In The

Court of Appeals of Maryland

No. 100

September Term, 2012

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, MARYLAND (HONORABLE C. PHILIPS NICHOLS, JR.)

BRIEF OF APPELLANT GREGORY HALL

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STATEMENT OF THE CASE

On November 20, 2012, Petitioner Gregory Hall filed his Verified Complaint for Temporary Restraining Order and Preliminary and Permanent Injunction and Declaratory Judgment against Appellee Prince George's County Democratic Central Committee (hereinafter the "Central Committee" or "Committee") in the Circuit Court for Prince George's County, Maryland along with Mr. Hall's Motion Temporary Restraining Order and Preliminary and Permanent Injunction (hereinafter "Motion for TRO") to enjoin the Committee from attempting to withdraw Mr. Hall's name as its appointee to fill the 24th Legislative District Seat in the House of Delegates for the State of Maryland at a meeting of the Committee scheduled for November 20, 2012. E. 1-4, 10-12. The Motion for TRO was heard by Judge C. Philip Nichols, Jr. with the Committee and Mr. Hall appearing and being represented by counsel. E. 3-4, 12. Judge Nichols heard argument on the Motion for TRO and stated that he would enter a show cause order directed to the Central Committee to show cause why the relief requested in Mr. Hall's Verified Complaint

should not be granted. E. 4, 12. Judge Nichols declined to specifically enjoin the Committee from voting on Mr. Hall's appointment on November 20, 2012. E. 4, 12.

The Committee met on November 20, 2012 and declined to withdraw Mr. Hall's name as its appointee for the vacant 24th Legislative District Seat in the House of Delegates. E. 191. The Committee voted 12-8 to hold the request of the Governor to withdraw Mr. Hall's name in abeyance pending the outcome of the show cause hearing in the Circuit Court for Prince George's County. E. 191. Despite the 12-8 vote to hold the request of the Governor in abeyance, on November 24, 2012, the Chairman of the Committee Terry Speigner, whom Mr. Hall defeated in the election before the Committee for the 24th Legislative District Seat, called an "emergency meeting" through e-mail to be held 48 hours later on November 26, 2012 to attempt to reconsider the vote to hold the request to withdraw Mr. Hall's name in abeyance pending the outcome of a show cause hearing in the Circuit Court for Prince George's County. E. 191-92. As of November 24, 2012 when Mr. Speigner called the "emergency meeting" there had been no show cause order issued by the Circuit Court for Prince George's County and no show cause hearing set. E. 1-19.

On November 26, 2012, Mr. Hall filed his Verified Amended Complaint for Temporary Restraining Order and Preliminary and Permanent Injunction and Declaratory Judgment against the Committee and added Governor Martin O'Malley as a party defendant. E. 4, 13. Mr. Hall also filed a second Motion for TRO to enjoin the Committee from voting on the withdrawal of Mr. Hall's name as the appointee to fill the 24th Legislative District Seat. E. 4, 13. Mr. Hall provided ample actual notice to the Committee and the Office of the Attorney General regarding the filing of his Verified Amended Complaint and his second Motion for TRO and all parties appeared on November 26, 2012 before the Circuit Court for argument on the second Motion for TRO. E. 2, 4, 9, 12-13, 15, 19, 183. Tiffany Alston also appeared and intervened in the case as she previously held the 24th Legislative District Seat prior to her conviction on October 9, 2012 that was determined to constitute misconduct in office resulting in a vacancy in the Seat by operation of law under Art. XV, § 2 of the Maryland Constitution.

E. 9, 19, 183. At the hearing on the second Motion for TRO, the Committee agreed that it would not take a binding vote concerning the withdrawal of Mr. Hall's name as the appointee to fill the 24th Legislative District Seat. E. 9, 19, 183.

On November 28, 2012, Mr. Hall filed his Second Amended Verified Complaint for Writ of Mandamus and Temporary Restraining Order and Preliminary and Permanent Injunctive Relief and Declaratory Judgment against Appellees Governor Martin O'Malley, Prince George's County Democratic Central Committee and Tiffany Alston. E. 4, 13, 137. The Circuit Court ordered that the Governor and the Committee file responses to Mr. Hall's Verified Second Amended Complaint by Friday, November 30, 2012 and ordered that Mr. Hall and Ms. Alston file any replies by noon on December 3, 2012 and set a hearing for 9:00 am on December 4, 2012. E. 183. On November 30, 2012, Appellees filed Answers to Mr. Hall's Verified Second Amended Complaint. E. 5, 137-157. All parties filed Motions for Summary Judgment and agreed that there was no dispute of material fact relating to Mr. Hall's Verified Second Amended Complaint. E.187-260. The material facts that were not in dispute relating to Mr. Hall's Verified Second Amended Complaint were contained in Mr. Hall's Affidavit and the documents supporting Mr. Hall's Motion for Summary Judgment were in the record and incorporated by reference pursuant Maryland Rule 2-303(d). E. 40-136, 187. Mr. Hall also filed a Motion to Strike the Affidavit of Terry Speigner attached to the Committee's Motion for Summary Judgment because it was in violation of Maryland Rule 2-501 as it was not under proper oath and contained matters which were not admissible. E. 380.

On December 4, 2012, the Circuit Court heard argument from all parties on the respective Motions for Summary Judgment. E. 5-6, 10, 14-15. On December 5, 2012, the Circuit Court entered its Opinion and Order and Declaration of Rights, granting the Motions for Summary Judgment filed by the Committee and the Governor and denying the Motions for Summary Judgment filed by Mr. Hall and Ms. Alston. E. 6-7, 16, 342-375. Mr. Hall filed his Notice of Appeal on December 6, 2012 and filed a Motion to Stay the Enforcement of the Judgment in the Circuit Court. E. 7-8, 17, 376. The Circuit Court summarily denied Mr. Hall's Motion to Stay. E. 7-8, 17. Also on December 6, 2012, Mr.

Hall filed his Petition for Writ of Certiorari in this Court and filed a Motion for Immediate Stay in this Court. E. 8, 18. On December 6, 2012, this Court granted Mr. Hall's Motion for Immediate Stay of enforcement of the judgment of the Circuit Court. E. 8, 18. On December 13, 2012, this Court granted Mr. Hall's Petition for Writ of Certiorari. E. 8, 18.

QUESTIONS PRESENTED

I. AS A MATTER OF FIRST IMPRESSION, UNDER ART. III, §13(a)(1) OF THE MARYLAND CONSTITUTION WHERE A CENTRAL COMMITTEE SUBMITS A NAME TO THE GOVERNOR WITHIN 30 DAYS OF A VACANCY OF OFFICE IN THE HOUSE OF DELEGATES, DOES THE GOVERNOR HAVE A MANDATORY DUTY TO APPOINT THE PERSON WHOSE NAME IS SUBMITTED TO HIM WITHIN FIFTEEN DAYS THEREOF?

II. AS A MATTER OF FIRST IMPRESSION, WHAT IS THE FINAL DAY FOR THE GOVERNOR TO PERFORM HIS DUTY TO APPOINT UNDER ART. III, §13(a)(1) OF THE MARYLAND CONSTITUTION WHERE THE FIFTEENTH DAY FOLLOWING SUBMISSION OF THE NAME FALLS ON A LEGAL HOLIDAY?

III. AS A MATTER OF FIRST IMPRESSION, DOES THE CENTRAL COMMITTEE HAVE ANY AUTHORITY TO RESCIND THE NAME IT SUBMITTED TO THE GOVERNOR UNDER MARYLAND CONSTITUTION ART. III, § 13(a)(1) MORE THAN 30 DAYS AFTER THE EVENT OF THAT CREATED THE VACANCY OF OFFICE IN THE HOUSE OF DELEGATES?

IV. SHOULD A WRIT OF MANDAMUS ISSUE TO GOVERNOR MARTIN O'MALLEY TO APPOINT GREGORY HALL TO THE 24TH LEGISLATIVE DISTRICT SEAT IN THE HOUSE OF DELEGATES OF MARYLAND?

V. DID THE CIRCUIT COURT ERR IN CONSIDERING ON SUMMARY JUDGMENT AN AFFIDAVIT THAT WAS BASED UPON "INFORMATION AND BELIEF"?

STATEMENT OF FACTS

On January 11, 2011, Tiffany Alston was a registered Democrat and was sworn in as a member of the House of Delegates representing the 24th Legislative District. E. 187. On December 15, 2011, Tiffany Alston was indicted by the State Prosecutor for misconduct in office arising from allegations that she used public money to pay an employee of her private law firm. E. 187. On June 12, 2012, Ms. Alston was found guilty by a jury in the Circuit Court for Anne Arundel County of the crime of misconduct in office. E. 187. On October 9, 2012, Judge Paul F. Harris, Jr. in the Circuit Court for Anne Arundel County, Maryland entered a sentence of 1 year of incarceration, suspended, three years of supervised probation, 300 hours of community service, and restitution to the State of Maryland in the amount of $800. E. 187-88. Ms. Alston waived her appeal rights. E. 187-88. On October 10, 2012, Ms. Alston filed a Motion for Modification and requested that it be held *sub curia*. E. 188. Ms. Alston did not, at any time, seek to appeal her sentence or conviction. E. 188. On October 10, 2012, Speaker of the House of Delegates Michael E. Busch announced that he would follow advice he had received from the Attorney General's Office concluding that Ms. Alston had been suspended from office without pay or benefits by operation of law, and took steps necessary to suspend Ms. Alston's pay and benefits. E. 188. On November 1, 2012, the Attorney General's Office provided a letter of advice to Speaker of the House of Delegates Michael E. Busch concluding that Ms. Alston had been removed from office on October 9, 2012. E. 188, 41. On November 1, 2012, Speaker of the House of Delegates Michael E. Busch announced that he would follow advice he had received from the Attorney General's Office concluding that Ms. Alston had been removed from office. E. 188.

On November 2, 2012, Appellant Gregory Hall won a contested election against Terry Speigner in the Prince George's County Democratic Central Committee to fill the 24th Legislative District Seat in the Maryland House of Delegates that was vacant as a result of the Tiffany Alston being permanently removed from elective office by operation

of law on October 9, 2012. E. 188. At the time of the November 2, 2012 vote by the Central Committee and continuing thereafter through the present day, Gregory Hall met all the Constitutional criteria to hold a seat in the Maryland House of Delegates; he was eligible to vote in the State of Maryland, a registered Democrat, a citizen of the State of Maryland, had resided in the 24th Legislative District for more than five years prior to November 2, 2012 and was over the age of thirty years as of November 2, 2012. E. 189. On November 7, 2012 pursuant to Art. III, § 13 of the Maryland Constitution, Gregory Hall's name was "submitted to [the Governor] in writing" to be appointed as the Delegate for the 24th Legislative District Seat in the Maryland House of Delegates and Mr. Hall's name was received by the Appellee Governor O'Malley on November 7, 2012. E. 189. The submission of Gregory Hall's name to the Governor was within 30 days of the date of Ms. Alston's removal from office on October 9, 2012. E. 187-189.

On November 13, 2012, Judge Harris granted Ms. Alston's Motion for Modification and entered probation before judgment in her cases. E. 189.

Although the Attorney General's Office had issued a letter of advice concluding that Ms. Alston had been removed from office on October 9, 2012, on November 16, 2012, Appellee Governor O'Malley requested by letter that the Appellee Central Committee "withdraw Mr. Hall's name and take no further action" concerning the vacated 24th Legislative District Seat in the Maryland House of Delegates until such time as the Appellee Governor O'Malley received a "formal opinion" from the Office of the Attorney General concerning the vacated 24th Legislative District Seat. E. 80, 190. On Saturday November 17, 2012, the Chairman of the Appellee Committee, Mr. Terry Speigner, who lost the contested election to Mr. Hall to fill the vacated 24th Legislative District Seat in the Maryland House of Delegates, was quoted as stating that on November 20, 2012 at the regularly scheduled meeting of the Committee, the Committee "will comply with the governor's request to rescind Hall's nomination." E. 82. On Saturday, November 17, 2012, Mr. Alonzo Washington, Assistant Secretary of the Committee issued an agenda for the November 20, 2012 meeting of the Committee

containing an "Action Item" of "Withdrawal of District 24 nomination to Governor." E. 18, 85.

Mr. Hall satisfied the minimum legal qualifications to be appointed to the 24th Legislative District Seat in the Maryland House of Delegates. E. 190. Mr. Hall has had none of the conditions precedent set forth in Art. III, § 13(a)(1), namely, "death, disqualification, resignation, refusal to act, expulsion, or removal from the county or city for which he shall have been elected," occur to him. E. 190.

On November 20, 2012, the Office of the Attorney General issued a "formal opinion" to Appellee Governor O'Malley and concluded, as it had in its November 1, 2012 Letter of Advice, that the 24th Legislative Seat previously held by Ms. Tiffany Alston was vacated on October 9, 2012 when "Ms. Alston was removed from office, by operation of law, by virtue of her conviction for official misconduct and her waiver of her rights of appeal." E. 121, 190. On November 20, 2012, the Appellee Central Committee met at its regularly scheduled meeting which began at approximately 7:00 p.m. and voted on the Appellee Governor's "request" in his November 16, 2012 Letter. E. 191. After significant discussion concerning the November 20, 2012 "formal opinion" and the recent events relating to the appointment of Gregory Hall, including the filing of the instant lawsuit, the Appellee Central Committee voted 12-8 to take no action concerning the Appellee Governor's "request" to rescind Gregory Hall's appointment to the vacant 24th Legislative District Seat. E. 191. Despite having publicly stated that the purpose of his "request" was for time to receive a formal opinion from the Attorney General's Office and the actual issuance of the Attorney General's Formal Opinion on November 20, 2012 prior to the commencement of the Appellee Central Committee's meeting on November 20, 2012 of which the Appellee Governor was actually aware, the Appellee Governor made no attempt to contact the Appellee Central Committee prior to the start of the meeting and made no attempt to withdraw his "request" concerning Gregory Hall's appointment. E. 191.

As of November 25, 2012, the Appellee Governor had not contacted the Appellee Central Committee in writing to "request" any further action by the Appellee Committee

concerning the Appellee Committee's appointment of Appellant Gregory Hall to the vacant 24th Legislative District Seat. E. 192. Between November 20, 2012 and November 25, 2012, the Appellee Governor spoke with Terry Speigner. E. 192. On November 24, 2012, after speaking with the Appellee Governor, Mr. Terry Speigner, Chairman of the Prince George's County Democratic Central Committee, and the person whom Appellant Gregory Hall defeated in the election for the 24th Legislative District Seat, purported to call an "emergency meeting" of the Appellee Committee to be held at 7:00 p.m. on November 26, 2012 for the Appellee Committee to purportedly be briefed by Mr. Sandler about a "show cause" hearing in the instant case and to "discuss" the prior vote of the Appellee Committee to take no action on the Appellee Governor's "request" to withdraw the appointment of Appellant Gregory Hall and to "discuss" the need for any "further action(s)" concerning the appointment of Appellant Gregory Hall. E. 191-192. The purported notice of the meeting was sent via electronic mail and no public notice of the meeting was provided to the general public. E. 192. At the time Mr. Speigner sent his e-mail, there was no show cause hearing scheduled in the instant case and no show cause order had been issued. E. 1-19, 192.

On November 26, 2012, Mr. Hall filed his Verified Amended Complaint for Temporary Restraining Order and Preliminary and Permanent Injunction and Declaratory Judgment against the Appellee Central Committee and added Appellee Governor Martin O'Malley as a party defendant. E. 4, 13. Mr. Hall also filed a second Motion for TRO to enjoin the Appellee Central Committee from voting on the further attempt at the purported "emergency meeting" on November 26, 2012 to withdraw Mr. Hall's name as the appointee to fill the 24th Legislative District Seat. E. 4, 13. Mr. Hall provided ample actual notice to the Committee and the Office of the Attorney General regarding the filing of his Verified Amended Complaint and his second Motion for TRO and all parties appeared on November 26, 2012 before the Circuit Court for argument on the second Motion for TRO. E. 2, 4, 9, 12-13, 15, 19, 183. Tiffany Alston also appeared and intervened in the case as she previously held the 24th Legislative District Seat prior to her conviction on October 9, 2012 that was considered misconduct in office sufficient to

vacate the Seat. E. 9, 19, 183. At the hearing on the second Motion for TRO, the Appellee Central Committee agreed that it would not take a binding vote concerning the withdrawal of Mr. Hall's name as the appointee to fill the 24th Legislative District Seat. E. 9, 19, 183. The Appellee Central Committee held its meeting on the evening of November 26, 2012 and held a non-binding sense of the committee vote in which a majority of the voting members of the Central Committee indicated a willingness to surrender to the demands of the Appellee Governor and withdraw Mr. Hall's name as the appointee to fill the vacant 24th Legislative District Seat.

On November 28, 2012, Mr. Hall filed his Second Amended Verified Complaint for Writ of Mandamus and Temporary Restraining Order and Preliminary and Permanent Injunctive Relief and Declaratory Judgment against Appellees Governor Martin O'Malley, Prince George's County Democratic Central Committee and Tiffany Alston. E. 4, 13, 137. On November 29, 2012, the Circuit Court memorialized its oral orders and the agreement of the parties placed on the record in open court on November 26, 2012 and ordered that the Appellee Governor and Appellee Central Committee file responses to Mr. Hall's Verified Second Amended Complaint without delay and expedited the case for a hearing on the merits as the parties agreed there was no material fact in dispute. E. 183. On November 30, 2012, Appellees filed Answers to Mr. Hall's Verified Second Amended Complaint in which they each admitted many of the material factual allegations contained in the Verified Second Amended Complaint. E. 5, 20-136, 137-157. All parties filed Motions for Summary Judgment and agreed that there was no dispute of material fact relating to Mr. Hall's Verified Second Amended Complaint. E.187-260. The material facts that were not in dispute relating to Mr. Hall's Verified Second Amended Complaint were contained in the Verified Second Amended Complaint and the Appellees' admissions to those material facts in their respective Answers to the Verified Second Amended Complaint, and in Mr. Hall's Affidavit. Mr. Hall's Motion for Summary Judgment was further supported by the documents in the record submitted by Mr. Hall with his Verified Complaints and incorporated by reference pursuant Maryland Rule 2-303(d). E. 40-136, 187. Mr. Hall filed a Motion to Strike the Affidavit of Terry

Speigner attached to the Committee's Motion for Summary Judgment because it was in violation of Maryland Rule 2-501 as it was not under proper oath and contained matters which were not admissible. E. 380.

