IN THE

Court of Appeals of Maryland

SEPTEMBER TERM 2012

No. 100

GREGORY HALL, *et al.*

Appellants

v.

PRINCE GEORGE'S COUNTY
DEMOCRATIC CENTRAL
COMMITTEE, *et al.*

Appellees

**ON WRIT OF CERTIORARI TO
THE COURT OF SPECIAL APPEALS**
On Appeal from the Circuit Court
For Prince George's County
THE HONORABLE C. PHILIP NICHOLS, JR.

BRIEF OF APPELLANT TIFFANY T. ALSTON

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Legislative History:

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STATEMENT OF THE CASE

To challenge her unconstitutional expulsion from the House of Delegates, Tiffany T. Alston intervened in an action originally filed by an individual seeking to replace her. In the Prince George's County case of *Gregory Hall v. Prince George's County Democratic Central Committee*, Case No. CAL12-36913, Delegate Alston filed a Complaint for Temporary, Preliminary, and Permanent Equitable Relief Including Declaratory Relief, Writ of Mandamus, and Writ of Prohibition, together with a motion for a temporary restraining order to preclude others from attempting to fill her seat. (E. 158-69)

After the Attorney General filed an answer on behalf of the Speaker of the House and the Governor, he moved for summary judgment, arguing that this seat was actually vacant and that a permanent successor be appointed. (E. 5) Without ruling on Delegate Alston's motion, or giving her time to oppose the summary judgment motion in writing, the Circuit Court for Prince George's County held an expedited hearing on the Attorney General's summary judgment motion on December 4, 2012. (E. 350) In an opinion released the next day, the circuit court mirrored the language of the Attorney General's own opinion, entered summary judgment against Delegate Alston, and declared her seat to be vacant. (E. 342-62, 373-74) To correct this decision, Delegate Alston filed a timely Notice of Appeal on December 6, 2012 (E. 378-79) and immediately petitioned this Court for a Writ of Certiorari on December 11, 2012. This Court granted the Writ on December

13, 2012.

QUESTIONS PRESENTED

I. **Is an Elected Official Entitled to the Benefit of a Plea Bargain Which Precluded a Final Conviction in Her Case?**

II. **Does Article XV, § 2 of the Maryland Constitution Permit the Expulsion of a Duly-elected Legislator Who Received a Final Disposition of Probation Before Judgment?**

STATEMENT OF FACTS

A. *The Prosecution*

Following a legislative session in which Delegate Alston frequently clashed with House leadership over some of the Governor's more controversial bills, the State began to investigate this freshman legislator's campaign finance records. Accusing Delegate Alston of misusing campaign funds on September 23, 2011, these misdemeanor charges failed to live up to the headlines they generated. Indeed, after charging her with stealing funds through two checks erroneously drawn on her campaign account, the prosecution ultimately learned that neither check had ever been cashed and that no campaign funds were ever withdrawn. *State v. Alston*, Case No. K-11-2040 (*Alston I*). (E. 200)

Rather than take these cases to trial, the prosecution subsequently charged Delegate Alston again on December 15, 2011. *State v. Alston*, Case No. K-11-2626 (*Alston II*). (E. 208) Accusing her of misdemeanor theft and misconduct in office, the State claimed that Delegate Alston misused public funds to compensate a legislative aid for working at her private firm. Although the State lacked any affirmative evidence that

this aid conducted law firm business in exchange for public funds, the introduction of hearsay evidence from the State's own investigators ultimately resulted in a guilty verdict on June 12, 2012.

Recognizing the tenuous state of the evidence, and defense efforts to challenge it, the State entered into prompt plea discussions after receiving Delegate Alston's Motion to Dismiss Indictment, Motion to Set Aside Jury Verdict, and Motion for New Trial. (E. 213) Throughout these negotiations, the State repeatedly listed Delegate Alston's ouster from office as its first priority. Indeed, in a four-part "settlement proposal" issued on August 24, 2012, the prosecutor placed Delegate Alston's immediate resignation at the top of his wish list:

> "1. Tiffany Alston agrees to resign her position as Maryland State Delegate for District 24 immediately."

