

**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)**

JOINT RECORD EXTRACT

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CIRCUIT COURT FOR ANNE ARUNDEL COUNTY
Robert P. Duckworth
Clerk of the Circuit Court
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07/10/06

Case Number: 02-C-06-115044 DJ
Date Filed: 06/27/2006
Status: Reopened/Active
Case Flag: Appeal
Judge Assigned: To Be Assigned,
Location :
CTS Start : 06/27/06 Target : 12/24/07

Thomas Roskelly, Et Al Vs Linda H Lamone, Et Al

C A S E H I S T O R Y

OTHER REFERENCE NUMBERS

Description	Number
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Case Folder ID	C06115044V01

INVOLVED PARTIES

Type Num	Name (Last, First, Mid, Title)	Addr Str/End	Pty. Disp. Addr Add/Upd
PLT	001 Roskelly, Thomas		
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Annapolis, MD 21401

DEF 002 Maryland State Board Of Elections

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06/27/06

06/27/06 LAP

Annapolis, MD 21401

CALENDAR EVENTS

Date	Time	Fac	Event Description	Text SA	Jdg Day	Of Notice	User ID
Result			ResultDt By Result Judge	Rec			
06/29/06	09:00A	3D	Motion Hearing (Civil)	Y	PAH	01 /01	SR
	Held/Concluded		06/30/06 E P.Hackner	Y			
Stenographer(s): Tape Recorder							
06/30/06	09:00A	3D	Motion Hearing (Civil)	Y	PAH	02 /01	JH
	Held/Concluded		06/30/06 E P.Hackner	Y			
Stenographer(s): Tape Recorder							

DISPOSITION HISTORY

Disp Date	Disp Code	Description	Stage Code	Description	User	Activity Date
06/30/06	DO	Decree or Order	CT	AFTER TRIAL/HEARING	DMM	06/30/06

JUDGE HISTORY

JUDGE ASSIGNED	Type	Assign Date	Removal RSN
TBA To Be Assigned,	J	06/27/06	

DOCUMENT TRACKING

Num/Seq	Description	Filed	Party	Jdg Ruling	Closed	User ID, Entered
0001000	Verified Complaint and Exhibits	06/27/06	PLT001	TBA	06/30/06	LAP DMM 06/27/06
<u>10-63</u>						
0002000	Attorney Appearance Filed John H West	06/27/06	PLT001	TBA	06/27/06	LAP 06/27/06
0003000	Attorney Appearance Filed John H West	06/27/06	PLT002	TBA	06/27/06	LAP 06/27/06
0004000	Attorney Appearance Filed James H West	06/27/06	PLT001	TBA	06/27/06	LAP 06/27/06
0005000	Attorney Appearance Filed James H West	06/27/06	PLT002	TBA	06/27/06	LAP LAP 06/27/06
0006000	Writ of Summons - Civil Issued	06/27/06	DEF001	TBA	06/27/06	LAP 06/27/06
<u>63a.</u>						
0007000	Writ of Summons - Civil Issued	06/27/06	DEF002	TBA	06/27/06	LAP 06/27/06
<u>63b.</u>						

