IN THE
COURT OF APPEALS OF MARYLAND

September Term, 2005

No. 141

THOMAS ROSKELLY, et al.

Appellants

v.

LINDA H. LAMONE, AS ADMINISTRATOR FOR THE
MARYLAND STATE BOARD OF ELECTIONS, et al.

Appellees

APPEAL FROM THE CIRCUIT COURT FOR
ANNE ARUNDEL COUNTY
(Honorable Paul A. Hackner)

BRIEF AND APPENDIX OF APPELLANTS

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STATEMENT OF THE CASE

This dispute centers on the Petition by Appellants to place Senate Bill 478 on the ballot for referendum at the next general election. On June 8, 2006, in the midst of the referendum petition process, Linda H. Lamone ("Lamone"), the State Administrator of Elections made a "determination" that Senate Bill 478 could not be referred and that any referendum petition was required to be filed, if at all, after the General Assembly initially approved Senate Bill 478 in 2005. The Administrator made this "determination" even though the Governor vetoed Senate Bill 478 in May 2005 and the General Assembly did not override the Governor's veto until January 2006.

Lamone sought to notify Thomas Roskelly ("Roskelly"), the Chairman for Marylanders for Fair Elections, Inc. ("MFFE") by letter dated June 8, 2006 of her "determination" that the petition process in connection with Senate Bill 478 was untimely and should have been completed a year earlier. Roskelly, however, did not receive Lamone's June 8 letter until June 17 and, once receiving it, had no understanding that he was required to seek judicial review of Lamone's determination of deficiency by June 19. Appellees contend that Appellants failure to initiate a legal challenge to Lamone's determination of deficiency by June 19 bars the referendum petition on Senate Bill 478. In this case, Appellants challenge the positions taken by the State Administrator of Elections, *viz.*, that Appellants were required to initiate the referendum petition process for Senate Bill 478 in 2005 and that Appellants were required to seek judicial review of Lamone's determination of deficiency by June 19.

On June 27, 2006, Roskelly and MFFE filed a Verified Complaint with exhibits, along with an Emergency Motion for Judicial Review, in the Circuit Court for Anne Arundel County against Lamone and the Maryland State Board of Elections ("State Board"). (E7-60). On June 28, 2006, Lamone and the State Board filed an Opposition to the Emergency Motion for Judicial Review with exhibits. (E61-82). On June 29, 2006, the Honorable Paul A. Hackner, Circuit Judge, conducted a hearing in which no testimony or documentary evidence was received by the Court. (E83-154). Subsequent to the hearing, the Court took the matter under advisement and, on June 30, 2006, Judge Hackner issued an oral opinion from the bench followed by an Order dismissing the case. (E155-66).

From an adverse ruling, on June 30, 2006, Roskelly and MFFE filed appeals to both the Court of Special Appeals and this Court. On July 3, 2006, Roskelly and MFFE filed a Petition for Writ of Certiorari with the Court of Appeals, which was granted on July 5, 2006.

QUESTIONS PRESENTED

I. Was the determination by the Administrator of the Maryland State Board of Elections — that the Petition relating to Senate Bill 478 was deficient because it had not been initiated in 2005 — inconsistent with Article XVI, Section 1(a) and Article XVI, Section 3(c) of the Maryland Constitution?

II. Was the determination by the Administrator of the Maryland State Board of Elections as conveyed in her June 8, 2006 letter — that the "Petition" relating to Senate Bill 478 was deficient — inconsistent with Article XVI, Section 3(b) of the Maryland Constitution and Title 6 of the Election Law Article of the Annotated Code of Maryland, and therefore defective as notice to trigger a ten-day limitations period to seek judicial review?

III. Was the June 8, 2006 letter from the Administrator of the Maryland State Board of Elections — stating both (a) that she had "determined" that the petition relating to Senate Bill 478 was "deficient and would not be referred to referendum" and (b) "that the local boards of election continue the petition verification process," — inherently inconsistent under Section 6-207(a) of the Election Law Article and constitutionally defective notice to trigger a ten-day limitations period to seek judicial review?

STATEMENT OF FACTS

This case involves questions of first impression relating to the referendum petition process under Article XVI of the Maryland Constitution and Title 6 of the Election Law Article of the Annotated Code of Maryland. At the heart of this dispute is Senate Bill 478 which, for the first time in Maryland's history, allows early voting in elections at locations in the City of Baltimore and in each county in Maryland selected by each local election board. The bill further mandated that early voting be available for eight (8) hours per day from the Tuesday before a primary or general election through the Saturday before the election. Senate Bill 478 also called for at least three early voting polling places in Anne Arundel County, Baltimore City, Baltimore County, Harford County, Howard County, Montgomery County, and Prince George's County. Following the approval of both houses of the General Assembly on April 9, 2005, Governor Robert L. Ehrlich, Jr. vetoed Senate Bill 478 on May 20, 2005. In January 2006, the Maryland House of Delegates and Senate overrode Governor Ehrlich's veto and enacted Senate Bill 478 into law. (E9).

Subsequently, during the 2006 legislative session, the General Assembly also passed House Bill 1368, which altered the early-voting scheme created by Senate Bill

478 in two significant respects. First, House Bill 1368 required early voting polling locations to be open from 7:00 a.m. until 8:00 p.m. from the Tuesday prior to a primary or general election through the Saturday before the election, rather than eight (8) hours per day. Second, in House Bill 1368, the General Assembly (a) legislated specific polling locations for early voting in Anne Arundel County, Baltimore City, Baltimore County, Harford County, Howard County, Montgomery County, and Prince George's County, (b) mandated that the early voting polling location in Charles County be established in Waldorf, and (c) required that all other counties establish an early voting location in the county seat. Apparently anticipating a veto by the Governor, the General Assembly also designated House Bill 1368 as "emergency" legislation. Following approval by both houses of the General Assembly on March 29, 2006, the Governor vetoed House Bill 1368 on April 7, 2006. By April 10, 2006, the House of Delegates and Senate overrode the Governor's veto and enacted House Bill 1368 into law. (E9-10).

On April 19, 2006, Appellants initiated the process under Article XVI of the Maryland Constitution to place both Senate Bill 478 and House Bill 1368 on the ballot at the next general election, which will occur on November 7, 2006. On April 25, 2006, the Office of the Attorney General provided an advance determination of sufficiency of the format of the Petition relating to Senate Bill 478 under Section 6-202 of the Election Law Article. (E63-69). At the same time, the Office of the Attorney General questioned whether Senate Bill 478 was timely based on its conclusion that a "petition drive for referendum must occur immediately after the session of the Legislature at which the bill is initially passed by the Legislature." (E67).

