

In The  
**Court of Appeals of Maryland**

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No. 100

September Term, 2012

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**GREGORY HALL, et al.**

*Appellants*

v.

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

*Appellees*

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**ON WRIT OF *CERTIORARI*  
TO THE COURT OF SPECIAL APPEALS  
ON APPEAL FROM THE CIRCUIT COURT FOR  
PRINCE GEORGE'S COUNTY, MARYLAND  
(HONORABLE C. PHILIPS NICHOLS, JR.)**

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**REPLY BRIEF OF APPELLANT GREGORY HALL**

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**ARGUMENT**

Over 120 years ago, this Court explained the proper interpretation of provisions of the Maryland Constitution as mandatory rather than directory.

It is with one only of these requirements that we are now particularly concerned. The plain mandate of the Constitution is that a person appointed by the Legislature to the office of Treasurer shall qualify by taking the constitutional oath of office within one month after his appointment, and with equal explicitness it is declared that if he refuses or neglects to do so within that period of time, such refusal or neglect shall operate as a refusal to accept the office, and a new appointment must be made as if he had by affirmative words declined or refused to accept it. We are unable to give these clauses of the Constitution any other interpretation. We cannot treat them as merely directory and not mandatory. Not only is the language of the Constitution too plain to admit of doubt, but the great weight of authority is against a directory construction of them. As said by Judge COOLEY: "Courts tread upon very dangerous ground when they venture to apply the rules which distinguish directory and mandatory statutes to the provisions of a Constitution. Constitutions do not usually undertake to prescribe mere rules of proceeding, except when such rules are

looked upon as essential to the thing to be done; and they must be regarded in the light of limitations upon the power to be exercised. It is the province of an instrument of this solemn and permanent character to establish those fundamental maxims, and fix those unvarying rules by which all departments of government must at all times shape their conduct. \* \* \* We are not, therefore, to expect to find in a Constitution provisions which the people in adopting it have not regarded as of high importance, and worthy to be embraced in an instrument which, for a time at least, is to control alike the government and the governed, and to form a standard by which is to be measured the power which can be exercised as well by the delegate as by the sovereign people themselves. If directions are given respecting the times or modes of proceeding in which a power should be exercised, there is at least a strong presumption that the people designed it should be exercised in that time and mode only; and we impute to the people a want of due appreciation of the purpose and proper province of such an instrument when we infer that such directions are given for any other end; especially, as has already been said, it is but fair to presume that the people in their Constitution have expressed themselves in careful and measured terms corresponding with the immense importance of the powers delegated, and with a view to leave as little as possible to implication." *Cooley Cons. Lim*, (3rd Ed.,) 78, 79. This is the view sustained by the decided weight of judicial authority throughout the country. The decisions in this State applicable to the subject and to the same effect are *Harwood vs. Marshall*, 9 Md. 83, and *County Commissioners of Dorchester County vs. Meekins*, 50 Md. 28. ... Here the Constitution deals with the important office of State Treasurer. Its mandates are directed not to formalities, but to essentials, and, if they can be overlooked and disregarded, where can we find anything in the Constitution that is to be obeyed?

*Archer v. State*, 74 Md. 443, 448-450 (1891).

The important and bedrock principle set forth by this Court in *Archer, supra.* over 120 years ago is equally applicable in the instant case concerning the mandatory duty of the Governor to appoint Gregory Hall as the Delegate for the 24<sup>th</sup> Legislative District in the Maryland House of Delegates within fifteen days of the submission of his name for appointment by the Central Committee (hereinafter the "Committee").



## I. THE GOVERNOR'S DUTY TO APPOINT GREGORY HALL WITHIN FIFTEEN DAYS OF THE SUBMISSION OF HIS NAME IS MANDATORY

### A. The Governor's Mandatory Ministerial Duty

The Letters of Advice of the Attorney General and Attorney General Opinions relied upon by the Committee and Governor provide no support for their contention that the Governor had more than fifteen days in which to perform his ministerial duty to appoint Gregory Hall. "While an opinion of the Attorney General is entitled to consideration in determining legislative intent, it is not binding upon the courts." *The A.S. Abell Publishing Company v. Mezzanote*, 297 Md. 26, 464 A.2d 1068 (1983) (citing *Schmidt v. Beneficial Finance Co. of Frederick*, 285 Md. 148, 158, 400 A.2d 1124, 1129 (1979); *Mayor of Baltimore v. State*, 281 Md. 217, 228, 378 A.2d 1326, 1332 (1977)). The Court of Appeals in *Mezzanote* specifically determined that the formal opinion and letter of advice in that case were "not persuasive" and held the law was contrary to that expressed in the letter of advice and formal opinion. *Id.* at 40; *see also Haigley v. Dept. of Health and Mental Hygiene*, 128 Md. App. 194, 736 A.2d 1185 (1999)(Court of Special Appeals noted that an attorney general opinion is not binding on the courts). *See also Mason v. Bd. of Educ.*, 375 Md. 504, 511, n. 4, 826 A.2d 433 (2003) The Letters of Advice are not "formal opinions" (as stated by the author of the advice letters) and do not command the Court to give much, if any, weight to such letters.

The Committee's reliance upon 62 Op. Md. Att'y Gen. 453 (1977) is misplaced. The Attorney General concluded that the Committee's power to submit a name to the Governor under Art. III, § 13(a)(1) was a limited power and that once the initial thirty day period from the date of the occurrence of vacancy expired, the Committee had no further power. Such an interpretation supports Mr. Hall's contentions that the Committee has no power to rescind his name. The remainder of the Attorney General's Opinion concerns whether the fifteen day time period under Art. III, § 13(a)(2) is mandatory or directory. In concluding that Art. III, § 13(a)(2) is directory, the Attorney General relied heavily on the fact that only the Governor has discretion under Art. III, § 13(a)(2) to

*select* the appointee. This is contrary to the unambiguous language of Art. III, § 13 (a)(1) which mandate that if the Committee submits a name to the Governor for appointment to fill a vacancy, the Governor is duty bound to appoint that person and has no discretion. The obvious difference in Art. III, § 13 (a)(1) and § 13 (a)(2) is absolute elimination of all discretion in the Governor under § 13 (a)(1). In addition, in Art. III, § 13(a)(2) the word “duty” is conspicuously absent in connection with the Governor’s “duty to appoint.” A duty is a legal obligation. Black’s Law Dictionary, 505 (6<sup>th</sup> Ed. 1991); *Merriam-Webster’s Collegiate Dictionary* 388 (11<sup>th</sup> Ed. 2006). Notably, the Attorney General recognized that his analysis of Art. III, § 13(a)(2) was “not entirely free from doubt.” Accordingly, the provisions of Art. III, § 13(a)(1) are mandatory and nothing in 62 Op. Md. Att’y Gen. 453 questions the mandatory nature of the Governor’s duty to appoint under Art. III, § 13(a)(1).

The Governor and Committee conveniently ignore the several formal Opinions of the Attorney General that explicitly concluded that the duty of the Governor to appoint the name submitted to him within fifteen days of its submission under Art. III, § 13(a)(1) is mandatory. In 1939, shortly after the ratification of the amendment to the Maryland Constitution that created the process currently set forth in Art. III, § 13(a)(1) to fill a vacancy, the Attorney General of Maryland issued a formal opinion concluding that “[t]here is no express limitation as to the time within which the Central Committee must act, although ***the Governor must appoint within fifteen days after the submission . . .***”<sup>1</sup> 24 Op. Md. Att’y Gen. 367 (1939)(emphasis added). *See also*, 24 Op. Md. Att’y Gen. 268-69 (1939)(Attorney General held that “within fifteen days after the name is submitted [by the Committee under Art. III, § 13], the Governor must act on it . . .”). The Attorney General of Maryland in providing a formal opinion to Governor Herbert R. O’Conor opined that “Article III, Section 13 of the Constitution requir[es] such

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<sup>1</sup> Art. III, § 13 ratified in 1936 had no time period within which the Committee was to submit a name to the Governor. In 1966, Art. III, § 13(a)(1) was amended to add language requiring the Central Committee to submit a name within thirty days of the occurrence of vacancy. The language that it “shall be the Governor’s duty to appoint within fifteen days of the submission of the name” is has not changed in 75 years.

appointments to be made within fifteen days after submission [of a name].” 24 Op. Md. Att’y Gen. 236 (1939). *See also* 25 Op. Md. Att’y Gen. 245 (1940)(Attorney General of Maryland holds that “in Section 13 of Article III of the Constitution...the Governor **must make the appointment within 15 days** after the submission of a name to fill the vacancy....” )(emphasis added). A common theme runs through the above cited formal opinions of the Attorney General, each interprets the Governor’s “duty to appoint within fifteen days of the submission of the name” under Art. III, § 13 (a)(1) as a mandatory ministerial duty.