Num/Seq	Description	Filed	Party	Jdg Ruling	Closed	User ID/ Entered
<u>64</u> 0008000	Case Information Sheet Filed	06/27/06	PLT001	TBA	06/30/06	LAP DMM 06/27/06
<u>65-67</u> 0009000	Emergency Motion for Judicial Review	06/27/06	PLT001	TBA	06/30/06	LAP DMM 06/27/06
<u>70-104</u> 0009001	Defendants' Memorandum in Opposition to Plaintiff's Emergency Motion for Judicial Review	06/29/06	DEF001	TBA	06/30/06	DMM DMM 06/30/06
<u>105</u> 0010000	Hearing Sheet Case called for Hearing on Motion (Emergency) before Judge Hackner. Counsel heard. Court to render oral opinion to Motion on the record, June 30, 2006 at 9:00am. Court retained file.	06/29/06	000 PAH		06/30/06	DMM DMM 06/30/06
<u>106</u> 0011000	Hearing Sheet Case resumed. Parties present. Court denied Motion for Judicial Review as being time-barred.	06/30/06	000 PAH		06/30/06	DMM DMM 06/30/06
0012000	Order Hearing Sheet signed as Order of Court (Copy mailed to Atty West and Davis)	06/30/06	000 PAH	Denied	06/30/06	DMM 06/30/06
0013000	Reopen Case for Appeal purposes.	07/03/06	000 TBA		07/03/06	SB 07/03/06
<u>107-108</u> 0014000	Notice of Appeal to COSA. (Copies to Judge Hackner and Jean Bowman). PHC mailed to atty James West.	06/30/06	PLT001	TBA		SB 07/03/06
<u>110-111</u> 0015000	Notice of Appeal to COA. (Copies to Judge Hackner and Jean Bowman).	06/30/06	PLT001	TBA		SB 07/03/06
0016000	Transcript(s) Filed, 2 Volumes dated 6/29/06 and 6/30/06. Cost: \$383.50	07/05/06	000 TBA		07/05/06	SB 07/05/06
<u>113-116</u> 0017000	Per Joanne at Court of Appeals, an Order has been issued re: Writ of Certiorari commanding transmittal of the record. Faxed copy of <u>COA Order</u> issued 7/05/06 sent to Appeals Clerk. Case was due at COA the same day the Order was issued. (7/05/06). *** Check requested for Appeals fees ****	07/10/06	000 TBA			SB SB 07/10/06
0018000	Records transmitted to COA, including 1 Volume of Pleadings and 2 Volumes of transcript dated 6/29/06 and 6/30/06. By BWA Courier 7/11/06.	07/10/06	000 TBA			SB SB 07/10/06

SERVICE

Form Name	Issued	Response Served	Returned Agency
CV-Writ of Summons DEF001 Lamone, Linda	06/27/06		Private Process
CV-Writ of Summons DEF002 Maryland State Board Of Elections	06/27/06		Private Process

TICKLE

Code	Tickle Name	Status	Expires	#Days	AutoExpire	GoAhead	From Type	Num	Seq
140T	140 Day Tickle	CLOSED	11/14/06	140	no	no	DCOM D	005	000
60DT	60 Day Tickle	OPEN	09/08/06	60	yes	no	DMIS D	017	000
CTOS	Create Tickle On Ser	CLOSED	08/01/06	35	no	no		000	000
NCDT	Notice Of Contemplat	CLOSED	10/25/06	120	no	no	CTOS T	000	000

ACCOUNTING SUMMARY

NON-INVOICED OBLIGATIONS AND PAYMENTS

Date	Rcpt/Initials	Acct	Desc	Debit	Credit	Method
06/27/06		106	Solicitor	10.00	.00	
06/27/06		265	MD LSC Fee	25.00	.00	
06/27/06		107	Filing New	80.00	.00	
06/27/06	200600011414/JEC	265	MD LSC Fee	.00	25.00	CK
06/27/06	200600011414/JEC	106	Solicitor	.00	10.00	CK
06/27/06	200600011414/JEC	107	Filing New	.00	80.00	CK
07/03/06		1220	Appl File Fe	60.00	.00	
07/03/06		1220	Appl File Fe	60.00	.00	
07/03/06	200600011769/SB	1220	Appl File Fe	.00	60.00	CK
07/03/06	200600011772/SB	1220	Appl File Fe	.00	60.00	CK
BALANCE:		0.00				

ESCROW DEPOSITS AND DISBURSEMENTS - 114 Escrow Crt of Special Appeals

Date	Rcpt/Initials	Deposit	Disbursement	Balance
07/03/06	200600011770/SB	50.00	.00	50.00
07/03/06	200600011774/SB	50.00	.00	100.00