Under Section 3(a) of Article XVI, a "referendum petition against an Act or part of an Act passed by the General Assembly shall be sufficient if signed by three percent of the qualified voters of the State of Maryland, calculated upon the whole number of votes cast for Governor at the last preceding Gubernatorial election . . . ." Section 3(b) of Article XVI allows proponents of a referendum petition to file at least "one-third, but less than the full number of signatures required to complete any referendum petition against any law passed by the General Assembly" before June 1, provided that the total number of signatures necessary to reach the three percent (3%) threshold is filed by June 30. The State Board's 2006 Procedures for Filing a Statewide or a Public Law Referendum Petition indicate that 51,185 signatures are needed to meet the 3% requirement set forth in Section 3(a) of Article XVI in order to place a law on the ballot for referendum. (E32).

On May 31, 2006, Appellants filed 20,221 signatures of Maryland voters supporting a referendum in connection with Senate Bill 478, and 20,687 signatures of Maryland voters supporting a referendum of House Bill 1368. (E12). On June 8, 2006, Lamone sent a letter to Roskelly, MFFE's Chairman, stating, in part, as follows:

> Pursuant to Maryland Code Election Law Article Section 6-206(c)(5), I have determined that the petition relating to Senate Bill 478 is deficient and may not be referred to referendum for the reasons stated in the enclosed letter dated June 8 from the Office of the Attorney General. The letter also advises that the local boards of elections continue the petition verification process. I will notify you of the results of the verification process when it has been completed.

(E38).

Significantly, Lamone omitted from her June 8 correspondence to Roskelly any notification that the letter triggered a ten-day limitations period within which he was required to seek judicial review, and that if he did not seek judicial review by June 19, the referendum process in connection with Senate Bill 478 would die. Rather than alerting Roskelly of the need to act quickly to save the referendum process by seeking judicial review, Lamone gave Roskelly every indication that the referendum process was ongoing with the direction of the local boards of elections to continue verification of signatures submitted by MFFE and that Lamone would notify Roskelly "of the results of the verification process when it has been completed." (E38). Moreover, even though Lamone contends that the letter was sent to Roskelly by mail and facsimile, no steps were taken to insure that Roskelly had actually received the letter and was aware of its impact. Indeed, Roskelly first became aware of Lamone's June 8 letter when, upon returning home from a ten-day vacation in North Carolina, he retrieved his mail from the post office on June 17. (E12, 140-41).[1]

Following the June 8 letter, Lamone's next communication with Roskelly was her letter dated June 21, 2006, in which she advised him that the local boards of elections had completed the validation of signatures relating to Senate Bill 478 filed on May 31, 2006. (E55). The June 21 letter indicated that 16,924 signatures had been accepted through the verification process, 138 short of the number of signatures required to meet the one-third

[1] On June 18, 2006, while working in his office, Roskelly noticed his fax machine indicating that a fax had been stored in memory but had not printed due to the absence of paper. Upon filling his fax machine with paper, the June 8 letter printed. (E140-41).

threshold necessary "to continue the petition process." (E55). Lamone's June 21 letter then continued as follows:

> In the letter to you dated June 8, 2006, which was faxed to you on the same date, I notified you that the petition relating to Senate Bill 478 was deficient and would not be referred to referendum for reasons stated in a letter dated June 8 from the Office of the Attorney General. You did not seek judicial review of this determination pursuant to Md. Code of Election Law Article ("EL"), Section 6-209 within ten days of June 8 as required by EL Section 6-210(e). Thus, even if you had obtained the required number of signatures to continue the petition process, your decision not to challenge my June 8 deficiency determination ends the petition process for Senate Bill 478.

(E55).

Following the receipt of Lamone's June 21 letter, Roskelly retained counsel and, on June 27, 2006, Appellants filed a Verified Complaint with supporting exhibits and an Emergency Motion for Judicial Review in the Circuit Court for Anne Arundel County. Appellants' Complaint seeks a declaratory judgment that Lamone's "determination" of deficiency relating to the Senate Bill 478 referendum petition was both substantively and procedurally at odds with Maryland law. (E7-60). Additionally, Appellants' emergency motion requested that the Court order the Appellees to (a) accept for filing on June 30 MFFE's completed Petition and the additional signatures of voters supporting a referendum petition on Senate Bill 478, (b) to secure and protect the Petition and all signature pages submitted on both May 31 and June 30, and (c) have those signatures, which had been filed on May 31, and which had been invalidated, re-checked to insure an accurate count. (E86-87, 101-08, 117-18).

Shortly after Appellants filed the Verified Complaint and Emergency Motion for Judicial Review, the Court scheduled a hearing for June 29, 2006 and the case was assigned to the Honorable Paul A. Hackner. Appellees filed on Opposition to the Emergency Motion for Judicial Review, with exhibits, on June 28, 2006. As of the time of the hearing, no discovery had been taken, and, although certain proffers were attempted, the Court limited the hearing to the papers and argument by counsel.

In support of its position, Appellants made several arguments to the Circuit Court. First, Appellants asserted that Lamone's contention that any petition in connection with Senate Bill 478 should have been filed in 2005, after the bill was first approved by the General Assembly, rather than in 2006, after the "final action" by the General Assembly in overriding the Governor's veto, was erroneous and in contravention of the plain language of Article XVI of Maryland Constitution. Specifically, Appellants directed the Court to Article XVI, Section 3(d) which provides that "signatures on a petition for referendum on an Act or part of any Act may be signed at any time ***after the Act or part of an Act is passed***," and Article XVI, Section 3(c) which specifically defines the terms "pass" and "passed" in Article XVI to mean "***any final action*** upon an Act or part of an Act by both Houses of the General Assembly." Md. Const., art. XVI, §§ 3(c) and 3(d) (emphasis added). (E89-93).

Appellants argued that Lamone's conclusion that Senate Bill 478 could not be subjected to a referendum ignored not only Article XVI, Section 3(c)'s definition of "passed" but also Article XVI, Section 1(a)'s clear mandate allowing the citizens of Maryland "to approve or reject at the polls, any Act, . . . ***passed by the General Assembly***

over the veto of the Governor." Md. Const., art. XVI, §§ 1(a) (emphasis added). In short, because the plain language of Article XVI recognizes that a veto override is the "final action upon an Act . . . by both Houses of the General Assembly," Roskelly and MFFE properly initiated the referendum process in connection with Senate Bill 478 following its passage by the General Assembly in January 2006. (E89-93). Moreover, Appellants emphasized to the Circuit Court that the Attorney General's strained interpretation of Article XVI – on which Lamone relied – would lead to the absurd result of requiring citizens to collect signatures to support a referendum on a law that did not then exist by virtue of the Governor's veto.

Second, Appellants argued that Lamone's determination of deficiency was untimely as such a determination could only be made upon the filing of a "petition." Because "petition" is defined under Title 6 of the Election Law Article, § 6-101(i) to include "all of the associated pages necessary to fulfill the requirements of a process . . . for: (1) [p]lacing . . . a question on the ballot at any election," it was not until the filing of the Petition, which occurred on June 30, 2006, that such a determination could be made. Considering the overall legislative scheme for handling referendum petitions, this position is consistent with § 6-207(a) of the Election Law Article that provides that "[u]pon the filing of a petition, and unless it has been declared deficient under § 6-206 of this subtitle, the staff of the election authority shall proceed to verify the signatures contained in the petition." (E93-101).