(E. 268) After further negotiations, the State continued to press for her resignation, offering a deal in return for her agreement "to notify the House of Delegates leadership ... that she is resigning from her position as Maryland State Delegate for District 24 effective November 1, 2012." (E. 270) When Delegate Alston refused any deal that would jeopardize her return to office, the State ultimately signed an agreement that would resolve the case without her resignation. (E. 213-14)

In exchange for pleas of *nolo contendere* on three counts, the State agreed to

dismiss four charges and to recommend probation before judgment on two more.[1] As to the remaining count of the latter indictment, the State agreed to the following:

> The State will recommend, and Ms. Alston will not contest, that Ms. Alston be sentenced on Count 2, Misconduct in Office, in [*Alston II*] to one year incarceration with the entire term suspended, followed by three years of probation. As conditions of that probation, the State will recommend, and Ms. Alston will not contest, that the Court order that Ms. Alston (1) pay restitution of $800.00 to the Maryland General Assembly and (2) perform 300 hours of community service at a mutually agreed upon legitimate, non-profit or governmental agency. The location where Ms. Alston performs her community service may be subject to change upon approval of the State, which shall not be unreasonably withheld or delayed. The State will recommend that the Defendant receive probation before judgment on Count 1, misdemeanor theft. The Defendant may seek a Modification of Sentence requesting probation before judgment on the misconduct in office conviction. The State shall remain silent and the Court agrees to bind itself to striking the guilty conviction and granting Ms. Alston probation before judgment on Count 2 in [*Alston II*] immediately upon (i) completion of three hundred hours of community service, (ii) payment of $800.00 in restitution, and (iii) payment of a civil citation fine in the amount of $500.00.

(E. 213-14 ¶ 2)

Upon receiving this agreement, The Honorable Paul F. Harris, Jr. of the Circuit Court for Anne Arundel County promised to honor it in exchange for Delegate Alston's *nolo contendere* plea on October 9, 2012. Reading the agreement in open court, Judge Harris confirmed that "the State will remain silent and that *the Court agrees to bind itself to striking that conviction* and granting a probation [before judgment], on this case, upon completion of those conditions." (E. 42) (emphasis added).

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[1] According to the September 26, 2012 Plea Agreement, the State entered a *nol pros* to Counts 1, 2, 3 and 5 in *Alston I*, to recommend probation before judgment on Count 4 of that indictment, and to recommend probation before judgment on the first count of the two-count indictment in *Alston II*. (E. 213-14 ¶¶ 2, 3)

Pledging to "go along with it" before taking Delegate Alston's plea (E. 281), Judge Harris assured her that the conviction would *not* be final. "As soon as you finish your three hundred hours, and as soon as you pay the eight hundred dollars, it will transition into a probation before judgment." (E. 330)

Because this disposition would enable her to return to work "full time as a delegate" (E. 326), Delegate Alston acknowledged her second chance to "work diligently for the citizens of Maryland, as a delegate." (E. 325) Concerned that a pending constitutional amendment might jeopardize this opportunity,[2] Delegate Alston told Judge Harris that she would "be diligently completing the community service hours" in order to hasten her return to office. (E. 325) As promised, when Delegate Alston met the terms of the agreement, Judge Harris struck the finding of guilt and entered probation before judgment in her favor on November 13, 2012. (E. 391)

B. *The Expulsion*

A day after Delegate Alston entered her *nolo contendere* plea, the Attorney General acknowledged the temporary nature of any conviction and advised the Speaker of the House on "the process for appointing a person to *temporarily* fill her position as a delegate from the 24th legislative district." (E. 69) (emphasis added). Quoting Article XV, § 2 of the Maryland Constitution, the Office of Counsel to the General Assembly

[2] Unlike the language applicable to this case, Article XV, § 2 of the Maryland Constitution will soon be amended to disqualify persons from holding elective office after being found guilty of certain offenses, or entering a plea of *nolo contendere* to them. (E. 66-67)

stated that "[d]uring and for the period of suspension of the elected official, the appropriate governing body ... shall appoint a person to *temporarily* fill the elective office." (E. 69) (emphasis added).

