oaks consenting to have his name removed from the ballot. *Id.* at Exhibit 1 to the Complaint.

While the action in Anne Arundel proceeds, and while Mr. Oaks continues to explore and support other means of removing his name from the primary ballot, Mr. Oaks, in the meantime, has authorized me to convey to the Court that:

- (1) he has suspended any campaign efforts for the primary and general elections;
- (2) if he wins the primary election, he will immediately decline/resign the nomination;
and
- (3) he is taking steps to communicate (1) and (2) above to the voters of District 41.

We sincerely hope these actions will alleviate any concerns the Court may have, and allow the voters of District 41 to exercise their votes with full knowledge of Mr. Oaks’s circumstances and intentions.

Please contact me if you have any questions, concerns, or comments.

Sincerely,

-----/s/-----

Lucius T. Outlaw III
Senior Litigation Counsel

CC: All counsel of record
Enc.

For federal legislative offices, Article I, Section 2, of the U.S. Constitution sets only age, U.S. citizenship, and state residency requirements; it contains no prohibition barring convicted felons from serving in the U.S. Senate or the House of Representatives. The same is true for the Presidency of the United States, pursuant to Article II, Section 1 of the Constitution.

I have similarly been unable to locate any prohibition barring a convicted felon, after completion of a prison sentence, from holding elected state office in Maryland. For instance, the eligibility requirements for Senate and House of Delegate offices in the Maryland legislature are initially established by Article 3, Section 9 of the Maryland Constitution. This state constitutional provision restricts eligibility only on the bases of age and Maryland citizenship and residency.

In addition, under Maryland statutory law, except under certain specified exceptions not relevant here, a person is eligible to seek a party nomination for state elected office so long as the person is a “registered voter affiliated with the political party.” Md. Code, Election Law § 5-203. A person may become a registered voter, in turn, so long as the person is “a citizen of the United States; is at least 16 years old; [and] is a resident of the State as of the day the individual seeks to register.” Md. Code, Election Law § 3-102(a)(1). Moreover, a person is disqualified from being a registered voter if the individual “has been convicted of a felony *and is currently serving a court-ordered sentence of imprisonment for the conviction.*” *Id.* § 3-102(b)(1) (emphasis added). I have located no other conviction-related prohibitions applying to state election candidacy.

Writer's direct contact:
410.783.3547
hmstichel@agtlawyers.com
Reply to Baltimore Office

217 east redwood street
21st floor
baltimore, maryland 21202
410.783.3550
410.783.3530 fax

washington, dc

www.agtlawyers.com

April 11, 2018

VIA EMAIL

Maryland State Board of Elections
c/o Andrea Trento, Esquire
Assistant Attorney General
Office of the Attorney General
Civil Litigation Division – 20th Floor
200 St. Paul Place
Baltimore, Maryland 21202

Re: *Nancy Lewin, et al. v. Linda H. Lamone, etc.*
Circuit Court for Anne Arundel County

Greetings:

I represent the plaintiffs in the above-referenced case that was filed in the Circuit Court for Anne Arundel County on Monday, April 9, 2018. My clients are seeking to have the name of Nathaniel T. Oaks removed from the ballot for the Democratic Party Primary Election that is scheduled to be held on June 26, 2018. Mr. Oaks, formerly a State Senator, pleaded guilty on March 29, 2018, to two felony counts in the United States District Court for the District of Maryland. I have provided courtesy copies of the Complaint to Mr. Trento, your counsel, and incorporate by reference the facts and argument stated in the Complaint. Today, I became aware of parallel litigation that has been filed by Jason Downs, Esquire, on behalf of Laura Harpool. In the *Harpool* action, the plaintiff has submitted an affidavit from Mr. Oaks stating that he consents to have his name removed from the ballot and that it is in the best interest of the people of Legislative District 41 that his name be removed from the ballot following his recent guilty plea.

On behalf of the Nancy Lewin, Elinor Mitchell and Christopher Ervin, each of whom is a registered voter in Legislative District 41, I hereby request that the Board and/or the State Election Administrator remove the name of Nathaniel T. Oaks from the ballot for the Democratic Primary Election. Mr. Oaks has filed certificates of candidacy for Maryland State Senate representing Legislative District 41 and Maryland State Central Committee representing Legislative District 41.

It is my understanding that the Board, through the State Election Administrator and/or her staff, has taken the position that Mr. Oaks' name cannot be removed from the ballot due to the provisions of Maryland Code, Election Law §§ 5-501 to 5-504 and § 5-601. In essence, it is the Board's position that the primary election ballot is frozen as of ten days following the candidacy

filing deadline, which was February 27, 2018, for the June 26, 2018 Democratic Party Primary election.

I recognize that EL § 5-504(b) on its face appears to preclude the removal of Mr. Oaks' name. In *Black v. Board of Supervisors of Elections of Baltimore City*, 232 Md. 74, 80, 191 A.2d 580, 583 (1963), the Court noted that: "The courts in other states have generally held that time limitations imposed upon a right to withdraw are directory and not mandatory." Although the Court of Appeals said that it did not need to go so far in *Black*, I believe that the Court's statement gives the State Administrator or the State Board an opening to take Mr. Oaks' name off of the ballot. Cf. *New Jersey Democratic Party, Inc., v. Samson*, 175 N.J. 178, 814 A.2d 1028 (2002) (allowed filling of vacancy on the ballot 34 days before election notwithstanding statutory prohibition of filling vacancy within 48 days of a general election).

As alleged in the Complaint I have filed on behalf of my clients, the arbitrary freezing of the ballot well in advance of the printing of ballots is a constitutional violation. Essentially, the early withdrawal deadline is analogous to early filing deadlines that have been found unconstitutional by the courts. See, e.g., *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992); see also *Cromer v. South Carolina*, 917 F.2d 819 (4th Cir. 1990). In 2016, Dan Sparaco challenged Maryland's early filing deadline for independent and non-principal party candidates in the United States District Court for the District of Maryland. The State Board agreed to change the filing deadline to avoid Mr. Sparaco's case and a finding that Maryland's statute was unconstitutional. In the same vein, I urge that the State Board interpret §§ 5-501 to 5-504 and § 5-601 as being directory and not mandatory pursuant to the canon of constitutional avoidance. Further, such an interpretation on the specific facts of this case, one in which the candidate would be ineligible for office were he to remain on the ballot and win the election, would be consistent with the "Democracy Canon" of statutory construction. See Richard L. Hasen, *The Democracy Canon*, 62 STAN. L. REV. 69 (2009).

It is my understanding from a telephone conversation that I had with Mr. Trento this evening that the printing of ballots for the June 26 Primary Election is expected to commence on or about April 23, 2018. Should the Board refuse to remove Mr. Oaks' name from the ballot, my clients intend to move for a Temporary Restraining Order or, in the alternative, a Preliminary Injunction to direct that Mr. Oaks' name be removed from the ballot.

I would welcome the opportunity to appear before the Board at its scheduled meeting tomorrow, April 12, 2018, to address this matter.

Sincerely,


H. Mark Stichel

Trento, Andrea

From: H. Mark Stichel <HMStichel@agtlawyers.com>
Sent: Sunday, April 22, 2018 2:03 PM
To: Trento, Andrea
Cc: lucius_outlaw@fd.org; Jason Downs; Elizabeth Harlan
Subject: Lewin v Lamone

Dear Andrea

I just received a telephone call from Lucius Outlaw, who represents Nathaniel Oaks. Mr Outlaw said that Mr Oaks is willing to take whatever steps he needs to take to withdraw his voter registration immediately. Mr. Outlaw has an appointment that he cannot cancel first thing tomorrow, but is available at 10:30. We would like to have a conference call with you then to discuss the most expeditions and efficient way that Mr Oaks can withdraw his voter registration pursuant to EL 3-501.

Also, once Mr Oaks withdraws his voter registration, I will be filing a second amended complaint to include the fact and request that Judge Klavans reconsider his ruling on Friday in light of Mr Oaks registration withdrawal. Given what Judge Klavans said from the bench when he denied the preliminary injunction on Friday combined with this latest development, I would request that the State Board of Elections not begin the ballot printing process until the court has had the opportunity to consider our motion for reconsideration.

Mark

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Armstead B. Jones, Sr.
Election Director
Baltimore City Board of Elections
417 E. Fayette St., Benton Office Building, Room #129
Baltimore, MD 21202

April 23, 2018

Dear Sir:

Please remove my name from the voter registration files of the State of Maryland. Below please find the information you require.

Name: Nathaniel Thomas Oaks
Address of registration: [REDACTED]
Date of birth: [REDACTED]
Reason for removal: To facilitate removal of my name from election ballot

Signed April 23, 2018:



Nathaniel T. Oaks

Voter Profile Report

Date : 04/23/2018

Voter ID From : 1034283 To :

Voter Information

Voter ID	Last Name	First Name	Middle Name	Suffix	DOB	Driver License
1034283	OAKS	NATHANIEL	T		[REDACTED]	

Registration Information

Party	Status	Reasons
DEMOCRAT	Cancelled	Voter Request
Last Voted Date	Original Reg. Date	Effective Registration Date
[REDACTED]	06/01/1990	06/01/1990

Miscellaneous Information

Language	Gender	Assistance
	MALE	
Comments	O200	

Residence Address

Mailing Address

District & Precinct Information

PRECINCT 20006	CONGRESSIONAL DISTRICT 7	APPELLATE/CIRCUIT COURT 6	COUNCILMANIC DISTRICT 08
FEDERAL	JUDICIAL DISTRICT 8	LEGISLATIVE DISTRICT 41	Senatorial District 41
STATE OF MARYLAND	WARD 20	BALTIMORE CITY	South Western District
ELECTION DISTRICT 20			

Absentee Addresses

Absentee Type	Address
Absentee Voter - Timely In Perso	[REDACTED]
Absentee Voter - Timely In Perso	ADDRESS ON FILE
Absentee Voter - By Mail	ADDRESS ON FILE
Absentee Voter - By Mail	ADDRESS ON FILE

Petition Sign History

Petitions Number	Petition Title	Valid Signatures
		[REDACTED]

Move History

Effective Date	Residence Address

NANCY LEWIN, *et al.*,

Plaintiffs,

v.

LINDA H. LAMONE,

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* No. C-02-CV-18-001013

* * * * *

NOTICE OF APPEAL

MADAM CLERK:

Notice is hereby given that the defendant appeals to the Court of Special Appeals of Maryland from the preliminary injunction entered in this action on April 26, 2018.

Respectfully submitted,

/s/ Andrea W. Trento

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

April 26, 2018

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on this 26th day of April 2018, a copy of the foregoing was filed and served electronically on the MDEC system and sent by electronic mail 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/ Andrea W. Trento

Andrea W. Trento

NANCY LEWIN, *et al.*,

Plaintiffs,

v.

LINDA H. LAMONE,

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* No. C-02-CV-18-001013

* * * * *

NOTICE OF APPEAL

MADAM CLERK:

Notice is hereby given that, as authorized by Md. Code Ann., Elec. Law § 12-203(a)(3), the defendant appeals to the Court of Appeals of Maryland from the preliminary injunction entered in this action on April 26, 2018.

Respectfully submitted,

/s/ Andrea W. Trento

JULIA DOYLE BERNHARDT
CPF No. 8112010024
ANDREA W. TRENTO
CPF No. 0806170247
Assistant Attorneys General
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jbernhardt@oag.state.md.us
atrento@oag.state.md.us

April 26, 2018

Attorneys for Defendants

CERTIFICATE OF SERVICE

I certify that on this 26th day of April 2018, a copy of the foregoing was filed and served electronically on the MDEC system and sent by electronic mail 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/ Andrea W. Trento

Andrea W. Trento

Official Ballot
 2018 Gubernatorial Primary Election
 June 26, 2018

BS DEM 9

State of Maryland, Baltimore City
 Democratic Ballot

Instructions

Making Selections



Fill in the oval to the left of the name of your choice. You must blacken the oval completely, and do not make any marks outside of the oval. You do not have to vote in every race.



Do not cross out or erase, or your vote may not count. If you make a mistake or a stray mark, you may ask for a new ballot.

Governor / Lt. Governor
 Vote for 1

Rushern L. Baker, III
 and
 Elizabeth Embry

Ralph Jaffe
 and
 Freda Jaffe

Ben Jealous
 and
 Susan Turnbull

James Hugh Jones, II
 and
 Charles S. Waters

Kevin Kamenetz
 and
 Valerie Ervin

Rich Madaleno
 and
 Luwanda Jenkins

Alec Ross
 and
 Julie C. Verratti

Jim Shea
 and
 Brandon M. Scott

Krish O'Mara Vignarajah
 and
 Sharon Y. Blake

Comptroller

Vote for 1

Peter Franchot
 Unopposed

Attorney General

Vote for 1

Brian E. Frosh
 Unopposed

U.S. Senator

Vote for 1

- Ben Cardin
- Erik Jetmir
- Chelsea Manning
- Marcia H. Morgan
- Jerome "Jerry" Segal
- Richard "Rikki" Vaughn
- Debbie "Rica" Wilson
- Lih Young

Representative in Congress
 District 3
 Vote for 1

Adam D. DeMarco

John Rea

Eduardo Rosas

John Sarbanes

State Senator
 District 41
 Vote for 1

Jill P. Carter

J.D. Merrill

Nathaniel T. Oaks

House of Delegates
 District 41
 Vote for up to 3

Bilal Ali

Dalya Attar

Tony Bridges

Richard Bruno

Angela C. Gibson

Tessa Hill-Aston

Walter J. Horton

George E. Mitchell

Samuel I. "Sandy" Rosenberg

Joyce J. Smith

Sean Stinnett

Vote Both Sides



Judge of the Circuit Court Circuit 8 Vote for up to 5 <input type="radio"/> Charles H. Dorsey <small>Unopposed</small>
<input type="radio"/> Lynn Stewart Mays <small>Unopposed</small>
<input type="radio"/> Dana Michele Middleton <small>Unopposed</small>
<input type="radio"/> John Nugent <small>Unopposed</small>
<input type="radio"/> Jennifer Bridget Schiffer <small>Unopposed</small>

State's Attorney Vote for 1 <input type="radio"/> Ivan Bates <input type="radio"/> Marilyn J. Mosby <input type="radio"/> Thiru Vignarajah
--

Clerk of the Circuit Court Vote for 1 <input type="radio"/> William Allen <input type="radio"/> Marilyn Bentley <input type="radio"/> Valerie L. Cunningham <input type="radio"/> Lenora Dawson <input type="radio"/> Shanai Dunmore <input type="radio"/> Hassan Giordano <input type="radio"/> Narine Hoffman <input type="radio"/> Rodney "FaraJ" Leach <input type="radio"/> Anika Middleton <input type="radio"/> Kevin W. Parson <input type="radio"/> Danny Smith
--

Register of Wills Vote for 1 <input type="radio"/> Belinda K. Conaway <input type="radio"/> Robert M. Higginbotham, II

Judge of the Orphans' Court Vote for up to 3 <input type="radio"/> Charles "Chuck" Bernstein <small>Unopposed</small> <input type="radio"/> Lewyn Scott Garrett <small>Unopposed</small> <input type="radio"/> Michele E. Loewenthal <small>Unopposed</small>
--

Sheriff Vote for 1 <input type="radio"/> John W. Anderson <input type="radio"/> Stanley Brandford
--

Democratic Central Committee District 41 Vote for up to 7 <input type="radio"/> Bilal Ali <input type="radio"/> Perrice U. Austin <input type="radio"/> Chazla Cager <input type="radio"/> Joshua Crockett <input type="radio"/> Christopher Ervin <input type="radio"/> Tehila Fink <input type="radio"/> Kalman Finkelstein <input type="radio"/> Bassheva "Shevy" Friedman <input type="radio"/> Angela C. Gibson <input type="radio"/> Tessa Hill-Aston <input type="radio"/> Walter J. Horton <input type="radio"/> Lisa James-Henson <input type="radio"/> Ricarra Jones <input type="radio"/> Ira Kolman <input type="radio"/> SueEllen Lawton <input type="radio"/> Mary Page Michel <input type="radio"/> Ellie Mitchell <input type="radio"/> Nathaniel T. Oaks <input type="radio"/> Billie Roberts Spann <input type="radio"/> Antoinette "Netty" Rucker <input type="radio"/> Sharif Small <input type="radio"/> Tammy Stinnett <input type="radio"/> Ryan Turner <input type="radio"/> Sean "Shmop" Welsbord

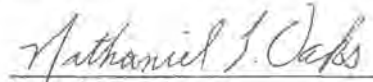
End of Ballot 

AFFIDAVIT OF NATHANIEL T. OAKS

I, Nathaniel Oaks, under penalty of perjury do declare and affirm the following:

- 1) From on or about February 10, 2017 until March 29, 2018, I served in the Maryland State Senate representing Legislative District 41.
- 2) I resigned my senate seat effective March 29, 2018, because I pled guilty the same day to two felony offenses in a federal criminal case pending against me in the United States District Court for the District of Maryland (*United States v. Oaks*, RDB-17-00288 (D. Md)).
- 3) I am currently on the ballot for the primary election, scheduled for June 26, 2018, to represent Legislative District 41 in the Maryland Senate.
- 4) I consent to have my name removed from the ballot for the primary election on June 26, 2018.
- 5) It is in the best interest of the people of Legislative District 41 that my name be removed from the ballot following my recent guilty plea in federal court.
- 6) I am of sound mind and body in making these statements, and no one has forced me to make them.

I swear and/or affirm that the foregoing representations are true and correct.

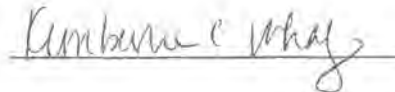

Nathaniel T. Oaks

Date: 4 9 18

STATE OF MARYLAND
BALTIMORE CITY

I, the undersigned Notary Public, do hereby affirm that Nathaniel T. Oaks personally appeared before me on the 9th day of April 9, 2018, and signed the above Affidavit as his free and voluntary act and deed.

KIMBERLEE C. WHALEY
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires August 17, 2019



H. Mark Stichel

From: Trento, Andrea <atrento@oag.state.md.us>
Sent: Saturday, April 14, 2018 1:53 PM
To: H. Mark Stichel
Cc: Jason Downs
Subject: Re: Lewin v Lamone

Thanks Mark. The board took no further action. Please keep me posted on your end. Thanks,
Andrea

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "H. Mark Stichel" <HMStichel@agtlawyers.com>
Date: 4/13/18 3:01 PM (GMT-05:00)
To: "Trento, Andrea" <atrento@oag.state.md.us>
Cc: Jason Downs <Jason@downscollins.com>
Subject: Lewin v Lamone

Dear Andrea

I assume that the State Board of Elections did not change its position regarding Mr Oaks' name on the ballot after I left the meeting yesterday. Please advise me if there has been any change. Assuming that there has not been a change it is my current intention to file a TRO motion and walk it through the Circuit Court for Anne Arundel County Monday. When I know the approximate time I will go to the court, I will let you know. Also, I am contemplating amending the complaint to include allegations relating to Mr Oaks affidavit that both of us became aware of on Wednesday. Best regards,

Mark

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2018 Gubernatorial Election Calendar

Date	Time ^{1,2}	Event Name	Description	Computation	Legal Authority ³
Monday, January 02, 2017		New Year's Day	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art., § 9-201
Monday, January 16, 2017		Martin Luther King Jr.'s Birthday	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art., § 9-201
Wednesday, January 18, 2017	11:59 pm	Campaign Finance Report	Deadline to file annual campaign finance report for all political committees.	3rd Wednesday in January.	EL § 13-309(b)(2)
Monday, February 20, 2017		President's Day	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art., § 9-201
Tuesday, February 28, 2017	COB	Begin Candidate Filing	First day candidates for the 2018 election can file a Certificate of Candidacy.	1 year before the deadline to file a Certificate of Candidacy.	SBE Policy
Monday, May 01, 2017	COB	Request for Advance Determination of Sufficiency for 2017 Referendum Petition	Deadline for petition sponsor to submit to SBE a request for advance determination of sufficiency of a referendum petition format.	At least 30 days before the deadline to file a petition.	EL § 6-210(a)(1)
Monday, May 08, 2017	COB	Determination of Referendum Petition Format Sufficiency	Deadline for SBE to determine sufficiency of a referendum petition format.	Within 5 days of receiving the request for advance determination.	EL § 6-210(a)(2)
Wednesday, May 10, 2017	COB	Notification of Outcome of Advance Determination of a Referendum Petition Format	Deadline for SBE to notify petition sponsor of the approval or deficiency of referendum petition format.	Within 2 business days after determining sufficiency of referendum petition format.	EL § 6-210(b)
Monday, May 29, 2017		Memorial Day	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art., § 9-201
Wednesday, May 31, 2017	11:59 pm	Filing Referendum Petition on Acts of the 2017 General Assembly	Deadline for petition sponsor to submit to Secretary of State at least one-third of the referendum petition signatures and a petition fund report.	Petitions are filed with the Secretary of State before the 1st day of June.	MD Const. Art. XVI, § 3(b)
Tuesday, June 20, 2017	COB	Verification and Counting of Referendum Petition	Deadline for the local boards to verify and count the signatures on the referendum petition.	Within 20 days after the filing of a petition.	EL § 6-210(c)
Thursday, June 22, 2017	COB	Certification of Referendum Petition	Deadline for SBE to certify the results of the first submission of the required signatures.	Within 2 business days after verification and counting is completed; deadline is extended if judicial review is pending.	EL § 6-210(d)
Monday, June 26, 2017		Early Voting Center Approval Form	Deadline for SBE to provide the local boards with the form for a proposed early voting center.	At least one year before a primary election.	COMAR 33.17.02.02A(1)
Friday, June 30, 2017	11:59 pm	Filing Referendum Petition on Acts of the 2017 General Assembly	Deadline for petition sponsor to submit to Secretary of State the balance of referendum petition signatures and a petition fund report.	Petitions are filed with the Secretary of State by the 30th day of June.	MD Const. Art. XVI, § 3(b)
Monday, July 03, 2017	COB	Judicial Review of Referendum Petition Certification	Deadline for petition sponsor to seek judicial review of referendum petition certification of the first submission of the required signatures.	10th day following SBE's determination (July 2, 2017) or 63rd day before the general election (September 4, 2018), whichever is earlier.	EL § 6-210(e)
Tuesday, July 04, 2017		Independence Day	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art., § 9-201
Thursday, July 20, 2017	COB	Verification and Counting of Referendum Petition	Deadline for the local boards to verify and count the balance of the signatures on the referendum petition.	Within 20 days after the filing of a petition.	EL § 6-210(c)
Monday, July 24, 2017	COB	Certification of Referendum Petition	Deadline for SBE to certify the results of the full referendum petition verification.	Within 2 business days after verification and counting is completed; deadline is extended if judicial review is pending.	EL § 6-210(d)
Thursday, August 03, 2017	COB	Judicial Review of Referendum Petition Certification	Deadline for petition sponsor to seek judicial review of referendum petition certification.	10th day following SBE's determination (August 3, 2017) or 63rd day before the general election (September 4, 2018), whichever is earlier.	EL § 6-210(e)
Monday, September 04, 2017		Labor Day	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art., § 9-201

¹ Under Maryland law, if a deadline is a Saturday, Sunday or State holiday, the deadline is moved to the next regular business day. See EL § 1-301

² COB means close of business. For SBE, the close of business is 5 pm. Because the close of business varies by county, please contact the appropriate local board of elections or circuit court to find out when the office closes.