On December 4, 2012, the Circuit Court held a hearing in open court on the parties' respective Motions for Summary Judgment. E. 5-6, 10, 14-15. In support of its Motion for Summary Judgment, Appellee Central Committee submitted an Affidavit of Terry Speigner that was based upon "the best of [his] knowledge, information and belief" that was in violation of Maryland Rule 2-501(c). E. 261. Mr. Hall filed a timely Motion to Strike the Affidavit of Terry Speigner because it was in violation of Maryland Rule 2-501(c) on its face and sought to introduce inadmissible evidence and was not proper as support for the Appellee Central Committee's Motion for Summary Judgment. E. 380-384. On December 5, 2012, the Circuit Court for Prince George's County issued its written Opinion and Order of the Court, which was docketed on December 6, 2012. E. 6-7, 16, 342-375. The Circuit Court ruled that the seat for the 24th Legislative District in the House of Delegates was vacated by operation of law on October 9, 2012, that the Governor's duty under Art. III, § 13(a)(1) was merely directory and that the Central Committee had the ability to withdraw a name submitted to the Governor at any time prior to the Governor making the appointment under Art. III, § 13(a)(1). E. 342-375. On December 6, 2012, Appellant Gregory Hall filed his timely Notice of Appeal and thereafter his Petition for Writ of Certiorari to this Court. E. 7-8, 17-18, 376. Appellant Gregory Hall contends that the portion of the Circuit Court's Opinion and Order and Declaration of Rights concerning the vacancy of the 24th Legislative District Seat should be affirmed, however, the Circuit Court erred in its interpretation of Art. III, § 13(a)(1) of the Maryland Constitution and such interpretation should be reversed by this Court.

STANDARD OF REVIEW

This Court recently stated the standard of review of a trial court's grant of summary judgment where there exists no dispute of material fact. The trial court's legal conclusions are reviewed *de novo* and are entitled to no deference.

> On review of an order granting summary judgment, this Court reviews the record to determine whether any material facts are in dispute. *Md. State Bd. of Elections v. Libertarian Party*, 426 Md. 488, 505-06, 44 A.3d 1002, 1012 (2012); *Doe v. Montgomery Cnty. Bd. of Elections*, 406 Md. 697, 711, 962 A.2d 342, 350 (2008). "The record is reviewed 'in the light most favorable to the non-moving party and [we] construe any reasonable inferences that may be drawn from the well-pled facts against the moving party." *D'Aoust v. Diamond*, 424 Md. 549, 574, 36 A.3d 941, 955 (2012) (quoting *Muskin v. State Dep't of Assessments & Taxation*, 422 Md. 544, 554-55, 30 A.3d 962, 968 (2011)); *Rhoads v. Sommer*, 401 Md. 131, 148, 931 A.2d 508, 518 (2007). If no genuine dispute of material fact exists, this Court determines "whether the Circuit Court correctly entered summary judgment as a matter of law." *Anderson v. Council of Unit Owners of the Gables on Tuckerman Condo.*, 404 Md. 560, 571, 948 A.2d 11, 18 (2008) (citations omitted); *Doe*, 406 Md. at 711, 962 A.2d at 350. "Whether a trial court properly applied this standard is a question of law, which we review [without deference]." *Rhoads*, 401 Md. at 148, 931 A.2d at 517-18.

Whitley v. Md. State Bd. of Elections, Slip Op. at 26-28 (Slip Op. October 23, 2012)

There are no genuine disputes of material fact in the instant case. The parties' disagreement rests solely on the interpretation of the constitutional and statutory provisions at issue in this case which is a question of law.

The Constitution is the organic law of the State, it is the fundamental, extraordinary act by which the people establish the procedure and mechanism of their government. *See Anderson v. Baker*, 23 Md. 531, 617 (1865); *Board of Supervisors of Elections v. Attorney Gen.*, 246 Md. 417, 429, 229 A.2d 388 (1967).

> While statutes are sometimes hastily and unskillfully drawn, a constitution imports the utmost discrimination in the use of language. Chief Justice Marshall declared that the patriots who framed the Federal Constitution must be "understood to have employed words in their natural sense, and to have intended what they have said." *Gibbons v. Ogden*, 9 Wheat. 1, 188, 6 L. Ed. 23, 68. The Maryland Constitution was carefully written and solemnly adopted by the Constitutional Convention of 1867, and approved by the people of the state; we should therefore be careful not to depart from the plain language of the instrument. The Court of Appeals of Kentucky asserted in reference to the Constitution of that State: "This fundamental law was designed by the people adopting it to be restrictive

> upon the powers of the several departments of government created by it. * * * Its every section was, doubtless, regarded by the people adopting it as of vital importance, and worthy to become a part and parcel of a constitutional form of government, by which the governors as well as the governed were to be governed. Its every mandate was intended to be paramount authority to all persons holding official trusts, in whatever department of government, and to the sovereign people themselves. * * * Wherever the language used is prohibitory it was intended to be a positive and unequivocal negation. Wherever the language contains a grant of power it was intended as a mandate. * * * To preserve the instrument inviolate we must regard its words, except when expressly permissive, as mandatory, as breathing the spirit of command. *Varney v. Justice*, 86 Ky. 596, 600, 6 S. W. 457, 459; *McCreary v. Speer*, 156 Ky. 783, 162 S. W. 99, 102. The Maryland Court of Appeals has declared that where the Constitution of this State speaks plainly on a subject, a different interpretation should not be given to the language merely because a literal interpretation might happen to be inconsistent with other parts of the instrument dealing with other subjects. *Cantwell v. Owens*, 14 Md. 215, 226 (1859).
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> *Buchholtz v. Hill*, 178 Md. 280, 285-286 (1940).

This Court has held on numerous occasions that the cardinal rule of constitutional interpretation, similar to the rule of statutory interpretation, is to ascertain and effectuate the intent of the framers and that where the constitutional language is unambiguous when construed according to its ordinary and everyday meaning, the constitutional provision is to be given effect as written. *Bernstein v. State*, 422 Md. 36, 43-44, 29 A.3d (2011).

> "It is a cardinal rule of construction that where the text of a constitutional provision is not ambiguous, the Court, in construing it, is not at liberty to search for its meaning beyond the Constitution itself." *Reed v. McKeldin,* 207 Md. 553, 560, 115 A.2d 281, 285 (1955). Further, this Court, while conceding that "the Constitution of 1867 does not always possess the consistency that [a textual] argument supposes," *Rasin v. Leaverton,* 181 Md. 91, 96, 28 A.2d 612, 614 (1942), has recognized that "[t]he Maryland Constitution was carefully written and solemnly adopted by the Constitutional Convention of 1867, and approved by the people of the State," *Buchholtz v. Hill,* 178 Md. 280, 285-86, 13 A.2d 348, 351 (1940), and, therefore, has admonished that courts should be careful not to depart from the plain language of the instrument. *Id.* Furthermore, "[o]ne cannot view the Constitution as made up of separate and unrelated parts. The entire Constitution must be regarded as a whole. Each part must be

> construed, not by itself, but with reference to the whole . . . ." *County Comm'rs for Montgomery County v. Supervisors of Elections,* 192 Md. 196, 208, 63 A.2d 735, 740 (1949); *State v. Jarrett,* 17 Md. 309, 328 (1861) ("[i]n construing a Constitution, it must be taken as a whole, and every part of it, as far as possible, interpreted in reference to the general and prevailing principle.").
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> *Bernstein v. State*, 422 Md. 36, 43-44, 29 A.3d (2011).

"Since constitutions are the basic and organic law, and are meant to be known and understood by all the people, the words used should be given the meaning which would be given to them in common and ordinary usage by the average man in interpreting them in relation to every day affairs." *Norris v. Baltimore*, 172 Md. 667, 676 (1937).

The Circuit Court's Opinion failed to adhere to the mandate of this Court in its construction of Art. III, § 13(a)(1) of the Maryland Constitution. *See id.* The Circuit Court's Opinion renders the express words "shall" and "duty" used in Art. III, §13(a)(1) nugatory in violation of the traditional rules of constitutional interpretation and degrades the Constitution's mandate to the point that its plain and unambiguous provisions are improperly rendered totally nugatory and of no force and effect in determining the issues involved in this case. The Circuit Court's purely legal conclusions are entitled to no deference in this case and for the reasons set forth herein should be reversed.

ARGUMENT

I. IN A MATTER OF FIRST IMPRESSION, UNDER ART. III, §13(a)(1) OF THE MARYLAND CONSTITUTION WHERE A CENTRAL COMMITTEE SUBMITS A NAME TO THE GOVERNOR WITHIN 30 DAYS OF A VACANCY OF OFFICE IN THE HOUSE OF DELEGATES, THE GOVERNOR HAS A MANDATORY DUTY TO APPOINT THE PERSON WHOSE NAME IS SUBMITTED TO HIM BY THE CENTRAL COMMITTEE WITHIN FIFTEEN DAYS THEREOF.

In this matter of first impression in the State of Maryland, certiorari was granted to determine if the Circuit Court for Prince George's County erred in failing to properly construe Art. III, § 13(a)(1) of the Maryland Constitution which concerns the

constitutionally mandated process for filling a vacancy in the House of Delegates in the Maryland General Assembly. The Circuit Court erroneously concluded that the Governor does not have a mandatory duty to appoint the person whose name is submitted to him for appointment by the Central Committee within thirty days of a vacancy of the office in the House of Delegates. The plain, ordinary, common meaning of the language of Art. III, § 13(a)(1) of the Maryland Constitution is contrary to the Circuit Court's Opinion.

Art. III, § 13(a)(1) of the Maryland Constitution provides:

> (a) (1) In case of death, disqualification, resignation, refusal to act, expulsion, or removal from the county or city for which he shall have been elected, of any person who shall have been chosen as a Delegate or Senator, or in case of a tie between two or more such qualified persons, **the Governor SHALL appoint a person to fill such vacancy from a person whose name shall be submitted to him in writing, within thirty days after the occurrence of the vacancy, by the Central Committee** of the political party, if any, with which the Delegate or Senator, so vacating, had been affiliated, at the time of the last election or appointment of the vacating Senator or Delegate, in the County or District from which he or she was appointed or elected, provided that **the appointee** shall be of the same political party, if any, as was that of the Delegate or Senator, whose office is to be filled, at the time of the last election or appointment of the vacating Delegate or Senator, and **it SHALL be the DUTY of the Governor to make said appointment within fifteen days after the submission thereof to him.**

(Emphasis added).

The Office of the Attorney General has issued several letters of advice concerning various interpretations of portions of Art. III, § 13 of the Maryland Constitution, however, the Office of Attorney General has not addressed the important questions raised in this case in any formal opinion. The appellate courts of Maryland have likewise not had the opportunity to address the proper interpretation of Art. III, § 13(a)(1) of the Maryland Constitution.

The plain language of Art. III, § 13(a)(1) utilizes the powerful words "shall" and "duty" in connection with the appointment by the Governor of the person whose name is

submitted to him by the Central Committee. The use of the word "shall" in Art. III, § 13(a)(1) is presumed mandatory. *Hirsch v. Dept. of Nat'l Resources,* 288 Md. 95 (1980); *Pope v. Secretary of Personnel*, 46 Md. App. 716, 420 A.2d 1017 (1980). "The word 'shall' has probably occupied the erudition of the Court of Appeals more than any other single term. In recent years the Court of Appeals has with increasing rigidity applied the principle of statutory construction that use of the word 'shall' is presumed mandatory." *Pope* 46 Md. App. at 717 (citing *Hirsch v. Dept. of Nat'l Resources, supra.; In Re: James S.*, 286 Md. 702 (1980); *State v. Hicks*, 285 Md. 310 (1979)(additional citations omitted). As explained in the *per curiam* opinion of this Court on the State's Motion for Reconsideration in *State v. Hicks*, 285 Md. 310 (1979), the use of the word "shall" is ordinarily presumed mandatory under settled principles of statutory construction. *Hicks,* 285 Md. at 335. In discussing the use of the word "shall" in connection with the 120 day deadline for trial of criminal charges, this Court noted that "if it were intended that the deadline for trial of the case was not mandatory and could be overlooked whenever convenient, there would have been no necessity for the further provision in the statute and rule requiring 'extraordinary cause' and permission of the county administrative judge for an extension of the deadline." *Id.* Similarly, if the use of the word "shall" in connection with the requirement in Art. III, § 13(a)(1) that the Governor "shall appoint a person to fill such vacancy from a person whose name shall be submitted to him in writing, within thirty days after the occurrence of the vacancy, by the Central Committee" was meant to be directory only, there would be no need for subsection (a)(2) of Art. III, § 13. Simply put, if the Governor had discretion to appoint or not appoint the person whose name was submitted by the Central Committee there would have been no need for the second part of Art. III, § 13 providing the Governor with the process to be employed if the Central Committee does not submit a name to him within thirty days of the occurrence of the vacancy. If the use of the word "shall" in Art. III § 13(a)(1) is "directory" it would render the entirety of section (a)(1) surplusage. Such an interpretation is illogical and inconsistent with the established rules of constitutional interpretation.

This Court's holding in *In Re: James S*, 286 Md. 702, 410 A.2d 586 (1980) further supports the conclusion that use of the word "shall" in Art. III, § 13(a)(1) concerning the Governor's appointment of the person whose name is submitted to him by the Central Committee is mandatory. Similar to the requirement in Art. III, § 13(a)(1) that "it shall be the duty of the governor to make said appointment within fifteen days after the submission thereof to him," the statute at issue in *In Re: James, supra.*, stated that "[a] petition alleging delinquency shall be filed [by the State's attorney] within 15 days after the receipt of a referral from the intake officer." In holding that the language in the statute at issue in *In Re: James*, *supra.*, was mandatory, this Court specifically declined to adopt the argument of the State, which not coincidentally is identical to the argument of the Governor in the instant case, that the use of the word "shall" should be held to be directory under the holding in *McCall's Ferry Co. v. Price*, 108 Md. 96, 69 A. 832 (1908) concerning Maryland Constitution, Art. IV § 15, concerning the filing of opinions by this Court within three months after argument of a case. In contrasting the meaning of the word "shall" in Art. IV, § 15 of the Maryland Constitution and the statute at issue in *In Re: James, supra.*, this Court noted that "[t]he duty imposed by statute is upon the attorney for one of the litigants, the State's Attorney of the particular county who represents the people of the county in the contention that the juvenile is delinquent, not upon the arbiter of the controversy." This Court made a distinction between the directory use of the word "shall" where it relates to an "arbiter of the controversy" and a duty imposed upon a non-arbiter where no discretion is provided. In explaining its holding, this Court noted that "in the absence of a contrary contextual indication, the use of the word 'shall' is presumed to have a mandatory meaning ... and thus denotes an imperative obligation inconsistent with the exercise of discretion." In Art. III, § 13(a)(1), there is an absence of a contrary contextual indication and the Governor has no discretion in whom to appoint when the Central Committee submits a name to him within thirty days of the occurrence of the vacancy in the House of Delegates. The Governor must appoint the person whose name is submitted to him within thirty days of the occurrence of the vacancy by the Central Committee. Accordingly, the use of the word "shall" with regard

to the Governor's obligation to appoint the person whose name is submitted to him by the Central Committee is mandatory and it is mandatory for the Governor to appoint Gregory Hall to fill the vacant 24th Legislative District Seat in the Maryland House of Delegates.

The Circuit Court erred when it failed to properly construe the plain language of Art. III, § 13(a)(1) of the Maryland Constitution that the Governor's duty is mandatory despite the plain language that "it shall be the duty of the Governor to make said appointment within 15 days after the submission thereof to him."

The Maryland Constitution adopted by the People in 1776 contained the following provision for filling a vacancy in the House of Delegates:

> VII. That on refusal, death, disqualification, resignation, or removal out of this State of any Delegate, or on his becoming Governor, or member of the Council, a warrant of election shall issue by the Speaker, for the election of another in his place; of which ten days' notice, at least, (excluding the day of notice, and the day of election) shall be given.

The Maryland Constitution adopted by the People in 1867 continued the form of special election set forth in the Maryland Constitution of 1776 when a vacancy occurred in the House of Delegates. In 1935, Art. III, § 13 of the Constitution of 1867 was amended to replace the expensive process of a special election with a process that is substantially similar to that set forth in current Art. III, § 13 to provide that the State Central Committee would submit "a name" to the Governor and that it "shall be the Governor's duty to appoint that person" to the vacant seat. The purpose of the 1935 Amendment was to obviate the "necessity and expense of calling special interim elections to fill vacancies in the Legislature." *Maryland Law Review*, 58-59 (1936-37 Vol. 1). A summary of the 1935 Amendment is contained in the Maryland Law Review issued immediately after ratification of the 1935 Amendment which states that the Amendment provides "that the Governor shall fill any vacancy in the General Assembly by appointing such person whose name is submitted by the State Central Committee for the County or District of the party to which the person vacating the office belonged." *Id.* at 58.

The purpose of Art. III, § 13(a)(1) of the Maryland Constitution is to promptly fill a vacancy in the House of Delegates. Maryland no longer utilizes special elections to fill

vacancies in the House of Delegates and Art. III, § 13(a)(1) of the Maryland Constitution is an alternative mechanism for a special election. *See Maryland Law Review*, 58-59 (Vol. 1, 1936-37)(summarizing the 1935 Amendment to the Maryland Constitution creating Art. III, § 13 as being for the purpose of obviating the necessity and expense of calling special interim elections to fill vacancies in the Legislature).