Art. III, § 13 was amended in 1966 to provide specifically for the thirty day period for the Committee to submit a name to the Governor that is present in the current Art. III § 13(a)(1). The language in Art. III, § 13(a)(1) that it “shall be Governor’s duty to appoint within fifteen days” has remained unchanged for seventy-six years (76) since ratification of the initial Art. III, § 13 replacing special elections in 1936. If the General Assembly had intended to change the mandatory ministerial duty of the Governor to appoint the person submitted by the Committee within fifteen days it surely could have changed the language in one of its several amendments. The fact is the language that it “shall be the Governor’s duty to appoint within fifteen days” has remained constant and the Governor’s duty was and remains mandatory.

There is no evidence to suggest that the Legislature and People intended for the Governor’s “duty to appoint within fifteen days” to be merely suggestive and the use of the word “shall” in connection with the Governor’s duty is presumed mandatory. *Hirsch v. Dept. of Nat’l Resources*, 288 Md. 95 (1980); *In Re: James S.*, 286 Md. 702 (1980); *State v. Hicks*, 285 Md. 310 (1979); *Pope v. Secretary of Personnel*, 46 Md. App. 716, 420 A.2d 1017 (1980).

The term "shall" is also unambiguous. It remains a well-settled principle of this Court that "[w]hen 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 citations omitted).

The Committee and Governor allude that the context of Art. III, § 13(a)(1) renders the unambiguous language merely directory. Such intimation is entirely without merit. The context of the use of the word “shall” is in conjunction with the “Governor’s *duty* to appoint within fifteen days....” Conspicuously absent from *all* of the cases cited by the Appellees is the phrase “shall be the duty.” The context of the use of the word “shall” confirms that it is the Governor’s legal obligation to appoint within fifteen days.

The Committee and Governor’s misleading use of the term “nominate” in connection with Art. III, § 13 (a)(1) is a misnomer. In an attempt to blur the plain language of Art. III, § 13(a)(1), the Committee and Governor attempt to liken the specific appointment process set forth therein to a nominating process. This attempt is illusionary. There exists no “nomination” process in Art. III, § 13(a)(1), no confirmation by the Senate or Governor or any other body, and the word “nominate” does not appear in the provision. *Compare Maryland Annotated Code, Art. 25 § 16 (2012)*(providing for nomination or appointment process to fill a vacancy for county commissioner with language similar to that of Art. III, § 13 (a)(1)). As set forth in Section II below, pursuant to the Committee’s Constitution, Bylaws and Standing Rules, the Committee held an election and thereafter submitted the name of Gregory Hall as the winner of that election to the Governor for appointment. There was no “nomination” in the process and the Governor has no discretion to reject the name submitted by the Committee, a point which the Governor admits. *See* Brief of Appellee Governor at 25 n. 12.

The claim of Appellees that if the Governor fails to perform his mandatory ministerial duty the seat would remain vacant until the next general election is flawed. This Court has ruled on numerous occasions that where a public official has an affirmative duty to issue a commission for a person to take office, a writ of mandamus will issue to that public official who has failed to perform his duty. *See Magruder v. Swann*, 25 Md. 173 (1866). *See also*, Brief of Committee at 13 referring to the Governor’s duty under Art. III, § 13(a)(1) as issuing a “commission.” The rule that the Court cannot compel the Governor to exercise his discretion to *select* an appointee is not at issue in this case. *Cf.* 62 Op. Md. Att’y Gen. 453 (1977). The Governor now readily

admits that he has no discretion under Art. III, § 13(a)(1), that he must appoint the person who is submitted to him by the Committee and the plain language of the Maryland Constitution mandates that he must perform his ministerial duty within fifteen days. *See also Rodriguez v. Popular Democratic Party*, 457 U.S. 1, 5 n. 4, 102 S. Ct. 2194, 2197 n. 4, 72 L. Ed. 2d 628, 633 n.4 (1982)(The United States Supreme Court concluded that the Committee chooses the appointee to fill the vacancy under Art. III, § 13(a)(1), not the Governor). Accordingly, the performance of the mandatory ministerial duty of the Governor to appoint Gregory Hall under Art. III, § 13(a)(1) may be compelled by this Court through a Writ of Mandamus and no continued vacancy of the 24<sup>th</sup> Legislative District Seat in the House of Delegates is at risk.

**B. The Last Day for the Governor to Perform his Ministerial Duty**

Gregory Hall won the election to fill the vacancy and his name was submitted to and received by the Governor on November 7, 2012. The Governor was duty bound to appoint Gregory Hall under Art. III, § 13(a)(1) “within fifteen days after the submission thereof to him.” The fifteenth day was Thursday, November 22, 2012 which was Thanksgiving, a Maryland Holiday. The next day was Friday November 23, 2012, another Maryland Holiday. The day following the two consecutive holidays was Saturday, November 24, 2012. As noted in Appellant Gregory Hall’s Brief, the Maryland Constitution contains no specific provision on how to calculate the fifteen day period and which days should be included or excluded in the calculation. The Maryland Rules are specifically *not* applicable to the instant case. Maryland Rule 1-101. Maryland Annotated Code, Art. 1, § 36 states that it is applicable to statutes but is silent concerning the Maryland Constitution. This Court noted that Art. 1, § 36 is a codification of the Maryland common law. *See Mayor of Oakland v. Mayor of Mt. Lake Park*, 392 Md. 301, 312-13, 896 A.2d 1036 (2006); *see also Mason v. Bd. of Educ., supra.*; *Equitable Life Assurance Society of the United States v. Jalowsky*, 306 Md. 257, 263-64, 508 A.2d 137 (1986). If Art. 1, § 36 is applicable, the Governor had until Saturday, November 24, 2012, at the very latest, to perform his ministerial duty of appointment. Art. 1, § 36(1) specifically does not exclude Saturday as a day for the Governor to perform his

ministerial duty, although Sundays and holidays are excluded. Art. 1, § 36(2) regarding actions to be taken in connection with court filings explicitly excludes Sundays, Saturdays and holidays. The only reasonable interpretation is that under Art. 1, § 36(1) Saturday is a day for the performance of the act, which would be applicable to the Governor's mandatory ministerial duty to appoint Gregory Hall under Art. III, § 13(a)(1).

In the 2012 Legislative Session, House Bill 1118 was passed by the General Assembly and submitted to the Governor pursuant to Art. II, § 17. A copy of the Legislative History for House Bill 1118 was attached to the Affidavit of Gregory Hall and is found at E. 195-197. The Governor did not veto House Bill 1118 "within 30 days after its presentment" under Art. II, § 17.<sup>2</sup> There is no specific provision in the Maryland Constitution regarding the enactment of a bill pursuant to Art. II, § 17(c) on a Saturday. On Saturday, May 26, 2012, which was the Saturday before Memorial Day (a holiday under Maryland law), House Bill 1118 was enacted under Art. II, § 17(c). E. 196. Notably, House Bill 1118 was not enacted on the "next business day" which would have been Tuesday, May 30, 2012. The enactment of House Bill 1118 on Saturday, May 26, 2012 under the Maryland Constitution is consistent with Maryland common law as codified in Art. 1, § 36(1). By analogy, Art. III, § 13(a)(1) of the Maryland Constitution requires the Governor to perform his "duty" to appoint "within fifteen days after the submission" of the name to him by the Committee and if the last day of the period is a Saturday, the Governor must perform his duty on or before that Saturday. *See Mayor of Oakland*, 392 Md. at 321 (holding that the time computation in Art. 1, § 36 is applicable unless a clear legislative intent to apply a different computation is present and confining the terms of Art. 1, § 36(1) to only exclude "Sunday or a legal holiday" for performance).

In the event Art. 1, § 36 is not applicable, the plain language of Art. III, § 13(a)(1) mandates that the Governor must perform his duty to appoint "within fifteen days." The

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<sup>2</sup> Md. Const. art. II, § 17(c) states "Any Bill presented to the Governor within six days (Sundays excepted), prior to adjournment of any session of the General Assembly, or after such adjournment, shall become law without the Governor's signature unless it is vetoed by the Governor within 30 days after its presentment."

use of the term “within” establishes that the Governor must appoint on or before the fifteenth day, and assuming the Governor would not have performed his mandatory ministerial duty on Thanksgiving Day, the last day for performance would have been Wednesday, November 21, 2012. *See Certain Underwriters at Lloyd’s London v. Argonaut Ins. Co.*, 444 F. Supp.2d 909 (2006)(construing “within thirty days” in arbitration agreement to require performance on or before the thirtieth day where thirtieth day fell on a Sunday and period was not extended to next business day).