Third, Appellants brought to the attention of the Court the fact that at least 125 envelopes sent to MFFE containing papers with signatures had been postmarked between

May 20 and May 25, 2006 and that the Postal Service had inadvertently failed to deliver to them by the May 31, 2006 deadline for the submission of the first 17,062 signatures. As established by the Affidavit of George Norberg, Station Manager for the United States Postal Service branch office in Eastport, had the subject 125 envelopes been properly processed by the Postal Service, they would have been delivered to MFFE on or before May 31, 2006. According to the Verified Complaint, each of the envelopes MFFE received contained an average of four to five signatures. Had those envelopes been delivered by the post office as they should have been, an estimated additional 500 signatures in support of a referendum on Senate Bill 478 would have been submitted by the initial filing deadline of May 31. (E108-18).

Fourth, based upon information first received on June 28, 2006, subsequent to filing the Verified Complaint, Appellants made an oral request to the Circuit Court at the hearing on June 29, 2006 to require Lamone to order the local boards of elections to re-check all previously invalidated signatures. Appellants made this additional request for relief based upon information first received from the Montgomery County Board of Elections, and then concurred in by various other local election boards, that a new statewide voter registration database, known as "MD Voters," used in the verification process, was prone to mistakes. Many election board officials that Appellants were able to reach in the short time frame between when the information first came to light on June 28 and the hearing on June 29 expressed genuine concerns as to the accuracy of the reported results of the signature verifications that relied solely on the "MD Voters"

statewide database, rather than the legacy database of registered voters maintained by each local jurisdiction. (E101-05).

Indeed, after submitting to Lamone its signature verification results in connection with Senate Bill 478, the Montgomery County Board of Elections cross-checked its reported results with its legacy voter registration database. (E103). During the cross-check, the Montgomery County Board of Elections discovered that 121 signatures that had been reported to Lamone on June 20 as invalid were, in fact, valid signatures of registered voters. (E103). On June 26, 2006, the Montgomery County Board of Elections sent to Lamone the corrected number of validated signatures supporting the referendum on Senate Bill 478. (E103). With those additional 121 validated signatures, that would leave Appellants only seventeen signatures short of the threshold of 17,062 valid signatures required to be filed by May 31, 2006. Amazingly, Lamone refused to accept the Montgomery County Board of Elections' corrected total. (E103-04).

Appellants have not yet had the opportunity to take discovery in this case. However, based upon the grossly inaccurate results initially reported by the Montgomery County Board of Elections using the MD Voters database, and the expression of concern of a number of officials from the local boards of election in other Maryland counties and the City of Baltimore, Appellants submit that there is a substantial probability that a cross-check of all invalidated signatures in Maryland's twenty-three other jurisdictions' legacy voter registration databases will uncover at least seventeen additional valid signatures necessary for Appellants to reach the one-third threshold of 17,062 validated signatures by May 31, 2006.

Appellees filed an Opposition to the Emergency Motion for Judicial Review on June 28, 2006. In the response, Appellees contended that (1) because Appellants failed to seek judicial review of Lamone's June 8 letter, Appellants were foreclosed from proceeding with the referendum petition on Senate Bill 478, (2) Senate Bill 478 was not subject to referendum in any event because a completed petition should have been filed in 2005 rather than 2006, and (3) based on the verification of the signatures by the local boards of election using the MD Voters database, Appellants failed to gather the required signatures on Senate Bill 478 by May 31, 2006.

On June 30, the Circuit Court announced its decision that Appellants were foreclosed from proceeding further with the referendum petition process concerning Senate Bill 478 because Roskelly had not sought judicial review within ten days of Lamone's June 8 letter. (E155-65). That same day, the Petition for Referendum of Senate Bill 478, with an additional 101,020 signatures of Maryland voters, was delivered to the Secretary of State, who, in turn, promptly delivered the Petition to the State Board. The State Board and Lamone have refused proceed with the verification of these signatures. Assuming that a cross-check of the signatures filed on May 31 in the local legacy voter registration databases reveals at least seventeen mistakes out of over 3,000 signatures invalidated in the May 31 filing, it is a virtual certainty that Appellants have submitted more than the number of valid signatures necessary to place the referendum on Senate Bill 478 on the ballot.

ARGUMENT

A. Consistent with Article XVI of the Maryland Constitution, Appellants Properly Initiated the Referendum Petition Process in Connection with Senate Bill 478 in 2006, after the Final Action by Both Houses of the General Assembly Overriding the Governor's Veto

The plain language of Article XVI of the Maryland Constitution makes clear that Appellants properly initiated the referendum petition process in connection with Senate Bill 478 in 2006. Although the General Assembly initially approved Senate Bill 478 in the 2005 legislative session, Governor Ehrlich vetoed the bill on May 20, 2005. By January 17, 2006, the Maryland House of Delegates and Senate overrode the Governor's veto and passed Senate Bill 478 into law. (E9).

Article XVI, Section 1(a) of the Maryland Constitution provides:

> The people reserve to themselves power known as The Referendum, by petition to have submitted to the registered voters of the State, to approve or reject at the polls, any Act, or part of any Act of the General Assembly, if approved by the Governor, or, ***if passed by the General Assembly over the veto of the Governor***.

Md. Const., art. XVI, § 1(a) (emphasis added). Under Article XVI, Section 3(d), "[s]ignatures on a petition for referendum on an Act or part of an Act may be signed ***at any time after the Act or part of an Act is passed***." *Id.* § 3(d) (emphasis added). Significantly, the framers of Article XVI specifically defined the terms "pass" and "passed:" "In this Article, 'pass' or 'passed' means ***any final action*** upon any Act or part of an Act by both Houses of the General Assembly." *Id.* § 3(c) (emphasis added).

This Court has held that "the same rules that are applicable to the construction of statutory language [generally] are employed in interpreting constitutional verbiage." *Brown v. Brown*, 287 Md. 273, 277, 412 A.2d 396, 398 (1980). The Court has made clear that in construing a constitutional provision, "we first look to the normal, plain meaning of the language." *Davis v. Slater*, 383 Md. 599, 604, 861 A.2d 78, 81 (2004). Each word of a constitutional provision should be "given its ordinary and popularly understood meaning." *Fish Mkt. Nominee Corp. v. G.A.A., Inc.*, 337 Md. 1, 8, 650 A.2d 705, 708 (1994). In this vein, the Court has long emphasized:

> 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.

Cohen v. Governor, 255 Md. 5, 16, 255 A.2d 320, 325-26 (1969) (internal quotations omitted). Moreover, if the constitutional language "is clear and unambiguous, [the Court] need not look beyond the provision's terms to inform [its] analysis." *Davis*, 383 Md. at 604-05, 861 A.2d at 81.

It cannot be disputed by Appellees that the "final action" on Senate Bill 478 "by both Houses of the General Assembly" occurred when the legislature overrode Governor Ehrlich's veto in January 2006. Under the plain language of Article XVI, Section 3(d), Appellants thus properly sought signatures from voters supporting a referendum in connection with Senate Bill 478 after it "passed" both the House of Delegates and Senate in 2006. Lamone's determination – based on the tentative advice of the Office of the Attorney General – that the petition process for Senate Bill 478 should have been

completed in 2005 erroneously ignores the plain language of Article XVI of the Maryland Constitution.