The limited legislative history concerning Senate Bill 314 which concerned the 1935 Amendment conclusively demonstrates that the intent of the Legislature was to eliminate the Governor's discretion in the selection of the appointee to fill the vacancy and to maintain political party lines in the Legislature. The 1935 Senate Journals demonstrate that the original bill introduced in the Senate (SB 314) contained a provision for submission of two names to the Governor by the State Central Committee and that the House of Delegates passed an amendment to Senate Bill 314 to provide for the submission of only one name to the Governor for appointment. *See House Journals for 1935* at 1971-72. The Senate adopted the House Amendment for Senate Bill 314 and passed Senate Bill 314 as amended providing for the submission of only *one name* to the Governor for appointment. *See Senate Journals for 1935* at 1272. *See also Chapter 584, Acts of 1935, ratified on November 3, 1936.* It appears clear that the intent of the 1935 Legislature in passing such amendment was to directly eliminate any discretion of the Governor in the appointment to fill a vacancy in the General Assembly where the Central Committee submits "a name" to the Governor. The passage of the amended Senate Bill 314 was a limitation on the Governor's power to appoint, i.e., he is limited to appoint only the person whose name is submitted to him by the Central Committee creating a purely ministerial duty in the Governor under Art. III, § 13(a)(1). This conclusion is supported by a 1939 formal opinion of the Maryland Attorney General interpreting the newly adopted Constitutional Amendment to Art. III, § 13. The Maryland Attorney General concluded that the specific elimination of the language concerning the submission of "two names" to the Governor and the replacement that only "a" singular name "shall" be submitted to the Governor conclusively demonstrated that only one name was to be submitted by the central committee for appointment by the Governor. 24 OAG

367 (1939). This interpretation of the modern (post 1966) version of Art. III, § 13(a)(1) was reiterated by a formal opinion of the Maryland Attorney General in 1977 wherein it was concluded that "it is our opinion that both the legislative history and the language of the provision itself indicate that the intent of Section 13 was that in case of vacancy in the General Assembly the appropriate State Central Committee *submit the name of only one person to the Governor and that the Governor appoint that person to fill the vacancy.*" 62 OAG 241 (1977)(emphasis added). The Maryland Attorney General further concluded that "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.'" *Id.* (emphasis in original). Accordingly, the Maryland Attorney General has from 1939, until the instant case, consistently interpreted Art. III, § 13 as mandatory upon the Governor to appoint the person whose name was submitted to him. Common sense further dictates that if the Governor has only one name to make the appointment, then the Governor has no discretion and no choice, but rather *must* appoint the person whose name was submitted to him by the central committee.

The plain language of Art. III, § 13(a)(1) of the Maryland Constitution demonstrates that the Central Committee, a publicly elected body, may select the person to fill the vacancy and bind the Governor to perform the ministerial duty of appointment of that selection provided the Central Committee submits the name of its appointee to the Governor within thirty days of the date of the event that created the vacancy. The Governor must then appoint the person submitted within fifteen days of the date the name was submitted to him. The Governor has no discretion and no right to refuse to appoint the Central Committee's appointee. The Circuit Court's Opinion violates the rules of constitutional interpretation and is contrary to the plain language and purpose of Art. III, § 13(a)(1) of the Maryland Constitution.

In comparing other constitutional provisions concerning appointments and filling of vacancies with Art. III, § 13(a)(1), it becomes apparent that the language utilized in Art. III, § 13(a)(1) is unique in that it employs mandatory language with the duty to perform within a specific amount of time. No other provision of the constitution dealing

with filling vacancies in public office dictates that the duty of the Governor must be performed within a specific amount of time. *See e.g.,* Maryland Constitution, Art. II, §11(general vacancies); Art. IV, § 5(vacancy of judge of circuit court); Art. IV, § 5A (vacancy judge of appellate court); Art. VI, § 44 (vacancy of Sheriff); Art. V, § 5 (vacancy of Attorney General). The obvious reason for such language in Art. III, § 13(a)(1) was for the expeditious filling of the vacancy and where the Governor has no discretion and need only perform a ministerial duty, the People determined the importance of filling such vacancy expeditiously and mandated that he must perform such ministerial duty within a limited time period.

The mandatory duty to appoint in Art. III, § 13(a)(1) is significantly different than the discretionary appointment in Art. III, §§ 13(a)(2) and 13(a)(3). The plain language of Art. III, § 13(a)(2) clearly contemplates that the Governor has the discretion to choose a person to fill the vacancy and thus does not state that "it shall be the duty of the Governor to appoint ... within fifteen days." Conspicuously absent from Art. III, § 13(a)(2) is the word "duty." Likewise, the framers specifically declined to include the word "duty" in Art. III, § 13(a)(3) in connection with the Governor's discretionary appointment. In reading Art. III, § 13 as a whole, it becomes crystal clear that the duty of the Governor to appoint the person submitted to him by the Central Committee in accordance with Art. III, § 13(a)(1) is mandatory and that the framers intentionally eliminated all discretion from the Governor's ministerial act and specifically directed the Governor to perform his ministerial duty within fifteen days. The duty to appoint within fifteen days without discretion is clearly mandatory and the use of the term "duty" by the framers in Art. III, § 13(a)(1) and the absence of the word "duty" in the remainder of Art. III§ 13 confirm that the Governor's duty to appoint is not merely directory.

The Opinion of the Attorney General and Letters of Advice relied upon by the Appellees to support their contention that the Governor's duty to appoint within fifteen days under Art. III, § 13(a)(1) is merely directory are inapposite. The sole Opinion of the Attorney General relied upon by Appellees involved the construction of Art. III, § 13(a)(2) where the Governor has unlimited discretion in whom to choose to appoint to fill

a vacancy. The Opinion provided no analysis concerning the specific language contained in Art. III, §13(a)(1) that it is the Governor's "duty to appoint" which language, as noted above, is conspicuously absent from Art. III, § 13(a)(2). Moreover, the Opinion was concerned with the time frame within which the Governor could exercise his discretion to choose a person to fill a vacancy. In the situations under Art. III, §§ 13(a)(2) and (a)(3), the Governor is the arbiter of the decision. The Appellees rely upon this Court's holding in *McCall's Ferry Power Co. v. Price*, 108 Md. 96 (1908) that the time frame within which the Court must issue its opinions is merely directory. Similar to Art. III, §§13(a)(2) and (a)(3), there is an absence of the word "duty" in Art. IV, § 15 and the Court is the arbiter of the dispute, which consequently is an exception to the presumption of mandatory use of the word "shall." Accordingly, the Appellees reliance upon such analysis is misplaced as the Governor's "duty to appoint" under Art. III, § 13(a)(1) is not discretionary. The framers eliminated all discretion in the Governor to choose the person to appoint and eliminated all discretion concerning the time period within which the Governor must perform his duty to appoint under Art. III, § 13(a)(1). Any other interpretation of Art. III, § 13(a)(1) would be illogical and would render the entirety of Art. III, § 13(a)(1) nugatory. The Appellees' proposed interpretation would place all power in the Governor to appoint under all subsections of Art. III, § 13, would eliminate the power of the Central Committee and allow the Governor to simply ignore Art. III, § 13(a)(1) and wait out the Central Committee and refuse to appoint the person submitted to him, rendering the entirety of Art. III, § 13(a)(1) a nullity. Such a result is not permitted under the traditional and settled principles of constitutional interpretation. Moreover, such an interpretation would defy common sense. "The Maryland Constitution cannot be read in a manner 'that is illogical or incompatible with commonsense." *Bernstein*, 422 Md. at 55 (citations omitted).

II. IN A MATTER OF FIRST IMPRESSION, THE CENTRAL COMMITTEE DOES NOT HAVE ANY AUTHORITY TO RESCIND THE NAME IT SUBMITTED TO THE GOVERNOR UNDER ART. III, § 13(a)(1) OF THE MARYLAND CONSTITUTION MORE THAN THIRTY DAYS AFTER THE OCCURRENCE OF THE VACANCY OF OFFICE IN THE HOUSE OF DELEGATES.

In a matter of first impression, if the Central Committee submits a name to the Governor for appointment within thirty days of the occurrence that created the vacancy in the House of Delegates, the Central Committee may not rescind its submission after the expiration of the thirty day period. The deadline for the Committee to exercise its right to submit a name to be binding upon the Governor for appointment under Art. III, § 13(a)(1) is "within thirty days" of the date of the event of vacancy. The thirty day period in which the Central Committee shall submit a name to the Governor to fill a vacancy is mandatory and that if the Central Committee fails to submit a name within such time period, it no longer has any power in connection with the appointment to fill the vacancy. If however the Central Committee submits a name within thirty days of the occurrence of the vacancy, the Governor's "duty to appoint" that person is triggered and the Committee's involvement in the process is concluded. Once the Committee submits a name within thirty days and the thirty day period expires, the Governor has no choice under Art. III, § 13(a)(1) and must appoint the person whose name was submitted to him by the Central Committee. Art. III, § 13(a)(1) leaves little doubt as it unequivocally states that it is the Governor's "duty" to make the appointment upon submission of a name to him by the Central Committee. As the Committee's role in the process is completed upon submission of a name and upon the expiration of the thirty day period, the Committee has no further role in the process, be it to submit a name or to attempt to withdraw the name it submitted in accordance with Art. III, § 13(a)(1). The obvious purpose of Art. III, § 13(a)(1) is to accomplish the objective of filling the vacancy promptly. If the Central Committee fails to submit a name to the Governor under Art. III, § 13(a)(1) within thirty days, the Central Committee no longer has the ability to bind the

Governor and the Governor no longer has the "duty" to appoint the Central Committee's appointee. *See* Art. III, § 13(a)(2). The Governor may not extend this mandatory deadline and neither may the Central Committee. While there is initially discretion provided to the Central Committee to submit a name to the Governor within thirty days of a vacancy in office, once that name is submitted he is the "appointee" to fill the vacancy under the plain terms of Art. III, § 13(a)(1) and the Governor's "duty" to appoint him is triggered. In other words, the Governor has an absolute constitutionally mandated "duty" to appoint the person submitted to him by the Central Committee if the Central Committee follows the process set forth in Art. III, § 13(a)(1) for submission of a name to fill the vacancy and the Committee has no further power in the process, including the power to withdraw a name, after the expiration of the thirty day period.

The plain terms of Art. III, §13(a)(1) provide that if the Central Committee submits a name for appointment within thirty days, the Governor and Central Committee are thereafter bound by the submission. There is no language in Art. III, § 13(a)(1) that would imply that the Central Committee may withdraw a name it submitted to the Governor for appointment after the expiration of thirty days from the date of the vacancy in office. As the purpose of the enactment of Art. III, § 13 was clearly as a substitute for a special election, the General Assembly and the People continued the underlying election process, albeit through a representative body rather than the general public.

The persons on the Central Committee are elected by the people. The Central Committee is constitutionally granted the ability to cast its binding vote as to who will fill a vacancy in the General Assembly. Just as the general public may choose to vote or not vote, the Central Committee may submit a name to the Governor to fill the vacancy and such name is binding upon the Governor if such name is submitted within thirty days of the occurrence of the vacancy. Once the Central Committee's vote is cast, it triggers the duty of the Governor to appoint that person, or stated in different terms, it triggers the duty of the Governor to seat the appointee. It is akin to the Governor issuing a commission after a general election. After a member of the general public has cast a vote for a candidate in a primary, general or special election, that member of the general

public may not thereafter withdraw its vote. Likewise, a legislator that casts his vote in favor of a particular bill may not withdraw such vote after he has received pressure from his some of his constituents after the bill has been sent to the Governor. Such a concept would create chaos in the political process. The time to lobby the person voting is *before* the vote, not after. There simply is no further power in the Central Committee after the expiration of the thirty days to withdraw the name of Gregory Hall for appointment and no discretion in the Governor to refuse to appoint Gregory Hall as he is the person whose name was submitted to the Governor. The Governor's actions in the instant case in refusing to perform his duty set forth in Art. III, § 13 (a)(1) is an unconstitutional attempt to exercise power that has not been conferred upon him in this circumstance.

The Circuit Court's conclusion and Appellees' argument that the Committee may withdraw the name submitted to the Governor at any time prior to the Governor performing his ministerial duty is without basis in law. The Circuit Court correctly equates the Governor's duty to appoint the person submitted to by the Committee under Art. III, § 13(a)(1) to the Governor's duty to issue a commission to the winner of an election. E. 366. The failure to issue a commission by the Governor has been the subject of several cases in this Court and the remedy provided by this Court is the issuance of a Writ of Mandamus to the Governor requiring the Governor to perform the specific act that the law required him to perform. *Magruder v. Swann*, 25 Md. 173 (1866). This Court's decision in *Magruder v. Swann, supra.,* nearly 150 years ago is applicable to the dispute in the instant case. In *Swann*, Governor Swann refused to issue a commission to Mr. Magruder for him to take the office of Judge after Mr. Magruder had been elected to such office. This Court reviewed the applicable provisions of the Constitution, one of which provided that the Governor "shall issue commissions" to those persons that were declared elected to the particular office. This Court held that the Governor's *duty* to issue the commission under Art. IV, § 14 was a "ministerial dut[y] imposed on the Governor preliminary to the qualification of the judges and other officers, in the discharge of which, he has been invested with no discretion but is imperatively required by the organic law to perform in order to keep the departments of government in motion." *Swann*, 25

Md. at 208. The duty of the Governor to appoint the singular person whose name was submitted to him by the Central Committee under Art. III, § 13(a)(1) is properly synonymous with the issuance of a commission. The Circuit Court noted that "[i]t is undisputed that once the submission of a name is made by the Central Committee, the Governor has little discretion and is constitutionally required to appoint the person whose name is submitted by the Central Committee." E. 363. The Governor has no discretion under Art. III, § 13 (a)(1) as concluded by the Circuit Court and conceded by the Appellees and *must* appoint the person whose name is submitted to him in accordance with Art. III, § 13 (a)(1). The plain language of Art. III, § 13(a)(1) and the prior interpretations by the Attorney General's Office over the course of the last forty years have consistently determined that the Governor has a ministerial duty to appoint the person whose name is submitted to him by the Central Committee under Art. III, § 13(a)(1). The interpretation that the Governor has no discretion in the appointment under Art. III, § 13(a)(1) and must perform his ministerial duty is entirely consistent with this Court's holding in *Magruder v. Swann, supra.* There is no dispute of material fact in the instant case that the Governor failed to perform his ministerial duty and therefore a Writ of Mandamus should issue from this Court for the Governor to appoint Gregory Hall to fill the 24th Legislative District Seat in the House of Delegates.

The determination of whether the Governor's "duty to appoint" under Art. III, § 13(a) is a ministerial duty for which the Governor has no discretion cannot reasonably be disputed. Apparently recognizing this dilemma, the Governor attempted to coerce the Central Committee into withdrawing the person whom the Governor had a ministerial duty to appoint to fill the 24th Legislative District Seat in the House of Delegates. The Governor was unsuccessful in his attempted manipulation of the Committee through his "request" in his November 16, 2012 Letter wherein he requested that the Committee withdraw Gregory Hall's name and take no further action until the Governor received a "formal opinion" on whether the 24th Legislative District Seat was in fact vacant. The Committee chose not to fall for the Governor's ruse and when it learned that the Governor had in fact received a formal opinion concluding that the Seat was indeed

vacant prior to the Committee's meeting on November 20, 2012, the Committee voted 12-8 to take no action on the Governor's "request." The propriety of the "request" in the November 16, 2012 Letter by the Governor is questionable given the Governor's subsequent recruitment of Terry Speigner to manipulate the Committee after the Committee summarily rejected the "request." The obvious implication in the actions that followed the November 20, 2012 Committee vote to take no action on the Governor's "request" is that the Governor was attempting to circumvent the ministerial duty that bound him to appoint the Committee's appointee Gregory Hall. The Governor wanted discretion to make his own choice but the Constitution expressly declined to provide such discretion to him and instead mandated a "duty to appoint" the person whose name was submitted to him by the Central Committee in accordance with the process set forth in Art. III, § 13(a)(1).

This Court has not previously addressed this important question of whether the Central Committee may rescind its appointee after the expiration of the thirty day period within which the Central Committee may submit a name to the Governor under Art. III, § 13(a)(1). The Appellees and the Circuit Court's comparison of Art. III, § 13(a)(1) with the provisions of the Constitution dealing with nominations by the Governor and confirmation by the Senate for certain public offices is illogical. The nomination process for the Governor to fill public office is contingent upon the discretion of the Governor in the first place and the Senate in the second place. The Senate has the Constitutional power to reject any nomination of the Governor in its sole discretion. In contrast, the Governor has no power to reject the appointee of the Central Committee under Art. III, § 13(a)(1). If the Governor determines in his sole discretion that the Senate is unlikely to confirm his nominee, the Governor may in his sole discretion withdraw his nominee and submit another. The Senate would continue to have its discretion to confirm or reject each nominee of the Governor. The Governor and Senate could continue such a dance until they reached agreement on the nomination and confirmation. There exists no time stated time frame for the Governor or Senate to act to nominate or confirm such nominations. Art. III, § 13(a)(1) provides a completely different structure for the process

of filling a vacancy in the General Assembly. The structure is similar to the structure of the electoral college where a representative body places a binding vote. The Central Committee submits a binding name to the Governor for appointment. The Governor has no discretion to refuse to appoint such person and the framers provided a specific time period within which the Governor was to perform his duty to appoint. The clear purpose of the time periods in Art. III, § 13(a)(1) is for the vacancy to be filled expeditiously and in a maximum of forty-five days. There is no comparable time period for discretionary nominations of the Governor that require Senate confirmation. The dual purpose of Art. III, § 13(a)(1) to dispense with costly special elections and for the expeditious filling of the vacancy, coupled with the plain language of the provision lead to a conclusion that the Central Committee's purpose is to select a name for appointment, similar to the people choosing the winner of a special election. Once the Central Committee performs its function to submit the name of the person for appointment, the Governor's duty immediately commences. There is nothing in the Constitution to indicate that the Central Committee could alter the Governor's duty once such duty is activated.