³ Most citations refer to the Election Law (EL) Article or General Provisions (GP) of the Annotated Code of Maryland. COMAR refers to the Code of Maryland Regulations. USC refers to the United States Code.

Sunday, September 17, 2017		Constitution Day and Citizenship Day	Commemorate the signing of the U.S. Constitution and require public schools to celebrate the day and instill in students knowledge of history, importance, and the meaning of the U.S. Constitution and Maryland Constitution.	Anniversary of signing of the U.S. Constitution on September 17, 1787.	Education Art., § 7-115
Monday, October 09, 2017		Columbus Day	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art., § 9-201

2018 Gubernatorial Election Calendar

Date	Time ^{1,2}	Event Name	Description	Computation	Legal Authority ³
Tuesday, October 24, 2017		Determination of Number of Registered Voters (Early Voting Centers)	Deadline for the State Administrator to determine the number of active registered voters for use when determining the number of early voting centers in each jurisdiction.	Tuesday that is 8 months before a primary election.	COMAR 33.17.02.01A(1)
Monday, October 30, 2017		Notice of Number of Early Voting Centers	Deadline for the State Administrator to provide the local boards with the number of early voting centers in each jurisdiction.	Within 5 days of determination of number of registered voters.	COMAR 33.17.02.01B
Friday, November 10, 2017		Veteran's Day	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art., § 9-201
Thursday, November 23, 2017		Thanksgiving	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art., § 9-201
Friday, November 24, 2017		American Indian Heritage Day	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art., § 9-201
Monday, November 27, 2017		Early Voting Center Approval Form	Deadline for the local boards to submit to SBE a form for each proposed early voting center.	At least 7 months before a primary election.	COMAR 33.17.02.02A(2)
Monday, December 25, 2017		Christmas	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art., § 9-201
Tuesday, December 26, 2017	COB	Designation of Early Voting Centers	Deadline for SBE, in collaboration with the local boards, to designate early voting centers.	No later than 6 months before a primary election.	EL § 10-301.1(c) (2009 Laws of Maryland)
Tuesday, December 26, 2017	COB	Determination of Eligible Primary Election Voters	Deadline for the chairs of the principal political parties to notify SBE whether they will allow voters not affiliated with its political party to vote in the primary election.	6 months prior to a primary election.	EL § 9-202(c)
Monday, January 01, 2018		New Year's Day	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art., § 9-201
Tuesday, January 02, 2018		Determination of Number of Registered Voters (Nomination Petition)	Deadline for SBE to determine the number of registered voters required to satisfy the requirement for a nomination by petition.	January 1st of the year of a primary election for which the nomination is sought.	EL § 5-703(e)(3)
Monday, January 15, 2018		Martin Luther King Jr.'s Birthday	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art., § 9-201
Wednesday, January 17, 2018	11:59 pm	Campaign Finance Report	Deadline to file annual campaign finance report for all political committees.	3rd Wednesday in January.	EL § 13-309(b)(2)
Monday, February 19, 2018		President's Day	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art., § 9-201
Tuesday, February 27, 2018	9 pm	Candidate Filing Deadline	Deadline to file a <i>Certificate of Candidacy</i> .	Last Tuesday in February in the year in which the primary election will be held.	EL § 5-303(a)(1)
Thursday, March 01, 2018	COB	Withdrawal of Candidacy	Deadline for a candidate to withdraw his or her candidacy before the primary election.	Within 2 days after the deadline to file a <i>Certificate of Candidacy</i> .	EL § 5-502(a)
Thursday, March 01, 2018		Financial Disclosure Statement	Deadline for candidates that filed a Certificate of Candidacy in the previous year to file a new financial disclosure statement. Failure to file may result in the candidate's removal from the ballot.	Last day for the withdrawal of a candidacy.	GP §5-805(d)(2)(ii)
Monday, March 05, 2018	COB	Vacancy in Candidacy	Deadline for central committees to fill a vacancy for an office appearing on the primary election ballot.	5 days after the deadline to file <i>Certificate of Candidacy</i> .	EL § 5-901(e)
Monday, March 05, 2018	COB	Challenge Residency of Candidate	Deadline for a registered voter to file in circuit court a petition challenging the residency of a candidate.	6 days after the deadline to file <i>Certificate of Candidacy</i> or <i>Declaration of Intent</i> .	EL § 5-305(c)(1)
Monday, March 26, 2018		Alternate Early Voting Center	Deadline for the local boards to submit to SBE a form for each proposed alternate early voting center.	At least 3 months before a primary election.	COMAR 33.17.02.02G(3)
Monday, March 26, 2018		Greeter Election Judge Exemption Request	Deadline for the local boards to request an exemption to assign greeter election judges at each early voting center.	No later than 3 months before an election.	COMAR 33.19.03.01C(2)
Tuesday, March 27, 2018		Appointment of Election Judges	Start of term of office for election judges.	Beginning the Tuesday that is 13 weeks before a primary election.	EL § 10-203(c)
Tuesday, March 27, 2018	COB	Polling Place Change	Deadline for the local boards to create or change a precinct boundary or polling place.	Tuesday that is 13 weeks before a primary election.	EL § 2-303(b)
Wednesday, March 28, 2018		Request to Waive Absentee Mailing Deadline	Deadline for SBE to submit a request to the Federal Voting Assistance Program for a waiver of the deadline to mail absentee ballots to certain voters.	At least 90 days before an election.	42 USC 1973ff-1(g)(3)
Wednesday, March 28, 2018		NVRA Confirmation Mailing Deadline	Deadline for the local boards to send to voters confirmation mailings to verify addresses and make voters inactive.	No later than 90 days before an election.	42 USC §1973gg-6(c)(2)
Monday, April 02, 2018		Greeter Election Judge Exemption Determination	Deadline for the State Administrator to respond to a local board's request for an exemption to assign greeter election judges at each early voting center.	Within 5 business days of a local board's request.	COMAR 33.19.03.01C(3)

2018 Gubernatorial Election Calendar

Date	Time ^{1,2}	Event Name	Description	Computation	Legal Authority ³
Tuesday, April 17, 2018	11:59 pm	Campaign Finance Report	Deadline to file report for campaign finance entities not required to file annual campaign finance report.	3rd Tuesday in April.	EL § 13-309(a)(1)
Thursday, April 18, 2018		Security Plan for Early Voting Centers	Deadline for the local boards to submit to the State Administrator an early voting security plan.	At least 8 weeks before early voting begins.	COMAR 33.17.02.04A
Tuesday, May 01, 2018	COB	Request for Advance Determination of Sufficiency for 2018 Referendum Petition Format	Deadline for petition sponsor to submit to SBE a request for advance determination of sufficiency of a referendum petition format.	At least 30 days before the deadline to file a petition.	EL § 6-210(a)(1)
Wednesday, May 02, 2018		Certification of Ballot	Deadline for SBE to prepare and certify content and arrangement of ballots for the primary election.	At least 55 days before the primary election.	EL § 9-207(a)(1)
Thursday, May 03, 2018	COB	Display of Ballot	Deadline for SBE to display on its website the content and arrangement of each certified ballot.	Within 1 day of certifying the ballot.	EL § 9-207(c)
Friday, May 04, 2018	COB	Judicial Review of Content and Arrangement of Ballot	Deadline for a registered voter to seek judicial review of the content and arrangement or to correct any other error on the ballot.	Within 2 days of certifying the ballot.	EL § 9-209(a)
Monday, May 07, 2018		Printing of Ballots	SBE may begin printing ballots and correct noted errors.	After 2 days of public display of ballot.	EL § 9-207(e)
Monday, May 07, 2018	COB	Determination of Referendum Petition Format Sufficiency	Deadline for SBE to determine sufficiency of a referendum petition format.	Within 5 days of receiving the request for advance determination.	EL § 6-210(a)(2)
Wednesday, May 09, 2018	COB	Notification of Outcome of Advance Determination of a Referendum Petition Format	Deadline for SBE to notify petition sponsor of the approval or deficiency of referendum petition format.	Within 2 business days after determining sufficiency of referendum petition format.	EL § 6-210(b)
Saturday, May 12, 2018		Transmitting Absentee Ballots	Deadline for the local boards to transmit absentee ballots to certain voters unless the Federal Voting Assistance Program grants the State a waiver of the deadline.	No later than 45 days before an election unless the Federal Voting Assistance Program grants the State a waiver of the 45 day transmittal deadline.	42 USC: 1973gg-1(a)(B)
Tuesday, May 15, 2018		Public Education for Early Voting	SBE and local boards start public education about early voting.	30 days before early voting for an election.	EL § 10-301.1(f)
Monday, May 21, 2018		Review of Early Voting Security Plan	Deadline for the State Administrator to review and provide feedback on a local board's early voting security plan.	Within 30 days of receipt of an early voting security plan.	COMAR 33.17.02.04C(2)
Tuesday, May 22, 2018	11:59 pm	Campaign Finance Report	Deadline to file first pre-primary report for political committees participating in the gubernatorial election.	5th Tuesday before a primary election.	EL § 13-308(a)(1)
Monday, May 28, 2018		Memorial Day	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art., § 9-201
Wednesday, May 30, 2018		Early Voting & Election Day Supply Verification	Deadline for the local boards to verify voting supplies according to the supply verification plan.	No later than 15 days before early voting starts.	SBE policy
Thursday, May 31, 2018	11:59 pm	Filing Referendum Petition on Acts of the 2018 General Assembly	Deadline for petition sponsor to submit to Secretary of State at least one-third of the referendum petition signatures and a petition fund report.	Petitions are filed with the Secretary of State before the 1st day of June.	MD Const. Art. XVI, § 3(b)
Tuesday, June 05, 2018	9 pm	Close of Registration & Party Affiliation Deadline for the primary election.	Deadline to register to vote or change party affiliation for the primary election.	21st day preceding an election.	EL § 3-302(a)
Tuesday, June 05, 2018	9 pm	Polling Place Reassignment	Deadline for elderly voters or voters with disabilities to submit a request to the local boards for reassignment to an accessible polling place.	No later than the close of registration before an election.	EL § 10-102(b)(1)
Tuesday, June 05, 2018		Voter Registration Lists	Deadline for a registered voter to request a voter registration list. (New requests will not be taken until registration reopens.)	On or before the registration deadline.	COMAR 33.03.02.05(B)
Thursday, June 07, 2018		Notice of Election	Deadline for the local boards to provide notice of the election.	At least one week before any early voting period before an election.	EL § 8-102
Tuesday, June 12, 2018	COB	Logic and Accuracy Testing - Early Voting (Public Demonstration & Notice)	Deadline for the local boards to complete logic and accuracy testing of the voting units being used for early voting. (Note: A public demonstration of the test must be conducted before any voting units are delivered to an early voting center. Notice of the public demonstration must be provided at least 10 days before the demonstration.)	At least 14 days before an election.	COMAR 33.10.02.14,16

2018 Gubernatorial Election Calendar

Date	Time ^{1,2}	Event Name	Description	Computation	Legal Authority ³
Wednesday, June 13, 2018	5 pm	Campaign Signs	Beginning of period when campaign signs must be allowed at early voting centers.	The day before early voting starts.	EL § 10-101(a)(3)(iii)(2)
Thursday, June 14, 2018	10 am to 8 pm	Early Voting Begins	Early voting for the primary election begins.	2nd Thursday before an election through the Thursday before an election.	EL § 10-301.1
Friday, June 15, 2018	COB	Voter Registration Lists	Deadline for SBE and the local boards to prepare a voter registration list that includes registrants through the registration deadline.	Within 10 days of the voter registration deadline.	COMAR 33.03.02.05C(2)
Friday, June 15, 2018	11:59 pm	Campaign Finance Report	Deadline to file second pre-primary report for political committees participating in the gubernatorial election.	2nd Friday before a primary election.	EL § 13-309(a)
Monday, June 18, 2018	COB	Logic and Accuracy Testing - Election Day	Deadline for the local boards to complete logic and accuracy testing of the election management system and voting units being used for election day voting and absentee and provisional voting. (Note: A public demonstration of the test must be conducted before any voting units are delivered to an early voting center.)	At least 10 days before an election.	COMAR 33.10.02.14, 16 COMAR 33.10.11.15, 18
Monday, June 18, 2018		Notice of Canvass	Deadline for the local boards to provide notice of the absentee and provisional canvasses.	At least 10 days before the first absentee canvass.	COMAR 33.08.01.05-1
Monday, June 18, 2018	COB	Judicial Review of any Ballot Printing Errors	Deadline for a registered voter to seek judicial review if an error is discovered after the ballots have been printed and the local boards fail to correct the error.	Not later than the 2nd Monday preceding an election.	EL § 9-209(c)
Tuesday, June 19, 2018	8 pm (mail) or 11:59 pm (fax/email)	Absentee Ballot Request Deadline: Ballot Delivered by Mail or Fax	Deadline for a registered voter to request a mailed or faxed absentee ballot.	Tuesday before an election.	EL § 9-305(b)(1); COMAR 33.11.02.02E
Wednesday, June 20, 2018	COB	Verification and Counting of Referendum Petition	Deadline for the local boards to verify and count the signatures on the referendum petition.	Within 20 days after the filing of a petition.	EL § 6-210(c)
Thursday, June 21, 2018	10 am to 8 pm	Early Voting Ends	Early voting for the primary election ends.	2nd Thursday before an election through the Thursday before an election.	EL § 10-301.1
Friday, June 22, 2018	8 am	Campaign Signs	End of period when campaign signs must be allowed at early voting centers.	The day after early voting ends.	EL § 10-101(a)(3)(iii)(2)
Friday, June 22, 2018	5 pm (mail) or 11:59 pm (email/fax)	Absentee Ballot Request Deadline: Ballot Delivered via Internet	Deadline for a registered voter to request an electronic absentee ballot.	Friday before an election.	EL § 9-305(b)(2)
Friday, June 22, 2018	COB	Certification of Referendum Petition	Deadline for SBE to certify the results of the first submission of the required signatures.	Within 2 business days after verification and counting is completed, deadline is extended if judicial review is pending.	EL § 6-210(a)
Monday, June 25, 2018	5 pm	Campaign Signs	Beginning of period when campaign signs must be allowed at polling places.	The day immediately preceding election day.	EL § 10-101(a)(3)(iii)(2)
Tuesday, June 26, 2018	7 am to 8 pm	Primary Election	Gubernatorial Primary Election Day.	Last Tuesday in June.	EL § 8-201(a)(2)(i)
Tuesday, June 26, 2018	8 pm	Absentee Ballot Request Deadline: Voter Picks Up Ballot	Deadline for a registered voter or voter's agent to request an absentee ballot in person at a local board.	No later than the close of the polls on election day.	EL § 9-305(b)(3); COMAR 33.11.02.04A
Tuesday, June 26, 2018	8 pm	Extended Voter Registration Deadline	Extended deadline for receipt of voter registration applications sent by mail for voting in the primary election.	An application received by mail after the close of registration is timely if it is properly postmarked.	EL § 3-302(c); COMAR 33.05.04.01C, D
Tuesday, June 26, 2018	8 pm	Absentee Ballot Deadline	Deadline for the local boards to receive an absentee ballot.	An absentee ballot is timely received if it is received by the local board before 8 pm on election day.	COMAR 33.11.03.08B(1)
Tuesday, June 26, 2018	8 pm	Precincts for Post-Election Verification & Audits	Deadline for local boards to select randomly the precincts for post-election verification and audits.	8 pm on election day.	COMAR 33.08.05.03 (revised by SBE)
Wednesday, June 27, 2018	8 am	Campaign Signs	End of period when campaign signs must be allowed at polling places.	The day immediately after election day.	EL § 10-101(a)(3)(iii)(2)
Thursday, June 28, 2018	10 am	Absentee Ballot Canvass 1	Local boards of canvassers are required to begin the 1st canvass of absentee ballots.	10 am on the Thursday after an election.	COMAR 33.11.04.03A(1)
Friday, June 29, 2018		Precincts for Post-Election Verification & Audits	Deadline for the local boards to submit to the State Administrator a list of the precincts selected for the post-election verification and audits.	Within 3 days of selecting the precincts.	COMAR 33.08.05.03B
Saturday, June 30, 2018	11:59 pm	Filing Referendum Petition on Acts of the 2018 General Assembly	Deadline for petition sponsor to submit to Secretary of State the balance of referendum petition signatures and a petition fund report.	Petitions are filed with the Secretary of State by the 30th day of June.	MD Const. Art XVI, § 3(b)

2018 Gubernatorial Election Calendar

Date	Time ^{1,2}	Event Name	Description	Computation	Legal Authority ³
Monday, July 02, 2018	COB	Judicial Review of Referendum Petition Certification	Deadline for petition sponsor to seek judicial review of referendum petition certification of the first submission of the required signatures.	10th day following SBE's determination (July 2, 2018) or 63rd day before the general election (September 4, 2018), whichever is earlier.	EL § 6-210(e)
Monday, July 02, 2018	5 pm	Declaration of Intent	Deadline for a candidate who seeks nomination by a recognized non-principal party to file <i>Declaration of Intent</i> to seek nomination.	First Monday in July.	EL § 5-703(c)(3)(i)
Monday, July 02, 2018	5 pm	Declaration of Intent	Deadline for an unaffiliated candidate or a candidate who is affiliated with a non-recognized political party who intends to seek nomination by petition to file a <i>Declaration of Intent</i> to seek nomination.	First Monday in July.	EL § 5-703(c)(3)(i)
Wednesday, July 04, 2018		Independence Day	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art. § 9-201
Thursday, July 05, 2018	10 am	Provisional Ballot Canvass	Local boards of canvassers are required to begin the canvass of provisional ballots.	10 am on the 2nd Wednesday after an election.	COMAR 33.16.05.02
Friday, July 06, 2018	10 am	Extended Absentee Ballot Deadline	Deadline for the local boards to receive absentee ballots by mail.	10 am on the 2nd Friday after an election provided there is a proper postmark or date on voter's oath.	COMAR 33.11.03.08B(2)
Friday, July 06, 2018	10 am	Absentee Ballot Canvass 2	Local boards of canvassers are required to begin the 2nd canvass of absentee ballots.	10 am on the 2nd Friday after an election.	COMAR 33.11.04.05A(2)
Friday, July 06, 2018		Post-Election Audit	Deadline for the local boards to conduct the post-election verification and audits.	Before certifying the results of an election.	COMAR 33.08.05.02A
Friday, July 06, 2018		Verification of Vote Count	Deadline for the local boards of canvassers to verify the primary election vote count.	Within 10 days after an election and before certifying the results of an election.	EL § 11-308(a)
Friday, July 06, 2018		Post-Election Audit	Deadline for the local boards to conduct the post-election verification and audits.	Before certifying the results of an election.	COMAR 33.08.05.02A
Friday, July 06, 2018		Certification of the Election	Deadline for the local boards of canvassers to certify the results of primary election.	After the verification of vote count is completed.	EL § 11-308(b)
Friday, July 06, 2018		Transmittal of Results	Local boards of canvassers must transmit certified copies of election results to the Governor, SBE, and appropriate Clerk of the Circuit Court.	2nd Friday after an election or if canvass is completed after that day, within 48 hours after completion.	EL § 11-401(c)
Monday, July 09, 2018		Voter Registration Reopens	Voter registration reopens.	11th day after an election.	EL § 3-302(a)
Monday, July 09, 2018	COB	Request for Advance Determination of Sufficiency for Candidacy or New Party Petition Format	Deadline for candidate or petition sponsor to submit to SBE or the appropriate local board a request for advance determination of sufficiency of a candidacy or new party petition format.	At least 30 days before the deadline to file the petition but not more than 2 years and one month before the deadline to file petition.	EL § 6-210(a)(1)
Monday, July 09, 2018		Statewide Certification of Results	Deadline for SBE to convene to certify election results.	2 days after official results are received from the local boards.	EL § 11-501(a)
Monday, July 09, 2018		Petition for Recount - Local Offices	Deadline to file a petition for a recount of the votes cast for a local office on the ballot.	Within 3 days after the results of an election have been certified.	EL § 12-101(d)
Wednesday, July 11, 2018	COB	Declination of Nomination	Deadline for declination of nomination by a filed candidate before general election.	Within 2 days after the results from a primary election are certified.	EL § 5-801(b)(2)(i)
Thursday, July 12, 2018	COB	Petition for Recount - State Offices	Deadline to file a petition for a recount of the votes cast for a State office on the ballot.	Within 3 days after the results of an election have been certified.	EL § 12-101(d)
Monday, July 16, 2018	COB	Request for Advance Determination of Sufficiency for Charter Amendment Petition Format	Deadline for petition sponsor to submit to the appropriate local board a request for advance determination on the sufficiency of a charter amendment petition format.	At least 30 days before the deadline to file the petition but not more than 2 years and one month before the deadline to file petition.	EL § 6-210(a)(1)
Monday, July 16, 2018	COB	Determination of Candidacy or New Party Petition Format Sufficiency	Deadline for SBE or the appropriate local board to determine sufficiency of a candidacy or new party petition.	Within 5 days of reviewing request of advance determination.	EL § 6-210(a)(2)
Tuesday, July 17, 2018	11:59 pm	Campaign Finance Report	Deadline for candidate committees for central committee candidates to file report.	3rd Tuesday after a gubernatorial primary election.	EL § 13-309(d)
Wednesday, July 18, 2018	COB	Notification of Outcome of Advance Determination of a Candidacy or New Party Petition Format	Deadline for SBE or the appropriate local board to notify candidate or petition sponsor of the approval or deficiency of candidacy or new party petition format.	Within 2 business days after determining sufficiency of a candidacy or new party petition format.	EL § 6-210(b)
Friday, July 20, 2018	COB	Verification and Counting of Referendum Petition	Deadline for the local boards to verify and count the balance of the signatures on the referendum petition.	Within 20 days after the filing of a petition.	EL § 6-210(c)
Monday, July 23, 2018	COB	Determination of Charter Amendment Petition Format Sufficiency	Deadline for the local boards to determine sufficiency of a charter amendment petition format.	Within 5 days of reviewing request of advance determination.	EL § 6-210(a)(2)
Tuesday, July 24, 2018	COB	Certification of Referendum Petition	Deadline for SBE to certify the results of the full referendum petition verification.	Within 2 business days after verification and counting is completed; deadline is extended if judicial review is pending.	EL § 6-210(d)