In addition to disregarding the plain meaning of Article XVI, Appellees' contention that the petition process in connection with Senate Bill 478 should have commenced in 2005 defies common sense. In the Circuit Court, Appellees argued that Article II, Section 17 of the Maryland Constitution mandates that a complete referendum petition must be filed immediately following the legislative session in which a bill initially is approved by the General Assembly, irrespective of the Governor's veto of the bill and any effort by the General Assembly to override a veto. (E128-35). In this case, Appellees' construction would lead to an absurd result in that Appellants would have been required to expend an immense amount of effort and resources necessary to complete a petition with in excess of 51,000 signatures at a time when the Governor had vetoed Senate Bill 478 and when the General Assembly had not yet considered an override of the Governor's veto. *See Schweitzer v. Brewer*, 280 Md. 430, 439, 374 A.2d 347, 352 (1977) ("[A]n interpretation should be given to statutory language which will not lead to absurd consequences.").

The Court acknowledged as much in *Wicomico County v. Todd*, 256 Md. 459, 466, 260 A.2d 328, 332 (1970): "There would be no point in giving the opportunity to the voters to kill a bill that their elected representatives had already killed."[2] Indeed, the

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[2] The Court similarly has recognized that a referendum petition drive in connection with legislation approved by the General Assembly would be "a futile exercise if the Governor should veto the bill when it is presented for his signature." *Selinger v. Governor*, 266 Md. 431, 437, 293 A.2d 817, 820 (1972).

Attorney General relied on the holding in *Todd* in an opinion regarding the viability of a referendum petition on a law that had been repealed by the General Assembly after the petition had been filed but before the law had been put on the ballot. *See* 62 Op. Att'y Gen. 405 (1977). In concluding that the law, once repealed, was no longer susceptible to a referendum, the Attorney General reasoned that "a referendum upon a law no longer in existence is a contradiction in terms." *Id.* (internal quotations and alterations omitted). A referendum on a bill that has been vetoed by the Governor, and is of no legal effect, similarly makes no sense.

In addition to offending common sense, Appellees' reliance on Article II, Section 17 of the Maryland Constitution cannot overcome the plain and unambiguous provisions of Article XVI, which allowed Appellants to initiate the petition process in connection with Senate Bill 478 in 2006. Article XVI, Section 3(c) defines "passed" as "any final action upon an Act . . . by both Houses of the General Assembly." Md. Const., art. XVI, § 3(c). Black's Law Dictionary, in turn, defines "final" as "[l]ast; conclusive; decisive; definitive; terminated; completed." Black's Law Dictionary 629 (6th ed. 1990). There can be no dispute that the last, conclusive, decisive, definitive, terminated, and completed action of both houses of the General Assembly in connection with Senate Bill 478 occurred in January 2006, when the legislature overrode Governor Ehrlich's veto. Because Article XVI, Section 3(d) provides that "[s]ignatures on a petition for referendum on an Act . . . may be signed at any time after the Act . . . is passed," Appellants properly initiated the referendum process in 2006, following the "final action" on Senate Bill 478 by the General Assembly.

Moreover, the Court has long recognized that "[w]hile statutes are sometimes hastily and unskillfully drawn, a Constitution imports the utmost discrimination in the use of language." *Buchholtz v. Hill*, 178 Md. 280, 285, 13 A.2d 348, 351 (1940). Thus, "[w]here the Constitution speaks in plain language, in reference to a particular matter, we have no right to place a different meaning on the words employed, because the literal interpretation may happen to be inconsistent with other parts of the instrument in relation to other subjects." *Johnson v. Duke*, 180 Md. 434, 439, 24 A.2d 304, 306 (1942). Accordingly, even if Article II, Section 17 in some way can be construed as inconsistent with Article XVI, the plain language of Article XVI, allowing Appellants to initiate the petition process for Senate Bill 478 in 2006, must be given effect.

B. LAMONE'S ALLEGED DETERMINATION OF DEFICIENCY IN HER JUNE 8, 2006 LETTER WAS PREMATURE SINCE APPELLANTS HAD NOT FILED A "PETITION"

Under Article XVI, Section 2 of the Maryland Constitution, a "petition" to place a law on the ballot for referendum must be filed with the Secretary of State. Section 6-205(a)(2) of the Election Law Article requires a "petition" filed with the Secretary of State to then be delivered to the State Board within 24 hours and processed as if it had been originally filed with the State Board. Md. Code Ann., Elec. Law § 6-205(a). Once the "petition" has been delivered to the State Board, the Administrator is required to review the petition and determine whether it is deficient. *Id.* § 6-101(c) and (e); § 6-206(a).

The General Assembly has legislatively defined the term "petition" in Title 6 of the Election Law Article. Section 6-101(i) of the Election Law Article defines "Petition" as follows:

> "Petition" means ***all of the associated pages necessary*** to fulfill the requirements of a process established by law by which individuals affix their signatures as evidence of support for:
>
> (1) Placing . . . a question on the ballot at any election.

Md. Code Ann., Elec. Law § 6-101(i) (emphasis added). "Page" likewise is defined as a "piece of paper comprising a part of a petition." *Id.* § 6-101(h). Under Section 6-201(a) of the Election Law Article, "[a] petition shall contain: (1) [a]n information page; and (2) [s]ignature pages ***containing not less than the total number of signatures required by law*** to be filed." *Id.* § 6-201(a) (emphasis added).

In addition, Article XVI, Section 3(b) makes clear that a single referendum petition must be filed by June 30, 2006:

> If more than one-third, but less than the full number of signatures required to ***complete any referendum petition*** against any law passed by the General Assembly, be filed with the Secretary of State before the first of June, the time for the law to take effect and for filing the remainder of signatures to ***complete the petition*** shall be extended to the thirtieth day of the same month, with like effect.

Md. Const., art. XVI, § 3(b) (emphasis added). This Court similarly acknowledged that "[t]he language of Art. XI-A, § 5, clearly contemplates that, when a petition has the requisite number of signatures and therefore is complete, the petition is to be filed and the proposed charter amendment is to be submitted to the voters." *Ficker v. Denny*, 326 Md.

626, 632, 606 A.2d 1060, 1063 (1992). The filing of signature pages by MFFE on May 31, 2006 did not constitute the "filing of a petition" that would allow Lamone to make a determination of deficiency under Section 6-206 of the Election Law Article.

As of June 8, 2006, Appellants had not filed a "petition" with "all of the associated pages necessary" under Maryland law, including all of the required signature pages, to bring Senate Bill 478 to a referendum. Appellants complied with the dictates of Article XVI, Section 3(b) by filing a complete referendum petition on June 30, 2006. Because Appellants had not filed a "petition," as that term is defined by Maryland law, by June 8, 2006, Lamone's "determination of deficiency" under Section 6-206(c)(5), based on advice that she received from the Office of the Attorney General, was premature and could not lawfully trigger a ten-day limitations period to seek judicial review.