The Central Committee had no power or discretion to rescind its submission of a name to the Governor under Art. III, § 13(a)(1) after the expiration of the thirty (30) day period in which it was to submit the name of the appointee to fill the vacant seat. To construe Art. III, § 13(a)(1) as providing such authority would nullify the mandatory time limits set forth therein and permit the vacancy to linger which is completely contrary to the purpose and express provisions of Art. III, § 13(a)(1).

III. IN A MATTER OF FIRST IMPRESSION, THE FINAL DAY FOR THE GOVERNOR TO PERFORM HIS DUTY TO APPOINT UNDER ART. III, §13(a)(1) OF THE MARYLAND CONSTITUTION WHERE THE FIFTEENTH DAY FOLLOWING SUBMISSION OF THE NAME FALLS ON A LEGAL HOLIDAY IS THE LAST DAY PRECEDING THE LEGAL HOLIDAY.

The Circuit Court in concluding that Art. III § 13(a)(1) was merely directory rather than mandatory as to the Governor's duty to appoint, failed to address the important

question concerning the computation of the fifteen day period within which the Governor must perform his "duty" to appoint. The 1935 ratified version of Art. III, § 13 contained no time period in which the Central Committee was to submit a name to the Governor for appointment to fill the vacancy in the Legislature, however, the ratified 1935 Constitutional Amendment provided that "it shall be the duty of the Governor to make said appointment within fifteen days after the submission thereof to him". Art. III, § 13 was subsequently substantively amended in 1966 to replace an appointment by the State Central Committee with a local county central committee submitting the name of the person "within thirty days after the occurrence of the vacancy" whom "it shall be the Governor's duty to appoint" to fill the vacant seat. *See* Chapter 162, Laws of Maryland 1966. The language in the 1966 Amendment that it "shall be Governor's duty to appoint" is original to the 1935 ratified Amendment has been retained in each subsequent amendment to Art. III, § 13(a)(1). *See* Chapter 681, Laws of Maryland 1977; Chapter 649, Laws of Maryland 1986. The 1966 amendment further provided that if the Central Committee did not submit a name to the Governor within thirty days after the occurrence of the vacancy, the Governor shall appoint a person within a period of fifteen days. Conspicuously absent from the 1966 amendment was the word "duty" in connection with the situation where a name was not submitted to the Governor by the central committee.

The Maryland Constitution contains no provision instructing how time is to be computed under its provisions.

The fifteen day period would begin to run from November 8, 2012 because the Governor was submitted Gregory Hall's name on November 7, 2012. Maryland Annotated Code, art. 1, § 36 (2012). The fifteen day period for the Governor to fulfill his constitutional duty would therefore end on November 23, 2012, however November 23, 2012 was a legal holiday (namely "American Indian Heritage Day"; *see* Maryland Annotated Code, art. 1, § 27(a)(14) (2012)). The last day for the Governor to perform his ministerial duty of appointment therefore fell on a holiday. The term "within" means on or before. *Merriam-Webster's Collegiate Dictionary,* 1439 (11th Ed. 2006) (defining "within" to mean "1-used as a function word to indicate enclosure or containment 2 –

used as a function word to indication situation or circumstance in the limits or compass of: as a: before the end of (b)(1) not beyond the quantity; degree, or limitations of"); *Webster's Third New International Dictionary*, 2627 (1976) (defining "within" to mean not longer in time than: before the end or since the beginning"). Accordingly, assuming that the Governor would not perform his ministerial duty on a holiday, the Governor had until the last day preceding the holiday to perform his ministerial duty "within fifteen days" of the date of the submission of the name to him, which was Wednesday, November 21, 2012.

Notably in the Constitution of 1864, Sec. 12, (the predecessor to Art. III, § 13) providing for special elections to fill a vacancy in the General Assembly, a specific computation of time was provided: "a warrant of election shall be issued ... for the election of another person in his place, of which election not less than ten days' notice shall be given, exclusive of the day of the publication of the notice and of the day of the election...." If the General Assembly had intended to employ the same computation of time for the Governor to perform his duty under Art. III, § 13 it surely could have done so. The implication in the 1935 amendment to Art. III, § 13 is that it was not intended that days were to be excluded in calculating the time for the Governor to perform his "duty" to appoint the person whose name was submitted to him by the Central Committee and that "within fifteen days" meant on or before the expiration of fifteen calendar days. The purpose of Art. III, § 13 to fill a vacancy in an expeditious manner further supports the conclusion that the Governor's duty be performed not later than the fifteenth day and thus the day before the legal holiday.

In the absence of a specific direction in the Constitution as to the proper method to compute time, the Maryland Annotated Code provides a framework that could be applied.

Maryland Annotated Code, art. 1, § 36 (2012), states:

> In computing any period of time prescribed or allowed by any applicable statute, the day of the act, event, or default, after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless: (1) It is a Sunday or a legal holiday, in which event the period runs until the end of the next day, which is

> neither a Sunday or a holiday; or, (2) the act to be done is the filing of some paper in court and the office of the clerk of said court on said last day of the period is not open, or is closed for a part of a day, in which event, the period runs until the end of the next day which is neither a Sunday, Saturday, a legal holiday, or a day on which the said office is not open the entire day during ordinary business hours. When the period of time allowed is more than seven days, intermediate Sundays and holidays shall be considered as other days; but if the period of time allowed is seven days or less, intermediate Sundays and holidays shall not be counted in computing the period of time.

In the alternative, pursuant to Maryland Annotated Code, art. 1, § 36 (2012), the fifteen day period, at the very latest, "runs until the end of the next day, which is neither a Sunday or a holiday." The "next day" following November 23, 2012 "which is neither a Sunday or a holiday" was Saturday, November 24, 2012. Consequently, the Governor had at the very latest until the end of Saturday, November 24, 2012 to fulfill his constitutionally mandated duty to appoint Appellant Gregory Hall to the vacant 24th Legislative District Seat. The Governor did not fulfill his mandatory constitutional duty in the time period specifically mandated by the plain language of Art. III, § 13(a)(1), consequently, Gregory Hall is entitled to a Writ of Mandamus against the Governor.

IV. IN A MATTER OF FIRST IMPRESSION, A WRIT OF MANDAMUS SHOULD ISSUE TO THE GOVERNOR TO COMPEL HIM TO PERFORM HIS MINISTERIAL DUTY UNDER ART. III, § 13(a)(1) OF THE MARYLAND CONSTITUTION.

This Court has not had the opportunity to address the important question of whether a Writ of Mandamus should issue to the Governor where he fails to perform his ministerial duty of appointment under Art. III, § 13(a)(1). This Court has however addressed whether a Writ of Mandamus will issue against a Governor who has refused to perform his ministerial duty in issuing a commission to an elected official. As set forth above, it is the Governor's "duty to make said appointment *within* fifteen days after the submission thereof to him." The "duty" must be performed before the expiration of the fifteen days, otherwise the term "duty" is rendered nugatory, which is contrary to the

established rules of statutory construction applicable to the Maryland Constitution. There is no language in Art. III, § 13(a)(1) that the term "days" refers to anything other than calendar days. The Governor has failed to perform his ministerial duty under Art. III, § 13(a)(1) to appoint Gregory Hall to the House of Delegates. A Writ of Mandamus will issue to compel a public officer to perform his ministerial duty where he fails to do so. *Magruder v. Swann*, 25 Md. 173 (1866).

This case is unprecedented in that it is the first time in Maryland's history that the Governor of Maryland has refused to appoint the Central Committee's appointee who is legally qualified to hold a seat in the House of Delegates within fifteen days of the submission of the name to him under Art. III, § 13(a)(1).[1] This Court should order the Governor to appoint Gregory Hall and upon failure to make such appointment, a Writ of Mandamus should issue. The extraordinary remedy of a Writ of Mandamus should be issued to the Governor to compel him to perform his express duty under Art. III, § 13(a)(1) of the Maryland Constitution under the facts and circumstances in the instant case.

V. THE CIRCUIT COURT ERRED IN CONSIDERING ON SUMMARY JUDGMENT AN AFFIDAVIT THAT WAS BASED UPON "THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF".

Appellee Central Committee included as an exhibit to its Motion for Summary Judgment an affidavit that was "to the best of [the affiant's] knowledge, information and

[1] In 1998, Governor Glendening refused to seat former Senator Larry Young after Mr. Young had been expelled from the Senate for ethical violations and then convinced the 44th District Central Committee to send his name to the Governor for appointment under Art. III, § 13(a)(1). Governor Glendening maintained the position that Mr. Young was not eligible to fill the seat that he had been expelled from and Governor Glendening relied upon the advice of the Attorney General's Office for support. As a result of Mr. Young's expulsion from the Senate, he was not eligible to be appointed back into the seat he was expelled from. Accordingly, Governor O'Malley's refusal in this case is the first time in Maryland's history that a Governor has refused to appoint a legally qualified person whose name was submitted in accordance with Art. III, § 13(a)(1).

belief." Mr. Hall filed a Motion to Strike the Affidavit and specifically argued that the Affidavit was improper to be relied upon for summary judgment. The Circuit Court specifically noted that it considered and relied upon this improper affidavit. *See* Opinion and Order at 11 n. 27. Such consideration by the Circuit Court was in error.

Maryland Rule 2-501(c) sets forth the requirements for an affidavit in support of a motion for summary judgment.

> An affidavit supporting or opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

Maryland Rule 1-304 sets forth the form of an affidavit that is upon "personal knowledge" which states "I solemnly affirm under the penalties of perjury and upon personal knowledge that contents of the foregoing paper are true."

The affidavit of Terry Speigner states in relevant part, "I solemnly affirm under penalty of perjury that the contents of the foregoing declaration are true and correct *to the best of my knowledge, information and belief.*" (Emphasis added). The allegations in the Speigner Affidavit could not be considered as "facts" for the purpose of summary judgment. The Court of Appeals has held on several occasions that "affidavits that are based on 'the best of one's knowledge, information, and belief," or similar attestation, are insufficient to support a motion for summary judgment ...." *County Comm'rs of Caroline County v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 102-104, 747 A.2d 600 (2000)(citing *Ehrlich v. Board of Educ.*, 257 Md. 542, 546, 263 A.2d 853, 855 (1970) (holding that an affidavit that was not made upon personal knowledge of the affiant was ineffective); *Mercier v. O'Neill Assocs., Inc.*, 249 Md. 286, 287 n.1, 239 A.2d 564, 564 n.1 (1968) (holding that an affidavit stating that it was "true and correct *to the best of his knowledge and belief* . . . [was] defective in form and substance."); *Phelps v. Herro*, 215 Md. 223, 227, 137 A.2d 159, 161 (1957) (holding that an affidavit not made on personal knowledge "was clearly defective."); *Tellez v. Canton R.R. Co.*, 212 Md. 423, 429, 129 A.2d 809, 812 (1957) (holding that an affidavit not made on the personal knowledge of

the affiant is not admissible in evidence); *Great Atlantic & Pacific Tea Co. v. Imbraguglio*, 346 Md. 573, 598, 697 A.2d 885, 897 (1997); *White v. Friel*, 210 Md. 274, 280, 123 A.2d 303, 305 (1956); *Fletcher v. Flournoy*, 198 Md. 53, 58, 81 A.2d 232, 234 (1951)). Terry Speigner's affidavit is defective on its face in that it is not based upon "personal knowledge" and is not "true."

In addition to the above, Mr. Terry Speigner's affidavit contains hearsay that is not "admissible in evidence." Rule 2-501(c). Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801. Maryland Rule 5-802 states that hearsay evidence is inadmissible. Maryland Rule 5-802 is derived from Federal Rule of Evidence 802. "If one or more hearsay statements are contained within another hearsay statement, each must fall within an exception to the hearsay rule in order not to be excluded by that rule." Md. Rule 5-805.

Mr. Speigner's affidavit contains excerpts from newspaper articles. A newspaper article is hearsay and most newspaper articles contain statements from others which constitute hearsay within hearsay. The United States Court of Appeals for the Fourth Circuit "has consistently held that newspaper articles are inadmissible hearsay to the extent that they are introduced 'to prove the factual matters asserted therein.'" *Gantt v. Whitaker*, 57 Fed. Appx. 141 (2003)(citing *United States v. ReBrook*, 58 F.3d 961, 967 (4th Cir. 1995)). Mr. Speigner's defective affidavit asserts the truth of the contents of the newspaper articles, which is expressly prohibited as inadmissible hearsay. In addition to the improper inclusion of hearsay in the form of newspaper articles, Mr. Speigner's defective affidavit contains inadmissible hearsay concerning his alleged conversations with other Committee members and pure speculation about what the Committee "would have" done had Mr. Hall not filed this lawsuit. Such hearsay and speculation is not "admissible evidence" under Maryland Rule 2-501(c).

The Affidavit of Terry Speigner was not in proper form and was not sufficient to be relied upon in granting summary judgment. The Affidavit of Terry Speigner should have been stricken by the Circuit Court and consequently it was improper for the Circuit

Court to have relied upon it in its decision below. Consequently, the only affidavit that provided the material facts which were not in dispute was the Affidavit of Gregory Hall.

VI. THE 24TH LEGISLATIVE DISTRICT SEAT WAS VACATED BY OPERATION OF LAW ON OCTOBER 9, 2012.

The Circuit Court for Prince George's County correctly concluded that the 24th Legislative District Seat was vacant by operation of law on October 9, 2012 when Appellant Alston was sentenced on the guilty findings of the jury on the indictments against her in the Circuit Court for Anne Arundel County, Maryland. The basis for the Circuit Court for Prince George's County's holding was that Appellant Alston's conviction was final under Art. XV, § 2 when she was sentenced on October 9, 2012 and waived her rights to appeal such sentence.

The Speaker of the House declared the seat vacant and the Central Committee performed its function under Art. III, § 13(a)(1) to submit a name to the Governor for appointment to the vacant seat. Ms. Alston did not judicially challenge the actions of the Central Committee in submitting a name to the Governor until she intervened in the instant suit on November 26, 2012.

The Attorney General of Maryland provided a letter of advice on November 1, 2012 to Speaker of the House of Delegates Michael E. Busch that concluded Ms. Alston was "permanently removed from elective office by operation of law. No subsequent modification of her sentence by the trial court can result in her restoration of office during this term." E. 42-76. The Office of the Attorney General followed up the November 1, 2012 Letter of Advice with a formal opinion on November 20, 2012 concluding that by operation of law Ms. Alston was removed from office and thus the 24th Legislative District Seat was rendered vacant as of October 9, 2012. As a result of being permanently removed from office by operation of law, Gregory Hall is the proper appointee to fill the 24th Legislative District Seat in the Maryland House of Delegates.

CONCLUSION

For the foregoing reasons, 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 24th Legislative District in the upcoming legislative session.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY certify that on this 20th day of December, 2012, that two copies of the foregoing Brief of the Appellant and Joint Record Extract were e-mailed and mailed, via first class mail, postage prepaid, to:

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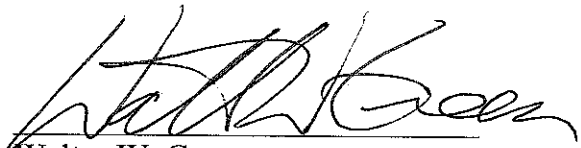

Walter W. Green

Disclosure pursuant to Maryland Rule 8-504(a)(8)

The font type used herein is Times New Roman; the type size is 13 point.

APPENDIX TO APPELLANT'S BRIEF

Constitutional Provisions

Statutes

Rules

Legislative History

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*** Current through all Chapters Effective October 1, 2012, of the 2012 General Assembly Regular Session, First Special Session, and Second Special Session. ***
*** Annotations through August 18, 2012 ***

CONSTITUTION OF MARYLAND
ARTICLE II. EXECUTIVE DEPARTMENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. Const. art. II, § 11 (2012)

Section 11. Power of Governor to fill vacancies

In case of any vacancy during the recess of the Senate, in any office which the Governor has power to fill, he shall appoint some suitable person to said office, whose commission shall continue in force until the end of the next session of the Legislature, or until some other person is appointed to the same office, whichever shall first occur; and the nomination of the person thus appointed during the recess, or of some other person in his place, shall be made to the Senate on the first day of the next regular meeting of the Senate.

HISTORY: 1955, ch. 626, ratified Nov. 6, 1956.

NOTES: CROSS REFERENCES. --See §§ 10 and 13 of this article and *§ 2-101 of the Election Law Article.*

PURPOSE OF SECTION. --Those persons who participated in the reported debates of the constitutional convention had two purposes in mind for this section: To vest in the Governor sufficient authority to prevent any function of government from being disrupted by a vacancy during the lengthy recess of the Senate; and, at the same time, to limit the tenure of appointees who assumed office without the prior consent of the Senate. *72 Op. Att'y Gen. 274 (1987).*

SECTION APPLIES ONLY WHERE VACANCY EXISTS. --This section only authorizes the Governor to fill vacancies, and if none exist, it has no application. *Watkins v. Watkins, 2 Md. 341 (1852).*

SECTION APPLIES TO OFFICES FILLED BY GOVERNOR AND SENATE TOGETHER. --This section regulates appointments to offices which the Governor and Senate together are authorized to fill. *Ash v. McVey, 85 Md. 119, 36 A. 440 (1897).*

SECTION DOES NOT APPLY TO OFFICES FILLED BY ELECTION OR APPOINTMENT BY SOMEONE ELSE. --The Governor's power to fill vacancies does not extend to offices which are filled in the first instance by election or by appointment by someone else. *Buchholtz v. Hill, 178 Md. 280, 13 A.2d 348 (1940),* cert. denied, *369 Md. 180, 798 A.2d 552 (2002).*

This section and § 10 of this article do not authorize Governor to fill vacancy in office of clerk to county commissioners elected by voters. *Buchholtz v. Hill, 178 Md. 280, 13 A.2d 348 (1940),* cert. denied, *369 Md. 180, 798 A.2d 552 (2002).*

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CONSTITUTION OF MARYLAND
ARTICLE III. LEGISLATIVE DEPARTMENT

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. Const. art. III, § 13 (2012)

Section 13. Vacancy in office of Senator or Delegate

(a) (1) In case of death, disqualification, resignation, refusal to act, expulsion, or removal from the county or city for which he shall have been elected, of any person who shall have been chosen as a Delegate or Senator, or in case of a tie between two or more such qualified persons, the Governor shall appoint a person to fill such vacancy from a person whose name shall be submitted to him in writing, within thirty days after the occurrence of the vacancy, by the Central Committee of the political party, if any, with which the Delegate or Senator, so vacating, had been affiliated, at the time of the last election or appointment of the vacating Senator or Delegate, in the County or District from which he or she was appointed or elected, provided that the appointee shall be of the same political party, if any, as was that of the Delegate or Senator, whose office is to be filled, at the time of the last election or appointment of the vacating Delegate or Senator, and it shall be the duty of the Governor to make said appointment within fifteen days after the submission thereof to him.