After the Speaker sought a second opinion on Delegate Alston's status, the Attorney General simply changed his views in an effort to force her from office a month later. Giving the Speaker a "better interpretation" of the Maryland Constitution (E. 50), the Attorney General took the "view that as of October 9, 2012, Tiffany Alston was also permanently removed from elective office by operation of law." (E. 42) Departing from the State's own plea agreement, the Attorney General claimed that Judge Harris "was not bound to ... strike the conviction and enter probation before judgment." (E. 45) Taking the position that her conviction was really "final" after all, the Attorney General advised the Speaker of the need to appoint a "permanent replacement ... rather than a temporary replacement." (E. 50-51)[3]

Rather than advise the Speaker to seek the consent of two-thirds of elected

[3] Without reviewing this Court's decisions regarding the binding nature of plea agreements, *see*, *infra*, at 13-14, the Attorney General rejected the State's own plea agreement as unenforceable. Quoting Judge Harris out of context from the October 9th hearing, the Attorney General claims that the court did not agree to be bound by its terms. (E. 45 n.2) Contrary to this erroneous assertion, Judge Harris expressly assured Delegate Alston that he would follow the September 26, 2012 plea agreement and "that the Court agrees to bind itself to striking that conviction and granting a probation [before judgment], on this case." (E. 313) Because the Attorney General's and the lower court's opinions are based upon their selective review of an audio recording of the October 9th hearing, the parties have provided this Court with a full transcript of these proceedings in the Joint Record Extract. (E. 272-341)

delegates before removing Delegate Alston, *see* MD. CONST. ART. III, § 19, the Attorney General dispensed with this constitutional requirement, unilaterally declared the position to be vacant, and advised the Speaker to "do nothing." (E. 50) Despite Judge Harris' pledge to strike the finding of guilt, and a plea agreement requiring it, the Attorney General rested on his newly-revised "judgment [that] she was removed from office by operation of law on October 9, 2012." (E. 50)

C. *The Litigation*

Challenging this position, Delegate Alston intervened in an action originally filed by an individual seeking to replace her. In the Prince George's County case of *Gregory Hall v. Prince George's County Democratic Central Committee*, Case No. CAL12-36913, Delegate Alston sought an injunction, declaratory judgment and other relief from what she regards as an unconstitutional expulsion from the House. (E. 158-69) In response, the Attorney General moved for summary judgment and sought a declaration to the contrary. (E. 5)

Recognizing that "[t]he issues are of a constitutional dimension and are of great importance to all the parties, especially to the people they represent" (E. 343), the circuit court ruled in favor of Defendants in an opinion that misconstrued the Constitution and eviscerated the judgment of another jurisdiction. Lifting virtually all of its language from the Attorney General's own opinion (E. 122-33), the lower court adopted defense counsel's distorted reading of Article XV of the Maryland Constitution. (E. 357-62)

Under Article XV, § 2 of the Constitution, an "elected official shall be removed from the elective office by operation of law and the office shall be deemed vacant" only if her "conviction becomes final, after judicial review or otherwise." Despite the fact that the Circuit Court for Anne Arundel County struck the guilty verdict and placed Delegate Alston on probation before judgment under MD. CRIM. PROC. CODE ANN. § 6-220, the Circuit Court for Prince George's County disregarded this disposition entirely, deemed her conviction "final," and declared her ineligible to maintain her office. (E. 362)

Although the earlier disposition "is not a conviction for the purpose of any disqualification or disability imposed by law because of conviction of a crime," *id.*, the lower court conveniently ignored the probation before judgment rule. Disqualifying Delegate Alston from the position to which she was elected, the Prince George's County court effectively struck the decision of a judge in another county and converted a temporary conviction into a final disposition. Paying no attention to the fact that the Anne Arundel County "discharge is a final disposition of the matter," *id.*, the Prince George's County judge pretended that the vacated conviction was a "final disposition" for purposes of his strained constitutional analysis. (E. 362)

Adopting the Attorney General's opinion, the judge below considered it his constitutional duty "to remove from office those elected officials who are found guilty of crimes that undermine the public trust in and the integrity of the General Assembly." (E. 359) Thus, even though the "final disposition of the matter" was probation before

judgment, the lower court decided to "hold that Ms. Alston was 'convicted' for purposes of Article XV and removed from office." (E. 362)

Since this December 5, 2012 holding eviscerated the final disposition of the criminal case, ignored the probation before judgment statute, and twisted the Constitution to expel a duly-elected official, Delegate Alston filed a Notice of Appeal the very next day. (E. 378)

ARGUMENT

Despite the circuit court's view that Delegate Alston's removal would "restore the public trust in our elected officials" (E. 359), judges must trust the public to appraise the qualifications of its representatives at the polls. In two years, thousands of voters in the 24th Legislative District may decide whether they trust Delegate Alston enough to re-elect her. But today, the seven members of this Court must limit their votes to the legal questions raised on appeal.