The Committee and Governor’s reliance upon 79 Op. Md. Att’y Gen. 438 (1994) to support the proposition that the Governor had nineteen days to perform his mandatory ministerial duty to appoint is clearly misplaced as such opinion was based upon an event that was deemed to occur on a specific day rather than a period of time “within” which one must act. The opinion was confined to “a single specified day” and noted that the rule is different when an act must be performed on or before the expiration of a time period. *See id.* n. 1, 3 (1994). Moreover, in the situation where the date for the administering of the oath to a newly elected State’s Attorney, there did not exist a vacancy in office and the outgoing State’s Attorney held his office until his successor was sworn in to office. *See id.* The situation is inapposite to the instant case where a *vacancy* in office is to be filled. As the Governor failed to perform his ministerial duty to appoint Gregory Hall on or before the expiration of the fifteenth day after submission of Gregory Hall’s name, he may be compelled to perform his duty by Writ of Mandamus. *See Swann, supra.*; *Groome v. Gwinn*, 43 Md. 572 (1876); and *Brooke v. Widdicombe*, 39 Md. 386 (1874).

The fifteen day time period for the Governor to perform his ministerial duty of appointment has additional importance in the instant case. Assuming *arguendo*, that the Committee had the implied power to rescind Gregory Hall’s name after the expiration of its thirty day period to submit a name to the Governor, there is no reasonable reading of Art. III, § 13(a)(1) that would allow the Committee to rescind a name after the last day that the Governor had to perform his ministerial duty to appoint. The Committee did not vote to rescind Gregory Hall’s name prior to November 24, 2012 and at the meeting it

held on November 20, 2012, the Committee specifically voted 12-8 to take no action to rescind Gregory Hall's name. Accordingly, Gregory Hall must be appointed to the office of Delegate for the 24<sup>th</sup> Legislative District to serve in the House of Delegates for the unexpired term of office pursuant to Art. III, § 13(a)(1).

## **II. THE COMMITTEE HAS NO POWER TO RESCIND THE NAME SUBMITTED TO THE GOVERNOR FOR APPOINTMENT**

### **A. The Plain Language of the Maryland Constitution**

The plain language of Art. III, § 13(a)(1) is not ambiguous. The Maryland Constitution clearly states that if the Committee submits a name to the Governor within thirty days of the occurrence of vacancy in office, it shall be the duty of the Governor to appoint that person to fill the vacancy within fifteen days of the submission of the name to him. If the Committee does not submit a name to the Governor within the thirty day period, the Constitution provides that the Governor may then appoint a person in his discretion. The plain language provides the power to "submit" a name to the Governor but provides no authority for the Committee to rescind the name once submitted. The Governor and Committee propose for this Court to add language to Art. III, § 13(a)(1) by judicial construction to provide the Committee power to rescind after submission of the name to the Governor for appointment. Such a construction by judicial fiat has been rejected by this Court. *Dept. of Motor Vehicles v. Greyhound Corp.*, 247 Md. 662, 234 A.2d 255 (1967). The omission of any language in Art. III, § 13(a)(1) that the Committee may rescind a name once it is submitted to the Governor for appointment should be conclusive that the General Assembly and People did not intend for the Committee to have the power of rescission and such a power should not be necessarily implied where the Governor's duty to appoint is activated by the submission of the name.

The Supreme Court of Kansas interpreted Kansas statutes providing for the process of filling a vacancy in the office of county treasurer and state representative that are similar to Art. III, § 13 of the Maryland Constitution. Under Kansas law, if a vacancy occurs in the office of county treasurer, such vacancy is to be filled by appointment in the



same manner “provided by law for filling vacancies in the office of member of the house representatives.” *Wilson v. Sebelius*, 72 P.2d 553, 555, 276 Kan. 87, 89 (2003)(quoting K.S.A 19-504 (2002 & Supp.)). A vacancy in the Kansas state house of representatives “shall be filled by appointment by the governor of the person elected to be so appointed by a district convention...” *Id.* (quoting K.S.A. 25-3903 (2002 & Supp.)). The Kansas Court held that “the procedure provided by the legislature for filling a vacancy ... is for the governor to appoint the person selected by a district convention of the political party of the outgoing official. *The governor is not given the opportunity to choose from several nominees and has no discretion to reject the district convention’s single selection.*” *Id.* (emphasis added). The opinion of the Kansas Supreme Court is instructive in the instant case and the plain language of Art. III, § 13(a)(1) supports that the Governor “is not given the opportunity to choose from several nominees and has no discretion to reject” the Committee’s appointee.

The Legislature in drafting the amendment to the Maryland Constitution contained in Art. III, § 13(a)(1) did not provide any power to the Committee to rescind the name that it submitted to the Governor to fill the vacancy. The Committee *only* has the power to submit a name and this is confirmed by the language of Art. III, § 13(a)(2) wherein the Governor *only* has discretion if the Committee “does not submit” a name. The Legislature obviously did not provide language that Art. III, § 13(a)(2) is applicable if the Committee “does not submit a name *or rescinds a name submitted.*” The Governor has no discretion under Art. III, § 13(a)(1) and has the duty to appoint the person submitted to him, which indicates that the Governor has no ability to influence the decision of the Committee once a name is submitted it to the Governor. In addition, the provisions provided for by the Legislature for the exercise of the Governor’s discretion are only applicable when the Committee *does not* submit a name to the Governor. It therefore follows that if the Committee submits a name to the Governor in accordance with the provisions of Art. III, § 13(a)(1), the Governor is duty bound to appoint that person and there is no ability of the Governor to influence the Committee to rescind the selection and no power in the Committee to rescind the name.

## **B. The Central Committee's Constitution and Bylaws**

The provisions of the Committee's Constitution and Bylaws *only* provide a mechanism for filling a vacancy in elective office. E. 92-94, *Art. X* of Committee Constitution. There exists no provision for rescinding the name of the person submitted to Governor for appointment. The procedure for filling a vacancy is contained in Art. X of the Committee's Constitution wherein it quotes Art. III § 13 of the Maryland Constitution and also quotes directly from the Maryland Democratic Party By-Laws. E. 92-93. The Committee's Constitution specifically contemplates a "vote" for the filling of the vacancy and mandates that such a vote "shall be conducted by roll call." *See* Art. X, § 6 of the Committee Constitution at E. 93. The Committee is required to hold a public meeting for the "filling of the vacancy" and that "[n]o vacancy shall be filled prior to the public advertising thereof and the holding of a public hearing for the purpose of soliciting candidates to fill said vacancy." *See* Art. X, § 7 of the Committee Constitution at E. 94. There exists no provision in Article X or any of the other governing documents of the Committee that authorizes rescission of the name submitted as appointee and there is no procedure for holding public meetings, notice to the public of any meeting concerning rescission of a name or how the vote to rescind is to be taken.

The Committee's "Standing Rules" further demonstrate that the Committee has no power to rescind a name submitted to the Governor under Art. III, § 13(a)(1). E. 101-102. The Standing Rules provide a comprehensive procedure for the selection of the appointee to fill the vacancy. Section 7 of the "Standing Rules" provides for the "order of business for a hearing conducted to" fill a vacancy and sets forth that each Candidate shall have an opportunity to speak, that elected officials shall have an opportunity to speak and that members of the public may speak before the Committee. The "Standing Rules" specifically contemplate questions of Candidates from the Committee. *See Sec. 8* at E. 102. The Standing Rules prohibit Committee members from testifying on behalf of candidates. In contrast to this comprehensive procedure to fill a vacancy, the Standing Rules provide no procedure for rescission of a name submitted to the Governor. E. 101-102. The Maryland Democratic Party By-Laws provide no authority or procedure for

rescission of a name submitted to the Governor to fill a vacancy. E. 106-113. This is significant because the Standing Rules, Committee Constitution and Maryland Democratic Party By-Laws go to great lengths to set forth the procedure for “filling the vacancy” and if the Committee had any authority to rescind the name submitted to the Governor after a “roll call vote” and “testimony” by members of the public, surely there would be a procedure for the rescission of the name that won the election.