2018 gubernatorial Election Calendar

Date	Time ^{1,2}	Event Name	Description	Computation	Legal Authority ³
Wednesday, July 25, 2018	COB	Notification of Outcome of Advance Determination for Charter Amendment Petition Format	Deadline for the local boards to notify petition sponsor of the approval or deficiency of charter amendment petition format.	Within 2 business days after determining sufficiency of charter amendment petition format.	EL § 6-210(b)
Friday, August 03, 2018	COB	Judicial Review of Referendum Petition Certification	Deadline for petition sponsor to seek judicial review of referendum petition certification.	10th day following SBE's determination (August 3, 2018) or 63rd day before a general election (September 4, 2018), whichever is earlier.	EL § 6-210(e)
Monday, August 06, 2018	COB	Filing New Party Petition	Deadline for petition sponsor to file with SBE a new political party petition.	1st Monday in August.	EL § 4-102(c)(2)(ii)
Monday, August 06, 2018	5 pm	Filing Candidacy Petition & Certificate of Candidacy	Deadline for general election petition candidate to file with SBE or the appropriate local board the Certificate of Candidacy and candidacy petition.	1st Monday in August.	EL § 5-703(d) & (f)
Monday, August 06, 2018	5 pm	Filing Certificates of Nomination and Candidacy	Deadline for candidates seeking nomination from a non-principal political party to file with SBE or the appropriate local board the Certificate of Nomination and Certificate of Candidacy.	1st Monday in August.	EL § 5-703.1(d)
Monday, August 06, 2018		Greeter Election Judge Exemption Request	Deadline for the local boards to request an exemption to assign greeter election judges at each early voting center.	No later than 3 months before an election.	COMAR 33.19.03.01C(2)
Wednesday, August 08, 2018		Request to Waive Absentee Mailing Deadline	Deadline for SBE to submit a request to the Federal Voting Assistance Program for a waiver of the deadline to transmit absentee ballots to certain voters.	At least 90 days before an election.	42 USC 1973ff-1(g)(3)
Wednesday, August 08, 2018		NVRA Confirmation Mailing Deadline	Deadline for the local boards to send to voters confirmation mailings to verify addresses and make voters inactive.	No later than 90 days before an election.	42 USC §1973gg-6(c)(2)
Monday, August 13, 2018	COB	Filing Charter Amendment Petition	Deadline for petition sponsor to file with local government authority a charter amendment petition.	2nd Monday in August.	EL § 7-104(b)
Monday, August 13, 2018		Greeter Election Judge Exemption Determination	Deadline for the State Administrator to respond to a local board's request for an exemption to assign greeter election judges at each early voting center.	Within 5 business days of a local board's request.	COMAR 33.19.03.01C(3)
Monday, August 13, 2018		Certification of General Assembly Ballot Questions	Deadline for SBE to prepare and certify to the local boards ballot questions referred by the General Assembly to voters of one county or part of one county.	2nd Monday in August.	EL § 7-103(c)(2)
Monday, August 20, 2018		Certification of Statewide Ballot Questions and Ballot Questions Petitioned to Referendum	Deadline for Secretary of State to certify to SBE statewide ballot questions and questions relating to Acts of the General Assembly petitioned to referendum.	3rd Monday in August.	EL § 7-103(c)(1)
Monday, August 20, 2018		Certification of Local Ballot Questions	Deadline for County Attorney or Baltimore City Solicitor to certify to the local boards each question to be voted on in the county or part of the county.	3rd Monday in August.	EL § 7-103(c)(3)
Monday, August 27, 2018		Alternate Certification of Local Ballot Questions	Deadline for Clerk of the Circuit Court to prepare and certify local ballot questions if the County Attorney or Baltimore City Solicitor does not do so.	4th Monday in August if County Attorney or Baltimore City Solicitor has not timely certified the ballot questions.	EL § 7-103(c)(3)(ii)
Monday, August 27, 2018	COB	Verification and Counting of Candidacy or New Party Petition	Deadline for the local boards to verify and count the signatures on a candidacy or new party petition.	Within 20 days after the filing of a petition.	EL § 6-210(c)
Tuesday, August 28, 2018	11:59 pm	Campaign Finance Report	Deadline to file the first pre-general report for political committees participating in the gubernatorial election.	Last Tuesday in August immediately preceding a general election.	EL § 13-309(a)(4)
Wednesday, August 29, 2018	COB	Certification of Candidacy or New Party Petition	Deadline for SBE or the appropriate local board to certify the results of the candidacy or new party petition verification.	Within 2 business days after verification and counting is completed; deadline is extended if judicial review is pending.	EL § 6-210(d)
Monday, September 03, 2018		Labor Day	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art. § 9-201
Tuesday, September 04, 2018	COB	Verification and Counting of Charter Amendment Petition	Deadline for the local boards to verify and count the signatures on a charter amendment petition.	Within 20 days after the filing of a petition.	EL § 6-210(c)
Tuesday, September 04, 2018	COB	Judicial Review of Candidacy Petition Certification	Deadline for candidate to seek judicial review of candidacy petition certification.	10th day following determination (September 8, 2018) or 63rd day before a general election (September 4, 2018), whichever is earlier.	EL § 6-210(e)(2)
Thursday, September 06, 2018	COB	Certification of Charter Amendment Petition	Deadline for the local boards to certify the results of the charter amendment petition verification.	Within 2 business days after verification and counting is completed; deadline is extended if judicial review is pending.	EL § 6-210(d)
Monday, September 10, 2018	COB	Judicial Review of New Party Petition Certification	Deadline for petition sponsor to seek judicial review of new party petition certification.	10th day after determination.	EL § 6-210(e)(1)
Wednesday, September 12, 2018		Certification of Ballot	Deadline for SBE to prepare and certify content and arrangement of ballots for the general election.	At least 55 days before an election.	EL § 9-207(a)(2)(i)

2018 Gubernatorial Election Calendar

Date	Time ^{1,2}	Event Name	Description	Computation	Legal Authority ³
Thursday, September 13, 2018		Display of Ballot	Deadline for SBE to display on its website the content and arrangement of each certified ballot.	Within 1 day of certifying the ballot.	EL § 9-207(d)
Friday, September 14, 2018	COB	Judicial Review of Content and Arrangement of Ballot	Deadline for a registered voter to seek judicial review of the content and arrangement or to correct any other error on the ballot.	Within 2 days of certifying the ballot.	EL § 9-209(a)
Monday, September 17, 2018		Printing of Ballots	SBE may begin printing ballots and correct noted errors.	After 2 days of public display of ballot.	EL § 9-207(e)
Monday, September 17, 2018	COB	Judicial Review of Charter Amendment Petition Certification	Deadline for petition sponsor to seek judicial review of charter amendment petition certification.	10th day following determination (September 16, 2018) or 63rd day before a general election (September 4, 2018), whichever is earlier. Although the 63rd day is earlier, this date is before the petition is certified (September 6, 2018).	EL § 6-210(e)(2)
Monday, September 17, 2018		Constitution Day and Citizenship Day	Commemorate the signing of the U.S. Constitution and require public schools to celebrate the day and instill in students knowledge of history, importance, and meaning of the U.S. Constitution and Maryland Constitution.	Anniversary of signing of the U.S. Constitution on September 17, 1787.	Education Art., § 7-116
Saturday, September 22, 2018		Transmitting Absentee Ballots	Deadline for the local boards to transmit absentee ballots to certain voters unless the Federal Voting Assistance Program grants the State a waiver of the deadline.	No later than 45 days before an election unless the Federal Voting Assistance Program grants the State a waiver of the 45 day transmittal deadline.	42 USC 1973f-1(a)(8)
Tuesday, September 25, 2018		Public Education for Early Voting	SBE and the local boards start public education about early voting.	30 days before early voting for an election.	EL § 10-301.1(f)
Thursday, September 27, 2018	COB	Vacancy in Nomination	Deadline for central committees to fill a vacancy in nomination if the vacancy occurred on or before the 40th day before the election.	The later of the 40th day before a general election or the 5th day following the vacancy. Because the 40th day before a general election is after absentee ballots must be transmitted to certain voters, a central committee should fill a vacancy as early as possible to ensure that the name of the candidate filling the vacancy is printed on all ballots.	EL §§5-1002(b), 5-1003(b), & 5-1004(b)
Wednesday, October 10, 2018		Early Voting & Election Day Supply Verification	Deadline for the local boards to verify voting supplies according to the supply verification plan.	No later than 15 days before early voting starts.	SBE policy
Friday, October 12, 2018	11:59 pm	Campaign Finance Report	Deadline for ballot issue committees to file pre-general report.	4th Friday before a general election.	EL §13-309(a)(3)
Monday, October 15, 2018		Columbus Day	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art., § 9-201
Tuesday, October 16, 2018	9 pm	Close of Registration	Deadline to register to vote for the general election.	21st day preceding an election.	EL § 3-302(a)
Tuesday, October 16, 2018	9 pm	Polling Place Reassignment	Deadline for elderly voters or voters with disabilities to submit a request to the local boards for reassignment to an accessible polling place.	No later than the close of registration before an election.	EL § 10-102(b)(1)
Tuesday, October 16, 2018	COB	Voter Registration Lists	Deadline for a registered voter to request a voter registration list (new requests will not be taken until registration reopens).	On or before the registration deadline.	COMAR 33.03.02.05(B)
Wednesday, October 17, 2018		Notice of Election	Deadline for the local boards to provide notice of the election.	At least one week before any early voting period before an election.	EL § 8-102
Tuesday, October 23, 2018	COB	Logic and Accuracy Testing - Early Voting (Public Demonstration & Notice)	Deadline for the local boards to complete logic and accuracy testing of the voting units being used for early voting. (Note: A public demonstration of the test must be conducted before any voting units are delivered to an early voting center.)	At least 14 days before an election.	COMAR 33.10.02.14,16
Wednesday, October 24, 2018	5 pm	Campaign Signs	Beginning of period when campaign signs must be allowed at early voting centers.	The day before early voting starts.	EL § 10-101(a)(3)(iii)(2)
Thursday, October 25, 2018	10 am to 8 pm	Early Voting Begins	Early voting for the general election begins.	2nd Thursday before an election through the Thursday before an election.	EL § 10-301.1
Friday, October 26, 2018	COB	Voter Registration Lists	Deadline for SBE and the local boards to prepare a voter registration list that includes registrants through the registration deadline.	Within 10 days of the voter registration deadline.	COMAR 33.03.02.05C(2)

Date	Time ^{1,2}	Event Name	Description	Computation	Legal Authority ³
Friday, October 26, 2018	11:59 pm	Campaign Finance Report	Deadline to file the pre-general election campaign finance report for political committees participating in the gubernatorial election.	2nd Friday immediately preceding an election.	EL § 13-306(a)(4)
Friday, October 26, 2018	COB	Logic and Accuracy Testing - Election Day	Deadline for the local boards to complete logic and accuracy testing of the election management system and voting units being used for election day voting and absentee and provisional voting. (Note: A public demonstration of the test must be conducted before any voting units are delivered to an early voting center.)	At least 10 days before an election.	COMAR 33.10.02.14,16 COMAR 33.10.11.15,16
Monday, October 29, 2018	COB	Judicial Review of any Ballot Printing Errors	Deadline for a registered voter to seek judicial review if an error is discovered after the ballots have been printed and the local boards fails to correct the error.	Not later than the 2nd Monday preceding an election.	EL § 9-209(c)
Monday, October 29, 2018		Notice of Canvass	Deadline for the local boards to provide notice of the absentee and provisional canvasses.	At least 10 days before the first absentee canvass.	COMAR 33.08.01.05-1
Tuesday, October 30, 2018	8 pm (mail) or 11:59 pm (fax/email)	Absentee Ballot Request Deadline: Ballot Delivered by Mail or Fax	Deadline for a registered voter to request a mailed or faxed absentee ballot.	Tuesday before an election	EL § 9-305(b)(1); COMAR 33.11.02.02D
Wednesday, October 31, 2018	5 pm	Write-in Candidate	Deadline for write-in candidates to file a <i>Certificate of Candidacy</i> . Only filed write-in candidates will have their votes reported on the official canvass.	Earlier of Wednesday preceding a general election or within 7 days after expenditure of \$51 to promote candidacy	EL § 5-303(c)
Thursday, November 01, 2018	10 am to 8 pm	Early Voting Ends	Early voting for the general election ends.	2nd Thursday before an election through the Thursday before an election.	EL § 10-301.1
Friday, November 02, 2018	8 am	Campaign Signs	End of period when campaign signs must be allowed at early voting centers.	The day after early voting ends.	EL § 10-101(a)(3)(iii)(2)
Friday, November 02, 2018	5 pm (mail) or 11:59 pm (email/fax)	Absentee Ballot Request Deadline: Ballot Delivered via Internet	Deadline for a registered voter to request an electronic absentee ballot.	Friday before an election.	EL § 9-305(b)(2)
Monday, November 05, 2018	5 pm	Campaign Signs	Beginning of period when campaign signs must be allowed at polling places.	The day immediately preceding election day.	EL § 10-101(a)(3)(iii)(2)
Tuesday, November 06, 2018	7 am to 8 pm	General Election	Gubernatorial General Election Day.	Tuesday after the first Monday in November.	MD Const. Art. XV, § 7; EL §§ 10-301
Tuesday, November 06, 2018	8 pm	Absentee Ballot Request Deadline: Voter Picks Up Ballot	Deadline for a registered voter or voter's agent to request an absentee ballot in person at a local board.	No later than the close of the polls on election day.	EL § 9-305(b)(3); COMAR 33.11.02.04A
Tuesday, November 06, 2018	8 pm	Extended Voter Registration Deadline	Extended deadline for receipt of voter registration applications sent by mail for voting in general election.	An application received by mail after the close of registration is timely if it is properly postmarked.	EL § 3-302(c); COMAR 33.05.04.01C, D
Tuesday, November 06, 2018	8 pm	Absentee Ballot Deadline	Deadline for the local boards to receive an absentee ballot.	An absentee ballot is timely received if it is received by the local board before 8 pm on election day.	COMAR 33.11.03.08B(1)
Tuesday, November 06, 2018	8 pm	Precincts for Post-Election Verification & Audits	Deadline for local boards to select randomly the precincts for post-election verification and audits.	8 pm on election day.	COMAR 33.11.03.08B(1)
Wednesday, November 07, 2018	8 am	Campaign Signs	End of period when campaign signs must be allowed at polling places.	The day immediately after election day.	EL § 10-101(a)(3)(iii)(2)
Thursday, November 08, 2018	10 am	Absentee Ballot Canvass 1	Local boards of canvassers are required to begin the 1st canvass of absentee ballots.	10 am on the Thursday after an election.	COMAR 33.11.04.03A(1)
Friday, November 09, 2018		Precincts for Post-Election Verification & Audits	Deadline for the local boards to submit to the State Administrator a list of the precincts selected for the post-election verification and audits.	Within 3 days of selecting the precincts.	COMAR 33.08.05.03B
Monday, November 12, 2018		Veteran's Day	State holiday. SBE and most local boards will be closed.		State Personnel & Pensions Art. § 9-201
Wednesday, November 14, 2018	10 am	Provisional Ballot Canvass	Local boards of canvassers are required to begin the canvass of provisional ballots.	10 am on the 2nd Wednesday after an election.	COMAR 33.16.05.02
Friday, November 16, 2018	10 am	Extended Absentee Ballot Deadline	Deadline for the local boards to receive absentee ballots by mail.	10 am on the 2nd Friday after an election provided there is a proper postmark or date on voter's oath.	COMAR 33.11.03.08B(2)
Friday, November 16, 2018	10 am	Absentee Ballot Canvass 2	Local boards of canvassers are required to begin the 2nd canvass of absentee ballots.	10 am on the 2nd Friday after an election.	COMAR 33.11.04.03A(2)
Friday, November 16, 2018		Post-Election Audit	Deadline for the local boards to conduct the post-election verification and audits.	Before certifying the results of an election.	COMAR 33.08.05.02A

NANCY LEWIN,
ELINOR MITCHELL,
and CHRISTOPHER ERVIN,

Plaintiffs,

v.

LINDA H. LAMONE, in her official
capacity as State Administrator,
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, Maryland 21401

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY

*
* Case No. C-02-CV-18-001013
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AFFIDAVIT OF ELINOR (ELLIE) MITCHELL

I, Elinor (Ellie) Mitchell, STATE:

1. I am over 18 years of age and competent to testify to the matters recited herein.

2. I am a registered voter in the 41st District, and a candidate for State Democratic Central Committee in the 41st District.

3. As a native Baltimorean, 14 year resident of the 41st district, and a candidate for Baltimore City State Democratic Central Committee, I believe in the power of effective, ethical and energetic representation in Annapolis. I decided to run for Central Committee on a platform of reform with a team of like-minded activists to more fully engage voters and bring greater transparency to party activities with particular emphasis on the appointments process by which Nathaniel Oaks was sent to the Maryland Senate.

I want to make sure every voter has all the information necessary to make informed decisions when at the polls. A ballot that includes Mr. Oaks would provide confusing and conflicting messages to voters since if nominated he will not be able to serve. It also sends the a message that a representative who abuses and exploits the power of their office is still qualified to seek elected office.

The inclusion of Mr. Oaks name also has the potential to impact the outcome of the election. With Nathaniel Oaks name on the ballot there are currently 21 candidates, of which I am one, running for the 7 elected State Democratic Central Committee seats. The number of votes required to win is impacted by the number of names appearing on the ballot. The voters of the 41st district deserve a clean ballot to ensure every vote cast is a vote that counts.

4. I SOLEMNLY AFFIRM UNDER PENALTIES OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE CONTENTS OF THE FOREGOING PAPER ARE TRUE.

Ellie Mitchell

Dated; April 18, 2018



Maryland State Board of Elections

SB 204

Senator Conway

Primary Election Dates in the Presidential Election Year

Purpose

This legislation moves the date of the Presidential Primary to eliminate early voting on Easter Sunday; allows a period of time for a Presidential Petition candidate to file petitions; provides that petition and non-principal political party nominated candidates declare intent of candidacy at same time as all other candidates. The legislation alters the deadlines to file as a write-in candidate; to fill vacancy; to file a judicial review for a Presidential Petition candidate; and to certify the Presidential primary ballot. This also eliminates a mandate for ballot printing on color paper and a campaign finance report.

Comments:

The State Board of Elections only provides clarification on the various sections of the legislation:

5-303 – Write-in candidate: A list of write-in candidates must be posted at early voting centers and polling places. Existing deadline is after the start of early voting.

5-703 – Petition candidate: Removes conflicting filing deadlines. All candidates, including petition candidates must make it known of intent to file candidacy by Candidacy Filing Deadline.

5-703.1 – Non-Principal Party Nominated candidate: All candidates, including those nominated by non-principal political parties, must make it known of intent to file candidacy by Candidacy Filing Deadline.

5-801 – Declination – Removes conflicting deadlines by eliminating reference to Baltimore City Election.

5-1002, 1003 and 1004 – Vacancy – Existing deadlines fall after ballots must be sent to Military and Overseas Voters under the provisions of the MOVE Act.

6-210 – Petition judicial review – Existing deadline falls after the deadline to certify the content of the ballot. The deadline only needs to change for a Presidential Primary Petition candidate.

8-201 – Date of Primary – Moves primary election one week to eliminate early voting on Easter Sunday.

8-502 – Secretary of State Deadline to name Presidential Candidates – Allows 7 days after the Secretary of State names presidential candidates for Presidential Petition candidate to file petitions and candidacy paperwork.

9-207 – Ballot certification – Mirrors the ballot certification deadline to the general election which allows time for compliance with the MOVE Act requirement to send ballots to Military and Overseas voters not later than 45 days prior to election.

9-215 – Ballot heading – Eliminates the mandate for ballots to be printed on certain color paper.

13-309 – Campaign Report – The April report only serves a purpose during a Gubernatorial Election. This eliminates the April report for Presidential election designated committees.

Contact:

Jared DeMarinis, Director of Candidacy and Campaign Finance
410-269-2853

Or

Donna J. Duncan, Assistant Deputy for Election Policy
410-269-2851

LINDA H. LAMONE, ADMINISTRATOR
STATE BOARD OF ELECTIONS

EHEA 2/19/2015

Chapter 332

(Senate Bill 204)

AN ACT concerning

Election Law – Primary Election Dates in the Presidential Election Year

FOR the purpose of altering the date of the statewide primary election in the year in which the President of the United States is elected; altering the date of the primary election for municipal offices in Baltimore City in the year in which the President of the United States is elected; making certain conforming changes; altering the deadline for filing a certain petition to challenge a candidate's residency; clarifying certain provisions of law concerning the filling of certain vacancies in nomination; repealing an obsolete provision of law concerning the printing of certain ballots; and generally relating to primary election dates in the presidential election year and the nomination of candidates.

BY repealing and reenacting, with amendments,

Article – Election Law

Section 5–303(c), ~~5–305~~, 5–703(c), 5–703.1(c), 5–801(b), 5–1002(b), 5–1003(b), 5–1004(b), 6–210(e), 8–201, 8–502(c), 9–207(a), 9–215(a), and 13–309(a)

Annotated Code of Maryland

(2010 Replacement Volume and 2014 Supplement)

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

Article – Election Law

5–303.

(c) 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 [Wednesday preceding the day of the election] **7TH DAY PRECEDING THE START OF EARLY VOTING** for which the certificate is filed.

5–305.

(a) This section applies only to a petition that will affect the right of a candidate to have the candidate's name appear on the ballot in a primary or general election.

(b) A registered voter who is a resident of the district or other geographic area in which a candidate is seeking office may file a petition with the circuit court for that district or geographic area to challenge the candidate's residency as provided in § 5-202 of this title.

(c) (1) The petition must be filed [6] 9 days after the filing dates provided in § 5-303 of this subtitle and [§ 5-703(c)] §§ 5-703(C) AND 5-703.1(C) of this title.

(2) Judicial review of any petition that is filed under subsection (b) of this section shall be expedited by the circuit court that hears the cause to the extent necessary in consideration of the deadlines established by law, and in no case, longer than 7 days from the date the petition is filed.

5-703.

(c) (1) A candidate for public office who seeks nomination by petition shall file a declaration of intent to seek nomination by petition.

(2) The declaration of intent shall be filed with the board at which the candidate files a certificate of candidacy under Subtitle 3 of this title.

(3) The declaration of intent shall be filed as follows:

(i) in a year in which the Governor is elected ~~or the Baltimore City municipal election is held~~, by the date and time specified for a candidate to file a certificate of candidacy;

(ii) in a year in which the President ~~is~~ **AND MAYOR OF BALTIMORE CITY ARE** elected, by **[July 1] THE DATE AND TIME SPECIFIED FOR A CANDIDATE TO FILE A CERTIFICATE OF CANDIDACY;** and

(iii) for a special election to fill a vacancy for Representative in Congress, by the date and time specified for a candidate to file a certificate of candidacy in the Governor's proclamation.

(4) A candidate who seeks nomination by petition may not be charged a fee for filing the declaration of intent.

5-703.1.

(c) (1) A candidate for public office who seeks political party nomination under this section shall file a declaration of intent to seek political party nomination.

(2) The declaration of intent shall be filed with the board at which the candidate files a certificate of candidacy under Subtitle 3 of this title.

(3) The declaration of intent shall be filed as follows:

(i) in a year in which the Governor is elected, by the date and time specified for a candidate to file a certificate of candidacy;

(ii) in the year in which the President and Mayor of Baltimore City are elected, by **[July 1] THE DATE AND TIME SPECIFIED FOR A CANDIDATE TO FILE A CERTIFICATE OF CANDIDACY;** and

(iii) for a special election to fill a vacancy:

1. for Representative in Congress, by the date and time specified in the Governor's proclamation for a candidate to file a certificate of candidacy; or

2. for a local public office, by the date and time specified in the county proclamation for a candidate to file a certificate of candidacy.

(4) A candidate who seeks nomination by political party may not be charged a fee for filing the declaration of intent.

5-801.

(b) The certificate of declination shall be under oath and filed:

(1) with the board at which the certificate of candidacy was filed; and

(2) (i) in the year of a gubernatorial election ~~for the year of an election for the Mayor of the City of Baltimore], within 2 days after the election results are certified,~~ **BY THE 70TH DAY PRECEDING THE GENERAL ELECTION;** or

(ii) in the year of a presidential election, by the 70th day preceding the general election.

5-1002.