Hardly an objective analysis of these issues, the lower court's opinion left the law and the Constitution behind. Commenting on state and local politics, its author lamented that the "circumstances of this case do little for the good name and reputation of our state and even less for our county." (E. 342) Expressing his "sincere hope that the people of the 24th Legislative District of Maryland are fully represented as quickly as possible" (E. 343), this Prince George's County judge believed that his "primary purpose" was "to remove from office those elected officials who are found guilty of crimes that undermine

the public trust in and the integrity of the General Assembly." (E. 359)

Ironically, in upholding the State's action to expel a duly-elected member of this legislative body, the opinion below undermines key constitutional limitations on the power of its leaders and of the court itself. Though this ruling directly affects thousands of voters in the 24th Legislative District, the lower court's misreading of Maryland law has even broader implications statewide. By failing to give Delegate Alston the benefit of a plea bargain accepted in another county, the Prince George's County court undermined a key component of the criminal justice system and entered an order inconsistent with the standard of fair play and equity. Plaguing Delegate Alston with far more severe consequences than she bargained for, the lower court then gave state leaders the unchecked power to circumvent limitations on the expulsion of House members. In keeping with this Court's mandate to uphold the Constitution and its limitations on the power of all elected officials, it is imperative that this Court reverse a decision to expand their authority.

I. NEITHER THE SPEAKER OF THE HOUSE NOR HIS COUNSEL MAY UNILATERALLY EXPEL A DULY-ELECTED DELEGATE FROM THIS LEGISLATIVE BODY

By unilaterally expelling Delegate Alston from the General Assembly, the Speaker and the Attorney General blatantly exceeded their own constitutional powers. Simply put, the Speaker and his counsel have no power to speak for a House that has not spoken.

Regardless of his title, one member of the House has no authority to expel another.

Under Article III, § 19 of the Maryland Constitution, only a super-majority of House members may expel one of their colleagues:

> Each House shall be judge of the qualifications and elections of its members, as prescribed by the Constitution and Laws of the State, and shall appoint its own officers, determine the rules of its own proceedings, punish a member for disorderly or disrespectful behaviour and with the consent of two-thirds of its whole number of members elected, expel a member; but no member shall be expelled a second time for the same offence.

Rather than seek the consent of two-thirds of its elected members before expelling Delegate Alston, the Speaker's legislative counsel declared her seat to be vacant "by operation of law." (E. 50)[4]

In truth, Delegate Alston was not removed by the operation of law, but in spite of it. Under Article XV, § 2, Delegate Alston could only be removed from office permanently if her conviction became "final, after judicial review or otherwise." Rather than finalize this disposition, the Circuit Court for Anne Arundel County struck it in accordance with a plea agreement that would leave her without any conviction whatsoever and would enable her to resume her legislative duties. Having left Delegate Alston without any conviction which would disqualify her from office, there is no constitutional basis for removing this legislator.

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[4] In this case, it is not even clear whether the Speaker has spoken. Beyond the Attorney General's letter expressing the opinion that Delegate Alston should be removed by operation of law (E. 42-51), there is no record of any correspondence or other legislative action to confirm her removal from office.

A. ***Delegate Alston Is Entitled to the Benefit of a Plea Bargain Which Precluded a Final Conviction in Her Case***

Though the State prefers to ignore it, Delegate Alston refused to accept any plea requiring her resignation from office or final conviction. Vigorously disputing government indictments, Delegate Alston would only agree to withdraw motions to dismiss them when the State offered to drop most of its charges and to permit the entry of probation before judgment on the rest. (E. 213-14 ¶¶ 2, 3) On the last remaining count, the State agreed to "striking the guilty conviction and granting Ms. Alston probation before judgment" once she completed the terms of probation. (E. 213-14 ¶ 2) (requiring community service, restitution and a fine).