The Committee Members authorized to vote to fill a vacancy are “elected” by the general public. As elected members, they are to serve the people of Prince George’s County. They are representatives of the districts which elected them to serve and in the process of filling a vacancy in elected office, they are at least an indirect voice for the electorate. *See* 70 Op. Md. Att’y Gen. 116 (1985). In fulfilling their duty, on November 2, 2012 after notice to the public and testimony from the public and elected officials, the Committee conducted a democratic vote consistent with the republican form of government set forth in the Maryland Constitution and voted 12-10 that Gregory Hall was the People’s choice as appointee to fill the vacant 24<sup>th</sup> Legislative District Seat in the House of Delegates. The Committee submitted the name of Gregory Hall to the Governor five days later on November 7, 2012.

The Constitution of the Committee explicitly states that the Committee is further governed by “the current edition of Robert’s Rules of Order.” E. 91 (Committee Constitution Art. VI, § 9.) The current edition of Robert’s Rules of Order indicates that the Committee is prohibited from rescinding the result of the election where Gregory Hall was present and officially notified of the result, and further indicates that once the name of the winner of the election is submitted to the Governor the Committee is prohibited from rescinding the name. *See* RONR (11<sup>th</sup> Ed.), § 35 (concerning actions that may not be rescinded). Pursuant to the Committee’s Constitution and other governing documents, the election of Gregory Hall to fill the vacant 24<sup>th</sup> Legislative District Seat may not be rescinded by the Committee after his name is submitted to the Governor.

The entire detailed process for filling a vacancy set forth in the Committee’s Constitution, By-Laws and Standing Rules is to provide order, notice and some measure

of participation to the public in filling a vacancy. The maxim *exclusio unius expressio alterius* is applicable in interpreting the Committee's Constitution, By-Laws and Standing Rules. The inclusion of the detailed procedure for filling a vacancy with the exclusion of *any* procedure for rescinding a name submitted to the Governor for appointment demonstrates that the Committee has no power of rescission. The public was not informed by Mr. Speigner or the Committee that it would attempt to rescind the name of Gregory Hall and the public was not informed that the Committee, if successful in such rescission, would be giving up all power it had to select the person to fill the vacancy, i.e., the Committee would be abandoning its indirect voice of the electorate.

Notice to the public is one of the foundational principles for the Committee in filling a vacancy. This would appear to be obvious as the person who is voted to fill such vacancy will be representing that same public for the unexpired term of the vacant office. One would expect that when such explicit provisions are provided for notice to the public that, at a minimum, such notice provisions would be set forth concerning any purported rescission of a name submitted to the Governor. The public is provided a significant part in the election process, however, the Committee excluded public notice of its arbitrary and unauthorized attempt to rescind the name of Gregory Hall as the appointee on November 26, 2012. Such a covert action by the Committee was in violation of its Constitution, By-Laws and Standing Rules.

### **C. The Election of Gregory Hall and Impermissible Attempted Rescission**

The plain and simple fact is on November 2, 2012, the Committee duly held an election to fill the vacancy created by Ms. Alston's disqualification and removal from office. The Committee advertised that it would hold an election to fill such vacancy. The Committee had a list of candidates to fill such vacancy, including Terry Speigner and Gregory Hall. Several elected officials attended the election meeting and spoke in favor of Gregory Hall. After significant discussion, questions from the Committee, statements by the Candidates and testimony by the public and elected officials, the Committee elected Gregory Hall to fill the vacancy in the House of Delegates for the 24<sup>th</sup> Legislative District in a roll call vote 12-10 over Terry Speigner. The Committee subsequently

certified the results of the election of Gregory Hall and submitted the name of Gregory Hall to the Governor on November 7, 2012 for appointment under Art. III, § 13(a)(1). The Committee completed its appointment of Gregory Hall within the required thirty day period and its jurisdiction in the process ended on the expiration of the thirty day period on November 8, 2012.

After there arose “some question or doubt” as to whether Gregory Hall’s appointment would be “duly acted upon” by the Governor, two of those elected officials who were in attendance at the November 2, 2012 election voiced their support for Gregory Hall in writing on November 15, 2012. *See* November 15, 2012 Letter to Governor Martin O’Malley from Andrea Harrison, Chair of the Prince George’s County Council and November 15, 2012 Letter to Senator Joanne C. Benson from Jennifer A. Jenkins, Councilwoman for Ward III in the City of Glenarden in Prince George’s County at E. 120 and E. 115-16, respectively. From the date Gregory Hall was elected on November 2, 2012 until November 17, 2012, the Committee took no action to rescind the election of Gregory Hall. On Saturday, November 17, 2012, an item was added to the Committee’s agenda for its previously scheduled November 20, 2012 meeting as a direct result of the Governor’s November 16, 2012 Letter wherein the Governor stated that he required a formal opinion from the Attorney General’s Office regarding the vacancy of the 24<sup>th</sup> Legislative District Seat. E. 80-81. Notably, the Governor’s November 16, 2012 Letter is not addressed to Terry Speigner, but instead is addressed to the “First Vice Chair, Secretary and Assistant Secretary” of the Committee. This was because the Chairman of the Committee, Mr. Speigner, was the losing candidate in the Committee’s election to fill the vacancy and Mr. Speigner was recused from participating further concerning the vacancy. As the record reflects, Mr. Speigner soon disregarded such recusal in his improper attempts to remove Gregory Hall as the Committee’s appointee. Governor O’Malley’s November 16, 2012 Letter states that his request that the Committee “withdraw Mr. Hall’s name and take no further action” was premised upon the receipt of a formal opinion from the Attorney General’s Office concerning the question of whether the seat was in fact vacant and had nothing to do with any alleged

background information concerning Mr. Hall. There is not one mention of Gregory Hall's qualifications or his background in the Governor's November 16, 2012 Letter to the Committee. On November 20, 2012, prior to the commencement of the Committee's meeting, the Attorney General issued its "formal opinion" to the Governor that the seat was in fact vacant thereby satisfying the stated purpose of the Governor's request and terminating the stated reason to withdraw Gregory Hall's name. Governor O'Malley made no further written communication to the Committee concerning any purported rescission of Gregory Hall's name as the appointee after he received the Attorney General's Formal Opinion.

The record is undisputed that after a "roll call vote" to hold the Governor's November 16, 2012 "request" in abeyance on November 20, 2012, Terry Speigner called what he deemed an "emergency meeting" to attempt to have the Committee reconsider its prior "roll call vote" to leave Gregory Hall as its appointee. On Saturday November 24, 2012, Terry Speigner called an "emergency meeting" via e-mail to certain members of the Committee. By no coincidence, Mr. Speigner eliminated Mr. Hall from the e-mail notice. Mr. Speigner provided no notice to the general public of his intention to coerce the Committee into rescinding the name of Gregory Hall as its appointee and followed no other procedures set forth in the Committee's Constitution, By-Laws or Standing Rules concerning notice relating to filling a vacancy in the House of Delegates. Mr. Speigner represented at the Committee's meeting on November 26, 2012 that he had been in contact with Governor O'Malley concerning the appointment of Gregory Hall, but declined to elaborate on the alleged discussions with the Governor. E. 192. No "roll call vote" was taken on November 26, 2012.

#### **D. The Fabrication of the Central Committee's Chairman**

The entire alleged issue concerning Gregory Hall's background is a fabrication created by Terry Speigner, the loser of the election to fill the vacant seat. The Committee's Brief alleges that only after the name of Gregory Hall was submitted to the Governor did any "background" information become available. This is simply not true. The "background" information allegedly relied upon by the Committee to support the

contention of Terry Speigner was public record. It was available to all members of the public and the Committee through the Maryland Judiciary website as is evident from the Circuit Court's Opinion in this case as the specific case number concerning a twenty year old misdemeanor charge was not part of this record until the Circuit Court included it in its Opinion. Moreover, an "anonymous" e-mail was sent on November 1, 2012 to Committee members concerning Gregory Hall's background prior to the November 2, 2012 Committee election. E. 189. There is no admissible evidence in the record that supports Mr. Speigner's contentions that the Committee did not have such information prior to the November 2, 2012 election. Moreover, Mr. Speigner's contentions are not supported by the specious timeline of events set forth in the Brief of the Committee.