(b) (1) A vacancy in nomination that occurs because a nominee dies, declines the nomination, or is disqualified for any cause shall be filled by the State central committee of the political party to which the nominee belongs **BY THE 60TH DAY BEFORE THE GENERAL ELECTION.**

(2) **[By the later of the 40th day before the general election or the fifth day following the death, declination, or disqualification of the former nominee:]**

(i) **[the] THE** State central committee shall file a certificate of designation for the nominee with the State Board**]; and].**

(ii) [the] **THE** successor nominee designated by the State central committee under subparagraph (i) of this paragraph shall file a certificate of candidacy with the State Board.

5-1003.

(b) (1) A vacancy in nomination under this section that occurs because the nominee dies, withdraws the candidacy, or is disqualified for any reason shall be filled by:

(i) a vote of the central committees of the political party in each of the counties included in the district of that nominee; or

(ii) a State central committee for a nonprincipal political party that does not have local central committees.

(2) The central committee of each county shall cast a vote that is proportionate to its share of the population in that district as reported in the most recent decennial census of the United States and promptly notify its State central committee of the results of its vote.

(3) (i) If no person receives a majority of the votes cast under paragraph (2) of this subsection, or if there is a tie vote by the central committees, the vacancy in nomination shall be filled by the State central committee.

(ii) In the event of a tie vote, the nominee selected by the State central committee shall be one of the candidates involved in the tie.

(4) [By the later of the 40th day before the general election or the fifth day following] **FOLLOWING** the death, declination, or disqualification of the nominee, **BY THE 60TH DAY BEFORE THE GENERAL ELECTION:**

(i) the State central committee shall file a certificate of designation for the nominee with the State Board; and

(ii) the successor nominee designated by the State central committee under subparagraph (i) of this paragraph shall file a certificate of candidacy with the State Board.

5-1004.

(b) If a nominee for an office that is entirely in one county dies, declines the nomination, becomes disqualified, or gains a tie vote with another candidate in a primary election, the vacancy in nomination shall be filled by [the later of:

(1) the 40th day before the general election; or

(2) the fifth day following the death, declination, or disqualification of the nominee] **THE 60TH DAY BEFORE THE GENERAL ELECTION.**

6-210.

(e) (1) Except as provided in ~~paragraph (2)~~ ~~PARAGRAPHS (2) AND (3)~~ **PARAGRAPH (2)** of this subsection, any judicial review of a determination, as provided in § 6-209 of this subtitle, shall be sought by the ~~[10th]~~ ~~2ND~~ day following the determination to which ~~it~~ **THE JUDICIAL REVIEW** relates.

(2) **(I)** ~~IF EXCEPT FOR A PRESIDENTIAL PRIMARY, IF~~ **IF** the petition seeks to place the name of an individual or a question on the ballot at any election, **EXCEPT A PRESIDENTIAL PRIMARY ELECTION**, judicial review shall be sought by the day specified in paragraph (1) of this subsection or the 63rd day preceding that election, whichever day is earlier.

~~**(3) IF THE PETITION SEEKS TO PLACE THE NAME OF AN INDIVIDUAL ON THE PRESIDENTIAL PRIMARY BALLOT, JUDICIAL REVIEW SHALL BE SOUGHT BY THE FIFTH DAY FOLLOWING THE DETERMINATION TO WHICH THE PETITION RELATES.**~~

(II) IF THE PETITION SEEKS TO PLACE THE NAME OF AN INDIVIDUAL ON THE BALLOT FOR A PRESIDENTIAL PRIMARY ELECTION IN ACCORDANCE WITH § 8-502 OF THIS ARTICLE, JUDICIAL REVIEW OF A DETERMINATION MADE UNDER § 6-208(A)(2) OF THIS TITLE SHALL BE SOUGHT BY THE 5TH DAY FOLLOWING THE DETERMINATION TO WHICH THE JUDICIAL REVIEW RELATES.

8-201.

(a) (1) There shall be a statewide primary election in every even-numbered year.

(2) A primary election shall be held:

(i) in the year in which the Governor is elected, on the last Tuesday in June; and

(ii) in the year in which the President of the United States is elected, on the ~~[first]~~ ~~SECOND~~ **FOURTH** Tuesday in April.

(b) In Baltimore City, there shall be a primary election for municipal offices on the ~~[first]~~ ~~SECOND~~ **FOURTH** Tuesday in April in the year in which the President of the United States is elected.

8-502.

(c) (1) The Secretary of State shall certify to the State Board the names of candidates for nomination by a principal political party [during the period beginning 90 days before the primary election and ending 80] **NO LATER THAN 90** days before the primary election.

(2) The Secretary of State shall certify the name of a presidential candidate on the ballot when the Secretary has determined, in the Secretary's sole discretion and consistent with party rules, that the candidate's candidacy is generally advocated or recognized in the news media throughout the United States or in Maryland, unless the candidate executes and files with the Secretary of State an affidavit stating without qualification that the candidate is not and does not intend to become a candidate for the office in the Maryland primary election.

9-207.

(a) The State Board shall certify the content and arrangement of each ballot:

(1) for a primary election, [no more than 11 days after the filing date provided in § 5-303 of this article] **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.

9-215.

(a) Each ballot shall be printed:

(1) in plain, clear type in black ink; **AND**

(2) on material of the size and arrangement that is required to fit the needs of the voting system[]; and

(3) (i) in a general election, on clear white material; or

(ii) in a primary election, on material of a different color for voters of each political party and for voters not affiliated with a political party that nominates its candidates by primary election].

13-309.

(a) Subject to other provisions of this subtitle and except as provided in subsection (d) of this section, a campaign finance entity shall file campaign finance reports as follows:

(1) **IN THE GUBERNATORIAL ELECTION YEAR ONLY**, except for a ballot issue committee, on or before the third Tuesday in April, if the campaign finance entity did not file the annual campaign finance report specified under subsection (b)(2) of this section on the immediately preceding third Wednesday in January;

(2) except for a ballot issue committee, on or before the fifth Tuesday immediately preceding each primary election;

(3) except for a ballot issue committee, on or before the second Friday immediately preceding a primary election;

(4) on or before the last Tuesday in August immediately preceding a general election;

(5) for a ballot issue committee only, on or before the fourth Friday immediately preceding a general election;

(6) on or before the second Friday immediately preceding a general election; and

(7) on or before the second Tuesday after a general election.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2015.

Approved by the Governor, May 12, 2015.

**NANCY LEWIN,
ELINOR MITCHELL,
and CHRISTOPHER ERVIN,**

Plaintiffs,

v.

LINDA H. LAMONE, in her official
capacity as State Administrator,
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, Maryland 21401

Defendant.

* **IN THE**
* **CIRCUIT COURT**
* **FOR**
* **ANNE ARUNDEL COUNTY**
* **Case No. C-02-CV-18-001013**
*
*

* * * * *

AFFIDAVIT OF NANCY LORD LEWIN

I, Nancy Lord Lewin, STATE:

1. I am over 18 years of age and competent to testify to the matters recited herein.
2. I am a registered voter in the 41st Legislative District of Maryland.
3. In the waning days of the 2018 legislative session of the Maryland General Assembly, constituents in Maryland’s 41st legislative district received the one-two political punch: a guilty plea in federal court from former 41st district senator Nathaniel Oaks, and the added insult of finding out that Mr. Oaks’ name would remain on the primary election ballot for both State Senate and state Democratic Central Committee unless voters took legal action.

Because Mr. Oaks' guilty plea on two of eight counts of federal corruption charges while in elected office did not automatically lead to his removal from the primary ballot. I joined this

case because I believe that voters' rights matter in Maryland's 41st District, and every district in the state.

The inclusion of Mr. Oaks on the primary ballot for State Senate, the seat in which he served until the time of his resignation and subsequent guilty plea, will create confusion and mistrust among voters. The 63,000 registered Democrats in my district deserve a clean primary ballot on June 26 that includes only legitimate candidates – those who are both qualified *and* will be able to serve in the office for which they are running. It is clear that Mr. Oaks does not meet the latter requirement, and the inclusion of his name on the ballot is a false representation of his legitimacy as a candidate to voters. In addition, voters throughout Maryland deserve an election system that we can trust to preserve voters' rights at all times, including when adverse developments arise related to a candidate's ability to serve in the office they seek on a ballot after the state's filing deadline.

There is still time to remove Mr. Oaks' name from the primary ballot, and it is the right thing to do for the integrity of our election system and in the interest of the most responsible use of public funds for elections. Voters cannot trust a state election system that will knowingly leave a candidate on the ballot who is not able to serve; this has adverse consequences for the election system at all levels – candidate qualifications, voter rights, and the outcomes for legitimate candidates on the ballot.

There are two legitimate candidates for State Senator and twenty-three legitimate candidates for Democratic Central Committee for the 41st District on the ballot. These candidates have met all of the requirements for candidacy and have no foreseeable inability to serve in that office. Although it is secondary to the larger issue of election system integrity and voter rights,

Mr. Oaks himself has said publicly and via affidavit to the Court that he wishes to have his name removed from the ballot.

Removing Mr. Oaks from the ballot now will preserve the integrity of the election system by assuring voters that the state will not allow illegitimate candidates to remain on a ballot when there is still time to remove them. Without this action, the state will send the message to voters that the state election system protects candidates who seek to use the system's rules for political or personal benefit by hedging their bets against the Board's likelihood of taking action to preserve an administrative bureaucracy rather than demonstrating swift responsiveness in the face of the blatant de-legitimization of the state's election system by a candidate.

Removing Mr. Oaks from the ballot will prevent voter confusion, voter loss of trust in the election process, and the continuation of an election law rule that provides cover for candidates with questionable intentions (i.e., using the election law rules for personal and political gain at the cost of voter confusion and election system de-legitimization) and clear inability to fulfill the requirements of office if elected.

On the candidate side, neither of the remaining two candidates for State Senator nor the remaining twenty-three candidates for the seven seats on the Democratic Central Committee for the 41st District will be prejudiced by the removal of Mr. Oaks.

4. ...

I SOLEMNLY AFFIRM UNDER PENALTIES OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE CONTENTS OF THE FOREGOING PAPER ARE TRUE.


[NAME]

Dated: 4/20/18

NANCY LEWIN,
ELINOR MITCHELL,
and CHRISTOPHER ERVIN,

Plaintiffs,

v.

LINDA H. LAMONE, in her official
capacity as State Administrator,
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, Maryland 21401

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY

*
* Case No. C-02-CV-18-001013

*
*

* * * * *

AFFIDAVIT OF JILL P. CARTER

I, JILL P. CARTER, STATE:

1. I am over 18 years of age and competent to testify to the matters recited herein.
2. I am a registered voter in Maryland Legislative District 41 and a candidate in the June 26, 2018, Democratic Party Primary Election ("Primary Election") for Maryland State Senate representing Legislative District 41.
3. I am aware that the Plaintiffs in the above-referenced case are seeking to have the name of Nathaniel T. Oaks removed from the ballot for the Maryland State Senate Seat that I also am seeking.
4. I have no objection to the removal of Mr. Oaks' name from the Primary Election ballot.

5. It is my opinion as a candidate for Maryland State Senate representing Legislative District 41 that the inclusion of Mr. Oaks' name on the Primary Election ballot notwithstanding his seeking to have his name removed from the ballot and the near certainty that he would be ineligible to be a candidate in the November 6, 2018, General Election, would cause prejudice to me and the other candidate who is seeking the Democratic Party Nomination for Maryland State Senate representing Legislative District 41. Including Mr. Oaks' name on the ballot implicitly informs voters that Mr. Oaks' is a viable candidate for office. Voters who mistakenly cast votes for Mr. Oaks believing that he is a viable candidate would cast votes for me or my opponent if Mr. Oaks' name did not appear on the ballot.

I SOLEMNLY AFFIRM UNDER PENALTIES OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE CONTENTS OF THE FOREGOING PAPER ARE TRUE.



JILL P. CARTER

Dated: 4/20/18

**NANCY LEWIN,
ELINOR MITCHELL,
and CHRISTOPHER ERVIN,**

Plaintiffs,

v.

**LINDA H. LAMONE, in her official
capacity as State Administrator,
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, Maryland 21401**

Defendant.

* **IN THE**
* **CIRCUIT COURT**
* **FOR**
* **ANNE ARUNDEL COUNTY**
*
* **Case No. C-02-CV-18-001013**
*
*

* * * * *


AFFIDAVIT OF J.D. MERRILL

I, J.D. MERRILL, STATE:

1. I am over 18 years of age and competent to testify to the matters recited herein.
2. I am a registered voter in Maryland Legislative District 41 and a candidate in the June 26, 2018, Democratic Party Primary Election ("Primary Election") for Maryland State Senate representing Legislative District 41.
3. I am aware that the Plaintiffs in the above-referenced case are seeking to have the name of Nathaniel T. Oaks removed from the ballot for the Maryland State Senate Seat that I also am seeking.

4. I have no objection to the removal of Mr. Oaks' name from the Primary Election ballot.

I SOLEMNLY AFFIRM UNDER PENALTIES OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE CONTENTS OF THE FOREGOING PAPER ARE TRUE.



J.D. MERRILL

Dated: 4/19/18

NANCY LEWIN,
ELINOR MITCHELL,
and CHRISTOPHER ERVIN,

Plaintiffs,

v.

LINDA H. LAMONE, in her official
capacity as State Administrator,
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, Maryland 21401

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY

*
* Case No. C-02-CV-18-001013
*

*

* * * * *

**MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION**

Nancy Lewin, Elinor Mitchell and Christopher Ervin, Plaintiffs, by undersigned counsel, pursuant to Maryland Rules 15-504 and 15-505, move herewith for a temporary restraining order and/or preliminary injunction against Linda H. Lamone, in her official capacity as State Administrator, Maryland State Board of Elections (“Defendant”). These orders would require that the Defendant remove the name of Nathaniel T. Oaks from any and all ballots to be distributed to voters in Maryland State Legislative District 41 for the June 26, 2018, Democratic Party Primary Election.

The reasons for this relief are set forth in the accompanying Memorandum and the Amended Verified Complaint for Mandamus, Declaratory Judgment and Injunctive Relief filed in this action. A proposed Order is submitted herewith.

/s/
H. MARK STICHEL

**CLIENT PROTECTION FUND NO.
8312010443
ASTRACHAN GUNST THOMAS, P.C.
217 EAST REDWOOD STREET, 21ST FLOOR
BALTIMORE, MARYLAND 21202**

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ATTORNEY FOR PLAINTIFFS

**NANCY LEWIN,
ELINOR MITCHELL,
and CHRISTOPHER ERVIN,**

Plaintiffs,

v.

LINDA H. LAMONE, in her official
capacity as State Administrator,
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, Maryland 21401

Defendant.

* **IN THE**
* **CIRCUIT COURT**
* **FOR**
* **ANNE ARUNDEL COUNTY**

*
* **Case No. C-02-CV-18-001013**
*
*

* * * * *

**MEMORANDUM IN SUPPORT OF
MOTION FOR TEMPORARY RESTRAINING ORDER AND/OR
PRELIMINARY INJUNCTION**

Nancy Lewin, Elinor Mitchell and Christopher Ervin, Plaintiffs, by undersigned counsel, pursuant to Maryland Rules 15-504 and 15-505, submit the following memorandum in support of their motion for a temporary restraining order and/or preliminary injunction against Linda H. Lamone, in her official capacity as State Administrator, Maryland State Board of Elections (“Defendant”). These orders would require that the Defendant remove the name of Nathaniel T. Oaks from any and all ballots to be distributed to voters in Maryland State Legislative District 41 for the June 26, 2018, Democratic Party Primary Election.

BACKGROUND

Plaintiffs Nancy Lewin (“Lewin”), Elinor Mitchell (“Mitchell”) and Christopher Erwin (“Erwin”) are registered voters in Maryland’s Legislative District 41; Mitchell and Erwin also are candidates for the Democratic State Central Committee for Legislative District 41. Verified

Complaint ¶¶ 1-3. Defendant Linda H. Lamone (“Lamone” or “State Administrator”) is the State Administrator, Maryland State Board of Elections (“State Board”). Verified Complaint ¶ 4.

Nathaniel T. Oaks (“Oaks”), the then-incumbent Maryland State Senator for Legislative District 41 timely filed certificates of candidacy for Maryland State Senate, Legislative District 41, and Maryland Democratic State Central Committee, Legislative District 41, for the Democratic Party Primary Election to be held on June 26, 2018. Verified Complaint ¶ 6. The State Board has listed Oaks on its website as being a candidate for election to the Maryland State Senate, Legislative District 41, and Maryland Democratic State Central Committee for the Democratic Primary to be held on June 26, 2018. Verified Complaint ¶ 7. The State Board also has listed Oaks on proof sample ballots that it has published on its website. See http://elections.state.md.us/elections/2018/primary_ballots/baltimorecity.pdf (last accessed on April 15, 2018). Verified Complaint ¶ 8.

On March 29, 2018, Oaks pleaded guilty to Counts Three and Four of the Superseding Indictment against him that was filed in the United States District Court for the District of Maryland in *United States v. Oaks*, Criminal No. RDB-17-0288 (“Federal Criminal Case”). Verified Complaint ¶ 9. Count Three charged Oaks with wire fraud in violation of 18 U.S.C. §1343. Verified Complaint ¶ 10. Count Four charged Oaks with honest services wire fraud in violation of 18 U.S.C. §1346. Verified Complaint ¶ 11. The maximum statutory sentence of imprisonment for both offenses is 20 years. Pursuant to the plea agreement in the Federal Criminal Case, the final adjusted offense level for Oaks’ crimes is 30, which under Federal Sentencing Guidelines would mean that the minimum sentence Oaks faces pursuant to the Guidelines is 97 months. Verified Complaint ¶ 12. Oaks’ sentencing in the Federal Case is scheduled to take place on July 17, 2018. Verified Complaint ¶ 13.

Nearly simultaneously with the filing of the original Complaint in the present case, Laura Harpool filed an action in this Court against the Baltimore City Elections Board, Armstead B.C. Jones in his official capacity as Elections Director of the Baltimore City Elections Board, the Maryland State Board of Elections and Linda H. Lamone in her official capacity as State Administrator of the Maryland State Board of Elections. (“Harpool Action.”) Verified Complaint ¶ 19. Filed with the Complaint in the Harpool Action is an Affidavit of Nathaniel T. Oaks. (“Oaks Affidavit.”). The Oaks Affidavit affirms under the penalty of perjury the following:

1. From on or about February 10, 2017 until March 29, 2018, I served in the Maryland State Senate representing Legislative District 41.

2. I resigned my senate seat effective March 29, 2018, because I plead guilty the same day to two felony offenses in a federal criminal case pending against me in the United States District Court for the District of Maryland (*United States v. Oaks*, RDB-17-00288 (D. Md)).

3. I am currently on the ballot for the primary election, scheduled for June 26, 2018, to represent Legislative District 41 in the Maryland Senate.

4. I consent to have my name removed from the ballot for the primary election on June 26, 2018.

5. It is in the best interest of the people of Legislative District 41 that my name be removed from the ballot following my recent guilty plea in federal court.

6. I am of sound mind and body in making these statements, and no one has forced me to make them.

Verified Complaint ¶ 20.

On April 11, 2018, Oaks’ counsel filed a letter on his behalf in the Federal Criminal Case. The introductory paragraph of the letter states:

I write in regard to the advisement regarding the consequences of a felony conviction that the Court provided Mr.

Oaks during his Rule 11 re-arraignment on March 29, 2018. Specifically, **this letter concerns the Court's advisement that Mr. Oaks is barred from holding elected office in the future due to his conviction in this case.** (Emphasis added.)

Verified Complaint ¶ 22.

Both before and after the filing of the present case, the State Administrator's staff and the State Board have taken the position that Oaks' name will remain on the ballot notwithstanding his guilty pleas and desire to have his name removed from the ballot. On the evening of April 11, 2018, undersigned counsel sent a letter to Andrea Trento, Assistant Attorney General of Maryland and counsel to the State Board, requesting that the State Board or the State Election Administrator remove the name of Nathaniel T. Oaks from the ballot for the Democratic Party Primary Election to be held on June 26, 2018. Undersigned counsel also requested the opportunity to appear before the State Board at its scheduled meeting on the next day, Thursday, April 12, 2018. Verified Complaint ¶ 23. Undersigned counsel appeared before the State Board on Thursday, April 12, 2018, and requested on behalf of the plaintiffs in the present case that the State Board remove Oaks' name from the Democratic Party Primary Election ballot. The board was advised publicly by Assistant Attorney General Trento that it was his opinion at that time that the State Board did not have the authority to remove Oaks' name from the ballot. State Administrator Lamone also expressed concern during the meeting about the impact of multiple and continuing requests by candidates to change the ballot and that there had to be a deadline for changes. Verified Complaint ¶ 24. The State Board took no action at the conclusion of undersigned counsel's presentation. On Friday, April 13, 2018, undersigned counsel sent an email to Assistant Attorney General Trento asking that he advise undersigned counsel if there had been any change in the State Board's position. On Saturday, April 14, 2018, Assistant Attorney General Trento advised undersigned

counsel by email that the State Board took no further action after undersigned counsel's presentation. Verified Complaint ¶ 25.

TEMPORARY RESTRAINING ORDER

Rule 15-504(a) states that a temporary restraining order may be granted if “immediate, substantial, and irreparable harm will result to the person seeking the order before a full adversary hearing can be held on the propriety of a preliminary or final injunction.” The statutory deadline for printing ballots is May 7, 2018, and the federally-mandated deadline for sending absentee ballots to overseas and military voters is May 12, 2018. Verified Complaint ¶ 45. *See also* 52 U.S.C.A. § 20302(a)(8)(A). The Plaintiffs will be irreparably harmed if ballots containing Oaks' name are printed and distributed by the State Board.

A person seeking a TRO also must address the four factors required for the granting of an interlocutory injunction. *See Fuller v. Republican Central Committee*, 444 Md. 613, 635, 120 A.3d 751, 764 (2015).

PRELIMINARY INJUNCTION

The criteria for granting a preliminary injunction have been articulated in *Department of Transportation v. Armacost*, 299 Md. 392, 404-05, 474 A.2d 191, 197 (1984):

As a general rule, the appropriateness of granting an interlocutory injunction is determined by examining four factors: (1) the likelihood that the plaintiff will succeed on the merits; (2) the “balance of convenience” determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interest.

It has also been said that these criteria are factors, not elements, *DMF Leasing, Inc. v. Budget Rent-A-Car Of Maryland, Inc.*, 161 Md. App. 640, 649, 871 A.2d 639, 644 (2005), and

that they are subject to a “flexible interplay.” *Lerner v. Lerner*, 306 Md. 771, 792, 511 A.2d 501, 512 (1986). In this case all of the criteria support granting of injunctive relief.

A. Likelihood of Success on the Merits.

The gravamen of the dispute between the Plaintiffs, on the one hand, and the State Administrator and State Board, on the other hand, is whether the statutory provisions relating to the removal of a name from a primary election ballot are mandatory or directory. The State Administrator and State Board take the position, on the advice of counsel, that the provisions are mandatory. The Plaintiffs contend that the provisions are directory and that under the facts of the present case the refusal of the State Administrator and State Board to remove Oaks’ name from the primary election ballot it is arbitrary, capricious and an abuse of discretion. Further, if the statutory provisions are mandatory, they are unconstitutional on the facts of the present case.