(2) If a name is not submitted by the Central Committee within thirty days after the occurrence of the vacancy, the Governor within another period of fifteen days shall appoint a person, who shall be affiliated with the same political party, if any as was that of the Delegate or Senator, whose office is to be filled, at the time of the last election or appointment of the vacating Delegate or Senator, and who is otherwise properly qualified to hold the office of Delegate or Senator in the District or County.

(3) In the event there is no Central Committee in the County or District from which said vacancy is to be filled, the Governor shall within fifteen days after the occurrence of such vacancy appoint a person, from the same political party, if any, as that of the vacating Delegate or Senator, at the time of the last election or appointment of the vacating Senator or Delegate, who is otherwise properly qualified to hold the office of Delegate or Senator in such District or County.

(4) In every case when any person is so appointed by the Governor, his appointment shall be deemed to be for the unexpired term of the person whose office has become vacant.

(b) In addition, and in submitting a name to the Governor to fill a vacancy in a Legislative or Delegate district, as the case may be, in any of the twenty-three counties of Maryland, the Central Committee or committees shall follow these provisions:

(1) If the vacancy occurs in a district having the same boundaries as a county, the Central Committee of the county shall submit the name of a resident of the district.

(2) If the vacancy occurs in a district which has boundaries comprising a portion of one county, the Central Committee of that county shall submit the name of a resident of the district.

(3) If the vacancy occurs in a district which has boundaries comprising a portion or all of two or more counties, the Central Committee of each county involved shall have one vote for submitting the name of a resident of the district; and if there is a tie vote between or among the Central Committees, the list of names there proposed shall be submitted to the Governor, and he shall make the appointment from the list.

HISTORY: 1935, ch. 584, ratified Nov. 3, 1936; 1966, ch. 162, ratified Nov. 8, 1966; 1977, ch. 681, ratified Nov. 7, 1978; 1986, ch. 649, ratified Nov. 4, 1986.

NOTES: EFFECT OF AMENDMENTS. --Chapter 649, Acts 1986, in subsection (a), designated the first through the third sentences as paragraphs (1) through (3), in paragraph (1), inserted "if any" following "political party," "at the time of the last election or appointment of the vacating Senator or Delegate" following "affiliated," "appointed or" preceding "elected," "if any" following "political party," "was that of" following "as," substituted "Delegate or Senator" for "person," and inserted "at the time of the last election or appointment of the vacating Delegate or Senator" and substituted a comma for a semicolon following "Senator," in paragraph (2), substituted "affiliated with" for "of" following "shall be," inserted "if any" following "party," "was that of" following "as," substituted "the Delegate or Senator" for "the person" and inserted "at the time of the last election or appointment of the vacating Delegate or Senator", in paragraph (3), inserted "from the same political party, if any, as that of the vacating Delegate or Senator, at the time of the last election or appointment of the vacating Senator or Delegate" and designated the former last sentence of subsection (a) to be present paragraph (4).

INTENT OF SECTION. --Both the legislative history and the language itself indicate that the intent of this section was that in case of a vacancy in the General Assembly, the appropriate central committee would submit the name of only one person to the Governor and the Governor would appoint that person to fill the vacancy. *62 Op. Att'y Gen. 241 (1977).*

NOTICE OR ADVERTISING OF VACANCY NOT REQUIRED. --There is no explicit requirement in the State Constitution providing for notice or advertising that a vacancy exists and is to be filled. *62 Op. Att'y Gen. 442 (1977).*

SECTION NOT APPLICABLE TO INITIAL VACANCIES IN OFFICES OF COUNTY COUNCILMEN. --The provision of the *Constitution, article III, § 13*, that vacancies in the membership of the General Assembly shall be filled by appointment of the Governor is not applicable to initial vacancies in the offices of county councilmen of a county which adopts a charter under the Home Rule Amendment because that amendment requires that the county council be an elective body. *County Comm'rs v. Supervisors of Elections, 192 Md. 196, 63 A.2d 735 (1949).*

REMOVAL OF MEMBER OF HOUSE OF DELEGATES FROM LEGISLATIVE DISTRICT NOT CONSTITUTING VACANCY --Removal of member of House of Delegates from legislative district for which he was chosen would not justify determination that vacancy had occurred so long as the Delegate remains a resident of either Baltimore City or of the county or counties from which his legislative district was formed. *60 Op. Att'y Gen. 306 (1975).*

SECTION NOT REQUIRING UNANIMITY --This section does not require unanimity in selecting a nominee to fill a vacancy created by resignation. *62 Op. Att'y Gen. 442 (1977).*

DUTY OF GOVERNOR WHERE COMMITTEE SUBMITS NAMES OF TWO OR MORE QUALIFIED PERSONS. --If a central committee should ignore the clear intent of this section and submit the names of two or more qualified persons to the Governor, the Governor cannot ignore the names submitted by the committee. Rather, the Governor must appoint one of the persons to the vacancy. *62 Op. Att'y Gen. 241 (1977).*

DUTY OF GOVERNOR NOT MANDATORY WHERE COMMITTEE FAILS TO SUBMIT NOMINEE. --Although the State Constitution provides that the Governor shall appoint a person within 15 days of the failure of the central committee to submit a nominee, that requirement cannot reasonably be construed as imposing a mandatory duty upon the Governor. *62 Op. Att'y Gen. 453 (1977).*

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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, § 5 (2012)

Section 5. Vacancy in office of judge of circuit court

Upon every occurrence or recurrence of a vacancy through death, resignation, removal, disqualification by reason of age or otherwise, or expiration of the term of fifteen years of any judge of a circuit court, or creation of the office of any such judge, or in any other way, the Governor shall appoint a person duly qualified to fill said office, who shall hold the same until the election and qualification of his successor. His successor shall be elected at the first biennial general election for Representatives in Congress after the expiration of the term of fifteen years (if the vacancy occurred in that way) or the first such general election after one year after the occurrence of the vacancy in any other way than through expiration of such term. Except in case of reappointment of a judge upon expiration of his term of fifteen years, no person shall be appointed who will become disqualified by reason of age and thereby unable to continue to hold office until the prescribed time when his successor would have been elected.

HISTORY: 1880, ch. 417, ratified Nov. 8, 1881; 1943, ch. 772, ratified Nov. 7, 1944; 1945, ch. 703, ratified Nov. 5, 1946; 1969, ch. 791, rejected Nov. 3, 1970; 1975, ch. 551, ratified Nov. 2, 1976; 1980, ch. 523, ratified Nov. 4, 1980.

NOTES: EFFECT OF AMENDMENTS. --The 1980 amendment deleted "or of the Supreme Bench of Baltimore City" following "circuit court" in the first sentence and the exception for filling a vacancy in the office of Chief Judge of the Supreme Bench of Baltimore City at the end of that sentence.

MARYLAND LAW REVIEW. --For note, "Discipline of Judges in Maryland," see *34 Md. L. Rev. 612 (1974).*

UNIVERSITY OF BALTIMORE LAW FORUM. --For an article, "The Selection and Election of Circuit Judges in Maryland: A Time for Change," see *40 U. Balt. L. F. 39 (2010).*

HISTORY OF SECTION. --See *Hillman v. Boone, 190 Md. 606, 59 A.2d 506 (1948).*

CHAPTERS 523 AND 524, ACTS 1980, DO NOT VIOLATE *MD. CONST., ART. XIV, § 1.* --Chapters 523 and 524, Acts 1980, concerning, respectively, the consolidation of the Baltimore City court system and the removal of causes, do not violate the *Md. Const., Art. XIV, § 1* and they represent valid amendments to the *Maryland Constitution. Andrews v. Governor of Md., 294 Md. 285, 449 A.2d 1144 (1982).*

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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, § 5A (2012)

Section 5A. Vacancy in office of judge of appellate court

(a) A vacancy in the office of a judge of an appellate court, whether occasioned by the death, resignation, removal, retirement, disqualification by reason of age, or rejection by the voters of an incumbent, the creation of the office of a judge, or otherwise, shall be filled as provided in this section.

(b) Upon the occurrence of a vacancy the Governor shall appoint, by and with the advice and consent of the Senate, a person duly qualified to fill said office who shall hold the same until the election for continuance in office as provided in subsections (c) and (d).

(c) The continuance in office of a judge of the Court of Appeals is subject to approval or rejection by the registered voters of the appellate judicial circuit from which he was appointed at the next general election following the expiration of one year from the date of the occurrence of the vacancy which he was appointed to fill, and at the general election next occurring every ten years thereafter.

(d) The continuance in office of a judge of the Court of Special Appeals is subject to approval or rejection by the registered voters of the geographical area prescribed by law at the next general election following the expiration of one year from the date of the occurrence of the vacancy which he was appointed to fill, and at the general election next occurring every ten years thereafter.

(e) The approval or rejection by the registered voters of a judge as provided for in subsections (c) and (d) shall be a vote for the judge's retention in office for a term of ten years or his removal. The judge's name shall be on the appropriate ballot, without opposition, and the voters shall vote yes or no for his retention in office. If the voters reject the retention in office of a judge, or if the vote is tied, the office becomes vacant ten days after certification of the election returns.

(f) An appellate court judge shall retire when he attains his seventieth birthday.

(g) A member of the General Assembly who is otherwise qualified for appointment to judicial office is not disqualified by reason of his membership in a General Assembly which proposed or enacted any constitutional amendment or statute affecting the method of selection. Continuance in office, or retirement or removal of a judge, the creation or abolition of a court, an increase or decrease in the number of judges of any court, or an increase or decrease in the salary, pension or other allowances of any judge.

HISTORY: 1975, ch. 551, ratified Nov. 2, 1976.

NOTES: EDITOR'S NOTE. --A § 5A was previously proposed by Acts 1969, ch. 791, but was rejected by the voters at the general election held on Nov. 3, 1970.

Subsection (g) is set out above just as it appears in ch. 551, Acts 1975.

Chapter 104, Acts 1994, proposed to substitute "seventy-fifth" for "seventieth" in (f), subject to a referendum. At the referendum held on Nov. 8, 1994, the act failed of ratification.

MARYLAND LAW REVIEW. --For note discussing the strict liability of manufacturers and marketers of Saturday night special handguns used in the commission of a crime, see *46 Md. L. Rev. 486 (1987).*

For an article; "Applying Federal Constitutional Theory to the Interpretation of State Constitutions: The Ban on Special Laws in Maryland," see 71 U. Md. L. Rev. 411 (2012).

UNIVERSITY OF BALTIMORE LAW FORUM. --For an article, "The Selection and Election of Circuit Judges in Maryland: A Time for Change," see *40 U. Balt. L. F. 39 (2010).*

MANDATORY RETIREMENT. --Circuit court judges and appellate court judges fall within the "elected to public office" exception to the federal Age Discrimination in Employment Act and, therefore, remain subject to the constitutional requirement that they retire at age 70. *71 Op. Att'y Gen. 181 (1986).*

VACATING OFFICE. --Participation of specially assigned retired judges in an in banc session of the Court of Special Appeals was improper because retired judges could not be "incumbent judges," as required by *§ 1-403(c) of the Courts Article*, because, once they retired they vacated office, under *art. IV, § 5A(a) of the Maryland Constitution*, and, under art. IV, § 18B(b) and (c) of the Maryland Constitution, they could not be incumbent judges after the attainment of their 70th birthdays. *Dep't of Human Res. v. Howard, 397 Md. 353, 918 A.2d 441 (2007).*

IN BANC PROCEEDINGS BEFORE THE COURT OF SPECIAL APPEALS. --When specially assigned retired judges participated in an in banc proceeding before the Court of Special Appeals, this rendered the court's decision invalid because the retired judges were not "incumbent judges," under *§ 1-403(c) of the Courts Article*, because they could not temporarily be an incumbent, under *§ 1-302(e) of the Courts Article*, as this only impermanently conveyed the power and authority of the "office," rather than the actual "office," because no appellate judge could attain "office" other than by appointment, under *art. IV, § 5A(b) of the Maryland Constitution*, and *§ 1-402(b) of the Courts Article. Dep't of Human Res. v. Howard, 397 Md. 353, 918 A.2d 441 (2007).*

It was not error, under *§ 1-403(c) of the Courts Article*, for the Maryland Court of Special Appeals to hear a case in banc when less than seven judges voted to do so because (1) three judges recused themselves under Md. Code Jud. Conduct R. 2.11, (2) one seat was vacant, and (3) the statute's proper interpretation held a majority of those remaining could decide to hear the case in banc. *Exxon Mobil Corp. v. Ford, 204 Md. App. 274, 40 A.3d 674 (2012).*

CITED IN Att'y Griev. Comm'n v. DeMaio, 379 Md. 571, 842 A.2d 802 (2004); Dep't of Human Res. v. Howard, 397 Md. 353, 918 A.2d 441 (2007).

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CONSTITUTION OF MARYLAND
ARTICLE IV. JUDICIARY DEPARTMENT
PART II. COURTS OF APPEAL

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. Const. art. IV, § 14 (2012)

Section 14. Composition of Court of Appeals; Chief Judge; jurisdiction; sessions; salaries of judges; quorum; division of court; reargument

The Court of Appeals shall be composed of seven judges, one from the First Appellate Judicial Circuit consisting of Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico, and Worcester Counties; one from the Second Appellate Judicial Circuit consisting of Baltimore and Harford Counties; one from the Third Appellate Judicial Circuit, consisting of Allegany, Carroll, Frederick, Garrett, Howard, and Washington Counties; one from the Fourth Appellate Judicial Circuit, consisting of Prince George's County; one from the Fifth Appellate Judicial Circuit, consisting of Anne Arundel, Calvert, Charles, and St. Mary's Counties; one from the Sixth Appellate Judicial Circuit, consisting of Baltimore City; and one from the Seventh Appellate Judicial Circuit, consisting of Montgomery County. The Judges of the Court of Appeals shall be residents of their respective Appellate Judicial Circuits. The term of each Judge of the Court of Appeals shall begin on the date of his qualification. One of the Judges of the Court of Appeals shall be designated by the Governor as the Chief Judge. The jurisdiction of the Court of Appeals shall be co-extensive with the limits of the State and such as now is or may hereafter be prescribed by law. It shall hold its sessions in the City of Annapolis at such time or times as it shall from time to time by rule prescribe. Its session or sessions shall continue not less than ten months in each year, if the business before it shall so require, and it shall be competent for the judges temporarily to transfer their sittings elsewhere upon sufficient cause. The salary of each Judge of the Court of Appeals shall be that now or hereafter prescribed by the General Assembly and shall not be diminished during his continuance in office. Five of the judges shall constitute a quorum, and five judges shall sit in each case unless the Court shall direct that an additional judge or judges sit for any case. The concurrence of a majority of those sitting shall be sufficient for the decision of any cause, and an equal division of those sitting in a case has the effect of affirming the decision appealed from if there is no application for reargument as hereinafter provided. In any case where there is an equal division or a three to two division of the Court a reargument before the full Court of seven judges shall be granted to the losing party upon application as a matter of right.

HISTORY: 1943, ch. 772, ratified Nov. 7, 1944; 1956, ch. 99, ratified Nov. 6, 1956; 1960, ch. 11, ratified Nov. 8, 1960; 1969, ch. 791, rejected Nov. 3, 1970; 1975, ch. 551, ratified Nov. 2, 1976; 1977, ch. 681, ratified Nov. 7, 1978; 1994, ch. 103, ratified Nov. 8, 1994.

NOTES: CROSS REFERENCES. --As to vacancy in office of judge, see § 5 of this article.
As to noncontested elections of appellate court judges, see § 5A of this article.

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CONSTITUTION OF MARYLAND
ARTICLE IV. JUDICIARY DEPARTMENT
PART II. COURTS OF APPEAL

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. Const. art. IV, § 15 (2012)

Section 15. Judge who heard cause below disqualified; opinions to be filed; judgment of Court of Appeals final

Any judge of the Court of Appeals or of an intermediate court of appeal who heard the cause below either as a trial judge or as a judge of any intermediate court of appeal as the case may be shall not participate in the decision. In every case an opinion, in writing, shall be filed within three months after the argument, or submission of the cause; and the judgment of the Court of Appeals shall be final and conclusive.

HISTORY: 1956, ch. 99, ratified Nov. 6, 1956; 1966, ch. 10, ratified Nov. 8, 1966.