The entirety of the deceptive assumptions set forth in the Committee's Brief are based upon the defective affidavit of Mr. Speigner.<sup>3</sup> Assuming *arguendo*, that the Washington Examiner had an article concerning Mr. Hall on November 8, 2012<sup>4</sup>, then one must ask the question of why the Committee took no action to add an agenda item to its previously scheduled November 20, 2012 meeting until *after* Governor O'Malley delivered his November 16, 2012 Letter to the Committee, which letter contained no mention of Mr. Hall's alleged objectionable background. If, as Mr. Speigner would have this Court believe, all of the alleged objectionable background information for Mr. Hall surfaced for the first time on November 8, 2012, why was the Governor's November 16, 2012 Letter the impetus to have an agenda item added on Saturday, November 17, 2012? Why on November 20, 2012 was the resolution passed by the Committee to hold in abeyance the "Governor's request" in his November 16, 2012 Letter rather than a resolution concerning Gregory Hall's alleged background? The answer is obvious, the alleged objectionable background information was not an issue for the Committee and

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<sup>3</sup> As set forth in the Brief of Gregory Hall and herein at Section III, Mr. Speigner's is defective and the alleged facts set forth therein cannot be deemed undisputed or admissible.

<sup>4</sup> Mr. Speigner's Affidavit actually states that the article appeared on November 8, 2016, rather than 2012. E. 263.

was known to the Committee prior to the election of Gregory Hall on November 2, 2012 and prior to the submission of Gregory Hall's name to the Governor on November 7, 2012. Moreover, the alleged background information is irrelevant to the legal issue of whether the Committee may rescind a name it submitted to the Governor and is merely an attempted smear campaign by the loser of the election Mr. Speigner. The reality is that Mr. Hall was falsely accused in the shooting death of a young person twenty years ago, and that he was fully exonerated of the charges because forensic evidence conclusively cleared him. The Committee held an election pursuant to its Constitution to fill the vacant seat and with all relevant information voted for Gregory Hall to fill the vacancy and it has no real basis to rescind the name of Gregory Hall and has no power to rescind the name of Gregory Hall in this case.

The Committee's argument that it "would have" withdrawn Mr. Hall's name on November 20, 2012 is pure speculation and not supported by the record. The fact is that the Committee was not enjoined from taking action on November 20, 2012.<sup>5</sup> The fact is that the Committee held a "roll call vote" and voted 12-8 not to take any action "on the Governor's request" to withdraw the name of Gregory Hall. As set forth above, the "Governor's request" made no mention of Gregory Hall's alleged background. To say that the Committee "would have" taken any action on the "Governor's request" when the Attorney General had issued its formal opinion immediately prior to the start of the November 20, 2012 meeting is unsupported conjecture and is in direct conflict with the Committee's *actual* roll call vote.

#### **E. The Applicable Attorney General Opinions and Letters of Advice**

The Attorney General's Office addressed the issue of rescission of a Committee appointee three separate times in letters of advice from 1996 to 2002. E. 229-231, 245-246, 253-260. Such letters of advice are not formal opinions of the Attorney General's Office and no formal opinion has addressed the issue. The three letters of advice *all* conclude that the Committee may not rescind its appointee *after* the expiration of the

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<sup>5</sup> The contention of the Committee that a show cause order issued is false as the record reflects no written show cause order was ever issued or entered by the Clerk of Court.



mandatory thirty day deadline for the Committee to submit a name to the Governor for appointment in Art. III, § 13(a)(1). Notably, each of the letters of advice also conclude that the Governor has no discretion to refuse to appoint the person submitted to him by the Committee within the thirty day deadline in Art. III, § 13(a)(1). Mr. Israel's Letter of Advice in 2002 is particularly instructive in this case in that he concludes that the Committee may not reconsider its appointee if the Committee has submitted the name of its appointee in writing to the Governor *and* the thirty day deadline under Art. III, § 13(a)(1) has expired. E. 255-56. Mr. Israel also wrote a Letter of Advice in 1996 concerning rescission and concluded that the Committee could not rescind the name submitted to the Governor after expiration of the thirty day period set forth in Art. III, § 13(a)(1). E. 257-58.

The conclusion in the Letter of Advice of Mr. Dan Friedman relied upon by the Committee and Governor in this case is not supported by the plain language of Art. III, § 13(a)(1), and the prior interpretations of the Attorney General's Office set forth in the Letters of Advice from 1996 to 2002 and in prior formal opinions. Attorney General Francis Burch stated in a formal opinion "For the Constitution requires that the Governor *shall appoint* a person to fill such vacancy from a person whose name 'is submitted to him by the appropriate State Central Committee.'" 62 Op. Md. Att'y Gen. 241 (1977). Attorney General Burch's conclusion indicates that where the Committee submits a name within thirty days, neither the Committee nor the Governor may impede the appointment of that person to fill the vacancy.

The reliance on *Duer v. Dashiell*, 91 Md. 660 (1900) lends no support to the Committee and Governor. The issue in *Dashiell* was whether a person elected by the Board of School Commissioners to serve as its secretary, treasurer and examiner had a contractual right to hold such office for the full term of two years where the Legislature abrogated the Board by legislation thereby terminating the term of that Board. This Court held that the former Board of School Commissioners had no power to fix the duration of office for an indefeasible term of two years and that when the term of the former Board was terminated by the Legislature, the term of office of its secretary also

came to an end. *Id.* at 668. In reaching its holding, this Court noted that such a public official serving a Board of School Commissioners has no contractual or vested right in his office. This Court's holding in *Dashiell* is inapposite and easily distinguishable from the issues present in this case. The issue in *Dashiell* did not involve an interpretation of the Maryland Constitution or the filling of a vacancy in the General Assembly. The issues herein do not involve service of officers for a Board of Commissioners and do not involve legislation that terminates the term of a Board of Commissioners.

Notably, this Court has recognized that the right to public office is “often the most valuable property a person possesses.” *Schisler v. State*, 394 Md. 519, 571-72, 907 A.2d 175 (2006)(quoting *Magruder v. Swann*, 25 Md. 173, 205-209 (1866)). Gregory Hall claims the Maryland Constitution, supplemented by the Committee's Constitution, By-Laws and Standing Rules, sets forth the process for filling a vacancy in the Maryland House of Delegates and pursuant to that process Gregory Hall was duly elected to fill the vacancy, his name was submitted to the Governor within thirty days of the occurrence of the vacancy and therefore the Governor is duty bound to appoint him to the 24<sup>th</sup> Legislative District Seat in the House of Delegates to complete the unexpired term of the office. *See* Art. III, § 13(a)(4). Gregory Hall claims that the Maryland Constitution as plainly written should be upheld by this Court and not improperly manipulated by the Committee to serve the impermissible political purposes of its Chairman, who lost the election to Gregory Hall.

#### **F. The Importance of the Thirty Day Period for Submission of a Name**

The thirty day time period is important in the rescission analysis because the Committee has no power under Art. III, § 13(a)(1) after the expiration of thirty days from the occurrence of the vacancy. It loses the jurisdiction to act in a binding manner upon the expiration of the thirty day period. Moreover, the plain language of Art. III, § 13(a)(1) provides that after the expiration of the thirty day period if the Committee has submitted a name to the Governor, the Governor must appoint *that* person. The Governor has no discretion after the name is submitted to him within thirty days, and no discretion to ask the Committee to reconsider its appointee. This interpretation is

supported by the language of Art. III, § 13(a)(2) which provides the Governor substantial discretion. The provisions of Art. III, § 13(a)(2), however, are only operative “[i]f a name is *not submitted* by the Central Committee within thirty days after the occurrence of the vacancy....” (Emphasis added). If a name *is submitted* within thirty days, the Governor *must* appoint that person to fill the vacancy.

The Legislature could have expressly provided the power to rescind the name submitted to the Committee but it did not. *Cf.* Maryland Constitution Art. II, § 10A; Art. II, § 15; Art. IV, § 4B; Art. VI, § 6 (all explicitly grant the power of removal). The Legislature in drafting Art. III, § 13 and the People in ratifying it did not provide any power to the Committee to remove the name submitted to the Governor for appointment. If the framers desired to grant the power to remove an appointee after submission of the name to the Governor they certainly knew how to do it, and clearly declined to do so.

The purpose of Art. III, § 13 was obviously to replace a special election to fill a vacancy in the General Assembly and to do so expeditiously.<sup>6</sup> In a special election, the Governor would have no discretion to refuse to issue a commission to the winner of the election and similarly the Governor has no discretion to deny the appointment to the person who wins the election before the Committee after the name of the winner is submitted to him. The Legislature drafted Art. III, § 13 as a cost effective representative election substitute for a popular special election and the People ratified it as such. The *purpose* of the special election to fill the vacancy was not abrogated, only the *process* was modified. Once the name is submitted to the Governor by the Committee under Art. III, § 13(a)(1), it has a similar effect as the certification of special election results, i.e., the Governor must issue the commission to the person whose name is submitted to him.