1. The Relevant Statutory Provisions Are Directory.

The relevant statutory provisions are as follows:

**Maryland Code, Election Law, § 5-504
Effect of withdrawal of candidacy**

In general

* * *

Appearance of name on primary election ballot

(b) 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.

**Maryland Code, Election Law, § 5-601
Candidate names remaining on ballot**

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.

In *Black v. Board of Supervisors of Elections of Baltimore City*, 232 Md. 74, 80, 191 A.2d 580, 583 (1963), the Court allowed the withdrawal of a general election candidate and substitution of another after the statutory deadline for doing so. The Court noted that: “The courts in other states have generally held that time limitations imposed upon a right to withdraw are directory and not mandatory.” Although the Court of Appeals said that it did not need to go so far in *Black* because it found on other grounds that the statutory deadline did not apply in Baltimore City, the Court’s statement supports the general proposition that withdrawal deadlines are directory. *Cf. New Jersey Democratic Party, Inc. v. Samson*, 175 N.J. 178, 814 A.2d 1028 (2002) (allowed filling of vacancy on the ballot 34 days before election notwithstanding statutory prohibition of filling vacancy within 48 days of a general election).

Three years later, the Court of Appeals, without any mention or discussion of *Black*, stated in *McGinnis v. Board of Supervisors of Elections of Harford County*, 244 Md. 65, 68, 222 A.2d

391, 393 (1966), that both filing and withdrawal deadlines were mandatory. At the next session of the General Assembly, the following was inserted in front of the provision interpreted in *Black* and *McGinnis*:

The times designated in paragraphs (a) and (b) of this section for declining nominations and withdrawal of certificates of candidacy are mandatory and the provisions of these paragraphs shall also be applicable to municipal elections in Baltimore City.

1967 Md. Laws ch. 392 at pp. 859-60 (Article 33, § 9-1). The implication of the legislative change was that because of the conflicting decisions, the interpretation of the withdrawal provisions was not certain. The language quoted above remained in the Election Code until 1998. In 1998 the General Assembly enacted a comprehensive revision of the Election Code. The revised code omitted any reference as to whether the withdrawal provisions were mandatory or directory. *See* 1998 Md. Laws ch. 585 at 2739-41 (§§ 5-501 to 5-504; 5-601).

The comprehensive revision of the Election Code was based upon the Report and draft statute submitted by the Commission to Revise the Election Code, which was created by the General Assembly in 1996. The Commission's Report is silent as to whether the withdrawal provisions should be mandatory or directory. *See* Report at 54-55.

Although the Court of Appeals has held that the use of the word "shall" is presumed to be mandatory, it has not held so universally. In *Maryland State Bar Association v. Frank*, 272 Md. 528, 533, 325 A.2d 718, 721 (1974), the Court of Appeals stated:

Although, ordinarily the use of the word "shall" indicates a mandatory provision and therefore it is presumed that the word is used with that meaning, this is not so if the context indicates otherwise, as we believe it does here. [Citation omitted.] Though not controlling, we think it is of some significance in this regard that the language of the statute provides no penalty for failure to act within the time prescribed. Of more importance, it is clear that the broad policy of the law regulating the conduct of attorneys authorized to practice law in this State is designed for the protection

of the public, [citation omitted], and that purpose would be largely vitiated if respondent's restrictive interpretation were to prevail.

In *Frank* the Court of Appeals held that a statutory time requirement for completion of attorney disciplinary proceedings was directory. There is no penalty in the Election Code should the State Administrator or State Board remove the name of a candidate who has pleaded guilty to two felonies and requested that his name be removed from the ballot notwithstanding that the withdrawal deadline in the Election Code has passed. Further, unlike the waiving of a filing deadline which would prejudice candidates who filed timely, the waiving of the withdrawal deadline prejudices no one. *Cf. Resetar v. State Board of Education*, 284 Md. 537, 550, 399 A.2d 232 (1979) (party suffered no prejudice). As shown by the amendment of the Election Code subsequent to *McGinnis*, the General Assembly knew how to make the withdrawal deadlines explicitly mandatory. See *Columbia Road Citizens' Association v. Montgomery County*, 98 Md. App. 695, 702, 635 A.2d 30, 34 (1995). However, when the General Assembly comprehensively revised the Election Code in 1998 it abandoned the mandatory language, which implies that the withdrawal provisions of the Election Code are directory.

Should the statutory provisions at issue in this case be interpreted as being mandatory, such an interpretation would implicate various constitutional protections for voting rights. See Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution. The arbitrary freezing of the ballot well in advance of the printing of ballots is a constitutional violation. The early withdrawal deadline is analogous to early filing deadlines that have been found unconstitutional by the courts. See, e.g., *Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992). Maryland courts recognize a "canon of constitutional avoidance, which provides that a statute will be construed so as to avoid a conflict with the Constitution whenever that course is reasonably possible." *Koshko v. Haining*,

398 Md. 404, 425, 921 A.2d 171, 183 (2007) (quoting *In re James D.*, 295 Md. 314, 327, 455 A.2d 966, 972 (1983)). The canon is applied by courts “where a statute is subject to two constructions, one of which will result in the legality and effectiveness of the statutory provisions being construed and the other of which might make it illegal and nugatory.” *James D.*, 295 Md. at 327, 455 A.2d at 972. Undergirding Maryland’s use of the avoidance canon is a judicial policy preference against deciding constitutional issues unnecessarily. *Md. State Bd. of Elections v. Libertarian Party*, 426 Md. 488, 519 n.12, 44 A.3d 1002, 1020 n.12 (2012) (“This Court has ‘long adhered to the policy of not deciding constitutional issues unnecessarily.’”) (quoting *Curran v. Price*, 334 Md. 149, 171, 638 A.2d 93, 104 (1994)). Thus, interpreting the withdrawal provisions as being directory would avoid this Court’s having to decide whether the provisions are unconstitutional.

2. The Defendant’s Actions are Arbitrary, Capricious and an Abuse of Discretion

The facts of this case present an extraordinary situation. This is not a case where a candidate on a whim requests to withdraw or for some change in the ballot. This is a situation involving a candidate who was the incumbent until the date he pleaded guilty to felonies. Having the candidate’s name remain on the ballot will cause confusion. Any votes cast for the candidate will be wasted. It will be impossible to tell how those wasted votes would have been cast were the ballot properly constituted without Oaks’ name. There is no administrative reason why the State Administrator could not remove Oaks’ name from the ballot. The ballots have not been printed yet and the removal of one name would not require any other changes to the ballot.

3. If the Withdrawal Provisions are Mandatory, they are Unconstitutional.

Anderson, Burdick, and their progeny are based on the doctrine that statutory provisions that preclude voters from casting an effective vote are unconstitutional. If the Election Code

provisions at issue in this case require that the name of a candidate remain on the ballot despite the fact that he wishes to withdraw and most certainly will be disqualified at the time of the General Election, those provisions deprive the voters of Legislative District 41 from casting an effective vote and are therefore unconstitutional.

B. The Balance of Convenience.

There will be no inconvenience to the Defendant should the Court enter a temporary restraining order or preliminary injunction. Ballots have not yet been printed and the deadlines for printing and mailing to military and overseas voters are more than two weeks in the future. Removing Oaks' name from primary election ballots can be made expeditiously and well in advance of the printing deadline.

Plaintiffs Mitchell and Ervin are greatly inconvenienced by the status quo – the State Board has posted a sample ballot listing Oaks as a candidate and intend to distribute the ballot with Oaks' name to voters. Plaintiffs Mitchell and Ervin effectively are forced right now in the context of an ongoing campaign for public office to campaign against someone who is not a proper candidate but who is listed as being so by the State Board.

C. The Plaintiffs will suffer Irreparably Injury unless the Defendants are enjoined.

If Oaks' name appears on ballots that the State Board distributes to voters, the Plaintiffs will suffer the irreparably injury that votes that otherwise would have been cast for legitimate candidates, including votes that otherwise may have been cast for Plaintiffs Mitchell and Ervin for Democratic State Central Committee, will be cast for an ineligible candidate. Once voters cast their ballots, it will be impossible to then determine for which candidate Oaks voters would have voted had Oaks' name not been on the ballot. Votes cast for Oaks, an ineligible candidate, could

supply the margin of victory to one of the Plaintiffs in the race for Democratic State Central Committee and one of the candidates for State Senate in Legislative District 41.

D. The Public Interest supports Injunctive Relief in the Present Case.

Both the Maryland Declaration of Rights and the United States Constitution protect the right of suffrage. By placing the name of a person who wishes to withdraw and never will be eligible to serve office robs voters of their ability to cast their votes for properly-qualified candidates. Those voters who cast their votes for Oaks effectively will have been disenfranchised in violation of the strong public policy of protection of voters' rights.

CONCLUSION

For the reasons stated above and to be argued at any hearing on this matter, the Plaintiffs respectfully request that the Court issue a temporary restraining order and/or a preliminary injunction that enjoins the State Board from listing Oaks' name on any and all ballots to be distributed to voters in Maryland Legislative District 41 for the Democratic Party Primary Election to be held on June 26, 2018.

/s/

H. MARK STICHEL
CLIENT PROTECTION FUND NO.
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ATTORNEY FOR PLAINTIFFS

NANCY LEWIN
212 Edgevale Road
Baltimore, Maryland 21210

* IN THE
* CIRCUIT COURT

ELINOR MITCHELL
2706 Sulgrave Avenue
Baltimore, Maryland 21215

* FOR
* ANNE ARUNDEL COUNTY

and,

*

CHRISTOPHER ERVIN
4301 Ridgewood Avenue
Baltimore, Maryland 21215

* Case No. C-02-CV-18-001013

*

Plaintiffs,

*

v.

*

LINDA H. LAMONE, in her official
capacity as State Administrator,
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, Maryland 21401

*

*

*

*

Defendant.

* * * * *

**SECOND AMENDED VERIFIED COMPLAINT FOR MANDAMUS,
DECLARATORY JUDGMENT and
INJUNCTIVE RELIEF**

Nancy Lewin, Elinor Mitchell, and Christopher ErwinErvin, Plaintiffs, by their attorneys bring the following action against Linda H. Lamone, in her official capacity as State Administrator, Maryland State Board of Elections, and allege as follows:

Parties

1. Nancy Lewin (“Lewin”) is a registered voter in Maryland’s -Legislative District 41.

2. Elinor Mitchell (“Mitchell”) is a registered voter in Maryland’s -Legislative District 41 and a candidate for the Democratic State Central Committee for Legislative District 41.

3. Christopher ~~Erwin~~-Ervin (“Ervin”) is a registered voter in Maryland’s Legislative District 41 and a candidate for the Democratic State Central Committee for Legislative District 41.

4. Linda H. Lamone (“Lamone” or “State Administrator”) is the State Administrator, Maryland State Board of Elections (“State Board”).

Facts Common to All Counts

6. Nathaniel T. Oaks (“Oaks”) filed ~~a~~-certificates of candidacy for Maryland State Senate, Legislative District 41, and Maryland Democratic State Central Committee, Legislative District 41, for the Democratic Party Primary Election to be held on June 26, 2018.

7. The State Board has listed Oaks on its website as being a candidate for election to the Maryland State Senate, Legislative District 41, and Maryland Democratic State Central Committee for the Democratic Primary to be held on June 26, 2018.

8. The State Board has listed Oaks on proof sample ballots that is has published on its website. See http://elections.state.md.us/elections/2018/primary_ballots/baltimorecity.pdf (last accessed on April 15, 2018). See also Exhibit A attached hereto.

9. On March 29, 2018, Oaks pleaded guilty to Counts Three and Four of the Superseding Indictment against him that was filed in the United States District Court for the District of Maryland in *United States v. Oaks*, Criminal No. RDB-17-0288 (“Federal Criminal Case”).

10. Count Three charged Oaks with wire fraud in violation of 18 U.S.C. §1343.

11. Count Four charged Oaks with honest services wire fraud in violation of 18 U.S.C. §1346.

12. The maximum statutory sentence of imprisonment for both offenses is 20 years. Pursuant to the plea agreement in the Federal Criminal Case, the final adjusted offense level for Oaks' crimes is 30, which under Federal Sentencing Guidelines, would mean that the minimum sentence Oaks faces pursuant to the Guidelines is 97 months.

13. Oaks' sentencing in the Federal Case is scheduled to take place on July 17, 2018.

14. On April 23, 2018, Oaks requested that his name be removed from the statewide voter registration list pursuant to Maryland Code, Election Law §3-501(1).

15. On April 23, 2018, the Baltimore City Board of Elections removed Oaks' name from the statewide voter registration list and, thus, he no longer is a registered voter in Maryland.

16. The Baltimore Sun reported on March 30, 2018, that Jared DiMarinis, chief of candidacy for the State Board, stated that Oaks would remain on the June 26, 2018, Primary Election Ballot, notwithstanding his guilty plea, because he met the qualifications for the office he sought at the time of the filing deadline, which was February 27, 2018.

17. Maryland Constitution, Article I, § 12, provides:

Except as otherwise specifically provided herein, a person is ineligible to enter upon the duties of, or to continue to serve in, an elective office created by or pursuant to the provisions of this Constitution if the person was not a registered voter in this State on the date of the person's election or appointment to that term or if, at any time thereafter and prior to completion of the term, the person ceases to be a registered voter.

18. Maryland Code, Election Law §3-102(b)(1) provides that an individual is not qualified to be a registered voter if the individual:

(1) has been convicted of a felony and is actually serving a court-ordered sentence of imprisonment.

~~1719.~~ Oaks' guilty plea is the equivalent of a conviction of a felony and he will be serving a court-ordered sentence of imprisonment on the date of the General Election for the office of Maryland State Senator for Legislative District 41.

~~1820.~~ The By-Laws of the Maryland Democratic Party provide that member of the Democratic State Central Committee shall be disqualified for office and removed as a member upon the conviction of a felony.

21. Oaks currently is disqualified from holding the offices for which his name currently is listed on the ballot by virtue of his no longer being a registered voter in the State of Maryland.

~~1822.~~ Pursuant to the operation of Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii), a name of a candidate shall remain on the ballot and be submitted to the voters at a primary election unless the candidate's death or disqualification is known to the applicable election board by the 10th day after the filing deadline.

~~1923.~~ Nearly simultaneously with the filing of the original Complaint in the present case, Laura Harpool filed an action in this Court against the Baltimore City Elections Board, Armstead B.C. Jones in his official capacity as Elections Director of the Baltimore City Elections Board, the Maryland State Board of Elections and Linda H. Lamone in her official capacity as State Administrator of the Maryland State Board of Elections. ("Harpool Action.")

~~2024.~~ Filed with the Complaint in the Harpool Action is an Affidavit of Nathaniel T. Oaks. ("Oaks Affidavit.") A copy of the Affidavit is attached hereto as Exhibit B. The Oaks Affidavit affirms under the penalty of perjury the following:

1. From on or about February 10, 2017 until March 29, 2018, I served in the Maryland State Senate representing Legislative District 41.

2. I resigned my senate seat effective March 29, 2018, because I plead guilty the same day to two felony offenses in a federal criminal case pending against me in the United States District Court for the District of Maryland (*United States v. Oaks*, RDB-17-00288 (D. Md)).

3. I am currently on the ballot for the primary election, scheduled for June 26, 2018, to represent Legislative District 41 in the Maryland Senate.

4. I consent to have my name removed from the ballot for the primary election on June 26, 2018.

5. It is in the best interest of the people of Legislative District 41 that my name be removed from the ballot following my recent guilty plea on federal court.

6. I am of sound mind and body in making these statements, and no one has forced me to make them.

~~2125~~. Neither the Plaintiffs in the present case nor undersigned counsel were aware of the Harpool Action or the Oaks Affidavit until Wednesday, April 11, 2018.

~~2226~~. On April 11, ~~2018~~, Oaks' counsel filed a letter on his behalf in the Federal Criminal Case. A copy of the letter is attached as Exhibit C. The introductory paragraph of the letter states:

I write in regard to the advisement regarding the consequences of a felony conviction that the Court provided Mr. Oaks during his Rule 11 re-arraignment on March 29, 2018. Specifically, **this letter concerns the Court's advisement that Mr. Oaks is barred from holding elected office in the future due to his conviction in this case.** ("Emphasis added.)

~~2227~~. On the evening of April 11, 2018, undersigned counsel sent a letter to Andrea Trento, Assistant Attorney General of Maryland and counsel to the State Board, requesting that the State Board or the State Election Administrator remove the name of Nathaniel T. Oaks from

the ballot for the Democratic Party Primary Election to be held on June 26, 2018. Undersigned counsel also requested the opportunity to appear before the State Board at its scheduled meeting on the next day, Thursday, April 12, 2018. A copy of the letter is attached as Exhibit D.

2328. Undersigned counsel appeared before the State Board on Thursday, April 12, 2018, and requested on behalf of the plaintiffs in the present case that the State Board remove Oaks' name from the Democratic Party Primary Election ballot. The board was advised publicly by Assistant Attorney General Trento that it was his opinion at that time that the State Board did not have the authority to remove Oaks' name from the ballot. State Administrator Lamone also expressed concern during the meeting about the impact of multiple and continuing requests by candidates to change the ballot and that there had to be a deadline for changes.

2429. The State Board took no action at the conclusion of undersigned counsel's presentation. On Friday, April 13, 2018, undersigned counsel sent an email to Assistant Attorney General Trento asking that he advise undersigned counsel if there had been any change in the State Board's position. On Saturday, April 14, 2018, Assistant Attorney General Trento advised undersigned counsel by email that the State Board took no further action after undersigned counsel's presentation. A copy of the email exchange is attached hereto as Exhibit E.

30. In addition to Oaks' name, the names of two additional candidates for the office of State Senator representing Legislative District 41 are listed on the ballot for the Democratic Party Primary Election to be held on June 26, 2018: Jill P. Carter ("Carter") and J.D. Merrill ("Merrill"). Both Carter and Merrill have filed affidavits in this matter stating that they have no objection to the removal of Oaks' name from the Democratic Party Primary Election ballot.

COUNT ONE

(Judicial Challenge to State Board's Refusal to Remove Oaks' Name from the Primary Election Ballot – EL § 12-202)

~~2531~~. Paragraphs 1-~~2430~~ above are incorporated as if recited herein.

~~2632~~. The State Board's allowing on the Democratic Primary Election Ballot the name of a person who ~~will be currently is~~ disqualified from ~~appearing on the General Election Ballot being~~ a candidate for public office or serving in the offices that he seeks will cause confusion and cause voters to cast votes for an ineligible candidate.

~~2733~~. The State Board's refusing to remove the name of a candidate who has pleaded guilty to two felony counts in Federal Court, has been advised by the Federal Judge who will be sentencing him that he will be barred from holding public office, ~~and~~ has signed an affidavit requesting that his name be removed from the ballot, and has cancelled his voter registration will cause confusion and cause voters to cast votes for a candidate who cannot and/or will not be able to serve in the offices that he seeks.

~~2834~~. Those voters who mistakenly cast votes for Oaks would cast votes for qualified candidates were Oaks' name not on the ballot.

~~2935~~. The State Board's failure to remove Oaks' name from the Primary Election Ballot deprives the plaintiffs, and all voters within Legislative District 41, of their rights under Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution.

WHEREFORE, the Plaintiffs seek judicial review by this Court and an order directing Ms. Lamone in her capacity State Administrator for the State Board to remove Oaks' name from any and all ballots to be distributed to voters in Maryland Legislative District 41 for the Democratic Primary Election to be held on June 26, 2018.

COUNT TWO

(Writ of Mandamus – Maryland Rule 15-701)

~~3036~~. Paragraphs 1-~~29-35~~ above are incorporated as if recited herein.

~~3137~~. The State Board has a duty imposed by the Maryland Declaration of Rights and the United States Constitution to protect the right of the people to cast ballots in elections effectively.

~~3238~~. The State Board's refusal to remove Oaks' name from the Primary Election ballot denies the voters of Legislative District 41 to cast effective ballots.

WHEREFORE, the Plaintiffs request that the Court issue a Writ of Mandamus directing Ms. Lamone in her capacity State Administrator for the State Board to remove Oaks' name from any and all ballots to be distributed to voters in Maryland Legislative District 41 for the Democratic Primary Election to be held on June 26, 2018.

COUNT THREE

(Declaratory Judgment -- Md. Cts. & Jud. Proc. Code §§ 3-401 to 3-415)

~~3339~~ Paragraphs 1-~~32-38~~ above are incorporated as if recited herein.

~~3440~~. An actual controversy exists between the Plaintiffs and the Defendant within the meaning of the Maryland Uniform Declaratory Judgment Act, Md. Cts. & Jud. Proc. Code § 3-409(a)(1).

~~3541~~. Antagonistic claims are present between the Plaintiffs and the Defendant.

~~3642~~. The Plaintiffs allege upon information and belief that the State Administrator's and/or the State Board's refusal to remove Oaks' name from the ballot is based upon reliance upon the advice of counsel that Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) do not allow the State Administrator and/or State Board to make any change in the primary election ballot once ten days have passed from the filing deadline.

~~3743~~. The provision of the Election Law code that pertain to the dates for the withdrawal of a candidate and the removal of a candidate's name from a primary election ballot are not

mandatory, but directory. The State Election Administrator- and/or the State Board has the power to remove a candidate's name from the primary election ballot under the facts and circumstances that Oaks' guilty plea, ~~and~~ affidavit and cancellation of his voter registration present.

~~3844~~. The refusal of the State Election Administrator and/or the State Board to remove Oaks' name from the Democratic Party Primary Election Ballot on the facts and circumstances of Oaks' guilty plea, ~~and~~ request that his name be removed from the ballot and cancellation of his voter registration is arbitrary, capricious and an abuse of discretion.

~~3945~~. Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) violate Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution in that they set an artificially early deadline for removal of a disqualified candidate's name from the Primary Election Ballot.

WHEREFORE, the Plaintiffs request that the Court issue a declaration that: (1) The provisions of Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) and all other provisions of the Maryland Code that pertain to the removal of a name from an election ballot are not ~~mandatory~~ mandatory, but are directory; (2) the refusal of the State Election Administrator and/or the State Board to remove Oaks' name from the Democratic Party Primary Election Ballot on the facts and circumstances of Oaks' guilty plea, ~~and~~ request that his name be removed from the ballot and cancellation of his voter registration is arbitrary, capricious and an abuse of discretion; and (3) Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) as applied on the facts of the present case violate Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution.

COUNT FOUR
(Temporary Restraining Order)
(Maryland Rule 15-504)

~~4046~~. The allegations of Paragraphs 1 to ~~3944~~, above, are incorporated as if recited herein.

~~4147~~. The actions of the State Board alleged above demonstrate that the State Board intends to distribute ballots to voters in the June 26, 2018, Democratic Primary Election that include Oaks' name as a candidate for State Senate and Democratic State Central Committee for Legislative District 41.

~~4248~~. Should the State Board distribute ballots to voters in June 26, 2018, Democratic Primary Election that include Oaks' name as a candidate, the Plaintiffs will suffer immediate, substantial and irreparable harm before a full adversary hearing can be held on the propriety of a preliminary or final injunction.

~~4349~~. The Plaintiffs are likely to succeed on the merits of their claims in this action.