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article, "State Constitutional Law for Maryland Lawyers: Judicial Relief for Violations of Rights," see *10 U. Balt. L. Rev. 102 (1980).*

"SHALL." --It is well-settled that the use of the word "shall" in this section's admonition that the Court of Appeals "shall" file its opinions within three months of hearing argument is merely directory; a provision similarly admonishing the State's circuit courts is also directory. *G & M Ross Enters., Inc. v. Board of License Comm'rs, 111 Md. App. 540, 682 A.2d 1190 (1996).*

JUDGE NOT DISQUALIFIED. --Motion to vacate decision, on ground that one of judges was disqualified as having participated in another case in which similar questions of fact had been decided against defendant, was overruled on ground that present case involving question of res judicata had nothing to do with ultimate finding of facts in case. *State v. Coblentz, 169 Md. 159, 180 A. 266 (1935).*

REQUIREMENT OF WRITTEN OPINION WITHIN THREE MONTHS IS DIRECTORY ONLY. --The portion of this section requiring a written opinion to be filed within three months is directory and not mandatory. Reargument denied. *McCall's Ferry Power Co. v. Price, 108 Md. 96, 69 A. 832 (1908).*

THREE-MONTH REQUIREMENT DOES NOT APPLY WHERE CASE IS AFFIRMED BY EQUALLY DIVIDED COURT. --The portion of this section requiring a written opinion to be filed in three months, construed not to apply where a case is affirmed because the judges of the Court of Appeals are equally divided. *Johns v. Johns, 20 Md. 58 (1863).*

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CONSTITUTION OF MARYLAND
ARTICLE IV. JUDICIARY DEPARTMENT
PART VII. SHERIFFS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. Const. art. IV, § 44 (2012)

Section 44. Sheriffs

There shall be elected in each county and in Baltimore City one person, resident in said county or City, above the age of twenty-five years, and for at least five years preceding his election a citizen of the State, to the office of Sheriff. He shall hold office for four years, until his successor is duly elected and qualified, give such bond, exercise such powers and perform such duties as now are or may hereafter be fixed by law.

In case of vacancy by death, resignation, refusal to serve, or neglect to qualify or give bond, or by disqualification or removal from the County or City, the Governor shall appoint a person to be Sheriff for the remainder of the official term.

The Sheriff in each county and in Baltimore City shall receive such salary or compensation and such expenses necessary to the conduct of his office as may be fixed by law. All fees collected by the Sheriff shall be accounted for and paid to the Treasury of the several counties and of Baltimore City, respectively.

HISTORY: 1914, ch. 845, ratified Nov. 3, 1914; 1916, ch. 547, rejected Nov. 7, 1916; 1945, ch. 786, ratified Nov. 5, 1946; 1953, ch. 55, ratified Nov. 2, 1954; 1977, ch. 681, ratified Nov. 7, 1978.

NOTES: CROSS REFERENCES. --As to rights and duties of sheriff relating to fees and other moneys received by him, see *Article XV, § 1 of the Constitution.*

As to sheriffs generally, see Article 87 and *§§ 2-301 to 2-309 of the Courts Article.*

MARYLAND LAW REVIEW. --For survey of Maryland Court of Appeals decisions, 1975-1976, regarding constitutional law, see *37 Md. L. Rev. 69 (1977).*

UNIVERSITY OF BALTIMORE LAW REVIEW. --For article "The Maryland Sheriff v. Modern and Efficient Administration of Justice," see *2 U. Balt. L. Rev. 282 (1973).*

For article, "Strangers in Paradise: An Overview of Maryland State Law Dealing with Noncitizens," see *21 U. Balt. L. Rev. 87 (1991).*

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CONSTITUTION OF MARYLAND
ARTICLE V. ATTORNEY-GENERAL AND STATE'S ATTORNEYS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. Const. art. V, § 5 (2012)

Section 5. Vacancy in office of Attorney-General

In case of vacancy in the office of Attorney General, occasioned by death, resignation, removal from the State, or from office, or other disqualification, the Governor shall appoint a person to fill the vacancy for the residue of the term.

HISTORY: 1977, ch. 681, ratified Nov. 7, 1978.

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CONSTITUTION OF MARYLAND
ARTICLE XV. MISCELLANEOUS

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. Const. art. XV, § 2 (2012)

THIS SECTION HAS MORE THAN ONE DOCUMENT WITH VARYING EFFECTIVE DATES.

Section 2. Suspension and removal of elected officials convicted of crimes [Amendment subject to contingency; amended version follows this section].

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 nolo 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.

HISTORY: 1974, ch. 879, ratified Nov. 5, 1974; 1977, ch. 681, ratified Nov. 7, 1978.

MARYLAND LAW REVIEW. --For note, "Discipline of Judges in Maryland," see *34 Md. L. Rev. 612 (1974).*
For article, "Survey of Developments in Maryland Law, 1986-87," see *47 Md. L. Rev. 739 (1988).*
For article, "Survey of Developments in Maryland Law, 1988-89," see *49 Md. L. Rev. 509 (1990).*

"CONVICTION" GOVERNED BY MARYLAND LAW. --Maryland law governs definition of conviction in this section. *62 Op. Att'y Gen. 365 (1977).*

MEANING OF "CONVICTION." --"Conviction" in this section means judgment of conviction, which includes imposition of sentence. *62 Op. Att'y Gen. 365 (1977).*
The word "convicted" in this section means the judgment of conviction which occurs upon sentencing. *62 Op. Att'y Gen. 365 (1977).*

or Delegate, or to any office of profit, or trust, under this State, until he shall have accounted for, and paid into the Treasury all sums on the Books thereof charged to, and due by him.

Vacancies in Senate or House.

SEC. 13. In case of death, disqualification, resignation, refusal to act, expulsion, or removal from the county, or city, for which he shall have been elected, of any person, who shall have been chosen as a Delegate, or Senator, or in case of a tie between two or more such qualified persons, a warrant of election shall be issued by the Speaker of the House of Delegates, or President of the Senate, as the case may be, for the election of another person in his place, of which election, not less than ten days notice shall be given, exclusive of the day of the publication of the notice, and of the day of election; and, if during the recess of the Legislature, and more than ten days before its termination, such death shall occur, or such resignation, refusal to act, or disqualification be communicated, in writing to the Governor by the person, so resigning, refusing, or disqualified, it shall be the duty of the Governor to issue a warrant of election to supply the vacancy thus created, in the same manner, the said Speaker, or President, might have done, during the session of the General Assembly; provided, however, that unless a meeting of the General Assembly may intervene, the election, thus ordered to fill such vacancy, shall be held on the day of the ensuing election for Delegates and Senators.

Monday in the month of November, eighteen hundred and sixty-six, for the term of four years, to supply their places; so that after the first election, one-half of the Senators may be chosen every second year. In case the number of Senators be hereinafter increased, such classification of the additional Senators shall be made as to preserve, as nearly as may be, an equal number in each class.

Qualifications of Senators and Delegates.

SEC. 8. No person shall be eligible as a Senator or Delegate who, at the time of his election, is not a citizen of the United States, and who has not resided at least three years next preceding the day of his election in this State, and the last year thereof in the county or in the legislative district of Baltimore city which he may be chosen to represent, if such county or legislative district of said city shall have been so long established, and if not, then in the county or city from which, in whole or in part, the same may have been formed; nor shall any person be eligible as a Senator unless he shall have attained the age of twenty-five years, nor as a Delegate unless he shall have attained the age of twenty-one years at the time of his election.

Persons ineligible 1853, ch. 280.

SEC. 9. No member of Congress, or person holding any civil or military office under the United States, shall be eligible as a Senator or Delegate; and if any person shall, after his election as a Senator or Delegate, be elected to Congress, or be appointed to any office, civil or military, under the Government of the United States, his acceptance thereof shall vacate his seat.

Same.

SEC. 10. No person holding any civil office of profit or trust under this State, except Justices of the Peace, shall be eligible to the office of Senator or Delegate.

Defaulters ineligible.

SEC. 11. No collector, receiver or holder of public moneys, shall be eligible as Senator or Delagate, or to any office of profit or trust under this State, until he shall have accounted for and paid into the Treasury all sums on the books thereof charged to and due by him.

1856, ch. 16

Vacancies in Senate or House.

SEC. 12. In case of death, disqualification, resignation, refusal to act, expulsion, or removal from the county or legislative district of Baltimore city for which he shall have

been elected, of any person who shall have been chosen as a Delegate or Senator, or in case of a tie between two or more such qualified persons, a warrant of election shall be issued by the Speaker of the House of Delegates or President of the Senate, as the case may be, for the election of another person in his place, of which election not less than ten days' notice shall be given, exclusive of the day of the publication of the notice and of the day of election; and in case of such resignation or refusal to act, being communicated in writing to the Governor, by the person so resigning or refusing to act; or if such death occur during the legislative recess, and more than ten days before its termination, it shall be the duty of the Governor to issue a warrant of election to supply the vacancy thus created, in the same manner the said Speaker or President might have done during the session of the General Assembly; *provided, however*, that unless a meeting of the General Assembly may intervene, the election thus ordered to fill such vacancy shall be held on the day of the ensuing election for Delegates and Senators.

Meetings of Legislature.

SEC. 13. The General Assembly shall meet on the first Wednesday of January, eighteen hundred and sixty-five, and on the same day in every second year thereafter, and at no other time, unless convened by the proclamation of the Governor.

Compensation of Members.

1864, Res. 4.

SEC. 14. The General Assembly shall continue its session so long as in its judgment the public interest may require, and each member thereof shall receive a compensation of five dollars per diem, for every day he shall attend the sessions unless absent on account of sickness; *provided*, however, that no member shall receive any other or larger sum than four hundred dollars. When the General Assembly shall be convened by proclamation of the Governor, the session shall not continue longer than thirty days, and in such case, the compensation shall be at the rate of five dollars per diem.

Extra Sessions.

16. The Inactive National Guard shall consist of such officers and enlisted men as are commissioned or enlisted therein or transferred thereto.

SEC. 2. *And be it further enacted,* That all Acts, or parts of Acts, inconsistent with this Act, be and the same are hereby repealed to the extent of such inconsistency.

SEC. 3. *And be it further enacted,* That this Act is hereby declared to be an emergency law and necessary for the immediate preservation of the public health and safety, and having been passed by a yea and nay vote, supported by three-fifths of all the members elected to each of the two Houses of the General Assembly, the same shall take effect from the date of its passage.

Approved May 17, 1935.

CHAPTER 584.

AN ACT to propose an amendment to Section 13 of Article 3 of the Constitution of the State of Maryland, title "Legislative Department," providing for the appointment of persons by the Governor to fill vacancies in the House of Delegates or in the Senate of the General Assembly of Maryland and providing for the submission of said amendment to the qualified voters of the State for adoption or rejection.

SECTION 1. *Be it enacted by the General Assembly of Maryland* (three-fifths of all the members of each of the two Houses concurring), That the following amendment is hereby proposed to Section 13 of Article 3 of the Constitution of the State of Maryland, title "Legislative Department," the same, if adopted by the legally qualified voters of the State as herein provided, to become Section 13 of Article 3 of the Constitution of the State of Maryland.

Section 13. In case of death, disqualification, resignation, refusal to act, expulsion, or removal from the county or city for which he shall have been elected, of any person who shall have been chosen as a Delegate or Senator, or in case of a tie between two or more such qualified presons, the Governor shall appoint a person to fill such vacancy from a person whose name shall be submitted to him

in writing by the State Central Committee of the political party with which the Delegate or Senator, so vacating, had been affiliated in the County or District from which he or she was elected, provided that the 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 said appointment within fifteen days after the submission thereof to him. In the event there is no State Central Committee in the County or District from which said vacancy is to be filled, the Governor shall within fifteen days after the occurrence of such vacancy appoint a person who is otherwise properly qualified to hold the office of delegate or senator in such District or County. In every case when any person is so appointed by the Governor, his appointment shall be deemed to be for the unexpired term of the person whose office has become vacant.

SEC. 2. *And be it further enacted* by the authority aforesaid, That said aforegoing section, hereby proposed as an amendment to the Constitution, shall be at the next general election for members of the House of Representatives of Congress held in this State submitted to the legal and qualified voters of the State for adoption or rejection, in pursuance of the directions contained in Article 14 of the Constitution of this State, and at the said general election the vote on the said proposed amendment to the Constitution shall be by ballot, and upon each ballot there shall be printed the words "For the Constitutional Amendment," and "Against the Constitutional Amendment," as now provided by law, and immediately after said election due returns shall be made to the Governor of the vote for and against said proposed amendment, as directed by said Fourteenth Article of the Constitution, and further proceedings had in accordance with said Article Fourteen.

Approved May 17, 1935.

CHAPTER 585.

AN ACT to repeal and re-enact, with amendments, Section 199 of Article 16 of the Code of Public Local Laws of Maryland (1930 Edition), title "Montgomery County," sub-title "County Treasurer," providing for the election of a County Treasurer, authorizing the County Treasurer to appoint his own attorney or attorneys, one additional clerk and a private stenographer, fixing their compensa-

CHAPTER 162

(Senate Bill 564)

AN ACT to propose an amendment to Section 13 of Article III of the Constitution of Maryland, title "Legislative Department", making provision for filling vacancies in the office of State Senator in certain senatorial districts or subdistricts, correcting an error in this section, and submitting this amendment to the qualified voters of the State for adoption or rejection.

SECTION 1. *Be it enacted by the General Assembly of Maryland* (three-fifths of all the members elected to each of the two houses concurring), That the following section be and the same is hereby proposed as an amendment to Section 13 of Article III of the Constitution of Maryland, title "Legislative Department", the same, if adopted by the legally qualified voters of the State, as herein provided, to become a part of the Constitution of Maryland:

13. *(a)* In case of death, disqualification, resignation, refusal to act, expulsion, or removal from the county or city for which he shall have been elected, of any person who shall have been chosen as a Delegate or Senator, or in case of a tie between two or more such qualified [presons] *persons*, the Governor shall appoint a person to fill such vacancy from a person whose name shall be submitted to him in writing, *within* ~~*fifteen*~~ THIRTY *days after the occurrence of the vacancy*, by the State Central Committee of the political party with which the Delegate or Senator, so vacating, had been affiliated in the County or District from which he or she was elected, provided that the 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 said appointment within fifteen days after the submission thereof to him. *If a name is not submitted by the State Central Committee within* ~~*fifteen*~~ THIRTY *days after the occurrence of the vacancy, the Governor within another period of fifteen days shall appoint a person* , WHO SHALL BE OF THE SAME POLITICAL PARTY AS THE PERSON WHOSE OFFICE IS TO BE FILLED, AND *who is otherwise properly qualified to hold the office of delegate or senator in the District or County.* In the event there is no State Central Committee in the County or District from which said vacancy is to be filled, the Governor shall within fifteen days after the occurrence of such vacancy appoint a person who is otherwise properly qualified to hold the office of delegate or senator in such District or County. In every case when any person is so appointed by the Governor, his appointment shall be deemed to be for the unexpired term of the person whose office has become vacant.

(b) In addition, and in submitting a name to the Governor to fill a vacancy in a Senatorial district or subdistrict, as the case may be, in any of the twenty-three counties of Maryland, the State Central Committee or committees shall follow these provisions:

(1) If the vacancy occurs in a district or subdistrict having the same boundaries as a county, the State Central Committee of the county shall submit the name of a resident of the district or subdistrict.

(2) If the vacancy occurs in a district or subdistrict which has boundaries comprising a portion of one county, the State Central Committee of that county shall submit the name of a resident of the district or subdistrict.

(3) If the vacancy occurs in a district or subdistrict which has boundaries comprising a portion or all of two or more counties, the State Central Committee of each county involved shall have one vote for submitting the name of a resident of the district or subdistrict; and if there is a tie vote between or among the State Central Committees, the list of names there proposed shall be submitted to the Governor, and he shall make the appointment from the list.

SEC. 2. *And be it further enacted,* That the aforegoing section hereby proposed as an amendment to the Constitution of Maryland, at the next general election to be held in this State in November 1966, shall be submitted to the legal and qualified voters thereof for their adoption or rejection in pursuance of directions contained in Article XIV of the Constitution of this State, and at the said general election, the vote on the said proposed amendment to the Constitution shall be by ballot, and upon each ballot there shall be printed the words "For the Constitutional Amendment" and "Against the Constitutional Amendment" as now prescribed by law, and, immediately after said election, all returns shall be made to the Governor of the vote for and against said proposed amendment, as directed by said Article XIV of the Constitution, and further proceedings had in accordance with said Article XIV.

Approved April 14, 1966.

CHAPTER 163

(Senate Bill 575)

AN ACT to add new Sections 13A(j) and 13A(k) to Article 66C of the Annotated Code of Maryland (1965 Supplement), title "Natural Resources", subtitle "In General", subheading "Department of Chesapeake Bay Affairs", to follow immediately after Section 13A(i) thereof, granting certain additional powers to the Department of Chesapeake Bay Affairs.

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That new Sections 13A(j) and 13A(k) be and they are hereby added to Article 66C of the Annotated Code of Maryland (1965 Supplement), title "Natural Resources", subtitle "In General", subheading "Department of Chesapeake Bay Affairs", to follow immediately after Section 13A(i) thereof, and to read as follows:

13A.

(j) To establish and conduct an extension service for persons engaged in the production of seafood, for the purpose of apprising such persons of the objectives and programs of the Department, the principles of natural resource conservation and management, current problems affecting the production of seafood, and such other matters

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ARTICLE 1. RULES OF INTERPRETATION
IN GENERAL.

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. Ann. Code art. 1, § 27 (2012)

§ 27. Legal holidays

(a) "Legal holiday" defined. -- In this Code and any rule, regulation, or directive adopted under it, "legal holiday" means:

(1) January 1, for New Year's Day;

(2) January 15, for Dr. Martin Luther King, Jr.'s birthday, unless the United States Congress designates another day for observance of that legal holiday, in which case, the day designated by the United States Congress;

(3) February 12, for Lincoln's birthday;

(4) The third Monday in February, for Washington's birthday;

(5) March 25, for Maryland Day;

(6) Good Friday;

(7) May 30, for Memorial Day, unless the United States Congress designates another day for observance of that legal holiday, in which case, the day designated by the United States Congress;

(8) July 4, for Independence Day;

(9) The first Monday in September, for Labor Day;

(10) September 12, for Defenders' Day;

(11) October 12, for Columbus Day, unless the United States Congress designates another day for observance of that legal holiday, in which case, the day designated by the United States Congress;

(12) November 11, for Veterans' Day;

(13) The fourth Thursday in November, for Thanksgiving Day;

(14) The Friday after Thanksgiving Day, for American Indian Heritage Day;

(15) December 25, for Christmas Day;

(16) Each statewide general election day in this State; and

(17) Each other day that the President of the United States or the Governor designates for general cessation of business.