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<sup>6</sup> Contrary to the Governor’s contention, the purpose of Art. III, § 13 is not to protect the prerogative of the Central Committee but rather to provide the prescribed process for expeditiously filling a vacancy in office. The prerogative of the Central Committee was to submit a duly elected candidate to the Governor for appointment within thirty days of the vacancy and that is exactly what the Central Committee did. There is no language in Art. III, § 13 or the Committee’s governing documents that provide authority for the Committee to rescind after the thirty day time period has expired which is consistent with the purpose of Art. III, § 13 to expeditiously fill the vacancy in office.

The history of Art. III, § 13(a)(1) further demonstrates that the Committee has no power to rescind its appointee after it has submitted the name to the Governor for appointment. From 1936 to 1966, Art. III, § 13 contained no time limit on when the Committee was required to submit a name to the Governor for appointment. The Attorney General's interpretation over this thirty year period was that the Committee was to submit the name to the Governor for appointment within a reasonable time after the occurrence of the vacancy. In 1966, the General Assembly inserted the thirty day time period for the Committee to act and further amended Art. III, § 13 to provide for the Governor to make an appointment if the Committee did not submit a name to him. For the first time the Governor was provided some discretion in the filling of a vacancy, but *only* if the Committee *did not submit* a name to him within thirty days. The consistency of the duty of the Governor to appoint the person whose name was submitted to him by the Committee remained and the Governor's duty arose immediately upon the submission of a name to him in writing by the Committee.

The proposition that the Committee possesses power to rescind a name after the expiration of the thirty day period in Art. III, § 13(a)(1) is contrary to established Maryland law. This Court's decisions in *Groome v. Gwinn, supra.*, *Brooke v. Widdicombe, supra.*, and *Magruder v. Swann, supra.* confirm that the Governor is required perform his ministerial duty to appoint the person whose name is submitted to him by the Committee and a power in the Committee to rescind the name of the person submitted to and binding upon the Governor would render the "duty" of the Governor to appoint that person in Art. III, § 13(a)(1) a nullity. The interpretation proposed by the Committee and the Governor violates the canons of constitutional interpretation. The Committee's limited power is evident upon reading the entirety of Art. III, § 13. It is no coincidence that the Governor's duty to appoint under Art. III, § 13(a)(1) is nearly identical to his duty to issue a commission, a duty that is purely ministerial.

As set forth above, the process for filling the vacancy under Art. III, § 13(a)(1) and the Committee's Constitution, Bylaws and Standing Rules involve an election, notice to the public before the election, the opportunity for the public and elected officials to

provide testimony, and for the result of the election to be submitted to the Governor for him to perform his “duty to appoint.” The process is similar to a special election where the votes are counted, the returns are certified and given to the Governor to issue a commission to the person with the most votes duly elected to the office. In *Brooke v. Widdicombe, supra.*, this Court held that the duty imposed upon the Governor to issue a commission is a ministerial duty that may be enforced by mandamus. *Widdicombe*, 39 Md. at 401 (citing *Magruder v. Swann, supra.*). Notably, this Court also held that where the defeated contestant in the election pursues a contest of the results of the election that the duty of the Governor remains to issue the commission regardless of the post-election contest. *Id.* at 401-02. The reasoning of this Court was that “there is nothing in the sections of the Constitution...that supports” the view that the Governor may refuse to perform his constitutional duty to issue the commission pending the results of the contested election. This Court stated “on the contrary, the 11<sup>th</sup> Section [of Art. IV of the Constitution of 1867] expressly declares that the election returns shall be certified to the Governor, ‘who shall issue commissions to the different persons for the offices, to which they shall have been, respectively, elected; and in all such elections, the person have the greatest number of votes, shall be declared to be elected.’” *Id.* at 401. This Court further held “it is very obvious from the language of the Constitution, as well as upon the plainest reason, that it never was contemplated, ... that the Governor,..., would be justified in refusing to issue the commission to the person regularly and duly returned as elected.” *Id.* at 402 (emphasis added).

The holding of this Court in *Widdicombe, supra.* is equally applicable to the instant case. Gregory Hall was duly elected on November 2, 2012 by the representative body of the Committee pursuant to the process set forth in the Maryland Constitution and the Committee’s governing documents to fill the vacancy for the unexpired portion of the term of office, five days later on November 7, 2012 the result of the election was certified to the Governor in writing with Gregory Hall declared the winner and upon the submission of Gregory Hall’s name to the Governor by the Committee, the Governor was to perform his “duty to appoint within fifteen days.” Upon the submission of Gregory

Hall's name, similar to the certification of election returns, the power of the Committee in the process was complete and it then became the duty of the Governor to appoint the person whose name was submitted. "It was never contemplated" that the Governor "would be justified in refusing to issue" the appointment to Gregory Hall. *See id.*

In *Gwinn, supra.*, as he had in this Court's Opinion in *Widdicombe*, Chief Judge Bartol reiterated that the Governor's duty to issue a commission is a ministerial duty that may be compelled by a Writ of Mandamus. This Court held under Art. IV, § 11 of the Maryland Constitution that "the Governor is required to issue commissions to the persons regularly and duly returned as elected. This is the plain meaning of its language, and such has been decided to be its true construction." *Gwinn*, 43 Md. at 623. The plain language of Art. III, § 13(a)(1) *requires* the Governor to make the appointment within fifteen days. If there were any question in the construction of the plain language of Art. III, § 13(a)(1), this Court's Opinions in *Swann*, *Widdicombe* and *Gwinn* confirm that there is nothing that would justify the Governor refusing to perform his ministerial duty, including the Committee Chairman's unauthorized attempt to create a fabricated election contest. Accordingly, the Committee has no power to rescind the name submitted to the Governor under Art. III, § 13(a)(1) after the expiration of thirty days from the occurrence of the vacancy and the Governor may not refuse to perform his ministerial duty to appoint Gregory Hall to fill the unexpired term of office as Delegate for the 24<sup>th</sup> Legislative District.

### **III. THE COMMITTEE'S DEFECTIVE AFFIDAVIT**

The Affidavit of Terry Speigner is not in conformance with Maryland Rule 2-501(c) and the "form of affidavit" upon "personal knowledge" mandated by Maryland Rule 1-304. The Committee note to Maryland Rule 1-304 states "[t]his Rule is not intended to abrogate *the additional* requirements for summary judgment set forth in Rule 2-501." (Emphasis added). The "statement of the affiant" for purposes of summary judgment *must* be in the form set forth in Maryland Rule 1-304 for "personal knowledge" and must give oath that "...the contents of the foregoing paper are true." The Affidavit of Terry Speigner does not conform to Maryland Rule 1-304 and does not "affirm under

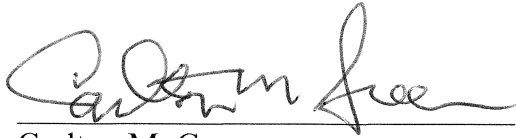
the penalties of perjury and upon personal knowledge that the contents of [the Affidavit] are true.” There is good reason for such an obvious oversight, the contents are not true and cannot be considered for purposes of summary judgment. The false contention that Mr. Hall did not challenge any of the alleged specific facts set forth in the Speigner Affidavit is meritless. Mr. Hall challenged *ALL* of the statements in the Speigner Affidavit and the entirety of the Affidavit by filing a Motion to Strike the entire Affidavit because the entirety of the Speigner Affidavit is NOT TRUE pursuant to Maryland Rule 1-304 and could not be used to support the Committee’s Motion for Summary Judgment. In addition to the clear violation of the Maryland Rules, the Speigner Affidavit sought to present inadmissible evidence which is clearly objectionable. The Maryland Rules are “precise rubrics” that “are to be strictly followed.” *Duckett v. Riley*, 428 Md. 471, 477, 52 A.3d 84 (2012) (quoting *In re Kaela*, 394 Md. 432, 471, 906 A.2d 915, 938 (2006)).

The Committee did not follow the Maryland Rules and presented a deficient affidavit in support of its Motion for Summary Judgment that should have been stricken by the lower court. The Committee’s disregard for the Maryland Rules renders its allegations of fact meaningless and such unsubstantiated allegations cannot support its Motion for Summary Judgment or its Brief herein.