~~4450~~. The balance of convenience favors the Plaintiffs in that the ~~Primary Election Ballots have not been printed yet. The~~ statutory deadline for printing ~~the Primary Election Ballots~~ ballots is May 7, 2018, and the deadline for sending absentee ballots to the overseas and military voters is not until May 12, 2018. See State Election Board 2018 Gubernatorial Election Calendar, page 3. A copy of the Calendar is attached hereto as Exhibit F. The removal of one name from the Democratic Party ballots for one Legislative District can be accomplished well within the time remaining before those deadlines.

~~4551~~ The public interest would be served by the entry of a temporary restraining order in this action which involves fundamental issues of constitutional law and executive power in derogation of the rights of the people. Further, should voters be given ballots with the name of a candidate who is ineligible to be a candidate, the votes of those persons who would vote for the ineligible candidate will be disregarded. Given the strong public interest in protecting the votes of all voters, such a ~~disregarding of ballots cast~~ disqualification would violate public policy.

WHEREFORE, the Plaintiffs request that the Court enter a Temporary Restraining Order that enjoins the State Board from listing Oaks' name on any and all ballots to be distributed to voters in the June 26, 2018, Democratic Primary Election.

COUNT FIVE
(Preliminary Injunction)
(Maryland Rule 15-505)

~~46~~52. The allegations of Paragraphs 1 to 45, above, are incorporated as if recited herein.

~~47~~53. The Plaintiffs are likely to succeed on the merits of their claims in this action.

~~48~~54. The Plaintiffs will suffer substantial and irreparable harm should the State Board include Oaks' name as a candidate on the June 26, 2018, Democratic Primary Election Ballot.

~~49~~55. The balance of convenience favors the Plaintiffs in that the Primary Election Ballots have not been printed yet. The statutory deadline for printing ballots is May 7, 2018, and the deadline for sending absentee ballots to the overseas and military voters is not until May 12, 2018. The removal of one name from the Democratic Party ballots for one Legislative District can be accomplished well within the time remaining before those deadlines.

~~50~~56. The public interest would be served by the entry of a preliminary injunction in this action which involves fundamental issues of constitutional law and executive power in derogation of the rights of the people.

WHEREFORE, the Plaintiffs request that the Court enter a Preliminary Injunction that enjoins the State Board from listing Oaks' name on any and all ballots to be distributed to voters in the June 26, 2018, Democratic Primary Election.

COUNT SIX
(Permanent Injunction)

~~51~~57. The allegations of Paragraphs 1 to ~~50~~56, above, are incorporated as if recited herein.

5258. Should the State Board list Oaks' name on ballots to be distributed to voters in in the June 26, 2018, Democratic Primary Election, the plaintiffs will suffer irreparable injury and have no adequate remedy at law.

WHEREFORE, the Plaintiffs request that the Court enter a Permanent Injunction that enjoins the State Board from listing Oaks' name on any and all ballots to be distributed to voters in the June 26, 2018, Democratic Primary Election.

**COUNT SEVEN
(Further Relief)**

5359. The allegations of Paragraphs 1 to 5258 above, are incorporated as if recited herein.

5460. The Plaintiffs seek all such further relief to which they are entitled at law and in equity.

WHEREFORE, the Plaintiffs request that the Court award the Plaintiffs any and all such further relief as the Court may deem just and proper, including, but not limited to attorneys' fees and costs.

**H. MARK STICHEL
CLIENT PROTECTION FUND NO.
8312010443**

**ELIZABETH A. HARLAN
CLIENT PROTECTION FUND NO.
1101050005**

**ASTRACHAN GUNST THOMAS, P.C.
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ATTORNEY FOR PLAINTIFFS

VERIFICATION

**I, NANCY LEWIN, swear under penalty of perjury that the contents of the forgoing
Complaint are true and correct**

NANCY LEWIN

Dated: April ~~15~~23, 2018

**NANCY LEWIN,
ELINOR MITCHELL,
and CHRISTOPHER ERVIN,**

Plaintiffs,

v.

LINDA H. LAMONE, in her official
capacity as State Administrator,
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, Maryland 21401

Defendant.

* **IN THE**
* **CIRCUIT COURT**
* **FOR**
* **ANNE ARUNDEL COUNTY**

*
* **Case No. C-02-CV-18-001013**
*
*

* * * * *

MOTION FOR RECONSIDERATION

Nancy Lewin, Elinor Mitchell and Christopher Ervin, Plaintiffs, by undersigned counsel, pursuant to Maryland Rule 2-311, move for reconsideration of the Honorable Glenn L Klavans' April 20, 2018, order denying Plaintiffs' Motion for Preliminary Injunction in the above-captioned matter. On Friday, April 20, 2018, following an evidentiary hearing and oral argument, Judge Klavans denied Plaintiffs' Motion for Preliminary Injunction, based on the fact that Mr. Nathaniel T. Oaks was not then disqualified from holding elected office. As explained in the accompanying memorandum, Mr. Oaks is now ineligible to hold office in the State of Maryland.

For the reasons set forth in the accompanying Memorandum in Support of Motion for Reconsideration and the Verified Second Amended Complaint for Mandamus, Declaratory Judgment and Injunctive Relief, Plaintiffs respectfully request that the Court reconsider the denial of Plaintiffs' Motion for Preliminary Injunction and order the Defendant to remove

Nathaniel T. Oaks' name from any and all ballots to be distributed to voters in Maryland State Legislative District 41 for the June 26, 2018, Democratic Party Primary Election. A proposed Order is submitted herewith.

/s/

H. MARK STICHEL
CLIENT PROTECTION FUND NO.
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ATTORNEY FOR PLAINTIFFS

MARYLAND RULE 20-201(f) CERTIFICATE

I HEREBY CERTIFY that this submission does not contain any restricted information.

/s/

H. MARK STICHEL

ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April 2018, a copy of the foregoing was filed and served electronically on the MDEC system and sent by electronic mail to:

Julia Doyle Bernhardt
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(410) 576-6472
(410) 576-7036 (facsimile)

Attorneys for Defendant

_____/s/
H. MARK STICHEL

ATTORNEY FOR PLAINTIFFS

NANCY LEWIN,
ELINOR MITCHELL,
and CHRISTOPHER ERVIN,

Plaintiffs,

v.

LINDA H. LAMONE, in her official
capacity as State Administrator,
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, Maryland 21401

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY

*
* Case No. C-02-CV-18-001013

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*

* * * * *

MEMORANDUM IN SUPPORT OF MOTION FOR RECONSIDERATION

Nancy Lewin, Elinor Mitchell and Christopher Ervin, Plaintiffs, by undersigned counsel, pursuant to Maryland Rule 2-311, submit the following memorandum in support of their Motion for Reconsideration.

BACKGROUND

On Friday, April 20, 2018, following consideration of the papers and affidavits filed in this matter, the testimony of Natasha Walker and the presentation of oral argument, the Honorable Glenn L. Klavans denied Plaintiffs' Motion for Preliminary Injunction based on the fact that Mr. Nathaniel T. Oaks was not then disqualified from holding elected office. Both parties agreed at the hearing that Mr. Oaks was not then disqualified because, while he had pleaded guilty to two criminal counts, he was not currently incarcerated. Mr. Oaks' sentencing in federal court is scheduled to take place on July 17, 2018.

Ruling from the bench at the conclusion of the April 20 Preliminary Injunction hearing, the Court stated, “I’m constrained by the singular fact that (Oaks’ eligibility) remains legally speculative today and close only counts in horseshoes.” The Court also noted during its decision that the harm to the State Election Board if it were required to remove Mr. Oaks’ name from the ballots was outweighed by the harm to the electorate if his name remains on the ballots.

ARGUMENT

Maryland Constitution, Article I, § 12, provides:

Except as otherwise specifically provided herein, a person is ineligible to enter upon the duties of, or to continue to serve in, an elective office created by or pursuant to the provisions of this Constitution if the person was not a registered voter in this State on the date of the person's election or appointment to that term or if, at any time thereafter and prior to completion of the term, the person ceases to be a registered voter.

If Mr. Oaks ceases to be a registered voter in Maryland, he becomes immediately ineligible to enter into the duties of an elective office.

Pursuant to Maryland Election Law § 3-501, a voter may be removed from the statewide voter registration list at the request of the voter, provided that request is “(i) signed by the voter; (ii) authenticated by the election director; and (iii) in a format acceptable to the State Board or on a cancellation notice provided by the voter on a voter registration application.”

On April 23, 2018, Mr. Oaks requested that his name be removed from the statewide voter registration list pursuant to Maryland Code, Election Law § 3-501(1). (Exhibit A.) On the same day, the Board of Elections for Baltimore City accepted Mr. Oaks’ request and removed his name from the statewide voter registration list. (Exhibit B.) Mr. Oaks is no longer eligible to vote in the State of Maryland.

Mr. Oaks is now ineligible to hold public office in the State of Maryland. This fact, together with the facts set forth in the Verified Second Amended Complaint and the Affidavits of Nancy Lewin, Elinor Mitchell, Jill P. Carter, J.D. Merrill, warrants entry of a Preliminary Injunction requiring Defendant to remove Mr. Oaks' name from the ballots in Legislative District 41.

In support of this request for injunctive relief, Plaintiff incorporate herein by reference the arguments previously set forth in their Memorandum in Support of Temporary Restraining Order and Preliminary Injunction and their Reply brief in support of the Motion for Preliminary Injunction.

If Mr. Oaks' name is not removed from the ballot, voters in Legislative District 41 will be constructively disenfranchised. Votes will be cast for Mr. Oaks, a candidate who is currently ineligible to hold office. The right of the citizens of Legislative District 41 to cast a meaningfully vote for a qualified candidate outweighs any inconvenience imposed upon the State Election Board in their efforts to prepare the Primary Election ballots.

CONCLUSION

Plaintiffs' request that their Motion for Preliminary Injunction be granted in light of Mr. Oaks' ineligibility to hold office, and that Defendant be ordered to remove Mr. Oaks' name from any and all ballots to be distributed to voters in Maryland Legislative District 41 for the Democratic Party Primary Election to be held on June 26, 2018.

/s/

H. MARK STICHEL
CLIENT PROTECTION FUND NO.
8312010443

ELIZABETH A. HARLAN
CLIENT PROTECTION FUND N.
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ATTORNEY FOR PLAINTIFFS

MARYLAND RULE 20-201(f) CERTIFICATE

I HEREBY CERTIFY that this submission does not contain any restricted information.

/s/

H. MARK STICHEL

ATTORNEY FOR PLAINTIFFS

NANCY LEWIN, et al.

Plaintiffs,

v.

LINDA H. LAMONE, etc.

Defendant

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IN THE

*

CIRCUIT COURT

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FOR

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ANNE ARUNDEL COUNTY

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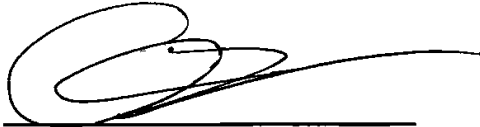
Case No. C-02-CV-18-001013

* * * * *

ORDER

UPON THE CONSENT MOTION TO SHORTEN TIME, it is this 24th day of April, 2018, by the Circuit Court for Anne Arundel County, ORDERED:

1. That the time for Defendant's response to the Plaintiffs' Motion for Reconsideration of Motion for Preliminary Injunction is shortened to 6:00 p.m. on Wednesday, April 25, 2018.



 Cathleen M. Vitale
 Circuit Judge

*Matter scheduled for hearing 1:30 pm Thursday
 April 26, 2018.
 cmv*

04/25/18 mkgp

NANCY LEWIN, *et al.*,

Plaintiffs,

v.

LINDA H. LAMONE,

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* No. C-02-CV-18-001013

* * * * *

**DEFENDANTS’ MEMORANDUM IN OPPOSITION TO
PLAINTIFFS’ MOTION FOR RECONSIDERATION AND
SECOND REQUEST FOR PRELIMINARY INJUNCTION;
DEFENDANTS’ REQUEST FOR HEARING**

In denying Plaintiffs’ motion for preliminary injunction, the Court found that former Senator Nathaniel T. Oaks’s disqualification as of the date of the primary was “legally speculative,” given that he would not be sentenced until after the primary took place. The Plaintiffs’ motion for reconsideration should be denied because Mr. Oaks’s cancellation of his voter registration changes nothing that would require the Court to revisit its denial of preliminary injunctive relief in this case.

First, the law remains the same. The Election Law Article contemplates that candidates may die or become disqualified during the course of the primary campaign. But unless that disqualification both *occurs* and *becomes known* to the relevant board of elections *within 10 days of the candidate filing deadline*, the name of the candidate “shall remain on the ballot and be submitted to the voters.” Md. Code Ann., Elec. Law § 5-601 (emphasis added). It would be difficult to find statutory language that is more clear. Nor does the cancellation affect the purported constitutional basis for Plaintiffs’ claims. That

Mr. Oaks has rendered himself disqualified (at this time) does not create a cognizable constitutional injury that arises from the concern that other voters may vote for an ineligible candidate.

Second, the facts have not changed—at least not materially. There is no dispute that Mr. Oaks filed candidacy papers by the candidacy-filing deadline of February 27, 2018, and did not withdraw from the contest by the March 1, 2018 withdrawal deadline. Nor is there any dispute that Mr. Oaks’s putative disqualification was not known to the State Board by the March 9, 2018 deadline for removing a candidate from the ballot. And there is no guarantee that Mr. Oaks will *remain* disqualified by the time of the June 26 primary, because voter registration remains generally open until June 5, 2018, and open on a same-day basis at early voting sites prior to the date of the primary. That Mr. Oaks has purportedly become disqualified now, *45 days* after the March 9 deadline, has no impact on the analysis. And even if it did, the fact that Mr. Oaks can simply re-register to vote by June 5 (or thereafter, during early voting) and thereby restore his eligibility reveals that Mr. Oaks’s ineligibility is ephemeral and still “legally speculative.”

Third, the other preliminary injunction factors support the Court’s denial of the preliminary injunction even more strongly now. In order for harm to be irreparable, it must be “actual” and “imminent,” which Plaintiffs have conceded is not the case here. *See* Mem. in Supp. of Mot. for TRO and/or Prelim. Inj. (“Pls.’ Prelim. Inj. Mem.”) 11-12 (conceding that it is “impossible to determine” which candidate the voters who cast votes for Mr. Oaks would have supported). It must also constitute “harm” in the first place, and Plaintiffs’ alleged harm has not become cognizable because of Mr. Oaks’s purported disqualification.

Plaintiffs’ “right to the franchise remains intact,” because they are “to cast [their] votes for any candidate [t]he[y] consider[] eligible, . . . and to have [those] vote[s] counted just as much as those cast for [other candidates].” *Hollander v. McCain*, 566 F. Supp. 2d 63, 70-71 (D.N.H. 2008). In the absence of any harm (much less any irreparable harm), the balance of interests as well as the public interest weigh heavily against Plaintiffs, given the concrete risk that revision of the ballots and delay of the printing process pose to the State Board’s ability to meet election deadlines, and to the accuracy of the ballots themselves.

Most importantly, the balance of convenience now weighs even more heavily in favor of the State Board. Plaintiffs were aware that Mr. Oaks remained a registered voter even after his March 29 guilty plea, and at the time of their April 9 filing of this lawsuit. By April 11, Plaintiffs were also aware that ballot-printing would start on April 23. Yet Plaintiffs waited to execute their last-minute maneuver to engineer Mr. Oaks’s disqualification until the day ballots started printing—a date of which Plaintiffs’ counsel has been aware for at least 12 days. In the context of this compressed election calendar, those 12 days are an eternity. Given their failure even to attempt to secure Mr. Oaks’s cancellation of his voter registration during this period, Plaintiffs’ claims are barred by laches and therefore cannot succeed.

Finally, the public interest strongly supports denial of Plaintiffs’ motion for reconsideration, so as to discourage similar efforts at “self-disqualification” by candidates who do not withdraw their candidacies by the applicable deadlines. This year, 10 candidates requested to have their candidacies withdrawn *after* the deadline for doing so. In keeping with its long-standing interpretation of the relevant statutes, the State Board

rejected all of these requests. If these candidates were permitted to accomplish withdrawals by disqualifying themselves in the way that Mr. Oaks has now done, it would wreak havoc on the ballot-preparation process and the administration of the election more generally. It would also render the statutory deadline for candidacy withdrawals meaningless.

Plaintiffs' motion for reconsideration should be denied.

BACKGROUND

Mr. Oaks is a candidate for the Democratic nomination for Maryland Senate in Legislative District 41. On March 29, 2018, Mr. Oaks pleaded guilty in the United States District Court for the District of Maryland to counts of wire fraud and honest services wire fraud in violation of federal law. Second Am. Compl. for Mandamus, Declaratory J. & Injunctive Relief (the "Second Am. Compl.") ¶¶ 6, 9-11. He is scheduled to be sentenced on July 17, 2018, and is likely to receive a sentence that includes a lengthy period of imprisonment. *Id.* ¶¶ 12-13. On the same day as his guilty plea, Mr. Oaks resigned from his Senate seat, and on April 9, 2018, provided an affidavit in which he stated that he "consent[s] to have [his] name removed from the ballot for the primary election on June 26, 2018." *Id.* ¶¶ 9, 24.

On April 9, 2018, this action (and a parallel proceeding seeking substantially the same relief, *see Harpool v. Baltimore City Elections Bd. et al.*, No. C-02-CV-18-001020 (Cir. Ct. for Anne Arundel County Apr. 9, 2018)), were filed in this Court. On Wednesday, April 11, 2018, counsel for the State Board, Andrea W. Trento, Assistant Attorney General, informed counsel for Plaintiffs, H. Mark Stichel, about the "ballot preparation schedule"

and encouraged Mr. Stichel to file his motion for temporary restraining order on Thursday, April 12, 2018, out of concern that “putting this off until next week adds unnecessary delay in a process that is already extremely tight.” Apr. 11, 2018 E-mail from A. Trento to H. Stichel (attached hereto as Exhibit A).

On Monday, April 16, 2018, Plaintiffs filed their Motion for Temporary Restraining Order and/or Preliminary Injunction. That part of the motion that sought entry of a temporary restraining order was denied by the chambers judge, and on Friday, April 20, 2018, a hearing was held on that part of the motion that sought entry of a preliminary injunction. That same day, this Court denied the motion for preliminary injunction, on the basis that the Court was constrained by the fact that Mr. Oaks’s disqualification as of the date of the primary was “legally speculative,” given that he would not be sentenced until after the primary took place.

On the evening of April 20, 2018, counsel for Plaintiffs attempted to contact Mr. Oaks and his criminal defense attorney, Lucius Outlaw, to request that Mr. Oaks remove his name from the voter registry pursuant to Election Law § 3-501(1), so as to attempt to render Mr. Oaks ineligible as a candidate for the offices for which he submitted certificates of candidacy. *See* Apr. 22, 2018 Letter from H. Stichel to L. Outlaw (attached hereto as Exhibit B). That same day, Mr. Stichel informed counsel for the State Board that Mr. Oaks had agreed to cancel his voter registration and that, upon his doing so, Plaintiffs would promptly file a second amended complaint in this Action and ask the Court to reconsider its April 20, 2018 denial of the preliminary injunction in light of Mr. Oaks’s self-disqualification. *See* Apr. 22, 2018 E-mail from H. Stichel to A. Trento (attached

hereto as Exhibit C). On April 23, 2018, Mr. Oaks formally requested that his name be removed from the voter registry at the Baltimore City Board of Elections, *see* Second Am. Compl. ¶ 14, and Plaintiffs filed their Second Amended Complaint and motion for reconsideration.

Meanwhile, ballot preparation has proceeded apace since last Friday’s hearing. On April 23, ballot PDFs and ballot “test decks” were sent to the State Board’s printing vendor and the printing process began. *See* Suppl. Aff. of Natasha Walker (the “Suppl. Walker Aff.”) ¶ 3 (attached hereto as Exhibit D); Aff. of Natasha Walker (the “Walker Aff.”) ¶ 11.¹ On April 25, ballot styles were imported into the MDVOTERS database, and absentees were assigned to the current election. Suppl. Walker Aff. ¶ 4; Walker Aff. ¶ 12. Several other processes are now complete as well. *See* Suppl. Walker Aff. ¶ 6.

ARGUMENT

I. LEGAL STANDARD

Until a final judgment is entered, the Court has inherent discretion to revise any interlocutory order, where that action is in the best interests of justice. *Michaels v. Nemethvargo*, 82 Md. App. 294, 299 (1990). Whether to grant a preliminary injunction depends upon the consideration of the following four factors:

1. The likelihood that plaintiff will succeed on the merits;
2. Whether plaintiff has an adequate remedy at law or will be irreparably harmed if the injunction is not issued;

¹ The Walker Affidavit was attached as Exhibit B to Defendant’s Memorandum in Opposition to Motion for Temporary Restraining Order and/or Preliminary Injunction (“Defendant’s Preliminary Injunction Opposition”), filed on April 18, 2018.

3. The “balance of convenience,” determined by whether the harm to the plaintiff if the injunction is not granted outweighs the harm to the defendant if the injunction is granted; and,

4. The injunction will not harm the public interest.

Fogle v. H & G Restaurant, 337 Md. 441, 455-56 (1995). “The burden of proving the facts necessary to satisfy these factors rests on the party seeking the interlocutory injunction,” and “the party seeking the injunction must prove the existence of *all four* of the factors . . . in order to be entitled to preliminary relief.” *Id.* at 456 (“The failure to prove the existence of even one of the four factors will preclude the grant of preliminary relief.”). Moreover, in regard to the “likelihood of success factor,” a party seeking the interlocutory injunction “must establish that it has a real probability of prevailing on the merits, not merely a remote possibility of doing so.” *Id.*; 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.”). Finally, “in litigation between governmental and private parties, or in cases in which injunctive relief directly impacts governmental interests, ‘the court is not bound by the strict requirements of traditional equity as developed in private litigation.’” *Schade v. Maryland State Bd. of Elections*, 401 Md. 1, 37 (2007) (quoting *Fogle*, 337 Md. at 456). In such cases, courts “may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved.” *Fogle*, 337 Md. at 456.

II. MR. OAKS'S REMOVAL FROM THE VOTER REGISTRY DOES NOT ALTER HIS LIKELIHOOD OF SUCCESS ON THE MERITS.

In denying Plaintiffs' request for preliminary injunction, the Court recognized that it was constrained by the law from granting that relief. Mr. Oaks's subsequent cancellation of his voter registration does nothing to alter this conclusion.

A. Mr. Oaks's Putative Disqualification Does Not Change the Statutory Analysis.

First, as a purely statutory matter, Mr. Oaks's disqualification became known to the State Board well after the date, inscribed in the Election Law article, by which such information would have allowed the State Board to remove Mr. Oaks's name from the primary ballot.

Section 5-504(b) of the Election Law Article provides, in relevant part, that "name of any individual who files a certificate of candidacy . . . *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." Elec. Law § 5-504(b) (emphasis added). Section 5-601 emphasizes that a candidate's name "*shall remain on the ballot* and be submitted to the voters at a primary election" so long as the candidate "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). Taken together, these provisions admit of only one outcome under the new circumstances of this case: because Mr. Oaks's disqualification was not "known to the

applicable board” by “the 10th day after the [candidacy] filing deadline,” his name “shall appear” (under § 5-504(b)) or “shall remain” (under § 5-601) on the primary election ballot.