(b) Observance of legal holidays. -- Except as otherwise expressly provided in this Code, a legal holiday shall be observed on:

(1) The date specified in subsection (a) of this section for the legal holiday; and

(2) If that date falls on a Sunday, on the next Monday after that date.

HISTORY: 1980, ch. 33, § 5; 1986, ch. 5, § 1; 1987, ch. 662; 1989, ch. 373; 1994, ch. 422; 2008, ch. 486.

NOTES: CROSS REFERENCES. --For present provisions concerning public school holidays, see *§ 7-103 of the Education Article.*

For present provisions concerning bank holidays, see *§ 5-701 et seq. of the Financial Institutions Article.*

For present provisions concerning observance of legal holidays by State employees, see *§ 9-201 et seq. of the State Personnel and Pensions Article.*

EFFECT OF AMENDMENTS. --Chapter 486, Acts 2008, effective October 1, 2008, added (a)(14) and redesignated accordingly.

STATED IN Taliaferro v. State, 295 Md. 376, 456 A.2d 29, cert. denied, *461 U.S. 948103 S. Ct. 211477 L. Ed. 2d 1307 (1983).*

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ARTICLE 1. RULES OF INTERPRETATION
TIME

GO TO MARYLAND STATUTES ARCHIVE DIRECTORY

Md. Ann. Code art. 1, § 36 (2012)

§ 36. How computed

In computing any period of time prescribed or allowed by any applicable statute, the day of the act, event, or default, after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless: (1) It is a Sunday or a legal holiday, in which event the period runs until the end of the next day, which is neither a Sunday or a holiday; or, (2) the act to be done is the filing of some paper in court and the office of the clerk of said court on said last day of the period is not open, or is closed for a part of a day, in which event, the period runs until the end of the next day which is neither a Sunday, Saturday, a legal holiday, or a day on which the said office is not open the entire day during ordinary business hours. When the period of time allowed is more than seven days, intermediate Sundays and holidays shall be considered as other days; but if the period of time allowed is seven days or less, intermediate Sundays and holidays shall not be counted in computing the period of time.

HISTORY: An. Code, 1951, § 2; 1941, ch. 522; 1957, ch. 399, § 40; 1991, ch. 352; 1997, ch. 31, § 6.

NOTES: CROSS REFERENCES. --For present provisions concerning computation of time under Election Code, see *§ 1-301 of the Election Law Article.*

For provisions of Maryland Rules as to computation of time, see Maryland Rule 1-203(a), (b).

MARYLAND LAW REVIEW. --For note, "The Maryland Survey: 2001-2002: Recent Decisions: Attainment of Legal Age: An Interpretation of the Statute of Limitations," see *63 Md. L. Rev. 992 (2004).*

LEGISLATIVE INTENT. --The purpose of this section is to establish a uniform method of computing any period of time prescribed or allowed by the rules of any court, or by order of court, or by any applicable statute. A uniform procedure for computing statutory periods is equitable for two reasons: First, a set method of time computation brings a degree of certainty to the law; second, by excluding the first day and counting from the first whole day following the event, a party will not be prejudiced if the triggering event occurs toward the end of the day. *Hampton v. University of Md., 109 Md. App. 297, 674 A.2d 145 (1996),* cert. denied, *343 Md. 333, 681 A.2d 68 (1996),* cert. denied, *519 U.S. 1032, 117 S. Ct. 592, 136 L. Ed. 2d 521 (1996).*

Trial court erred in finding that the mayor and city council's notice did not meet the time requirements of *art. 23A, § 19(d) of the Code* based on its conclusion that the mayor and city council did not set a hearing on their annexation resolution not less than 15 days after publication of the their last annexation resolution notice; the legislature intended that the general method for computing time set out in this section applied because the legislature did not express an intent to

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Michie's Annotated Code of Maryland
Maryland Rules

*** State and Federal Rules are current through October 4, 2012 ***
*** Annotations are through October 18, 2012 ***

MARYLAND RULES
TITLE 1. GENERAL PROVISIONS
CHAPTER 300. GENERAL PROVISIONS

Md. Rule 1-304 (2012)

Review Court Orders which may amend this Rule.

Rule 1-304. Form of affidavit

The statement of the affiant may be made before an officer authorized to administer an oath or affirmation, who shall certify in writing to having administered the oath or taken the affirmation, or may be made by signing the statement in one of the following forms:

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

Personal Knowledge. "I solemnly affirm under the penalties of perjury and upon personal knowledge that the contents of the foregoing paper are true."

NOTES: Committee note. -- This Rule is not intended to abrogate the additional requirements for summary judgment set forth in Rule 2-501.

Source. -- This Rule is derived from former Rule 5 c.

University of Baltimore Law Review. -- For article, "The Maryland Rules -- A Time for Overhaul," see *9 U. Balt. L. Rev. 1 (1979).*

Owner's affidavit sufficient in mechanic's lien case. -- Order establishing a mechanic's lien was improper because both of the owner's verified answers were valid and sufficient under *§ 9-106(a)(2) of the Real Property Article*, and an evidentiary hearing was required; pursuant to Rule 1-311, the owner's answers were valid because they were signed by counsel, and nothing in the North Carolina statutes prohibited the owner, acting through a manager, from authorizing the affiant to file an affidavit on its behalf. Even if *N.C. Gen. Stat. § § 57C-3-24(a)* required written authorization for the affidavit filed in this case, there was no requirement that the existence of the authorization be recited in the affidavit. *T.W. Herring Invs., LLC v. Atl. Builders Group, Inc., 186 Md. App. 673, 975 A.2d 264 (2009).*

Waiver. -- Where there was ample opportunity to complain below that the form of oath of the answers to interrogatories was defective and that the dead man's statute barred reliance on the answers, but where the plaintiffs instead focused on their contention that the answers should be excluded because of defendant's earlier reliance on defendant's constitutional right to silence, the arguments were not preserved for appellate review. *Faith v. Keefer, 127 Md. App. 706, 736 A.2d 422 (1999).*

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MARYLAND RULES
TITLE 2. CIVIL PROCEDURE -- CIRCUIT COURT
CHAPTER 300. PLEADINGS AND MOTIONS

Md. Rule 2-303 (2012)

Review Court Orders which may amend this Rule.

Rule 2-303. Form of pleadings

(a) Paragraphs, counts, and defenses. All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each cause of action shall be set forth in a separately numbered count. Each separate defense shall be set forth in a separately numbered defense.

(b) Contents. Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleadings are required. A pleading shall contain only such statements of fact as may be necessary to show the pleader's entitlement to relief or ground of defense. It shall not include argument, unnecessary recitals of law, evidence, or documents, or any immaterial, impertinent, or scandalous matter.

(c) Consistency. A party may set forth two or more statements of a claim or defense alternatively or hypothetically. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has, regardless of consistency and whether based on legal or equitable grounds.

(d) Adoption by reference. Statements in a pleading or other paper of record may be adopted by reference in a different part of the same pleading or paper of record or in another pleading or paper of record. A copy of any written instrument that is an exhibit to a pleading is a part thereof for all purposes.

(e) Construction of pleadings. All pleadings shall be so construed as to do substantial justice.

HISTORY: (Amended Mar. 22, 1991, effective July 1, 1991; Nov. 12, 2003, effective Jan. 1, 2004.)

NOTES: Cross references. -- Rules 1-301; 1-311 through 1-313.

Committee note. -- This Rule, authorizing the adoption by reference of statements in "papers of record" other than pleadings, must be read in conjunction with Rule 2-311 (c), which requires documents to be attached to a motion or response, incorporated by reference, or set forth verbatim as permitted by Rule 2-432 (b), and Rule 2-501 (e), which permits the court to rule on a motion for summary judgment based on the motion and response. The court need not consider a document in ruling on a motion unless the document is (1) attached as an exhibit, (2) filed and incorporated by reference, or (3) set forth verbatim in a motion to compel discovery. Since Rule 2-401 (d) prohibits the routine filing of discovery materials, any party who wishes the court to consider them will have to use one of these methods.

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MARYLAND RULES
TITLE 2. CIVIL PROCEDURE -- CIRCUIT COURT
CHAPTER 500. TRIAL

Md. Rule 2-501 (2012)

Review Court Orders which may amend this Rule.

Rule 2-501. Motion for summary judgment

(a) Motion. Any party may make a motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law. The motion shall be supported by affidavit if it is (1) filed before the day on which the adverse party's initial pleading or motion is filed or (2) based on facts not contained in the record.

Committee note. -- For an example of a summary judgment granted at trial, see *Beyer v. Morgan State, 369 Md. 335 (2002).*

(b) Response. A response to a written motion for summary judgment shall be in writing and shall (1) identify with particularity each material fact as to which it is contended that there is a genuine dispute and (2) as to each such fact, identify and attach the relevant portion of the specific document, discovery response, transcript of testimony (by page and line), or other statement under oath that demonstrates the dispute. A response asserting the existence of a material fact or controverting any fact contained in the record shall be supported by an affidavit or other written statement under oath.

(c) Form of affidavit. An affidavit supporting or opposing a motion for summary judgment shall be made upon personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated in the affidavit.

(d) Affidavit of defense not available. If the court is satisfied from the affidavit of a party opposing a motion for summary judgment that the facts essential to justify the opposition cannot be set forth for reasons stated in the affidavit, the court may deny the motion or may order a continuance to permit affidavits to be obtained or discovery to be conducted or may enter any other order that justice requires.

(e) Contradictory Affidavit or Statement.

(1) A party may file a motion to strike an affidavit or other statement under oath to the extent that it contradicts any prior sworn statement of the person making the affidavit or statement. Prior sworn statements include (A) testimony at a prior hearing, (B) an answer to an interrogatory, and (C) deposition testimony that has not been corrected by changes made within the time allowed by Rule 2-415.

(2) If the court finds that the affidavit or other statement under oath materially contradicts the prior sworn statement, the court shall strike the contradictory part unless the court determines that (A) the person reasonably believed the prior statement to be true based on facts known to the person at the time the prior statement was made, and (B) the

statement in the affidavit or other statement under oath is based on facts that were not known to the person and could not reasonably have been known to the person at the time the prior statement was made or, if the prior statement was made in a deposition, within the time allowed by Rule 2-415 (d) for correcting the deposition.

(f) Entry of judgment. The court shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law. By order pursuant to Rule 2-602 (b), the court may direct entry of judgment (1) for or against one or more but less than all of the parties to the action, (2) upon one or more but less than all of the claims presented by a party to the action, or (3) for some but less than all of the amount requested when the claim for relief is for money only and the court reserves disposition of the balance of the amount requested. If the judgment is entered against a party in default for failure to appear in the action, the clerk promptly shall send a copy of the judgment to that party at the party's last known address appearing in the court file.

Cross references. -- Section 521 of the Servicemembers Civil Relief Act, *50 U.S.C. app. §§501* et seq., imposes specific requirements that must be fulfilled before a default judgment may be entered.

(g) Order specifying issues or facts not in dispute. When a ruling on a motion for summary judgment does not dispose of the entire action and a trial is necessary, the court may enter an order specifying the issues or facts that are not in genuine dispute. The order controls the subsequent course of the action but may be modified by the court to prevent manifest injustice.

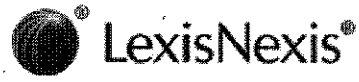
HISTORY: (Amended Apr. 8, 1985; Apr. 7, 1986, effective July 1, 1986; Mar. 22, 1991, effective July 1, 1991; Dec. 8, 2003, effective July 1, 2004; June 16, 2009, effective June 17, 2009.)

NOTES: Source. -- This Rule is derived as follows:
Section (a) is derived from former Rule 610 a 1 and 3.
Section (b) is new.
Section (c) is derived from former Rule 610 b.
Section (d) is derived from former Rule 610 d 2.
Section (e) is new.
Section (f) is derived in part from former Rules 610 d 1 and 611 and is in part new.
Section (g) is derived from former Rule 610 d 4.

ANALYSIS

I. GENERAL CONSIDERATION.

Effects of Amendments. --



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Michie's Annotated Code of Maryland
Maryland Rules

*** State and Federal Rules are current through October 4, 2012 ***
*** Annotations are through October 18, 2012 ***

MARYLAND RULES
TITLE 5. EVIDENCE
CHAPTER 800. HEARSAY

Md. Rule 5-801 (2012)

Review Court Orders which may amend this Rule.

Rule 5-801. Definitions

The following definitions apply under this Chapter:

(a) Statement. A "statement" is (1) an oral or written assertion or (2) nonverbal conduct of a person, if it is intended by the person as an assertion.

(b) Declarant. A "declarant" is a person who makes a statement.

(c) Hearsay. "Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

NOTES: Committee note. -- This Rule does not attempt to define "assertion," a concept best left to development in the case law. The fact that proffered evidence is in the form of a question or something other than a narrative statement, however, does not necessarily preclude its being an assertion. The Rule also does not attempt to define when an assertion, such as a verbal act, is offered for something other than its truth.

Source. -- This Rule is derived from *F.R.Ev. 801 (a)*, (b), and (c).

Maryland Law Review. -- For note, "The New Maryland Rules of Evidence: Survey, Analysis and Critique," see *54 Md. L. Rev. 1032 (1995).*

University of Baltimore Law Review. -- For a comment, "The Court of Appeals of Maryland: Garner v. State: Maryland's Implied Retreat from Implied Assertions," see 71 U. Md. L. Rev. 619 (2012).

For a comment, "In Light of Crawford v. Washington and the Difficult Nature of Domestic Violence Prosecutions, Maryland Should Adopt Legislation Making Admissible Prior Acts of Domestic Violence in Domestic Violence Prosecutions," see *39 U. Balt. L. Rev. 467 (2010).*

University of Baltimore Law Forum. -- For note, "Recent Development: Stoddard v. State: When Deciding if an Implied Assertion Is Hearsay, the Intent of the Declarant Is Irrelevant if the Statement Is Offered to Prove the Truth of the Matter Asserted," see *36 U. Balt. L.F. 215 (2006).*

For a note, "Recent Development: State v. Coates: Statements Made to a Medical Care Provider Are Not Admissible Under the Statements Made for Medical Diagnosis or Treatment Hearsay Exception When the Declarant Was Unaware of the Purpose of the Statement," see *39 U. Balt. L. F. 117 (2009).*

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Michie's Annotated Code of Maryland
Maryland Rules

*** State and Federal Rules are current through October 4, 2012 ***
*** Annotations are through October 18, 2012 ***

MARYLAND RULES
TITLE 5. EVIDENCE
CHAPTER 800. HEARSAY

Md. Rule 5-802 (2012)

Review Court Orders which may amend this Rule.

Rule 5-802. Hearsay rule

Except as otherwise provided by these rules or permitted by applicable constitutional provisions or statutes, hearsay is not admissible.

NOTES: Source. -- This Rule is derived from *F.R.Ev. 802.*

University of Baltimore Law Review. -- For a comment, "The Court of Appeals of Maryland: Garner v. State: Maryland's Implied Retreat from Implied Assertions," see 71 U. Md. L. Rev. 619 (2012).

University of Baltimore Law Forum. -- For a note, "Recent Development: State v. Coates: Statements Made to a Medical Care Provider Are Not Admissible Under the Statements Made for Medical Diagnosis or Treatment Hearsay Exception When the Declarant Was Unaware of the Purpose of the Statement," see *39 U. Balt. L. F. 117 (2009).*

In general -- Generally, hearsay is inadmissible. *Parker v. State, 156 Md. App. 252, 846 A.2d 485 (2004),* cert. denied, *382 Md. 347, 855 A.2d 350 (2004).*

Common law hearsay rules embodied in this chapter. -- Although Title 5 of the Maryland Rules became effective on July 1, 1994, this chapter reflects the preexisting common law rules regarding hearsay evidence. *Brandon v. Molesworth, 104 Md. App. 167, 655 A.2d 1292 (1995),* aff'd as modified, *341 Md. 621, 672 A.2d 608 (1996).*

Hearsay evidence inadmissible. -- Hearsay evidence pertaining to the validity of the issuance of a protective order and the mother's state of mind in denying defendant visitation with their daughter was not admissible in defendant's trial for violation of a protective order because defendant never challenged the validity of the protective order, and never contended that the protective order was not admissible in evidence. In addition, whether the mother was justified in denying defendant access to their child was not an issue that was before the trial court. *Boyd v. State, 399 Md. 457, 924 A.2d 1112 (2007).*

Seven year old child sexual assault victim's statements to a forensic nurse, as recounted by the nurse through her testimony, were hearsay pursuant to Rule 5-801(c), because the statements were offered for their truth. Pursuant to this Rule, the statements were inadmissible because they did not qualify under a recognized exception. *State v. Coates, 405 Md. 131, 950 A.2d 114 (2008).*

Doctor's report to a detective should have been excluded on ground it was prepared in anticipation of litigation, the doctor did not testify, and the report was not admissible under either the "business records" exception or the "statements

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PROCEEDINGS

OF THE

SENATE

OF

MARYLAND

JANUARY SESSION, 1935

BY AUTHORITY

INTRODUCTION OF BILLS.

SENATE BILL NO. 313—By Senator Prescott:

A Bill entitled "An Act to repeal and re-enact, with amendments, Section 199 of Article 16 of the Code of Public Local Laws of Maryland (1930 Edition), title 'Montgomery County', sub-title 'County Treasurer', authorizing the County Treasurer to appoint his own attorney or attorneys and a private stenographer, and fixing their compensation."

Which was read the first time and referred to Senators Prescott, Dodson and Risteau.

SENATE BILL NO. 314—By Senator Higgins:

A Bill entitled "An Act to propose an amendment to Section 13 of Article 37 of the Constitution of the State of Maryland, title 'Legislative Department', providing for the appointment of persons by the Governor to fill vacancies in the House of Delegates or in the Senate of the General Assembly of Maryland and providing for the submission of said amendment to the qualified voters of the State for adoption or rejection."