C. LAMONE'S JUNE 8, 2006 LETTER WAS INCONSISTENT WITH SECTION 6-207(A) OF THE ELECTION LAW ARTICLE AND CONSTITUTIONALLY DEFECTIVE AS NOTICE TO TRIGGER A TEN-DAY LIMITATIONS PERIOD TO SEEK JUDICIAL REVIEW

Section 6-207(a) of the Election Law Article provides that "[u]pon the filing of a petition, and ***unless it has been declared deficient under § 6-206 of this subtitle***, the staff of the election authority shall proceed to verify the signatures and count the validated signatures contained in the petition." Md. Code Ann., Elec. Law § 6-207(a) (emphasis added). The plain language of Section 6-207(a) of the Election Law Article makes clear that the verification of signatures by local boards of elections can only proceed if a petition ***has not been*** "declared deficient under § 6-206." *See* Black's Law Dictionary

1536 (6th ed. 1990) (defining "unless" as "[i]f it be not that; if it be not the case that; if not; supposing not; if it be not; except").

Lamone's June 8 letter cannot constitute proper notice of a determination of deficiency under Section 6-206(c)(5) of the Election Law Article since the letter also states that "the local boards of elections [would] continue the petition verification process" and that she would notify Roskelly "of the results of the verification process when . . . completed." (E38). Because the signature verification process cannot, by law, proceed if a petition has been declared deficient, Lamone's assertion on June 8, 2006 that the verification of signatures would continue requires the conclusion that a final determination of deficiency under Section 6-206(c)(5) had not yet occurred. Accordingly, since there was no clear determination of deficiency, the June 8, 2006 letter cannot be deemed sufficient to trigger the ten-day limitations period within which judicial review must be sought.

Moreover, Lamone's June 8 letter is devoid of any notice that a judicial challenge to her "determination" of deficiency must be sought within ten days thereafter, failing which the referendum process would automatically cease. (E38). Indeed, quite to the contrary, Lamone imparted the unmistakable impression that the referendum process in connection with Senate Bill 478 was continuing. (E38). Accordingly, the June 8 letter did not constitute clear notice to Appellants of the need to contest a final determination of deficiency under Sections 6-209 and 6-210 of the Election Law Article. Procedural due process under Article 24 of the Maryland Declaration of Rights and the Fourteenth Amendment guarantees "an opportunity to be heard and its instrumental corollary, a

promise of prior notice." *Golden Sands Club Condominium, Inc. v. Waller*, 313 Md. 484, 487-88, 545 A.2d 1332, 1334 (1988). It is firmly established that "'[a]n elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Pickett v. Sears, Roebuck & Co.*, 365 Md. 67, 81, 775 A.2d 1218, 1226 (2001) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 315, 70 S. Ct. 652, 657, 94 L. Ed. 865, 873 (1950)).

Because Lamone indicated in her June 8 letter that the signature verification process would continue, Appellants did not receive adequate notice that she had a made a final determination of deficiency under Section 6-206 necessary to trigger the ten-day limitations period to seek judicial review. Upon receipt of Lamone's June 21 letter, which, for the first time, definitively indicated that Lamone was invoking the ten-day limitations period provided in Section 6-209 and 6-210 of the Election Law Article, Roskelly properly proceeded to engage counsel and timely filed a Complaint challenging the validity of Lamone's determination.

D. BECAUSE ROSKELLY DID NOT RECEIVE LAMONE'S JUNE 8, 2006 LETTER UNTIL SATURDAY, JUNE 17, 2006, THE CIRCUIT COURT'S CONCLUSION THAT APPELLANTS WERE REQUIRED TO SEEK JUDICIAL REVIEW BY JUNE 19, 2006 VIOLATES APPELLANTS' DUE PROCESS RIGHTS

Despite the fact that Appellants have submitted over 120,000 signatures in support of a referendum on Senate Bill 478, Appellees have refused to allow Appellants to continue with the petition process because Roskelly allegedly did not initiate a timely

judicial challenge to Lamone's June 8, 2006 letter. Even if the Court overlooked the fact that (a) a determination of deficiency could not occur under Title 6 of the Election Law Article until Appellants filed a completed petition on June 30, 2006, (b) Lamone's alleged determination of deficiency was inconsistent with Section 6-207(a) of the Election Law Article, and (c) Lamone's representation that the verification process would continue after June 8, 2006 necessarily indicated that a final determination of deficiency had not been made, Lamone's June 8, 2006 letter cannot properly constitute notice sufficient to bar Appellants' petition drive under Section 6-210 of the Election Law Article.

It is undisputed that Roskelly was first made aware of Lamone's letter on Saturday, June 17, 2006, when he picked up his mail from the post office and after his return from vacation. (E12, 58-59). Roskelly did not receive the faxed copy of Lamone's June 8, 2006 letter until June 18, 2006, when he filled his fax machine with paper. (E58-59). Surprisingly, despite having his telephone number, neither Lamone nor anyone from the State Board attempted to contact Roskelly by telephone to determine whether he received the June 8, 2006 letter.

Appellees' interpretation of Sections 1-301(b) and 6-210(e)(1) of the Election Law Article would have required (a) Appellants to engage an attorney and (b) the attorney to investigate a claim on behalf of Appellants, research the applicable law, interview witnesses, and file an action for judicial review in the Circuit Court for Anne Arundel County by Monday, June 19, 2006. The notice of Lamone's determination of deficiency was constitutionally deficient to allow for such a result. Section 6-210(b) of the Election

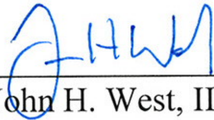
Law Article requires that "[w]ithin 2 business days after . . . a determination of deficiency under § 6-206 . . ., the chief election official of the election authority ***shall notify*** the sponsor of the determination." Md. Code Ann., Elec. Law § 6-210(b) (emphasis added). Under Maryland law, "[a] person has notice of a fact or condition if that person (1) has actual knowledge of it; (2) has received a notice of it; (3) has reason to know about it; (4) knows about a related fact; or (5) is considered as having been able to ascertain it by checking an official filing or recording." *Prince George's County Dep't of Social Servs. v. Knight*, 158 Md. App. 130, 138, 854 A.2d 907, 912 (2004).

It is beyond dispute that Appellants did not receive notice of Lamone's alleged determination until Saturday, June 17, 2006. The Circuit Court's conclusion that Appellants were required to initiate an action for judicial review by June 19, after actually receiving Lamone's letter on June 17, fails to comport with the minimum notice requirements of due process guaranteed by Article 24 of the Maryland Declaration of Rights. This Court has held that "[a]t the core of due process is the right to notice and a meaningful opportunity to be heard." *Roberts v. Total Healthcare, Inc.*, 349 Md. 499, 509, 709 A.2d 142, 146-47 (1998). To expect Roskelly to have hired an attorney and filed suit against Lamone and the State Board by Monday, June 19, after returning home from a ten-day vacation on June 17, runs counter to the protections of due process and the right to notice and the meaningful opportunity to be heard.