Rather than finalize this conviction, Judge Harris expressly confirmed the court's agreement "to bind itself to striking that conviction and granting a probation [before judgment], on this case, upon completion of those conditions. (E. 313) Reading the plea agreement in open court before taking Delegate Alston's plea, the formal discharge of this conviction became a fait accompli in the hands of Judge Harris. "As soon as you finish your three hundred hours, and as soon as you pay the eight hundred dollars," the judge assured her that "it will transition into a probation before judgment." (E. 329-30)

As this disposition would enable her to resume office much faster than post-trial motions or appeals, Delegate Alston sought to expedite her return to the House of Delegates. (E. 325-26) To hasten her return, Delegate Alston had already completed many of her community service hours by the time of the October 9th hearing. As her

lawyer informed Judge Harris, "she immediately started" serving long hours at a local church after the parties reached a plea agreement on September 26, 2012 so that she could "have a lot of it ... done before she appeared in Court today." (E. 318) For this reason, Delegate Alston filed an October 9th motion to discharge her conviction which Judge Harris agreed to hold *sub curia* pending her completion of the remaining hours. (E. 312-13) Satisfied that she had met her end of the bargain by November 13th, Judge Harris kept his promise, discharged any conviction, and entered probation before judgment pursuant to MD. CRIM. PROC. CODE ANN. § 6-220. (E. 391)

As a "final disposition of the matter," this probation before judgment "is not a conviction for the purpose of any disqualification or disability imposed by law because of conviction of a crime." *Id.*[5] Seeking to disqualify her anyway, the State would deny Delegate Alston the benefits of this disposition and the benefits of her bargain.

Despite the State's strained efforts to depart from its own agreement, this was not an incidental contract that the State may readily disavow. As "[p]lea bargaining is a significant, if not critical, component of the criminal justice system," *Chertkov v. State*,

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[5] This Court, and the Court of Special Appeals, have repeatedly observed that "probation before judgment ... is not a 'conviction'" *Myers v. State*, 303 Md. 639, 647-48, 496 A.2d 312 (1985); *Ogburn v. State*, 71 Md. App. 496 (1987) ("probation before judgment disposition is not a conviction"). Even the Attorney General has opined that "a defendant who receives probation before judgment is not convicted of the crime, unless the defendant fails to fulfill the terms and conditions of probation." 82 Op. Att'y Gen. 34, 39 (1997). Although the Attorney General has changed his view for the purpose of disqualifying Delegate Alston, he fails to cite any substantive change in the law in the 15 years since issuing his original opinion.

335 Md. 161, 170, 642 A.2d 232 (1994), this agreement formed a key component of the criminal court's resolution. "When the judge accepted [Delegate Alston's] pleas," the parties' agreement – *including the pending discharge of any conviction* – became an "inviolate" part of his October 9, 2012 disposition and carried "the force of law." *Dotson v. State*, 321 Md. 515, 523, 583 A.2d 710, 714 (1991); Maryland Rule 4-243(c)(3) ("judge shall embody in the judgment the agreed ... disposition, or other judicial action encompassed in the agreement"). "[B]ecause it is required that the ... disposition it contemplates must be embodied in the court's judgment," this Court would declare that "it is." *Chertkov*, 335 Md. at 172. Since the October 9, 2012 disposition embodied provisions calling for the discharge of any conviction, the State's desperate effort to characterize her conviction as "final" is utterly without merit.

By declaring otherwise, the lower court failed to honor the disposition rendered in another county and undermined the very foundation of the parties' plea agreement. Unlike the Circuit Court for Prince George's County, both this Court and the United States Supreme Court have "held that 'when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.'" *Tweedy v. State*, 380 Md. 475, 484, 845 A.2d 1215 (2004), *quoting Santobello v. New York*, 404 U.S. 257, 262 (1971). Indeed, "allowing the plea agreement to be violated, *even if not by the trial judge*, 'would be inconsistent with the standard of fair play and equity.'" *Chertkov*, 335 Md. at 174

(emphasis added).