Plaintiffs’ theory that the legislature intended the word “shall” in these provisions to be directory rather than mandatory is as meritless today as it was last week.² The determination as to whether a statute is “directory” or “mandatory” is ultimately a question of legislative intent, *see State v. Rice*, 447 Md. 594, 625 (2016) (holding that the inquiry “turns upon the intention of the Legislature as gathered from the nature of the subject matter and the purposes to be accomplished”), and the statutes at issue here could not be more clear. They expressly contemplate circumstances where, as here, a disqualification becomes known to the State Board *after* the 10-day period following the candidacy filing deadline, and provide that in such circumstances the candidate’s name “shall remain” on the ballot. Moreover, the record is replete with justification for the “mandatory” nature of this rule. As Natasha Walker, the State Board’s Project Manager of Election Management Systems testified, the State Board does not start the ballot preparation process until the withdrawal and death/disqualification deadlines pass, and any extension or relaxation of the mandatory nature of those deadlines would push the ballot-preparation start date. *See Walker Aff.* ¶ 5; Apr. 20, 2018 Hr’g Tr. 14:1-15:1. As Defendant noted in her opposition to the Motion for Preliminary Injunction, the circumstances here do not resemble the cases

² “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).

in which the Court of Appeals has found the term “shall” to be directory, *see* Def.’s Prelim. Inj. Opp. 9-12, and Plaintiffs’ “offensive” use of this interpretive doctrine has no precedent in the case law, *see id.* at 12. The statutes are mandatory.

In addition, Mr. Oaks’s putative disqualification has no bearing on the relevant statutes’ legislative history, which still confirms their “mandatory” character. Between 1967 and 1998, the election laws expressly stated that the deadlines for candidacy filing and withdrawal (which included deadlines for when a death or disqualification could result in the removal of a name from a ballot) were “mandatory.” *See, e.g.*, Md. Code. Ann. art. 33, § 9-1 (1996); *see* Def.’s Prelim. Inj. Opp. 12-14. In 1998, the election laws were reorganized following the recommendations of the Report of the Commission to Revise the Election Code (the “Garber Commission Report”). Although the Garber Commission Report’s proposal removed the references to these provisions being “mandatory,” it did not consider this a “substantive change” because no reference was made to this removal in either of the Report’s outlining of the substantive changes that the Garber Commission was recommending. *See* Garber Comm’n Rep. 51-62 (App’x C) (identifying proposed substantive changes); *id.* at 4, 63-64 (App’x D) (identifying proposed changes “deemed to be potentially controversial”). Therefore, the relevant provisions remain “mandatory,” as they have been consistently treated by Maryland courts since approximately the mid-1960s.

Nor does Mr. Oaks’s attempt at self-disqualification somehow bring the doctrine of constitutional avoidance into play. As noted in Defendant’s Preliminary Injunction Opposition, this doctrine is used by courts to “avoid” reaching constitutional issues where a “plausible” alternative interpretation of the statute – that did not require wading into the

constitutional thicket – is available. *See* Def.’s Prelim. Inj. Opp. 15-16; *Koshko v. Haining*, 398 Md. 425 (2007). But here, too, the analysis is driven by legislative intent, “resting on the reasonable presumption that [the legislature] did not intend the alternative which raises serious constitutional doubts.” *Id.* at 425 n.10 (quoting *Clark v. Martinez*, 543 U.S. 371, 381-82 (2005)). Here, as noted, the text of the statutes is so clear, that there can be no alternative “plausible” or “reasonable” interpretations that would allow the Court to avoid reaching any constitutional questions. *See Maryland State Bd. of Elections v. Libertarian Party of Md.*, 426 Md. 488, 519 n.12 (2012) (declining to apply the doctrine because “[t]he statutory provisions before us in the instant case are not susceptible to more than one reasonable interpretation; rather, the relevant provisions are governed by their plain and unambiguous meanings”).

Strict disqualification deadlines such as those at issue here are not unique to Maryland. In *Templeton v. McEntyre*, No. 09-02-423CV, 2002 WL 31268496 (Tex. App. Oct. 9, 2002), a Texas intermediate appellate court was called on to apply a Texas statute providing that “[i]f a candidate dies or is declared ineligible after the 65th day before election day, the candidate’s name shall be placed on the ballot.” *Id.* at *2 (quoting Tex. Elec. Code Ann. § 145.039 (West 2002)).³ Because the candidate’s disqualification was determined less than 65 days prior to the election, the appeals court dissolved a temporary

³ The current version of this provision extends the period in which a candidate’s death or disqualification would not have the effect of removing the candidate’s name from the ballot back to 74 days prior to the election. *See* Tex. Elec. Code Ann. § 145.039 (West 2018).

injunction requiring that the candidate's name be removed, on the ground that "[t]he statutory scheme requires [the candidate's] name to remain on the ballot." *Templeton*, 2002 WL 31268496, at *3. The same outcome should obtain here.

Finally, Plaintiffs' theory that a candidate can engineer his or her own withdrawal—at any point during the primary election—by simply cancelling his or her voter registration would read the withdrawal deadline of § 5-502 completely out of the statute. Section 5-502 provides that 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). 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.” *Id.* § 5-601(1)(i). “The process of statutory interpretation begins with the plain language of the statute, where [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)). Plaintiffs' theory 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 result should be rejected by the 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”).

B. Mr. Oaks’s Putative Disqualification Does Not Change the Constitutional Analysis.

Mr. Oaks’s cancellation of his voter registration does not meaningfully impact Plaintiffs’ constitutional voting rights.

Under the voting rights tests articulated in *Anderson v. Celebrezze*, 460 U.S. 780 (1983), and *Burdick v. Takushi*, 504 U.S. 428 (1992), “[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). When “severe” restrictions are imposed, “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).

Here, the relevant restrictions on Plaintiffs are that, due to the death/disqualification deadlines in §§ 5-504(b) and 5-601, Plaintiffs may be required to vote ballots that contain the names of candidates who become deceased or disqualified after the expiration of those deadlines. But it is difficult to conceptualize how this fact—which is borne of the necessity of establishing deadlines so that the ballot-preparation process can begin—impacts

Plaintiffs’ voting rights. 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 v. Federal Election Comm’n*, 230 F.3d 381, 390 (1st Cir. 2000)). By contrast, the fact that Mr. Oaks’s presence on the ballot “simply [makes] it less likely that the plaintiff’s preferred candidate would ultimately be elected . . . does not amount to a judicially cognizable injury.” *Hollander*, 566 F. Supp. 2d at 70.⁴

Plaintiffs’ theory that voters in the 41st legislative district will be “constructively disenfranchised” because of Mr. Oaks’s presence on the ballot also ignores the numerous other circumstances in which voters’ attempt to cast meaningful votes for their preferred candidates have been thwarted. Sixty-three candidates in Maryland have *declined their respective nominations after winning primary elections* since the late 1990s. Apr. 20, 2018 Hr’g Tr. 19:4-20 (testimony of N. Walker). These declinations rendered the votes for these candidates just as meaningless as any vote for Mr. Oaks, who will presumably become the 64th candidate to decline the nomination during this time frame should he win his primary. This relatively mundane occurrence underscores that the voting right at issue here—the

⁴ See also *Gottlieb v. Federal Election Comm’n*, 143 F.3d 618, 622 (D.C. Cir. 1998) (inclusion of a rival on the ballot does “not impede the voters from supporting the candidate of their choice” and thus does not cause the legally cognizable harm necessary for standing); *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.”).

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—is not one that the Courts have generally recognized.

Because the provisions at issue impose only “reasonable, nondiscriminatory restrictions” upon the Plaintiffs’ voting rights, “the State’s important regulatory interests are generally sufficient” for the early candidate withdrawal deadline at issue here to survive constitutional scrutiny. The record here amply establishes the presence of such important regulatory interests.⁵ As Ms. Walker made clear in her testimony, the statutory deadlines are critical to the efficient and orderly preparation of ballots. Walker Aff. ¶¶ 3-14. In fact, the ballot-creation process cannot even *begin* until deadlines for withdrawal and death/disqualification pass. Apr. 20, 2018 Hr’g Tr. 14:1-15:1; Walker Aff. ¶ 5. This year, following the candidacy filing deadline of February 27, 2018, twenty-three candidates have timely withdrawn their candidacies, an additional eight candidates were timely determined to be deceased or disqualified, and an additional ten candidates sought unsuccessfully to have their names removed after the passing of the withdrawal deadline. Apr. 20, 2018 Hr’g Tr. 12:19-13:19; Walker Aff. ¶¶ 3-4. Ballot-creation began on March 12, 2018—the next business day following the March 9 death/disqualification deadline. Walker Aff. ¶ 5. Were

⁵ See *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.”); *De La Fuente v. Kemp*, No. 1:16-CV-2937-MHC, 2016 WL 9023598, at *6 (N.D. Ga. Aug. 30, 2016) (noting the state’s regulatory interest was “the need for election ballots to be timely and accurately prepared”), *aff’d in part, dismissed in part*, 679 F. App’x 932 (11th Cir. 2017).

the candidacy withdrawal and death/disqualification deadlines to extend materially into the current ballot-creation timeframe, the risk of confusion and error—and, ultimately, non-compliance with statutory ballot delivery deadlines—would be substantial. *See generally id.* ¶¶ 7, 9-12; Apr. 20, 2018 Hr’g Tr. 14:1-12. 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.

C. Plaintiffs’ Claims Are Barred by Laches.

Plaintiffs’ claims are not likely to succeed on the merits for an additional reason, in that they are barred by laches.

The doctrine of laches “applies when there is an unreasonable delay in the assertion of one’s rights and that delay results in prejudice to the opposing party.” *Liddy v. Lamone*, 398 Md. 233, 244 (2007) (citation and quotation marks omitted). Laches is often invoked in the election context, because “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)). Laches can bar an election claim even when the “delay in seeking judicial relief [is] measured in days,” *Baker v. O’Malley*, 217 Md. App. 288, 296 (2014) (citations omitted), and even where the action would be timely under Election Law § 12-202(b); *see Schlakman*, 451 Md. at 482 (stating that where the relief sought is equitable, “laches, rather than direct application of the statutory time period, [is] the proper focus” (quoting *Fraternal Order of Police v. Montgomery County*, 446 Md.

490, 509 (2016)) (alterations in *Schlakman*). Both prongs of the laches doctrine are met here—unreasonable delay and prejudice to the defendant.

First, although Plaintiffs filed their action within ten days of Mr. Oaks’s federal guilty plea, they waited another week before seeking preliminary injunctive relief. They did so despite counsel to the State Board’s warning that “putting this off until next week adds unnecessary delay in a process that is already extremely tight.” Ex. A at 1. Moreover, even though they knew that Mr. Oaks was still an eligible candidate, and would become ineligible only if he cancelled his voter registration, Plaintiffs waited until *after* the Court denied their motion for preliminary injunction (and the day before printing of the ballots was scheduled to begin) to request that Mr. Oaks cancel his voter registration. *See* Ex. B. Certainly, nothing prevented Plaintiffs from contacting Mr. Oaks during the ten-day period between entry of his guilty plea and the filing of their complaint to request that he cancel his voter registration. Plaintiffs’ delay in seeking injunctive relief and in asking Mr. Oaks to withdraw his voter registration was unreasonable because the statutory deadline for removing a candidate had long passed, the State Board had already certified the ballot and posted it for public viewing, and Plaintiffs were well-aware of the need for expeditious prosecution of their claims in light of the imminent ballot printing and delivery deadlines.

Second, the Plaintiffs’ delay has prejudiced the State and local boards of elections, which are already well into the process of preparing for the June 2018 primary election. By the time the Plaintiffs filed their action, the State Board had already certified the ballots and posted them for public viewing. *See* Walker Aff. ¶ 7. Five days before the Plaintiffs moved for preliminary injunctive relief, the State Board began the process of creating the

PDF files of the 747 primary election ballots for each of the different ballot formats that will be used in the primary election. *Id.* ¶ 9. On the day that Plaintiffs filed their motion for injunctive relief, the State Board was only one week away from sending the ballots to the printer. *Id.* ¶ 11. Two days after Plaintiffs filed their motion for injunctive relief, the State Board imported final ballot-style data into the MDVOTERS database. *Id.* ¶ 12. Any changes to the ballots would require reimporting of the ballot styles and re-verifying of all ballot styles to precinct associations. *Id.* On the day that Mr. Oaks finally cancelled his voter registration, the printing of ballots had begun. Suppl. Walker Aff. ¶ 3. Today, 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. *Id.* ¶ 4. Redoing this step would impose a five-day delay, the ripple effects of which would create a serious risk of non-compliance with the May 12 absentee ballot delivery deadline. *See* Walker Aff. ¶ 12; Apr. 20, 2018 Hr’g Tr. 22:1-16 (Testimony of N. Walker) (“[W]e don’t have the time” for a one-week delay, as of April 20, 2018); *see also infra* at 19-20. Several other ballot- and election-preparation steps are now complete, *see* Suppl. Walker Aff. ¶ 6, such that Ms. Walker is “extremely concerned” about the State Board’s ability to prepare the ballots on time in the event a change is ordered at this juncture, *id.* ¶ 7. Finally, requiring a correction after ballots have been printed could result in the re-printing of the entire jurisdiction’s ballots, necessitating the ordering of additional, specialized ballot paper for which there is not sufficient time. *See id.* ¶¶ 8-10 (requiring reprinting of Baltimore City ballots could require four-week lead time for ordering of more blank ballot paper).

The Plaintiffs' delay also prejudiced the State Administrator's ability to defend a lawsuit on the merits while conducting an election, and the court's ability to conduct hearings, decide the case, and fashion a remedy that the State and local election boards could implement before the primary election. Had Plaintiffs moved expeditiously, Mr. Oaks's voter registration cancellation would have been a *fait accompli* when the Court rendered its decision on April 20, which was still several days *before* printing began. The Plaintiffs' new claim is barred by laches.

III. THE OTHER PRELIMINARY INJUNCTION FACTORS FAVOR DENIAL OF THE REQUESTED RELIEF.

Plaintiffs' failure to establish a likelihood of success on the merits means that the Court need not consider the issues of irreparable harm, the balance of hardships, or the public interest. *See M. Leo Storch Ltd. P'ship v. Erol's, Inc.*, 95 Md. App. 253, 258 (1993) (declining to reach remaining issues where plaintiffs failed to establish likelihood of success). But, should the Court need to consider these factors in adjudicating this Motion, the factors weigh even more heavily against the entry of a preliminary injunction now.

With regard to irreparable injury, it remains the case that Plaintiffs' alleged injury is entirely speculative. *See generally* Def.'s Prelim. Inj. Opp. 20-21. Not only have Plaintiffs conceded that it will be "impossible to . . . determine" if Mr. Oaks's presence on the ballot actually inflicts injury on them or their preferred candidate, Pls.' Prelim. Inj. Mem. 11, the very fact that Mr. Oaks will be disqualified on the date of the primary is, itself, a "legally speculative" conclusion. Mr. Oaks is free to re-register to vote up to and including June 5, 2018, *see* Elec. Law § 3-302, and may re-register in person at an

appropriate early voting site thereafter, *see* Elec. Law § 3-305. In conjunction with the fact that Plaintiffs are not otherwise impeded from voting or associating with the candidate of their choice, the alleged harm—if it is even cognizable—is speculative, not irreparable. *See Direx Israel, Ltd. v. Breakthrough Med. Corp.*, 952 F.2d 802, 812 (4th Cir. 1991) (cited in *Schade*, 401 Md. at 39) (“irreparable harm must be neither remote nor speculative, but actual and imminent”).

The balance of convenience weighs even more heavily in favor of the Defendant, given that the calendar has moved that much closer to the primary election from the date of the Hearing. As of this past Monday, April 23, 2018, the printing of ballots has already begun. Suppl. Walker Aff. ¶ 3. 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. *Id.* ¶ 4. According to Ms. Walker, “once we do that, it cannot be undone.” Apr. 20, 2018 Hr’g Tr. 22:9-10. That is because the ballot delivery system (for web-delivered absentee ballots) requires absentee voters to be assigned, requires two weeks to be tested, and must have testing completed by the May 12 deadline to deliver absentee ballots to military and overseas voters. *See* Walker Aff. ¶ 13; Apr. 20, 2018 Hr’g Tr. 22:1-22:16. While the evidence suggests that reassigning affected absentee voters in the MDVOTERS database following a change to the ballots would take approximately five days to accomplish, *see* Walker Aff. ¶ 12, the arithmetic suggests that this is no longer feasible: five days to reassign absentee voters, plus two weeks to test the web delivery system, using the date of this filing as a starting point, takes the calendar beyond the May 12 deadline to May 14, 2018. When asked on April 20, 2018, whether a

one-week delay to accommodate appellate review of the Court's April 20 order would be possible, Ms. Walker explained, "[I]t is a matter of everything has to be pushed back and we don't have the time." Apr. 20, 2018 Hr'g Tr. 22:14-16. In short, the Defendant and the State and local boards would be prejudiced by the entry of preliminary injunctive relief.

Finally, the public interest also weighs more heavily in favor of denial of the requested relief. Plaintiffs' Motion is premised on the theory that, notwithstanding the withdrawal and death/disqualification deadlines explicitly set out in the Election Law article, candidates can engineer their own removal from the ballot *at any time during the primary election* by simply canceling their voter registration. Setting aside the statutory analysis articulated above, *see supra* § II.A, this end-run around the code's clear statutory deadlines would create havoc in the ballot-preparation process, with cascading effects on other preparation processes.⁶ For example, if the ten candidates who had inquired about withdrawing their candidacies after the withdrawal deadline were now permitted to effectuate the removal of their names from the ballot by simply cancelling their respective voter registrations, ballot preparation would grind to a halt. And it goes without saying that there is significant public interest in the State Board meeting statutory deadlines to provide absentee ballots to Maryland voters serving in the military or living abroad, which a ballot-change at this late juncture would jeopardize.

⁶ As Ms. Walker testified at the Hearing, the work of others in the Election Administrators' office is impacted by her work preparing ballots, such that it is difficult to capture with certainty the ripple effects on the schedule that a delay in ballot-preparation could have. *See* Apr. 20, 2018 Hr'g Tr. 22:1-16.

Moreover, the availability of withdrawal for the duration of the primary election increases the opportunity for political pressure to play a role in persuading candidates to withdraw, thereby reducing the choices available to voters. The public unquestionably has an interest in the orderly and even-handed administration of the election, and Plaintiffs' proposed rule, which effectively reads the withdrawal deadline out of the Election Law Article, would be inimical to that interest. The enforcement of clear deadlines, without exception, reduces the possibility that candidates will be treated inequitably. The State Board should not be called on to relax the rules for one candidate.

For these reasons, and the reasons set forth in Defendant's Preliminary Injunction Opposition (at 22-23) the public interest supports denial of the preliminary injunction.

IV. IF THE COURT ORDERS RELIEF, IT SHOULD NOT ORDER REMOVAL BUT INSTEAD REQUIRE NOTICE TO BE POSTED AT AFFECTED POLLING SITES.

For the reasons expressed above and in the Defendant's Preliminary Injunction Opposition, the Election Law Article controls the issues presented in this case, and therefore the Court should decline to award any relief. But if the Court does order relief, it should at the most direct Defendant to provide notice regarding Mr. Oaks's disqualification at affected polling sites, rather than require affected ballots to be revised at the eleventh-hour.

As noted above and in Ms. Walker's testimony, the ballots have begun to be printed and absentee ballots have been assigned, as part of a sequence of steps that must take place in advance of the delivery of absentee ballots on May 12, 2018. *See* Walker Aff. ¶¶ 11-14; Suppl. Walker Aff. ¶¶ 3-4. It would be disruptive, costly, and time-consuming to require

the State Board at this juncture to remove Mr. Oaks's name from the affected ballots, and to go through all the steps needed to recreate, proof, export, and print those ballots. Walker Aff. ¶ 11.

In *Abrams v. Lamone*, 394 Md. 304 (2006), the Court of Appeals reconsidered an earlier order requiring the State Board to remove a disqualified candidate from the ballot prior to the 2006 primary election, and instead ordered the State Board to do the following:

- (1) Post notices conspicuously in each polling location informing voters that Thomas Perez is not a candidate for the Office of the Attorney General and that any votes cast for Mr. Perez will not be counted; and
- (2) provide the same standard of notice to voters who will be using paper ballots for absentee and provisional voting.

Id. at 305. If this Court is inclined to grant relief here, it should follow the example of the Court of Appeals in *Abrams*. This would avoid the risks inherent with the eleventh-hour revisions to the ballot that would be necessary, while at the same time providing sufficient notice to affected voters regarding the eligibility of Mr. Oaks.

Even so, there is an important distinction between *Abrams* and this case: In *Abrams*, the candidate could not have cured the disqualification before the primary, while a candidate who has disqualified himself or herself through voluntary self-disenfranchisement may re-register during early voting. Thus, relief in this case could open the door to the future evasion of the candidacy withdrawal deadline whenever a candidate chooses to disqualify himself.

REQUEST FOR HEARING

The defendants request a hearing on Plaintiffs' Motion for Reconsideration, which renews their request for preliminary injunction, and is based on new allegations in their second amended complaint, filed after the April 20, 2018 preliminary injunction hearing and this Court's denial of preliminary injunctive relief.

CONCLUSION

Plaintiffs' motion for reconsideration and second request for preliminary injunction should be denied.

Respectfully submitted,

/s/ Andrea W. Trento

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April 25, 2018

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that on this 25th day of April 2018 a copy of the foregoing was filed and served electronically on the MDEC system and sent by electronic mail to:

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Attorneys for Plaintiffs

/s/ Andrea W. Trento

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April 22, 2018

VIA EMAIL

Lucius T. Outlaw, III
Senior Litigation Counsel
Office of the Federal Public Defender
District of Maryland
Tower II, 9th Floor
100 South Charles Street
Baltimore, Maryland 21201-2705

Re: *United States v. Oaks*,
Crim. No. 17-00288-RDB
United States District Court for the District of Maryland

Nancy Lewin, et al. v. Linda H. Lamone, etc.
Case No. C-02-CV-18-001013
Circuit Court for Anne Arundel County, Maryland

Dear Mr. Outlaw:

I am writing regarding your April 11, 2018, letter to Judge Bennett.

I represent three voters in Maryland Legislative District 41 who have filed an action in the Circuit Court for Anne Arundel County to require that the Maryland State Board of Elections remove the name of Nathaniel T. Oaks from the ballot for the Democratic Party Primary Election that is scheduled to be held on June 26, 2018. On Friday, April 20, 2018, the Circuit Court for Anne Arundel County denied my clients' motion for a preliminary injunction. Judge Glenn L. Klavans indicated during his oral decision from the bench that he agreed with my clients' position that the early freezing of the election ballot and the State Board's refusal to remove the name of a disqualified candidate from the ballot potentially was a constitutional violation. When weighing the balance of convenience between the parties, Judge Klavans also stated that the potential risk of voter disenfranchisement caused by having Mr. Oaks' name on the ballot far outweighed the administrative burden of changing the ballot. However, given that Mr. Oaks is not *currently* disqualified, Judge Klavans held that he was constrained from granting the relief my clients sought.

Article 1, Section 12 of the Maryland Constitution provides that a person is ineligible to enter upon the duties of or continue to serve in an elective office if a person ceases to be a registered voter. The State Board of Elections takes the position that Mr. Oaks remains a qualified registered voter notwithstanding his guilty plea on March 29, 2018, and the near certainty that he will be incarcerated at the time of the 2018 General Election because he currently is not incarcerated. *See*

Author: *The Law of Advertising*
LexisNexis®

Maryland Code, Election Law, §3-102(b)(1). However, should Mr. Oaks request that his voter registration be cancelled, he immediately would become disqualified. See Maryland Code, Election Law §3-501(1).