Which was read the first time and referred to the Committee on Amendments to the Constitution.

SENATE BILL NO. 315—By Senator Callan:

A Bill entitled "An Act to repeal and re-enact, with amendments, Section 296 of Article 4 of the Code of Public Local Laws of Maryland (1930 Edition), title 'Baltimore City', sub-title 'Coroners, Inquests and Dead Bodies', providing for the establishment of a Central Bureau for Coroners in Baltimore City and fixing its duties."

Which was read the first time and referred to the Committee on City Senators.

SENATE BILL NO. 316—By Senator Baile:

A Bill entitled "An Act to repeal and re-enact with amendments, sub-section (3) Section 36 of Article 101 of the Annotated Code of Maryland (1924 Edition), title 'Workmen's

ORDERS.

By Senator Kimble:

The Senate respectfully requests the Senate Finance Committee to report Senate Bill No. 16, "Income Tax Bill," to the Senate Monday night, March 25, for consideration by this body.

So ordered.

REPORTS STANDING COMMITTEE.

Senator Donovan from the Committee on Judicial Proceedings, reported favorably HOUSE BILL NO. 74:

Subject: "Washington County Hospital Association," restoring Association to its original status.

Favorable report adopted.

Which was read the second time and ordered passed to its third reading.

Also,

Senator Donovan from the Committee on Judicial Proceedings reported favorably HOUSE BILL NO. 218:

Subject: "Health," sub-title "Adulteration of Food and Drink."

Favorable report adopted.

Which was read the second time and ordered passed to its third reading.

Also,

Senator Cobourn from the Committee on Amendments to the Constitution reported favorably SENATE BILL NO. 314:

Subject: "Legislative Department," providing for the appointment of persons by the Governor to fill vacancies in the House of Delegates or in the Senate of the General Assembly of Maryland.

By Senator Higgins:

AMENDMENT TO SENATE BILL NO. 314.

Amendment No. 1: On page 1, line 3 of Section 13 strike out the following: "insanity, physical inability to act"

Which was laid over under the rules.

Also,

Senator Donovan, from the Judiciary Proceedings Committee, reported favorably:

Senate Bill No. 446, entitled "An Act to repeal and re-enact, with amendments, Section 187R (a) of Article 56 of the Code

LAID OVER BILLS.

The President laid before the Senate, laid over bill, with amendments, being,

Senator Cobourn, from Amendments to the Constitution Committee, reported favorably, with amendments, SENATE BILL NO. 314:

Subject: "Legislative Department," providing for the appointment of persons by the Governor to fill vacancies in the House of Delegates or in the Senate of the General Assembly of Maryland.

Favorable report adopted.

By Senator Higgins:

AMENDMENT TO SENATE BILL No. 314.

Amendment No. 1. On page 1, line 3 of Section 13 strike out the following: "insanity, physical inability to act".

Which amendment was read and adopted.

Which was read the second time and ordered printed for its third reading.

REPORTS SELECT COMMITTEE.

Senator Prescott, from Select Committee, reported unfavorably HOUSE BILL NO. 95:

Subject: "Montgomery County," salary of the Police Justice.

Unfavorable report adopted.

Also,

Senator Risteau, from Select Committee, reported favorably HOUSE BILL NO. 475:

Subject: "The Methodist Episcopal Church of Havre de Grace," election of the Board of Trustees.

Favorable report adopted.

Which was read the second time and ordered passed to its third reading.

Also,

Senator Prescott, from Select Committee, reported favorably, with amendments, HOUSE BILL NO. 66:

Subject: "Montgomery County," sub-title "County Commissioners and Treasurer."

Favorable report adopted.

By the Committee:

AMENDMENTS TO HOUSE BILL No. 66.

Amendment No. 1. In line 7 of the title of the printed bill,

Subject: "Garrett County," sub-title "County Treasurer."

Favorable report adopted.

Which was read the second time and ordered printed for its third reading.

THIRD READING BILLS.

The President laid before the Senate bills for a third reading as follows:

Being,

SENATE BILL NO. 314—By Senator Higgins:

Subject: "Legislative Department," providing for the appointment of persons by the Governor to fill vacancies in the House of Delegates or in the Senate of the General Assembly of Maryland.

Which was read the third time and passed by yeas and nays as follows:

AFFIRMATIVE.

Messrs.—				
Baile	Cooksey	Duncan	Lloyd	Risteau
Brice	Davis	Fine	Melvin	Veasey
Coad	Dodson	Higgins	Prescott	Wilson
Cobourn	Donovan	Kimble		

Total—18

NEGATIVE.

Messrs.—			
Callan	Every	Hofferbert	Wyatt

Total—4

Said bill was then sent to the House of Delegates.

Also,

SENATE BILL NO. 392—By Senator Baile:

Subject: "Forestry," sub-title "State Park Commission."

Which was read the third time and passed by yeas and nays as follows:

AFFIRMATIVE.

Messrs.—				
President	Cobourn	Duncan	Latimer	Prescott
Baile	Cooksey	Every	Lloyd	Veasey
Brice	Davis	Fine	Melvin	Wilson
Callan	Dodson	Higgins	Miller	Wyatt
Coad	Donovan	Kimble	Phoebus	

Total—24

NEGATIVE.

Messrs.—	
Friend	Hofferbert

Total—2

Said bill was then sent to the House of Delegates.

Also,

SENATE BILL NO. 389—By Senator Donovan:

the date of issue, and shall pay therefor the sum of one dollar ($1.00) per year".

Which amendment was read and rejected.

Senator Coad moved to non-concur in said amendments.

Which motion prevailed.

Also,

SENATE BILL NO. 314—By Senator Higgins:

Subject: "An Act to propose an amendment to Section 13 of Article 3 of the Constitution of the State of Maryland, title 'Legislative Department,' providing for the appointment of persons by the Governor to fill the vacancies in the House of Delegates or in the Senate of the General Assembly of Maryland and providing for the submission of said amendment to the qualified voters of the State for adoption or rejection."

Amended in the House.

By the Committee:

AMENDMENT TO SENATE BILL NO. 314.

Amendment No. 1. In Section 13, page 2, line 7, strike out the words "two persons whose name" and insert in lieu thereof "a person whose name".

Which amendment was read and concurred in.

On motion of Senator Higgins, the House amendments were concurred in and bill, as amended, was passed by yeas and nays as follows:

Messrs.—		AFFIRMATIVE.		
President	Cooksey	Fine	LeGore	Prescott
Baile	Davis	Friend	Lloyd	Prescott
Brice	Dodson	Higgins	Melvin	Veasey
Callan	Donovan	Hofferbert	Miller	Wilson
Coad	Duncan	Kimble	Phoebus	Wyatt
Cobourn	Every	Latimer		

NEGATIVE—NONE. Total—28

Also,

By Senator Callan:

SENATE JOINT RESOLUTION NO. 18.

A Joint Resolution requesting the Board of Public Works to pay out of the contingent fund appropriated to said Board in the State Budget for the years 1935-1937, the sum of five thousand ($5,000.00) dollars to Mr. and Mrs. John J. Zebron on account of the death of one child and of injuries sustained by Mrs. Zebron and two of their children due to the negligence of a police officer driving a police car.

By Mr. Mullikin:

AMENDMENT TO SENATE JOINT RESOLUTION NO. 18.

In lines 19, page 2, of the third reading file Joint Resolu-

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JANUARY SESSION, 1935

BY AUTHORITY

Sections to Article 89-B of the Public General Laws of Maryland, title 'State Roads', said new sections to be known as Sections 75 to 93, inclusive, and to follow immediately after Section 74 of said Article, creating the Chesapeake Bay Authority; providing for its powers and duties; authorizing it to construct a bridge across the Chesapeake Bay, including the approaches thereto, and to maintain and operate said bridge and charge tolls thereon, and to acquire, maintain and operate a ferry across the Chesapeake Bay and to charge tolls thereon; and to issue its 'Bridge' Bonds for a sum not exceeding Ten Million Dollars. ($10,000,000) for the cost of said bridge, payable out of revenue only, and providing that said bonds shall in no way be the debt or obligation of the State of Maryland or any sub-division thereof; and to issue its 'Ferry' Bonds in a sum not in excess of One Million Two Hundred Thousand Dollars ($1,200,000) for the cost of acquisition of a ferry; and to condemn or otherwise acquire land needed for the construction of said bridge and approaches and for its other corporate purposes and to issue its 'Bridge Approach' Bonds in an amount not exceeding Five Hundred and Twenty Thousand Dollars ($520,000) for the cost of the construction of said approaches; said 'Ferry' and 'Bridge Approach' Bonds to be payable primarily from the revenues from the projects of the Authority; and to dedicate certain revenue derived from certain gasoline taxes to pay and deficit in the debt service requirements of said 'Ferry' and 'Bridge Approach' Bonds; and to provide that said 'Ferry' and 'Bridge Approach' Bonds shall not be deemed obligations or debts contracted by the General Assembly of Maryland or pledges of the faith or credit of the State of Maryland; and to provide for exemption of the Bonds and of such projects; and the tolls and revenues derived therefrom from taxation; and empowering the State Roads Commission of Maryland to assist the said Authority, and under certain circumstances to exercise its powers."

Which was read the first time and referred to the Committee on Ways and Means.

Also,

Senate Bill No. 314, entitled "An Act to propose an amendment to Section 13 of Article 3 of the Constitution of the State of Maryland, title 'Legislative Department', providing for the appointment of persons by the Governor to fill vacancies in the House of Delegates or in the Senate of the General Assembly of Maryland and providing for the submission of said amendment to the qualified voters of the State for adoption or rejection."

Which was read the first time and referred to the Committee on Amendments to the Constitution.

Also,

Mr. Carroll, from Constitutional Amendments Committee, reported favorably, with amendment:

Senate Bill No. 314, entitled "An Act to propose an amendment to Section 13 of Article 3 of the Constitution of the State of Maryland, title 'Legislative Department', providing for the appointment of persons by the Governor to fill vacancies in the House of Delegates or in the Senate of the General Assembly of Maryland and providing for the submission of said amendment to the qualified voters of the State for adoption or rejection."

Favorable report adopted.

By the Committee:

AMENDMENT TO SENATE BILL NO. 314.

Amendment No. 1. In Section 13, page 2, line 7, strike out the words "two persons whose name" and insert in lieu thereof " a person whose name".

Which amendment was read and adopted.

Which was read the second time and ordered passed to its third reading.

On motion of Mr. Carroll and two-thirds of all the Members-Elect voting in the affirmative, the rules were suspended by yeas and nays as follows, to permit bill to be put upon its third reading, and final passage:

AFFIRMATIVE.

Messrs.—				
Speaker	Collins	Payne	Baer, D.	Hays
Lomax	Evans, G.	Clark, J. E.	Cordish	Magruder
Hayden	Hoffman	Pfaffenbach	Berman	Canby
Hubbard	Bennett	Broumel	Abramson	Shoemaker
Strong	Brinsfield	Moore	Blum	Baer, C. W.
Cromwell	Brohawn	Mitchell	Conlon	Dick
Dulin	Reynolds	Appel	Locke	Popp
Miller, P.	Briscoe	Novak	Chambers, Jr.	Glenn
Labrot	Manlove	Clarke, E. A.	Knight	Twigg
Mason	Clagett	Schap	Griesacker	Boucher
Clark, A. C.	Marbury	Bruno	Geraghty	Barnes
Hall	Mullikin	Friedel	Webster, Jr.	Kephart
Ireland	White	Conroy	Owings, Jr.	Rinehart
Carrico	Tingley	Ament	Lehnert	Routson
Monroe	Sothoron	Sweeney	Clark, A. W.	Gassaway
Ward	Evans, J. W.	Hirt	Warns	Carroll, Jr.
Hanley	Thomas	Cardin	Wallace	Boyce
Knapp	Brimer	Luther	Myers	Davis
Phillips, W.	Dennis	Blake	Holzapfel, 3d	Whealton
Howard, 3d	Robertson	Baker	Miller, H. M.	Burroughs
Tolle	Castle	Anderton	Hartle	Edwards
Harrison	Ramsburg	Meade	Troxell	Groves
Fairbank	Funk	Wilson, Jr.	Beachley	Cullers
Coulby	Barrick	Phillips, E. B.	Cantrel	

Total—119

NEGATIVE—NONE.

The rules being suspended said bill was placed on third reading and final passage.

Senate Bill No. 314, entitled "An Act to propose an amendment to Section 13 of Article 3 of the Constitution of the State of Maryland, title 'Legislative Department', providing for the appointment of persons by the Governor to fill vacancies in the House of Delegates or in the Senate of the General Assembly of Maryland and providing for the submission of said amendment to the qualified voters of the State for adoption or rejection."

Which was read the third time and passed by yeas and nays as follows:

AFFIRMATIVE.

Messrs.—

Speaker	Collins	Payne	Baer, D.	Hays
Lomax	Evans, G.	Clark, J. E.	Cordish	Magruder
Hayden	Hoffman	Pfaffenbach	Berman	Canby
Hubbard	Bennett	Broumel	Abramson	Shoemaker
Strong	Brinsfield	Moore	Blum	Baer, C. W.
Cromwell	Brohawn	Mitchell	Conlon	Dick
Dulin	Reynolds	Appel	Locke	Popp
Miller, P.	Briscoe	Novak	Chambers, Jr.	Glenn
Labrot	Manlove	Clarke, R. A.	Knight	Twigg
Mason	Clagett	Schap	Griesacker	Boucher
Clark, A. C.	Marbury	Bruno	Geraghty	Barnes
Hall	Mullikin	Friedel	Webster, Jr.	Kephart
Ireland	White	Conroy	Owings, Jr.	Rinehart
Carrico	Tingley	Ament	Lehnert	Routson
Monroe	Sothoron	Sweeney	Clark, A. W.	Gassaway
Ward	Evans, J. W.	Hirt	Warns	Carroll, Jr.
Hanley	Thomas	Cardin	Wallace	Boyce
Knapp	Brimer	Luther	Myers	Davis
Phillips, W.	Dennis	Blake	Holzapfel, 3d	Whealton
Howard, 3d	Robertson	Baker	Miller, H. M.	Burroughs
Tolle	Castle	Anderton	Hartle	Edwards
Harrison	Ramsburg	Meade	Troxell	Groves
Fairbank	Funk	Wilson, Jr.	Beachley	Cullers
Coulby	Barrick	Phillips, E. B.	Cantrel	

Total—119

NEGATIVE—NONE.

Said bill was then sent to the Senate.

Also,

On motion of Mr. Phillips and two-thirds of all the Members-Elect voting in the affirmative, the rules were suspended by yeas and nays as follows, to allow Chesapeake Bay and Tributaries Committee to report on Senate Bill No. 470:

Senate of Maryland

NO. 314.

MR. HIGGINS—Amendments to the Constitution.

By the SENATE, March 8, 1935.

Introduced, read first time and referred to the Committee on Amendments to the Constitution.

By order, C. ANDREW SHAAB, Secretary.

A BILL

ENTITLED

AN ACT to propose an amendment to Section 13 of Article 3 of the Constitution of the State of Maryland, title "Legislative Department," providing for the appointment of persons by the Governor to fill vacancies in the House of Delegates or in the Senate of the General Assembly of Maryland and providing for the submission of said amendment to the qualified voters of the State for adoption or rejection.

SECTION 1. *Be it enacted by the General Assembly of Maryland* (three-fifths of all the members of each of the two Houses concurring), That the following amendment is hereby proposed to Section 13 of Article 3 of the Constitution of the State of Maryland, title "Legislative Department," the same, if adopted by the legally qualified voters of the State as herein provided, to become Section 13 of Article 3 of the Constitution of the State of Maryland.

Section 13. In case of death, disqualification, resignation, refusal to act, expulsion, *insanity, physical inability to act* or removal from the county or city for which he shall have been elected, of any person who shall have been chosen as a delegate or Senator, or in case of a tie between two or more such qualified persons, [a warrant of election shall be issued by the Speaker of the House of Delegates, or President of the Senate, as the case may be, for the election of

another person in his place, of which election not less than days' notice shall be given, exclusive of the day of the publication of the notice and of the day of election; and if during the recess of the Legislature, and more than ten days before its termination, such death shall occur, or such resignation, refusal to act or disqualification be communicated in writing to the Governor by the person so resigning, refusing or disqualified, it shall be the duty of the Governor to issue a warrant of election to supply the vacancy thus created, in the same manner the said Speaker or President might have done during the session of the General Assembly; provided, however, that unless a meeting of the General Assembly may intervene, the election thus ordered to fill such vacancy shall be held on the day of the ensuing election for Delegates and Senators.] *The Governor shall appoint a person to fill such vacancy from two persons whose names shall be submitted to him in writing by the State Central Committee of the political party with which the Delegate or Senator, so vacating, had been affiliated in the County or District from which he or she was elected, provided that the 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 said appointment within fifteen days after the submission thereof to him. In the event there is no State Central Committee in the County or District from which said vacancy is to be filled, the Governor shall within fifteen days after the occurrence of such vacancy appoint a person who is otherwise properly qualified to hold the office of delegate or senator in such District or County. In every case when any person is so appointed by the Governor, his appointment shall be deemed to be for the unexpired term of the person whose office has become vacant.*

SEC. 2. *And be it further enacted by the authority aforesaid*, That said aforegoing section, hereby proposed as an amendment to the Constitution, shall be at the next general election for members of the House of Representatives of Congress held in this State submitted to the legal

and qualified voters of the State for adoption or rejection, in pursuance of the directions contained in Article 14 of the Constitution of this State, and at the said general election the vote on the said proposed amendment to the Constitution shall be by ballot, and upon each ballot there shall be printed the words "For the Constitutional Amendment," and "Against the Constitutional Amendment," as now provided by law, and immediately after said election due returns shall be made to the Governor of the vote for and against said proposed amendment, as directed by said Fourteenth Article of the Constitution, and further proceedings had in accordance with said Article Fourteen.