This is particularly true where, as here, the parties reached an agreement that would *not* call for Delegate Alston's removal from the House of Delegates. (*Cf.* E. 268, 270) Understanding that the September 26th plea agreement would leave her without any conviction that would preclude her from finishing her term, Delegate Alston assured Judge Harris that she "will be diligently completing the community service hours" to expedite her return to work "full time as a delegate." (E. 326)

Rather than cast any doubt on her understanding of the plea, or on the resumption of her legislative duties, the State voiced no objection when Delegate Alston pledged to "work diligently for the citizens of Maryland, as a delegate." (E. 325)[6] In fact, the very next day, the Attorney General acknowledged the temporary nature of any conviction and advised the Speaker on "the process for appointing a person to *temporarily* fill her position." (E. 69) (emphasis added). Though the Attorney General has since changed his mind, he should not be permitted to change the terms of his own plea agreement and impose even harsher consequences.

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[6] Although no one expressed any concern that Judge Harris' disposition would jeopardize her return to office, Delegate Alston expressed the desire to complete the terms of her probation before the ratification of a constitutional amendment that would expand the bases for removing officials from elective office. (E. 326)

B. ***Article XV, § 2 of the Maryland Constitution Provides No Basis for Removing Delegate Alston from Office***

Switching to what he touts as a "better interpretation of the constitutional provision," E. 50, the Attorney General would rather switch the provision's language instead. Contrary to his new interpretation, as endorsed in the opinion below, Article XV, § 2 of the Maryland Constitution does not empower the State "to remove from office those elected officials who are found guilty of crimes that undermine the public trust in and the integrity of the General Assembly." (E. 359)

As presently enacted, Article XV, § 2 provides no authority for disqualifying an official upon a finding of guilt, a plea of *nolo contendere*, or the entry of probation before judgment. Although voters approved an amendment that would expand the grounds for removing officials in the future, Delegate Alston may only be removed permanently if her conviction became "final, after judicial review or otherwise."

Having received probation before judgment under MD. CRIM. PROC. CODE ANN. § 6-220, it is readily apparent that this "final disposition ... is not a conviction for the purpose of any disqualification or disability imposed by law because of conviction of a crime." *Id.* Indeed, "the legislature intended that a grant of probation before judgment, unless subsequently altered by a violation of that probation, should have the effect of wiping the criminal slate clean." *Jones v. Baltimore City Police*, 326 Md. 480, 488, 606 A.2d 214 (1992).

Rather than read the law as currently written, the Attorney General and the lower

court were determined to change it. Believing that the ouster of "guilty" politicians would "restore the public trust in our elected officials and the institutions in which they serve" (E. 359), the lower court treated Delegate Alston as having a conviction for the purpose of disqualifying her from office. Expressing "no opinion as to whether probation before judgment may always be considered a conviction in all circumstances" (E. 362), the opinion below provides no basis for repealing the probation before judgment statute, for converting this "final disposition" into a conviction, or for disqualifying Delegate Alston from office. *Cf.* MD. CRIM. PROC. CODE ANN. § 6-220.

As this Court observed in rejecting a similar effort to revoke the benefits of probation before judgment, "Whether we agree that such a rule would be beneficial is immaterial — we are not a legislative body and we are not permitted to engraft a strained or artificial interpretation upon a statute to achieve a result that comports with our idea of societal needs." *Jones v. Baltimore City Police*, 326 Md. at 489, *citing Simpson v. Moore*, 323 Md. 215, 223-28, 592 A.2d 1090 (1991) (court will not rewrite statute to achieve a desired result); *Kaczorowski v. City of Baltimore*, 309 Md. 505, 516 n. 4, 525 A.2d 628 (1987) (a court is not wholly free to rewrite a statute merely because of some judicial notion of legislative purpose). As this is undoubtedly true in the case of constitutional provisions, the lower court's view of societal needs forms no basis for expanding the

law.[7]

Masking his desire to apply new language well in advance of its enactment, the Attorney General manipulates the current language of Article XV, § 2 to confuse provisions for disqualifying elected officials with those addressing their reinstatement. Although Delegate Alston's conviction never became final after judicial review or otherwise, the Attorney General's "better interpretation" provides that a conviction is "final" unless it is reversed or overturned in an appeal on the merits of her "guilt." Despite the Attorney General's tendency to beg this question by blending these separate provisions, Article XV, § 2 does not require that an appellate court reverse a "finding of guilt" to rescue an official from a "final" conviction.