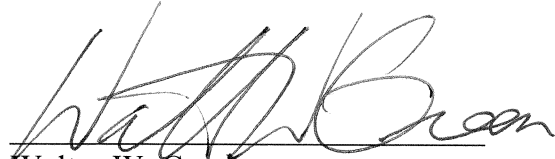
### **CONCLUSION**

For the foregoing reasons and the reasons set forth in the Brief of Appellant, the December 5, 2012 Opinion and Order and Declaration of Rights of the Circuit Court for Prince George’s County, Maryland in the case captioned *Gregory Hall v. Prince George’s County Democratic Central Committee, et al.*, Case Number CAL12-36913, should be reversed, the Governor should be ordered to appoint Gregory Hall to fill the vacant seat, upon any refusal by the Governor or failure to act within the time specified by this Court, a Writ of Mandamus should be issued to the Governor to compel him to perform his express duty under Art. III §13(a)(1) to appoint Appellant Gregory Hall to fill the vacant House of Delegates seat in the 24<sup>th</sup> Legislative District in the upcoming legislative session.

Respectfully submitted,



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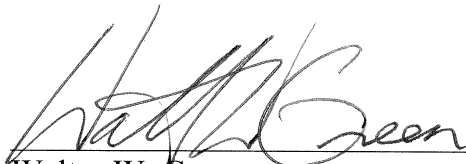
**CERTIFICATE OF SERVICE**

I HEREBY certify that on this 2<sup>nd</sup> day of January, 2013, that two copies of the foregoing Reply Brief of the Appellant Gregory Hall were e-mailed and mailed, via first class mail, postage prepaid, to:

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**APPENDIX TO APPELLANT’S REPLY BRIEF**

**Constitutional Provisions**

Maryland Constitution Art. II, §10A ..... Rep. App. 1

Maryland Constitution Art. II § 15 ..... Rep. App. 2

Maryland Constitution Art. II, § 17 ..... Rep. App. 3

Maryland Constitution Art. IV, § 4B ..... Rep. App. 5

Maryland Constitution Art. VI, § 6..... Rep. App. 7

**Statutes**

Maryland Annotated Code, art. 25, § 16..... Rep. App. 8

**Rules**

Maryland Rule 1-101 ..... Rep. App. 9



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\*\*\* Annotations through August 18, 2012 \*\*\*

CONSTITUTION OF MARYLAND  
ARTICLE II. EXECUTIVE DEPARTMENT

**GO TO MARYLAND STATUTES ARCHIVE DIRECTORY**

*Md. Const. art. II, § 10A (2012)*

Section 10A. Appointment of officers between primary election and inauguration of next succeeding Governor; emergencies

(a) Except as provided in subsection (b) of this section, a Governor may not appoint a person to an office in the Executive Branch of State Government during:

(1) The period between a primary election in which the Governor is not renominated or is ineligible to succeed himself and the inauguration of the next succeeding Governor; or

(2) If the Governor is nominated in the primary election but defeated in the general election, the period between the general election and the inauguration of the next succeeding Governor.

(b) In an emergency during the periods described in subsection (a) of this section, a Governor may appoint a person to an office in the Executive Branch that the Governor has the power to fill on a temporary basis upon filing a statement of emergency with the Secretary of State. Appointments made under this subsection are subject to the approval of the next succeeding Governor, who may remove the temporary officeholder and appoint a replacement.

**HISTORY:** 1995, ch. 114, ratified Nov. 5, 1996.

**NOTES:** EDITOR'S NOTE. --Section 2, ch. 114, Acts 1995, provides that "the General Assembly determines that the amendment to the Constitution of Maryland proposed by this Act affects multiple jurisdictions and that the provisions of *Article XIV, § 1 of the Constitution* concerning local approval of constitutional amendments do not apply."



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CONSTITUTION OF MARYLAND  
ARTICLE II. EXECUTIVE DEPARTMENT

**GO TO MARYLAND STATUTES ARCHIVE DIRECTORY**

*Md. Const. art. II, § 15 (2012)*

Section 15. Suspension and removal of officers

The Governor may suspend or arrest any military officer of the State for disobedience of orders, or other military offense; and may remove him in pursuance of the sentence of a Court-Martial; and may remove for incompetency, or misconduct, all civil officers who received appointment from the Executive for a term of years.

**NOTES: CROSS REFERENCES.** --See § 11 of this article. As to removal of Adjutant-General, see *article IX, § 2, of the Constitution*. As to militia, see Article 65 of the Code.



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CONSTITUTION OF MARYLAND  
ARTICLE II. EXECUTIVE DEPARTMENT

**GO TO MARYLAND STATUTES ARCHIVE DIRECTORY**

*Md. Const. art. II, § 17 (2012)*

Section 17. Governor to approve or disapprove bills passed by legislature; reconsideration of vetoed bills by legislature; disapproval of items in bills making appropriations

(a) To guard against hasty or partial legislation and encroachment of the Legislative Department upon the co-ordinate Executive and Judicial Departments, every Bill passed by the House of Delegates and the Senate, before it becomes a law, shall be presented to the Governor of the State. If the Governor approves he shall sign it, but if not he shall return it with his objections to the House in which it originated, which House shall enter the objections at large on its Journal and proceed to reconsider the Bill. Each House may adopt by rule a veto calendar procedure that permits Bills that are to be reconsidered to be placed on each veto calendar. The members of each House shall be afforded reasonable notice of the Bills to be placed on each veto calendar. Upon the objection of a member, any Bill shall be removed from the veto calendar. If, after such reconsideration, three-fifths of the members elected to that House pass the Bill, it shall be sent with the objections to the other House, by which it shall likewise be reconsidered, and if it passes by three-fifths of the members elected to that House it shall become a law. The votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the Bill shall be entered on the Journal of each House respectively.

(b) If any Bill presented to the Governor while the General Assembly is in session is not returned by him with his objections within six days (Sundays excepted), the Bill shall be a law in like manner as if he signed it, unless the General Assembly, by adjournment, prevents its return, in which case it shall not be a law.

(c) Any Bill presented to the Governor within six days (Sundays excepted), prior to adjournment of any session of the General Assembly, or after such adjournment, shall become law without the Governor's signature unless it is vetoed by the Governor within 30 days after its presentment.

(d) Any Bill vetoed by the Governor shall be returned to the House in which it originated immediately after the House has organized at the next regular or special session of the General Assembly. The Bill may then be reconsidered according to the procedure specified in this section. Any Bill enacted over the veto of the Governor, or any Bill which shall become law as the result of the failure of the Governor to act within the time specified, shall take effect 30 days after the Governor's veto is over-ridden, or on the date specified in the Bill, whichever is later. If the Bill is an emergency measure, it shall take effect when enacted. No such vetoed Bill shall be returned to the Legislature when a new General Assembly of Maryland has been elected and sworn since the passage of the vetoed Bill.

(e) The Governor shall have power to disapprove of any item or items of any Bills making appropriations of money embracing distinct items, and the part or parts of the Bill approved shall be the law, and the item or items of appropria-

tions disapproved shall be void unless repassed according to the rules or limitations prescribed for the passage of other Bills over the Executive veto.

**HISTORY:** 1890, ch. 194, ratified Nov. 3, 1891; 1949, ch. 714, ratified Nov. 7, 1950; 1959, ch. 664, ratified Nov. 8, 1960; 1974, ch. 883, ratified Nov. 5, 1974; 1988, ch. 793, ratified Nov. 8, 1988.

**NOTES:** CROSS REFERENCES. --See *article III, § 30, of the Constitution*.

EFFECT OF AMENDMENTS. --The 1988 amendment rewrote the section.



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CONSTITUTION OF MARYLAND  
ARTICLE IV. JUDICIARY DEPARTMENT  
PART I. GENERAL PROVISIONS

**GO TO MARYLAND STATUTES ARCHIVE DIRECTORY**

*Md. Const. art. IV, § 4B (2012)*

Section 4B. Power of Commission on Judicial Disabilities; procedure; removal or retirement of judge by Court of Appeals

(a) (1) The Commission on Judicial Disabilities has the power to:

(i) Investigate complaints against any judge of the Court of Appeals, any intermediate courts of appeal, the circuit courts, the District Court of Maryland, or the orphans' court; and

(ii) Conduct hearings concerning such complaints, administer oaths and affirmations, issue process to compel the attendance of witnesses and the production of evidence, and require persons to testify and produce evidence by granting them immunity from prosecution or from penalty or forfeiture.

(2) The Commission has the power to issue a reprimand and the power to recommend to the Court of Appeals the removal, censure, or other appropriate disciplining of a judge or, in an appropriate case, retirement.

(3) All proceedings, testimony, and evidence before the Commission shall be confidential and privileged, except as provided by rule of the Court of Appeals; the record and any proceeding filed with the Court of Appeals shall lose its confidential character, except as ordered by the Court of Appeals.