CONCLUSION

For all of the foregoing reasons, Appellants respectfully request that the Court reverse the decision of the Circuit Court for Anne Arundel County.

Respectfully submitted,



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Prepared in Times New Roman Font, 13 point

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of July, 2006, copies of the foregoing Brief and Appendix of Appellants and Joint Record Extract were sent by electronic mail to:

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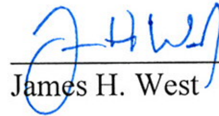

James H. West

MARYLAND CONSTITUTION

ARTICLE XVI

The Referendum

SEC. 1. (a) The people reserve to themselves power known as The Referendum, by petition to have submitted to the registered voters of the State, to approve or reject at the polls, any Act, or part of any Act of the General Assembly, if approved by the Governor, or, if passed by the General Assembly over the veto of the Governor;

(b) The provisions of this Article shall be self-executing; provided that additional legislation in furtherance thereof and not in conflict therewith may be enacted.

SEC. 2. No law enacted by the General Assembly shall take effect until the first day of June next after the session at which it may be passed, unless it contains a Section declaring such law an emergency law and necessary for the immediate preservation of the public health or safety and is passed upon 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 effective date of a law other than an emergency law may be extended as provided in Section 3 (b) hereof. If before said first day of June there shall have been filed with the Secretary of the State a petition to refer to a vote of the people any law or part of a law capable of referendum, as in this Article provided, the same shall be referred by the Secretary of State to such vote, and shall not become a law or take effect until thirty days after its approval by a majority of the electors voting thereon at the next ensuing election held throughout the State for Members of the House of Representatives of the United States. An emergency law shall remain in force notwithstanding such petition, but shall stand repealed thirty days after having been rejected by a majority of the qualified electors voting thereon. No measure changing the salary of any officer, or granting any franchise or special privilege, or creating any vested right or interest, shall be enacted as an emergency law. No law making any appropriation for maintaining the State Government, or for maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose, shall be subject to rejection or repeal under this Section. The increase in any such appropriation for maintaining or aiding any public institution shall only take effect as in the case of other laws, and such increase or any part thereof specified in the petition, may be referred to a vote of the people upon petition.

SEC. 3. (a) The referendum petition against an Act or part of an Act passed by the General Assembly, shall be sufficient if signed by three percent of the qualified voters of the State of Maryland, calculated upon the whole number of votes cast for Governor at the last preceding Gubernatorial election, of whom not more than half are residents of Baltimore City, or of any one County. However, any Public Local Law for any one County or the City of Baltimore, shall be referred by the Secretary of State only to the

people of the County or City of Baltimore, upon a referendum petition of ten percent of the qualified voters of the County or City of Baltimore, as the case may be, calculated upon the whole number of votes cast respectively for Governor at the last preceding Gubernatorial election.

(b) If more than one-third, but less than the full number of signatures required to complete any referendum petition against any law passed by the General Assembly, be filed with the Secretary of State before the first day of June, the time for the law to take effect and for filing the remainder of signatures to complete the petition shall be extended to the thirtieth day of the same month, with like effect.

If an Act is passed less than 45 days prior to June 1, it may not become effective sooner than 31 days after its passage. To bring this Act to referendum, the first one-third of the required number of signatures to a petition shall be submitted within 30 days after its passage. If the first one-third of the required number of signatures is submitted to the Secretary of State within 30 days after its passage, the time for the Act to take effect and for filing the remainder of the signatures to complete the petition shall be extended for an additional 30 days.

(c) In this Article, "pass" or "passed" means any final action upon any Act or part of an Act by both Houses of the General Assembly; and "enact" or "enacted" means approval of an Act or part of an Act by the Governor.

(d) Signatures on a petition for referendum on an Act or part of an Act may be signed at any time after the Act or part of an Act is passed.

SEC. 4. A petition may consist of several papers, but each paper shall contain the full text, or an accurate summary approved by the Attorney General, of the Act or part of Act petitioned. There shall be attached to each paper of signatures filed with a petition an affidavit of the person procuring those signatures that the signatures were affixed in his presence and that, based upon the person's best knowledge and belief, every signature on the paper is genuine and bona fide and that the signers are registered voters at the address set opposite or below their names. The General Assembly shall prescribe by law the form of the petition, the manner for verifying its authenticity, and other administrative procedures which facilitate the petition process and which are not in conflict with this Article.

SEC. 5. (a) The General Assembly shall provide for furnishing the voters of the State the text of all measures to be voted upon by the people; provided, that until otherwise provided by law the same shall be published in the manner prescribed by Article XIV of the Constitution for the publication of proposed Constitutional Amendments.

(b) All laws referred under the provisions of this Article shall be submitted separately on the ballots to the voters of the people, but if containing more than two hundred words, the full text shall not be printed on the official ballots, but the Secretary of State shall prepare and submit a ballot title of each such measure in such form as to present the purpose of said measure concisely and intelligently. The ballot title may be distinct from the legislative title, but in any case the legislative title shall be sufficient. Upon each of the ballots, following the ballot title or text, as the case may be, of each such measure, there shall be printed the words "For the referred law" and "Against the referred law," as the case may be. The votes cast for and against any such referred law shall be returned to the Governor in the manner prescribed with respect to proposed amendments to the Constitution under Article XIV of this Constitution, and the Governor shall proclaim the result of the election, and, if it shall appear that the majority of the votes cast on any such measure were cast in favor thereof, the Governor shall by his proclamation declare the same having received a majority of the votes to have been adopted by the people of Maryland as a part of the laws of the State, to take effect thirty days after such election, and in like manner and with like effect the Governor shall proclaim the result of the local election as to any Public Local Law which shall have been submitted to the voters of any County or of the City of Baltimore.

SEC. 6. No law, licensing, regulating, prohibiting, or submitting to local option, the manufacture or sale of malt or spirituous liquors, shall be referred or repealed under the provisions of this Article.

MARYLAND DECLARATION OF RIGHTS

ARTICLE 24. Due Process

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

ELECTION LAW ARTICLE OF THE ANNOTATED CODE OF MARYLAND

TITLE 6

§ 6-101. Definitions.

(a) *In general.*- In this title the following words have the meanings indicated.

b) *Affidavit.*- "Affidavit" means a statement executed under penalty of perjury.

(c) *Chief election official.*- "Chief election official" means:

(1) as to the State Board, the State Administrator; or

(2) as to a local board, the election director.

(d) *Circulator.*- "Circulator" means an individual who attests to one or more signatures affixed to a petition.

(e) *Election authority.*- "Election authority" means:

(1) the State Board; or

(2) as to a local petition, the local board for that county.

(f) *Legal authority.*- "Legal authority" means:

(1) the Attorney General; or

(2) as to a local petition, the counsel to the local board appointed under § 2-205 of this article for that county.