On Friday evening, I emailed you and informed you that my clients would be contacting Mr. Oaks to ask that he request that his name be removed from the voter registration list immediately. My clients have been unable to contact Mr. Oaks directly and I have not had a response from you to my email. **Thus, I now am writing to you to formally request that Mr. Oaks take immediate steps to remove his name from the voter registration list.**

On April 11, 2018, you stated in your letter to Judge Bennett:

Mr. Oaks and defense counsel are still pursuing recourse outside of the Board of Elections to remove Mr. Oaks' name from the ballot, including supporting an emergency petition filed in the Circuit Court for Anne Arundel County that seeks to have Mr. Oaks' name removed from the primary ballot. See Ex. 1. The complaint in that action includes an affidavit from Mr. Oaks consenting to have his name removed from the ballot. *Id.* at Exhibit 1 to the Complaint.¹

While the action in Anne Arundel proceeds, and while **Mr. Oaks continues to explore and support other means of removing his name from the primary ballot**, Mr. Oaks, in the meantime has authorized me to convey to the Court that:

- (1) he has suspended any campaign efforts for the primary and general elections;
- (2) if he wins the primary election, he will immediately decline/resign the nomination; and
- (3) he is taking steps to communicate (1) and (2) above to the voters of District 41.

(Emphasis added.)

My clients intend to continue their efforts to remove Mr. Oaks' name from the ballot. Mr. Oaks' requesting that his name be removed from the voter registration list would aid significantly my clients' efforts to have his name removed from the ballot. Should Mr. Oaks refuse to do so, it

¹ See *Harpool v. Baltimore City Elections Board, Circuit Court for Anne Arundel County*. Counsel in the *Harpool* action has moved to consolidate the case with *Lewin v. Lamone*. However, the motion has not been granted yet.

would belie the representation emphasized above that you made in your April 11 letter to Judge Bennett.

I look forward to the courtesy of a prompt response to my letter no later than tomorrow morning (*i.e.*, Monday, April 23). Should Mr. Oaks agree to request that his name be removed from the voter registration list, my clients will move for reconsideration of Judge Klavans' denial of their motion for a preliminary injunction. Should Mr. Oaks refuse, my clients will notice an appeal to the Court of Appeals of Maryland and ask for relief upon the record as it currently exists. The State Board of Elections has indicated at the preliminary injunction hearing on Friday that it intends to begin the process of printing ballots tomorrow, Monday, April 23, 2018. Thus, time is of the essence.

Sincerely,



H. Mark Stichel

cc: The Honorable Richard D. Bennett
and all counsel in *United States v. Oaks* (via ECF)

Andrea Trento, Esquire (via email)

NANCY LEWIN, *et al.*,

Plaintiffs,

v.

LINDA H. LAMONE,

Defendant.

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* No. C-02-CV-18-001013

* * * * *

**DEFENDANT’S ANSWER TO SECOND AMENDED VERIFIED COMPLAINT
FOR MANDAMUS, DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF
AND DEFENDANT’S AFFIRMATIVE DEFENSES**

Defendant Linda H. Lamone, State Administrator of Elections, having been sued in her official capacity, through undersigned counsel, files this Answer to the Second Amended Verified Complaint for Mandamus, Declaratory Judgment, and Injunctive Relief (the “Second Amended Complaint”).¹

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. [No paragraph with this number was included in the Second Amended Complaint.]
6. Admitted.

¹ Except as stated herein, capitalized terms shall have the meanings assigned to them in the Second Amended Complaint.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. The first sentence of paragraph 12 references certain federal statutes and purports to characterize their provisions. Defendant denies Plaintiffs' characterization of those statutes and defers to the text of the statutes for their content. To the extent a further response is required, Defendant denies the allegations in the first sentence of paragraph 12. The second sentence of paragraph 12 refers to Nathaniel T. Oaks' plea agreement in the Federal Criminal Case as well as to the Federal Sentencing Guidelines. Defendant denies Plaintiffs' characterization of those documents and defers to the text of those documents for their content. To the extent a further response is required, Defendant denies the allegations in the second sentence of paragraph 12.

13. Admitted.

14. Admitted.

15. Defendant admits that on April 23, 2018, the Baltimore City Board of Elections removed Mr. Oaks's name from the statewide voter registration list, and that Mr. Oaks is not currently a registered voter in Maryland. Defendant denies the remaining allegations of paragraph 15.

16. The allegations of paragraph 16 refer to a news report in *The Baltimore Sun* on March 30, 2018. Defendant denies Plaintiffs' characterization of that news report and defers to the text of the news report for its content. To the extent a further response is required, Defendant denies the allegations of paragraph 16.

17. The allegations of paragraph 17 purport to quote from the Maryland Constitution, the content of which speaks for itself. To the extent a further response is required, Defendant denies the allegations of paragraph 17.

18. The allegations of paragraph 18 purport to quote from a Maryland statute, the content of which speaks for itself. To the extent a further response is required, Defendant denies the allegations of paragraph 18.

19. Defendant denies the allegations of paragraph 19.

20. The allegations of paragraph 20 refer to the by-laws of the Maryland Democratic Party. Defendant denies Plaintiffs' characterization of these by-laws and defers to the text of the document for its content. To the extent a further response is required, Defendant denies the allegations of paragraph 20.

21. Defendant admits that Mr. Oaks is currently disqualified from being a candidate for the offices for which his name currently is listed on the ballot by virtue of his no longer being a registered voter in the State of Maryland. Defendant denies the remaining allegations of paragraph 21.

22. The allegations of paragraph 22 refer to two Maryland statutes. Defendant denies Plaintiffs' characterization of these statutes and defers to the text of the statutes for their content. To the extent a further response is required, Defendant denies the allegations of paragraph 22.

23. Admitted, except that Defendant is without sufficient information to admit or deny whether the Harpool Action was filed "nearly simultaneously" with the filing of the original Complaint in the present case, and therefore denies that allegation.

24. Defendant admits the allegations in the first two sentences of paragraph 24. The remaining allegations of paragraph 24 purport to quote from the Oaks Affidavit, the content of which speaks for itself. To the extent a further response is required, Defendant denies the allegations of paragraph 24 not otherwise admitted herein.

25. Defendant is without sufficient information to admit or deny the allegations of paragraph 25 and therefore denies those allegations.

26. Defendant admits the allegations in the first two sentences of paragraph 26. The remaining sentences of paragraph 26 purport to quote from the letter attached as Exhibit C to the Second Amended Complaint, the content of which speaks for itself. To the extent a further response is required, Defendant denies the allegations of paragraph 26 not otherwise admitted herein.

27. Defendant admits that Assistant Attorney General Andrea Trento received the letter attached as Exhibit D to the Second Amended Complaint. The remaining

allegations purport to characterize the content of that letter. Defendant denies Plaintiffs' characterization of the letter and defers to the text of the document for its content. To the extent a further response is required, Defendant denies the allegations of paragraph 27 not otherwise admitted herein.

28. Defendant admits the allegations in the first sentence of paragraph 28. Defendant further admits that Assistant Attorney General Andrea Trento, in response to a request by a member of the State Board, advised the State Board that it did not have legal authority to remove Mr. Oaks's name from the primary ballot at that time. Defendant further admits that State Administrator Linda H. Lamone expressed concern during the meeting about the need for deadlines and about the impact of removing Mr. Oaks's name from the primary ballot. Defendant denies the remaining allegations of paragraph 28.

29. Defendant admits the allegations in the first sentence of paragraph 29. The remaining allegations of paragraph 29 reference an e-mail exchange between H. Mark Stichel and Assistant Attorney General Andrea Trento, which is attached to the Second Amended Complaint as Exhibit E. Defendant denies Plaintiffs' characterization of this letter and defers to the text of the letter for its content. To the extent a further response is required, Defendant denies the allegations of paragraph 29 not otherwise admitted herein.

30. Defendant admits the allegations in the first sentence of paragraph 30. Defendant further admits that both Jill P. Carter and J.D. Merrill have provided affidavits that have been filed in this case. Defendant denies Plaintiffs' characterization of those

affidavits and defers to the text of the affidavits for their content. To the extent a further response is required, Defendant denies the allegations of paragraph 30 not otherwise admitted herein.

Count One

31. Defendant incorporates the responses to Paragraphs 1-30 above as if fully set forth herein.

32. Paragraph 32 states Plaintiffs' legal arguments and legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 32.

33. Paragraph 33 states Plaintiffs' legal arguments and legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 33.

34. Paragraph 34 states Plaintiffs' legal arguments and legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 34.

35. Paragraph 35 states Plaintiffs' legal arguments, legal conclusions and requests for relief, to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 35.

Count Two

36. Defendant incorporates the responses to Paragraphs 1-35 above as if fully set forth herein.

37. Paragraph 37 states Plaintiffs' legal arguments and legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 37.

38. Paragraph 38 states Plaintiffs' legal arguments, legal conclusions and requests for relief, to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 38.

Count Three

39. Defendant incorporates the responses to Paragraphs 1-38 above as if fully set forth herein.

40. Paragraph 40 states Plaintiffs' legal arguments and legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 40.

41. Admitted.

42. Paragraph 42 states Plaintiffs' legal arguments and legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 42.

43. Paragraph 43 states Plaintiffs' legal arguments and legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 43.

44. Paragraph 44 states Plaintiffs' legal arguments and legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 44.

45. Paragraph 45 states Plaintiffs' legal arguments, legal conclusions and requests for relief, to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 45.

Count Four

46. Defendant incorporates the responses to Paragraphs 1-45 above as if fully set forth herein.

47. Defendant admits that the State Board intends to distribute ballots to certain voters in the June 26, 2018, Democratic Primary Election that include Mr. Oaks's name as a candidate for the offices for which he has filed certificates of candidacy. Defendant denies the remaining allegations of paragraph 47.

48. Paragraph 48 states Plaintiffs' legal arguments and legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 48.

49. Paragraph 49 states Plaintiffs' legal arguments and legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 49.

50. Paragraph 50 states Plaintiffs' legal arguments and legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 50.

51. Paragraph 51 states Plaintiffs' legal arguments, legal conclusions and requests for relief, to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 51.

Count Five

52. Defendant incorporates the responses to Paragraphs 1-51 above as if fully set forth herein.

53. Paragraph 53 states Plaintiffs' legal arguments and legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 53.

54. Paragraph 54 states Plaintiffs' legal arguments and legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 54.

55. Paragraph 55 states Plaintiffs' legal arguments and legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 55.

56. Paragraph 56 states Plaintiffs' legal arguments, legal conclusions and requests for relief, to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 56.

Count Six

57. Defendant incorporates the responses to Paragraphs 1-56 above as if fully set forth herein.

58. Paragraph 58 states Plaintiffs' legal arguments, legal conclusions and requests for relief, to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 58.

Count Seven

59. Defendant incorporates the responses to Paragraphs 1-58 above as if fully set forth herein.

60. Paragraph 60 states Plaintiffs' legal arguments, legal conclusions and requests for relief, to which no response is required. To the extent a response is required, Defendant denies the allegations of paragraph 60.

61. Defendants deny every allegation in the complaint not specifically admitted.

62. Defendants deny that Plaintiffs are entitled to the relief requested.

FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

The plaintiffs' claims are untimely.

THIRD AFFIRMATIVE DEFENSE

The plaintiffs' claims are barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

The plaintiffs' claims are barred, in whole or in part, by estoppel.

The defendant respectfully requests that the Court deny the plaintiffs' relief requested in the complaint; enter judgment in favor of defendant and against the plaintiffs; and grant such further relief as this Court may deem just and appropriate.

Respectfully submitted,

/s/ Andrea W. Trento

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April 26, 2018

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that on this 26th day of April 2018, a copy of the foregoing was filed and served electronically on the MDEC system and sent by electronic mail to:

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Attorneys for Plaintiffs

/s/ Andrea W. Trento

Andrea W. Trento

CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MD

CASE SUMMARY
CASE NO. C-02-CV-18-001013

Nancy Lewin, et al. vs. Linda Lamone

§
§
§
§
§

Location: Anne Arundel Circuit Court
 Filed on: 04/09/2018

CASE INFORMATION

Related Cases

COA-PET-0097-2018 (Petition Filed)
 COA-REG-0085-2017 (Petition Granted)

Case Type: Election Law

DATE CASE ASSIGNMENT

Current Case Assignment

Case Number C-02-CV-18-001013
 Court Anne Arundel Circuit Court
 Date Assigned 04/09/2018

I, Robert P. Duckworth, Clerk of the Circuit Court for Anne Arundel County, hereby certify that this is a true copy from the record in this court. Witness the hand and act of the undersigned this 27th day of April 2018

Robert P. Duckworth
 Clerk of the Circuit Court for Anne Arundel County, Maryland

PARTY INFORMATION

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Mitchell, Elinor
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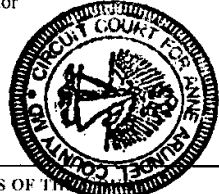
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Defendant

Lamone, Linda H
 In her Official capacity as State Administrator
 Maryland State Board of Elections
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










DATE EVENTS & ORDERS OF THE COURT INDEX

04/09/2018 Attorney Appearance - \$10 Fee
 Counsel: Attorney STICHEL, HENRY MARK
 For: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
















04/09/2018 Complaint / Petition
Verified Complaint for Mandamus, Declaratory Judgment and Injunctive Relief
 Filer: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
 Against: Defendant Lamone, Linda H

CASE SUMMARY
CASE NO. C-02-CV-18-001013

- 04/09/2018  Request to Issue
Request to Issue Summons
- 04/09/2018  Case Information Report Filed
Civil Case Information Report
Filed by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
- 04/16/2018 **Hearing - Temporary Order (8:30 AM) (Judicial Officer: McCormack, Stacy Wiederle)**
- 04/16/2018  Summons Issued (Service Event)
Requested by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
Service for: Defendant Lamone, Linda H
- 04/16/2018 **Summons Issued**
Lamone, Linda H
Unserved
- 04/16/2018  Motion
Motion For Temporary Restraining Order And/Or Preliminary Injunction
Filed by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
- 04/16/2018  Complaint - Amended
Amended Complaint
Filed by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
- 04/16/2018  Supporting Documents
Comparison Copy
Filer: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
- 04/16/2018  Supporting Exhibits
Exhibit A
- 04/16/2018  Supporting Exhibits
Exhibit B
- 04/16/2018  Supporting Exhibits
Exhibit C
- 04/16/2018  Supporting Exhibits
Exhibit D
- 04/16/2018  Supporting Exhibits
Exhibit E
- 04/16/2018  Supporting Exhibits
Exhibit F
- 04/16/2018  Hearing Sheet / Open Court Proceedings (Judicial Officer: McCormack, Stacy Wiederle)
- 04/16/2018  Supporting Documents
Memorandum in Support of Motion For Temporary Restraining Order And/Or Preliminary














CASE SUMMARY
CASE NO. C-02-CV-18-001013

Injunction

- 04/16/2018  Supporting Documents
Rule 15-504(b) Certificate
- 04/18/2018  Opposition / Response
Opposition to Motion for Temporary Restraining Order and/or Preliminary Injunction
Filed by:: Defendant Lamone, Linda H
- 04/18/2018  Order (Judicial Officer: McCormack, Stacy Wiederle)
Hearing Sheet signed as Order of Court. Copies to Atty Stichel and L. Lamone. Notification emailed to Atty Stichel
- 04/18/2018  Supporting Exhibits
Exhibit A
- 04/18/2018  Supporting Exhibits
Exhibit B - Affidavit of Natasha Walker
- 04/19/2018  Reply to Opposition
Reply Memorandum in Support of Motion for Preliminary Injunction
Filed by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
- 04/19/2018  Attorney Appearance - No Fee
Counsel: Attorney HARLAN, ELIZABETH ANN
For: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
- 04/19/2018  Supporting Exhibits
Mitchell Affidavit
- 04/19/2018  Supporting Exhibits
SB 204
- 04/19/2018  Supporting Exhibits
Chapter 332
- 04/20/2018  Affidavit
Affidavit of Nancy Lewin
- 04/20/2018  Affidavit
Affidavit of Jill P. Carter
- 04/20/2018  Affidavit
Affidavit of J.D. Merrill
- 04/20/2018 **Hearing (1:30 PM) (Judicial Officer: Klavans, Glenn L.)**
- 04/20/2018  Hearing Sheet / Open Court Proceedings (Judicial Officer: Klavans, Glenn L.)
Hearing Sheet signed as Order of Court
- 04/20/2018  Motion
Motion for Relief - filed and DENIED in ope Court
Filed by: Attorney STICHEL, HENRY MARK

CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MD












CASE SUMMARY
CASE NO. C-02-CV-18-001013

- 04/20/2018  Miscellaneous Document
Attorney Appearances Filed in Open Court (Appearances previously entered)
- 04/23/2018  Complaint - Amended
Second Amended Verified Complaint for Mandamus, Declaratory Judgment and Injunctive Relief
Filed by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
- 04/23/2018  Supporting Documents
Comparison Copy
Filer: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
- 04/23/2018  Motion - Reconsideration
Filed by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
- 04/23/2018  Supporting Documents
Memorandum in Support of Motion for Reconsideration
Filer: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
- 04/23/2018  Supporting Exhibits
Exhibit A to Memorandum in Support of Motion for Reconsideration
- 04/23/2018  Supporting Exhibits
Exhibit B to Memorandum in Support of Motion for Reconsideration
- 04/24/2018  Order (Judicial Officer: Klavans, Glenn L.)
Hearing sheet signed as order of court: Court denied plaintiffs complaint for Preliminary Injunction, relief pursuant to Md Rule 2-632 denied. (Copies to attys Stichel, Harlan, Trento and Bernhardt...Notification email to all attys)
- 04/24/2018  Summons Issued (Service Event)
Requested by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
Service for: Defendant Lamone, Linda H
- 04/24/2018 **Summons Issued**
Lamone, Linda H
Unservd
- 04/24/2018  Consent Motion
Consent Motion to Shorten Time
Filed by: Attorney STICHEL, HENRY MARK
- 04/25/2018  Transcript
Invoice and 1 transcript Hearing dated 4/20/18; Costs: \$296.06.
- 04/25/2018  Order (Judicial Officer: Vitale, Cathleen M.)
ORDERED that the time for Defendant's response to Plaintiff's Motion for Reconsideration is shorten to 6:00 pm on Wednesday April 25, 2018. Matter Scheduled for hearing 1:30 pm Thursday April 26, 2018. (copies mailed to Atty Stichel, Atty Bernhardt, Atty Trento and Atty Harlan-Notification by Email)
- 04/25/2018  Supporting Exhibits

CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MD

CASE SUMMARY

CASE NO. C-02-CV-18-001013

	<i>Exhibit A - Memorandum in Opposition to Motion for Reconsideration and Second Request for Preliminary Injunction</i>
04/25/2018	 Supporting Exhibits <i>Exhibit B - Memorandum in Opposition to Motion for Reconsideration and Second Request for Preliminary Injunction</i>
04/25/2018	 Supporting Exhibits <i>Exhibit C - Memorandum in Opposition to Motion for Reconsideration and Second Request for Preliminary Injunction</i>
04/25/2018	 Supporting Exhibits <i>Exhibit D - Memorandum in Opposition to Motion for Reconsideration and Second Request for Preliminary Injunction</i>
04/25/2018	 Opposition / Response <i>Memorandum in Opposition to Motion for Reconsideration and Second Request for Preliminary Injunction and Request for Hearing</i> Filed by:: Defendant Lamone, Linda H
04/26/2018	 Order (Judicial Officer: Klavans, Glenn L.) <i>ORDERED, the Motion for Preliminary Injunction is GRANTED. Linda H. Lamone, in her official capacity as State Administrator of the Maryland State Board of Elections shall immediately remove the name of Nathaniel T. Oaks from any and all ballots for elective office, in any form, to be distributed to voters in Legislative District 41, for the Democratic Party Primary Election to be held in June, 2018. This preliminary injunction shall apply to all persons under the direction of the State Administrator. No bond shall be required prior to or after the effectiveness of this Order. (Copies to atys Stichel Bernhardt, Trento and Harlan... Notification email to atys</i>
04/26/2018	CANCELED Hearing (1:30 PM) (Judicial Officer: Mulford, William C., II) <i>Event Terminated</i>
04/26/2018	 Answer <i>Answer to Second Amended Verified Complaint for Mandamus, Declaratory Judgment and Injunctive Relief and Affirmative Defenses</i> Filed by: Defendant Lamone, Linda H
04/26/2018	 Reply to Opposition <i>Reply in Support of Motion for Reconsideration</i> Filed by: Plaintiff Lewin, Nancy; Plaintiff Mitchell, Elinor; Plaintiff Ervin, Christopher
04/26/2018	 Notice of Appeal to COSA <i>Notice of Appeal to Court of Special Appeals</i> Filed by: Defendant Lamone, Linda H
04/26/2018	 Notice of Appeal to COSA <i>Notice of Appeal to Court of Appeals</i> Filed by: Defendant Lamone, Linda H
04/26/2018	 Acknowledgment of Petition for Writ of Certiorari
04/27/2018	 Order - Writ of Certiorari Granted <i>Order (Judge Barbera) - ORDERED, by the Court of Appeals of Maryland, that the consent motion to shorten time to respond to petitioner's motion for stay pending further review, be, and it is hereby, granted; and it is further ORDERED, that the Petition for Writ of Certiorari</i>

CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MD

CASE SUMMARY

CASE NO. C-02-CV-18-001013

be, and it is hereby, granted, and a writ of certiorari to the Court of Special Appeals shall issue; and it is further ORDERED, that the motion for immediate stay pending further review be, and it is hereby, granted, and the order of the Circuit Court for Anne Arundel County entered on April 26, 2018 in Lewin, et al v. Lamone, No. C-02-CV-18-001013, entering a preliminary injunction requiring the removal of Nathaniel T. Oaks from the primary ballot for the 2018 primary election, and all further proceedings in that case, are stayed, until further Order of this Court; and it is further ORDERED, that this case shall be set in for oral arguments before the Court on May 2, 2018.

04/27/2018	Original Record Sent <i>Sent to COA workflow queue</i>
04/27/2018	Additional Notes Exist <i>**** Acknowledgement of Petition of Writ of Certiorari sent to Judge Vitale task queue ****</i>
04/27/2018	Additional Notes Exist <i>**** Case Summary and Appeal Index mailed to Attorneys Stichel, Trento, Bernhardt, and Harlan ****</i>
04/27/2018	Additional Notes Exist <i>**** Notices of Appeal sent to Judge Vitale task queue ****</i>
04/27/2018	Additional Notes Exist <i>**** PHC form mailed to Attorney Trento ****</i>

DATE	FINANCIAL INFORMATION	
	Attorney STICHEL, HENRY MARK	
	Total Charges	0.00
	Total Payments and Credits	0.00
	Balance Due as of 4/27/2018	0.00
	Attorney TRENTO, ANDREA WILLIAM	
	Total Charges	61.00
	Total Payments and Credits	0.00
	Balance Due as of 4/27/2018	61.00
	Plaintiff Lewin, Nancy	
	Total Charges	165.00
	Total Payments and Credits	165.00
	Balance Due as of 4/27/2018	0.00