Nor does this provision distinguish between a conviction that is discharged by an appellate court or by a trial court. Lacking any language to support this reading of Article XV, § 2, or any public policy that would differentiate between levels of court, the opinion

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[7] Emphasizing Judge Harris' finding of guilt as grounds for removal, the Attorney General and lower court are undoubtedly eager to apply the pending amendment to Article XV, § 2 instead. Unlike the current version, the amended provision would oust elected officials who plead guilty or *nolo contendere* to a covered offense regardless of whether they ultimately receive probation before judgment. (E. 67) While it would similarly remove officials whose convictions become final by "judicial review or otherwise," it would only reinstate the official if the "finding of guilt" is "reversed or overturned" on the merits. (E. 66-67). By contrast, the current provision would reinstate officials whose "convictions" are overturned or reversed on any basis. Although there is no need to reinstate an official whose conviction never became final, the current provision lends no support to the Attorney General's insistence that her conviction must somehow be reversed on the merits.

below would reinstate Delegate Alston if her original conviction were vacated on appeal, but oust her where, as here, it was stricken by the very same judge that imposed it.

By adopting the Attorney General's "better" interpretation of Article XV, § 2, the lower court drew a distinction that the framers of this provision expressly rejected. Indeed, as the Attorney General himself concedes, "the 1974 legislative history of Article XV, § 2 provides some support for the view Ms. Alston espouses." (E. 128)

Although an earlier version of this provision focused on appellate dispositions, Maryland Senate Journal, Vol. II at 1914 (1974), the voters ultimately ratified a broader version of the bill which would only require removal if a conviction "becomes final, after judicial review or otherwise." Maryland House Journal, Vol. II at 4365 (1974); *see also* MD. CONST. ART. XV, §2. Because the conviction at issue was "otherwise" stricken by the trial court, there is simply no basis for removing Delegate Alston under this clause.

The Attorney General "acknowledge[s] that this history could be seen as evidence" that the trial court's final disposition of the case on probation before judgment may be controlling "as Ms. Alston contends." Unable to change the past, the Attorney General chose to forget this history and the lower court chose to ignore it.[8] Insisting that all convictions are final unless reversed on the merits by an appellate court, they continue to confuse removal and reinstatement provisions by claiming that a waiver of such appeals

[8] Interestingly, the only aspect of the Attorney General's opinion which the lower court did not adopt dealt with defense counsel's concessions that the legislative history favored Delegate Alston's position.

also triggers removal. Yet, unlike the amended version of Article XV, § 2, the current provision contains no requirement that a "finding of guilt" be reversed. Indeed, under the law as it now stands, if a conviction does not become final after judicial review or otherwise, the basis on which it was discharged is immaterial.

Contrary to the opinion below, Delegate Alston did not waive all rights to appeal the conviction at issue. As Judge Harris informed her when taking her plea, "whether or not this Court would impose a legal sentence is always appealable." (E. 290) Indeed, if Judge Harris had departed from the plea agreement and finalized the conviction, his violation of Maryland Rule 2-423(c)(3) could have, and undoubtedly would have, been reversed on appeal. *See Dotson*, 321 Md. 515 (providing for direct appeal of deviations from plea agreements); *Walczak v. State*, 302 Md. 422, 427, 488 A.2d 949 (1985) ("issue should ordinarily be reviewed on direct appeal even if no objection was made in the trial court").

Preempting such concerns, Judge Harris advised Delegate Alston that "if the plea bargain, as presented to the Court, is accepted, which I indicated that it would be, I believe that would be a legal sentence so you wouldn't have a right to appeal from that sentence." (E. 290) Having assured Delegate Alston that her conviction would not be final at all, there is simply no basis for a contrary holding or for her removal from office.[9]

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[9] Given Judge Harris' repeated assurance that he accepted and would abide by a plea agreement calling for the discharge of her conviction, it is readily apparent that a motion which Delegate Alston's counsel called a "motion for modification" was not

CONCLUSION

Unlike questions confronting the electorate at large, this Court may not defer to the political considerations of the Attorney General or the Speaker of the House. Nor may this Court substitute its political judgment for that of the electorate. In our political system, only the public may determine the level of trust which they repose in their elected officials.