(4) No judge shall participate as a member of the Commission in any proceedings involving that judge's own conduct, and the Governor shall appoint another judge as a substitute member of the Commission for those proceedings.

(5) The Court of Appeals shall prescribe by rule the means to implement and enforce the powers of the Commission and the practice and procedure before the Commission.

(b) (1) Upon any recommendation of the Commission, the Court of Appeals, after a hearing and upon a finding of misconduct while in office, or of persistent failure to perform the duties of the office, or of conduct prejudicial to the proper administration of justice, may remove the judge from office or may censure or otherwise discipline the judge, or the Court of Appeals, after hearing and upon a finding of disability which is or is likely to become permanent and which seriously interferes with the performance of the judge's duties, may retire the judge from office.

(2) A judge removed under this section, and the judge's surviving spouse, shall have the rights and privileges accruing from the judge's judicial service only to the extent prescribed by the order of removal.

(3) A judge retired under this section shall have the rights and privileges prescribed by law for other retired judges.

(4) No judge of the Court of Appeals shall sit in judgment in any hearing involving that judge's own conduct.

(c) This section is alternative to, and cumulative with, the methods of retirement and removal provided in Sections 3 and 4 of this Article, and in *Section 26 of Article III of this Constitution*.

**HISTORY:** 1965, ch. 773, ratified Nov. 8, 1966; 1969, ch. 789, ratified Nov. 3, 1970; 1969, ch. 791, rejected Nov. 3, 1970; 1974, ch. 886, ratified Nov. 5, 1974; 1980, ch. 523, ratified Nov. 4, 1980; 1995, ch. 113, ratified Nov. 5, 1996.

**NOTES:** CROSS REFERENCES. --As to removal or retirement of judges, see Maryland Rule 16-803.





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CONSTITUTION OF MARYLAND  
ARTICLE VI. TREASURY DEPARTMENT

**GO TO MARYLAND STATUTES ARCHIVE DIRECTORY**

*Md. Const. art. VI, § 6 (2012)*

Section 6. Removal of Comptroller and Treasurer

Whenever during the recess of the Legislature charges shall be preferred to the Governor against the Comptroller or Treasurer, for incompetency, malfeasance in office, willful neglect of duty, or misappropriation of the funds of the State, it shall be the duty of the Governor forthwith to notify the party so charged, and fix a day for a hearing of said charges; and if, in the case of the Comptroller, from the evidence taken, under oath, on said hearing before the Governor, the said allegations shall be sustained, it shall be the duty of the Governor to remove the Comptroller and appoint another in his place, who shall hold the office for the unexpired term of the Comptroller so removed. However, if, in the case of the Treasurer, from the evidence taken under oath in the hearing before the Governor, the allegations are sustained, it is the duty of the Governor to remove the Treasurer, and the deputy treasurer shall act as Treasurer until the next regular or extraordinary session of the Legislature following the appointment, whereupon a successor shall be chosen by the Legislature who shall serve for the unexpired term of the Treasurer so removed.

**HISTORY:** 1976, ch. 640, ratified Nov. 2, 1976.



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ARTICLE 25. COUNTY COMMISSIONERS  
GENERAL PROVISIONS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

*Md. Ann. Code art. 25, § 16 (2012)*

§ 16. Filling vacancy in office of county commissioner; special provision as to Allegany County

(a) Applicability of section. -- This section applies only to commission counties and, unless otherwise provided by a local law enacted by a code county, code counties.

(b) In general. --

(1) In case any office of county commissioner shall become vacant in any county by death, resignation or otherwise, the Governor, if such vacancy shall occur during the session of the Senate, shall, by and with the advice and consent of the Senate, appoint, and if such vacancy shall occur during the recess of the Senate, the Governor shall appoint a proper person or proper persons to fill such vacancy or vacancies; and the nomination of the person or persons thus appointed during such recess, or of some other person in his or their place, shall be made to the Senate within thirty days after the next meeting of the legislature.

(2) (i) Subject to subparagraph (ii) of this paragraph the Governor shall nominate or appoint the person to fill such vacancy whose name shall be submitted to the Governor in writing by the central committee of the political party with which the county commissioner, so vacating, has been affiliated in the particular county, provided that the nominee or appointee shall be of the same political party as the person whose office is to be filled; and it shall be the duty of the Governor to make the nomination or appointment within fifteen days after the submission of the name of the nominee or appointee to the Governor.

(ii) In Garrett County, the nominee or appointee shall be a resident of the same commissioner district in which the former county commissioner resided.

(3) In the event there is no central committee in the county in which the vacancy occurs, the Governor shall appoint to fill the vacancy a person who has all the qualifications required for the office of county commissioner in the particular county.

(4) As to Allegany County, if there is no resident Senator from Allegany County in the Senate of Maryland at the time of the appointment, it shall be by and with the advice and consent of the House of Delegates of Maryland.

HISTORY: An. Code, 1951, § 12; 1939, § 5; 1924, § 4; 1912, § 3; 1904, § 3; 1888, § 3; 1880, ch. 210; 1951, chs. 17, 18; 1962, ch. 63; 1966, ch. 246; 1977, ch. 638, § 3; 2010, ch. 699, § 2; 2011, ch. 440.



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Maryland Rules  
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\*\*\* Annotations are through November 26, 2012 \*\*\*

MARYLAND RULES  
TITLE 1. GENERAL PROVISIONS  
CHAPTER 100. APPLICABILITY AND CITATION

*Md. Rule 1-101* (2013)

Review Court Orders which may amend this Rule.

Rule 1-101. Applicability

(a) Title 1. Title 1 applies to all matters in all courts of this State, except the Orphans' Courts and except as otherwise specifically provided.

(b) Title 2. Title 2 applies to civil matters in the circuit courts, except for Juvenile Causes under Title 11 of these Rules and except as otherwise specifically provided or necessarily implied.

(c) Title 3. Title 3 applies to civil matters in the District Court, except as otherwise specifically provided or necessarily implied.

(d) Title 4. Title 4 applies to criminal matters; post conviction procedures; and expungement of records in the District Court and the circuit courts, including records of civil offenses or infractions, except juvenile offenses, under a State or local law enacted as a substitute for a criminal charge.

(e) Title 5. Title 5 applies to all actions in the courts of this State, except as otherwise provided by statute or rule.

(f) Title 6. Title 6 applies to matters in the Orphans' Courts and before the registers of wills relating to the settlement of decedents' estates.

(g) Title 7. Title 7 applies to appellate and other judicial review in the circuit courts.

(h) Title 8. Title 8 applies to appellate review in the Court of Appeals and the Court of Special Appeals.

(i) Title 9. Title 9 applies to proceedings under Code, Family Law Article, Title 5, Subtitles 3 (Guardianship to and Adoption through Local Department), 3A (Private Agency Guardianship and Adoption), and 3B (Independent Adoption) and proceedings relating to divorce, annulment, alimony, child support, and child custody and visitation.

(j) Title 10. Title 10 applies to fiduciary matters in the courts of this State, except for matters relating to the settlement of decedents' estates governed by Title 6 of these Rules and guardianships governed by Title 9 of these Rules.

(k) Title 11. Title 11 applies to juvenile causes under Code, Courts Article, Title 3, Subtitles 8 and 8A.

(l) Title 12. Title 12 applies to property actions relating to writs of survey, lis pendens, actions for release of lien instruments, condemnation, mechanics' liens, partition, redemption of ground rents, replevin, and detinue.

(m) Title 13. Title 13 applies to proceedings relating to estates of assignees and receivers.

(n) Title 14. Title 14 applies to proceedings relating to sales of property.

(o) Title 15. Title 15 applies to special proceedings relating to arbitration, catastrophic health emergencies, contempt, habeas corpus, health claims arbitration, injunctions, judicial releases of individuals confined for mental disorders, mandamus, the Maryland Automobile Insurance Fund, name changes, and wrongful death.

(p) Title 16. Title 16 applies to the courts, judges, and attorneys.

(q) Title 17. Title 17 applies to alternative dispute resolution proceedings in civil actions in a circuit court, except for actions or orders to enforce a contractual agreement to submit a dispute to alternative dispute resolution.

**HISTORY:** (Amended Mar. 30, 1993, effective July 1, 1993; Dec. 15, 1993, effective July 1, 1994; June 5, 1996, effective Jan. 1, 1997; Nov. 1, 2001, effective Jan. 1, 2002; Jan. 8, 2002, effective Feb. 1, 2002; April 5, 2005, effective July 1, 2005; June 4, 2007, effective July 1, 2007; Dec. 4, 2007, effective Jan. 1, 2008.)