(g) *Local petition.*- "Local petition" means a petition:

(1) on which the signatures from only one county may be counted; and

(2) that does not seek to:

(i) refer a public local law enacted by the General Assembly; or

(ii) nominate an individual for an office for which a certificate of candidacy is required to be filed with the State Board.

(h) *Page.*- "Page" means a piece of paper comprising a part of a petition.

(i) *Petition.*- "Petition" means all of the associated pages necessary to fulfill the requirements of a process established by the law by which individuals affix their signatures as evidence of support for:

(1) placing the name of an individual, the names of individuals, or a question on the ballot at any election;

(2) the creation of a new political party; or

(3) the appointment of a charter board under Article XI-A, § 1A of the Maryland Constitution.

(j) *Sponsor.*- "Sponsor" means the person who coordinates the collection of signatures for a petition and who, if the petition is filed, is named on the information page as required by § 6-201 of this title.

§ 6-102. Applicability.

(a) *In general.*- Except as provided in subsection (b) of this section, this title applies to any petition authorized by law to place the name of an individual or a question on the ballot or to create a new political party.

(b) *Not applicable to municipal petitions.*- This title does not apply to a petition filed pursuant to Article 23A of the Code.

(c) *Title construed consistent with Maryland Constitution.*- This title may not be interpreted to conflict with any provision relating to petitions specified in the Maryland Constitution.

§ 6-103. Regulations; guidelines; forms.

(a) *Regulations.*-

(1) The State Board shall adopt regulations, consistent with this title, to carry out the provisions of this title.

(2) The regulations shall:

(i) prescribe the form and content of petitions;

(ii) specify procedures for the circulation of petitions for signatures;

(iii) specify procedures for the verification and counting of signatures; and

iv) provide any other procedural or technical requirements that the State Board considers appropriate.

(b) *Guidelines, instructions, and forms.-*

(1) The State Board shall:

(i) prepare guidelines and instructions relating to the petition process; and

(ii) design and arrange to have printed sample forms conforming to this subtitle for each purpose for which a petition is authorized by law.

(2) The guidelines, instructions, and forms shall be provided to the public, on request, without charge.

§ 6-201. Content of petitions.

(a) *In general.-* A petition shall contain:

(1) an information page; and

(2) signature pages containing not less than the total number of signatures required by law to be filed.

(b) *Information page.-* The information page shall contain:

(1) a description of the subject and purpose of the petition, conforming to the requirements of regulations;

(2) identification of the sponsor and, if the sponsor is an organization, of the individual designated to receive notices under this subtitle;

(3) the required information relating to the signatures contained in the petition;

(4) the required affidavit made and executed by the sponsor or, if the sponsor is an organization, by an individual responsible to and designated by the organization; and

(5) any other information required by regulation.

(c) *Signature page.-* Each signature page shall contain:

(1) a description of the subject and purpose of the petition, conforming to the requirements of regulations;

(2) if the petition seeks to place a question on the ballot, either:

(i) a fair and accurate summary of the substantive provisions of the proposal; or

(ii) the full text of the proposal;

(3) a statement, to which each signer subscribes, that:

(i) the signer supports the purpose of that petition process; and

(ii) based on the signer's information and belief, the signer is a registered voter in the county specified on the page and is eligible to have his or her signature counted;

(4) spaces for signatures and the required information relating to the signers;

(5) a space for the name of the county in which each of the signers of that page is a registered voter;

(6) a space for the required affidavit made and executed by the circulator; and

(7) any other information required by regulation.

(d) *Petition relating to questions.*- If the petition seeks to place a question on the ballot and the sponsor elects to print a summary of the proposal on each signature page as provided in subsection (c)(2)(i) of this section:

(1) the circulator shall have the full text of the proposal present at the time and place that each signature is affixed to the page; and

(2) the signature page shall state that the full text is available from the circulator.

(e) *Signature page to meet requirements at all times.*- A signature page shall satisfy the requirements of subsections (c) and (d)(2) of this section before any signature is affixed to it and at all relevant times thereafter.

§ 6-202. Advance determinations.

(a) *In general.*- The format of the petition prepared by a sponsor may be submitted to the chief election official of the appropriate election authority, in advance of filing the petition, for a determination of its sufficiency.

(b) *Advice of legal authority.*- In making the determination, the chief election official may seek the advice of the legal authority.

§ 6-203. Signers; information provided by signers.

(a) *In general.*- To sign a petition, an individual shall:

(1) sign the individual's name as it appears on the statewide voter registration list or the individual's surname of registration and at least one full given name and the initials of any other names; and

(2) include the following information, printed or typed, in the spaces provided:

(i) the signer's name as it was signed;

(ii) the signer's address;

(iii) the date of signing; and

(iv) other information required by regulations adopted by the State Board.

(b) *Validation and counting.*- The signature of an individual shall be validated and counted if:

(1) the requirements of subsection (a) of this section have been satisfied;

(2) the individual is a registered voter assigned to the county specified on the signature page and, if applicable, in a particular geographic area of the county;

(3) the individual has not previously signed the same petition;

(4) the signature is attested by an affidavit appearing on the page on which the signature appears;

(5) the date accompanying the signature is not later than the date of the affidavit on the page; and

(6) if applicable, the signature was affixed within the requisite period of time, as specified by law.

(c) *Removal of signature.-*

(1) A signature may be removed:

(i) by the signer upon written application to the election authority with which the petition will be filed if the application is received by the election authority prior to the filing of that signature; or

(ii) prior to the filing of that signature, by the circulator who attested to that signature or by the sponsor of the petition, if it is concluded that the signature does not satisfy the requirements of this title.

(2) A signature removed pursuant to paragraph (1)(ii) of this subsection may not be included in the number of signatures stated on the information page included in the petition.

§ 6-204. Circulators; affidavit of the circulator.

(a) *In general.-* Each signature page shall contain an affidavit made and executed by the individual in whose presence all of the signatures on that page were affixed and who observed each of those signatures being affixed.

(b) *Requirements.-* The affidavit shall contain the statements, required by regulation, designed to assure the validity of the signatures and the fairness of the petition process.

(c) *Age of circulator.-* A circulator must be at least 18 years old at the time any of the signatures covered by the affidavit are affixed.

§ 6-205. Filing of petitions.

(a) *In general.-*

(1) Unless otherwise required by the Maryland Constitution, a petition shall be filed, in person by or on behalf of the sponsor, in the office of the appropriate election authority.

(2) If the Maryland Constitution provides that a petition shall be filed with the Secretary of State, the Secretary of State shall deliver the petition to the State Board within 24 hours.

(3) If the Maryland Constitution provides that a petition shall be filed with an official or governmental body of a county, the official or governmental body, after determining that the petition is in conformance with the requirements of law, shall dispatch the petition to the local board for that county within 24 hours.

(4) A petition forwarded under paragraph (2) or (3) of this subsection shall be processed under this subtitle as if it had been filed with the election authority.

(b) *Regulations.-* The regulations adopted by the State Board may provide that the signature pages of a petition required to be filed with the State Board be delivered by the sponsor, or an individual authorized by the sponsor, to the appropriate local board or boards for verification and counting of signatures.