Though this has not stopped the lower court from intervening to remove one of these officials, or from rejecting a disposition entered in another county, this Court must put an end to the political commentary and strained constitutional construction contained in the opinion below.

In the future, cases may be decided differently under revised language. But, as currently enacted, Article XV, § 2 provides no basis for removing an official whose conviction never became final. Having received the benefit of probation before judgment, Delegate Alston is entitled to the benefit of her bargain with the State. And the people who elected her to the House of Delegates are entitled to her continued service. For these reasons, Appellant Tiffany T. Alston respectfully requests that this Court reverse the judgment of the Circuit Court for Prince George's County and enable this official to take her seat in the House when the General Assembly reconvenes on

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really to "revise" the court's judgment, but to complete it. This hardly amounts to a "collateral attack" which the Attorney General claims to be insufficient to prevent removal.

Wednesday, January 9, 2013.

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CERTIFICATE OF SERVICE

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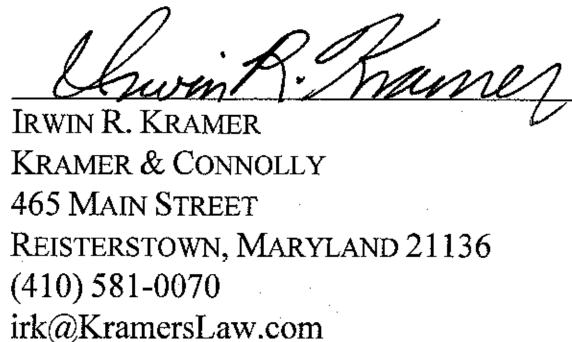

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PERTINENT PROVISIONS

MD. CONST. ART. III, § 19

Each House to be judge of qualifications and elections of its members; appoint its own officers, make its own rules; punishment and expulsion of members. Each House shall be judge of the qualifications and elections of its members, as prescribed by the Constitution and Laws of the State, and shall appoint its own officers, determine the rules of its own proceedings, punish a member for disorderly or disrespectful behaviour and with the consent of two-thirds of its whole number of members elected, expel a member; but no member shall be expelled a second time for the same offence.

MD. CONST. ART. XV, § 2

Any elected official of the State, or of a county or of a municipal corporation who during his term of office is convicted of or enters a plea of nob o contendere to any crime which is a felony, or which is a misdemeanor related to his public duties and responsibilities and involves moral turpitude for which the penalty may be incarceration in any penal institution, shall be suspended by operation of law without pay or benefits from the elective office. During and for the period of suspension of the elected official, the appropriate governing body and/or official authorized by law to fill any vacancy in the elective office shall appoint a person to temporarily fill the elective office, provided that if the elective office is one for which automatic succession is provided by law, then in such event the person entitled to succeed to the office shall temporarily fill the elective office. If the conviction becomes final, after judicial review or otherwise, such elected official shall be removed from the elective office by operation of Law and the office shall be deemed vacant. If the conviction of the elected official is reversed or overturned, the elected official shall be reinstated by operation of Law to the elective office for the remainder, if any, of the elective term of office during which he was so suspended or removed, and all pay and benefits shall be restored.

MD. CRIM. PROC. CODE ANN. § 6-220. Authority of court to stay judgment and impose probation; terms and conditions of probation; when probation is not allowed; effect of violating probation.

(g) Effect of fulfillment of conditions of probation. — (1) On fulfillment of the conditions of probation, the court shall discharge the defendant from probation. (2) The discharge is a final disposition of the matter. (3) Discharge of a defendant under this section shall be without judgment of conviction and is not a conviction for the purpose of any disqualification or disability imposed by law because of conviction of a crime.

Maryland Rule 4-243(c)(3). Approval of Plea Agreement.

If the plea agreement is approved, the judge shall embody in the judgment the agreed sentence, disposition, or other judicial action encompassed in the agreement or, with the consent of the parties, a disposition more favorable to the defendant than that provided for in the agreement.