(c) *Acceptance of petition.-* A petition may not be accepted for filing unless the information page indicates that the petition satisfies any requirements established by law for the time of filing and for the number and geographic distribution of signatures.

(d) *Additional signatures.-* Subsequent to the filing of a petition under this subtitle, but prior to the deadline for filing the petition, additional signatures may be added to the petition by filing an amended information page and additional signature pages conforming to the requirements of this subtitle.

§ 6-206. Determinations at time of filing.

(a) *Review by chief election official.-* Promptly upon the filing of a petition with an election authority, the chief election official of the election authority shall review the petition.

(b) *Determinations.-* Unless a determination of deficiency is made under subsection (c) of this section, the chief election official shall:

(1) make a determination that the petition, as to matters other than the validity of signatures, is sufficient; or

(2) defer a determination of sufficiency pending further review.

(c) *Declaration of deficiency.-* The chief election official shall declare that the petition is deficient if the chief election official determines that:

(1) the petition was not timely filed;

(2) after providing the sponsor an opportunity to correct any clerical errors, the information provided by the sponsor indicates that the petition does not satisfy any requirements of law for the number or geographic distribution of signatures;

(3) an examination of unverified signatures indicates that the petition does not satisfy any requirements of law for the number or geographic distribution of signatures;

(4) the requirements relating to the form of the petition have not been satisfied;

(5) based on the advice of the legal authority:

(i) the use of a petition for the subject matter of the petition is not authorized by law; or

(ii) the petition seeks:

1. the enactment of a law that would be unconstitutional or the election or nomination of an individual to an office for which that individual is not legally qualified to be a candidate; or

2. a result that is otherwise prohibited by law; or

(6) the petition has failed to satisfy some other requirement established by law.

(d) *Consistency with advance determination.*- A determination under this section may not be inconsistent with an advance determination made under § 6-202 of this subtitle.

(e) *Notice.*- Notice of a determination under this section shall be provided in accordance with § 6-210 of this subtitle.

§ 6-207. Verification of signatures.

(a) *In general.*- Upon the filing of a petition, and unless it has been declared deficient under § 6-206 of this subtitle, the staff of the election authority shall proceed to verify the signatures and count the validated signatures contained in the petition.

(b) *State Board to establish process.*- The State Board, by regulation, shall establish the process to be followed by all election authorities for verifying and counting signatures on petitions.

(c) *Random sample verification.-*

(1) The process established under subsection (b) of this section shall provide for optional verification of a random sample of signatures contained in a petition.

(2) Verification by random sample may only be used, with the approval of the State Board:

(i) for a single-county petition containing more than 500 signatures; or

(ii) in the case of a multicounty petition, by a local board that receives signature pages containing more than 500 signatures.

(3) Verification under this subsection shall require the random selection and verification of 500 signatures or 5% of the total signatures on the petition, whichever number is greater, to determine what percentage of the random sample is composed of signatures that are authorized by law to be counted. That percentage shall be applied to the total number of signatures in the petition to establish the number of valid signatures for the petition.

(4) (i) If the random sample verification establishes that the total number of valid signatures does not equal 95% or more of the total number required, the petition shall be deemed to have an insufficient number of signatures.

(ii) If the random sample verification establishes that the total number of valid signatures exceeds 105% of the total number required, the petition shall be deemed to have a sufficient number of signatures.

(iii) If the random sample verification establishes that the total number of valid signatures is at least 95% but not more than 105% of the total number required, a verification of all the signatures in the petition shall be conducted.

§ 6-208. Certification.

(a) *In general.-* At the conclusion of the verification and counting processes, the chief election official of the election authority shall:

(1) determine whether the validated signatures contained in the petition are sufficient to satisfy all requirements established by law relating to the number and geographical distribution of signatures; and

(2) if it has not done so previously, determine whether the petition has satisfied all other requirements established by law for that petition and immediately notify the sponsor of that determination, including any specific deficiencies found.

(b) *Certification.*- If the chief election official determines that a petition has satisfied all requirements established by law relating to that petition, the chief election official shall certify that the petition process has been completed and shall:

(1) with respect to a petition seeking to place the name of an individual or a question on the ballot, certify that the name or question has qualified to be placed on the ballot;

(2) with respect to a petition seeking to create a new political party, certify the sufficiency of the petition to the chairman of the governing body of the partisan organization; and

(3) with respect to the creation of a charter board under Article XI-A, § 1A of the Maryland Constitution, certify that the petition is sufficient.

(c) *Notice.*- Notice of a determination under this section shall be provided in accordance with § 6-210 of this subtitle.

§ 6-209. Judicial review.

(a) *In general.*-

(1) A person aggrieved by a determination made under § 6-202, § 6-206, or § 6-208(a)(2) of this subtitle may seek judicial review:

(i) in the case of a statewide petition, a petition to refer an enactment of the General Assembly pursuant to Article XVI of the Maryland Constitution, or a petition for a congressional or General Assembly candidacy, in the Circuit Court for Anne Arundel County; or

(ii) as to any other petition, in the circuit court for the county in which the petition is filed.

(2) The court may grant relief as it considers appropriate to assure the integrity of the electoral process.

(3) Judicial review shall be expedited by each court that hears the cause to the extent necessary in consideration of the deadlines established by law.

(b) *Declaration relief.*- Pursuant to the Maryland Uniform Declaratory Judgments Act and upon the complaint of any registered voter, the circuit court of the county in which a petition has been or will be filed may grant declaratory relief as to any petition with respect to the provisions of this title or other provisions of law.

§ 6-210. Schedule of process.

(a) *Request for advance determination.*-

(1) A request for an advance determination under § 6-202 of this subtitle shall be submitted at least 30 days, but not more than 2 years and 1 month, prior to the deadline for the filing of the petition.

(2) Within 5 business days of receiving the request for an advance determination, the election authority shall make the determination.

(b) *Notice.*- Within 2 business days after an advance determination under § 6-202 of this subtitle, or a determination of deficiency under § 6-206 or § 6-208 of this subtitle, the chief election official of the election authority shall notify the sponsor of the determination.

(c) *Verification and counting.*- The verification and counting of validated signatures on a petition shall be completed within 20 days after the filing of the petition.

(d) *Certification.*- Within 2 business days of the completion of the verification and counting processes, or, if judicial review is pending, within 2 business days after a final judicial decision, the appropriate election official shall make the certifications required by § 6-208 of this subtitle.

(e) *Judicial review.*-

(1) Except as provided in paragraph (2) of this subsection, any judicial review of a determination, as provided in § 6-209 of this subtitle, shall be sought by the 10th day following the determination to which it relates.

(2) If the petition seeks to place the name of an individual or a question on the ballot at any election, judicial review shall be sought by the day specified in paragraph (1) of this subsection or the 63rd day preceding that election, whichever day is earlier.

§ 6-211. Prohibited practices and penalties.

Offenses and penalties relating to the petition process shall be as provided in Title 16 of this article.