CASE FOLDER HISTORY

Date	Time	Type	User	Location	Clerk	Reason
07/05/06	8:40 AM	Transfer	CD	Civil Departmen	SB	
06/27/06	1:52 PM	Transfer	JHC	Judge Hackner C	SR	
06/27/06	11:37 AM	Transfer	JMC	Judge Caroom	MD	
06/27/06	11:03 AM	Transfer	JMC	Judge Mulford's	LAP	
06/27/06	11:03 AM	Created		Civil Departmen	LAP	Case Folder Crea

THOMAS ROSKELLY
934 Bay Ridge Avenue, #303
Annapolis, Maryland 21403

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IN THE
CIRCUIT COURT

and

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FOR

MARYLANDERS FOR FAIR
ELECTIONS, INC.
P.O. Box 4593
Annapolis, Maryland 21403

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*
*

ANNE ARUNDEL COUNTY

Case No.:

Plaintiffs

*
*

v.

*

LINDA H. LAMONE, as Administrator for
the Maryland State Board of Elections
P.O. Box 6486
Annapolis, Maryland 21401-0486

*
*

and

*

MARYLAND STATE BOARD OF
ELECTIONS
P.O. Box 6486
Annapolis, Maryland 21401-0486

*
*

Defendants

*
*

* * * * *

VERIFIED COMPLAINT

Plaintiffs Thomas Roskelly and Marylanders for Fair Elections, Inc., by their attorneys, hereby file this Verified Complaint against Defendants Linda H. Lamone, Administrator of the Maryland State Board of Elections, and the Maryland State Board of Elections and, for cause, state as follows:

PARTIES

1. Thomas Roskelly (“Roskelly”) is an individual residing in Annapolis, Maryland and is a registered voter in Anne Arundel County. Roskelly is the Chairman of Marylanders for Fair Elections.

2. Marylanders for Fair Elections, Inc. (“MFFE”) is a not-for-profit corporation organized under the laws of the State of Maryland with its principal place of business located in Anne Arundel County. At all times relevant, MFFE has sought to promote fair elections in the State of Maryland through election law reform and the promotion of public awareness of issues related to election law reform.

3. Defendant Linda H. Lamone (“Lamone”) is the Administrator of the Maryland State Board of Elections. As Administrator, Lamone is the chief election official in the State of Maryland and is responsible for supervising the operations of the local boards of election in Maryland’s twenty-three (23) counties and the City of Baltimore.

4. Defendant Maryland State Board of Elections (“State Board”) manages and supervises elections conducted by the local boards of elections in Maryland’s twenty-three (23) counties and the City of Baltimore. The State Board is responsible for ensuring compliance with the requirements of Maryland election laws and for promoting fair and equitable elections in the State of Maryland.

JURISDICTION AND VENUE

5. Jurisdiction and venue are proper in this Court under Section 6-209 of the Election Law Article of the Annotated Code of Maryland and Sections 3-403 and 3-8B-01 of the Courts and Judicial Proceedings Article of the Annotated Code of Maryland.

BACKGROUND

6. In 2005 and 2006, the Maryland General Assembly enacted sweeping changes on a highly partisan basis to the election administration processes in Maryland. In 2005, the legislature passed Senate Bill 478 to allow, for the first time in Maryland's history, early voting at locations within each county and in the City of Baltimore selected by each local election board. The bill 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, and at least one early voting location in all other counties in the State.

7. Both houses of the General Assembly passed Senate Bill 478 on April 9, 2005. Pursuant to Article II, Section 17 of the Maryland Constitution, 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.

8. In the 2006 session, the General Assembly 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.

9. 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. Under the law created by Senate Bill 478, the General Assembly had left it to each jurisdiction's election board to determine the location of early voting polling places.

10. Following passage of House Bill 1368 on March 29, 2006 by both houses of the General Assembly, Governor Ehrlich vetoed the bill on April 7, 2006. By April 10, 2006, the House of Delegates and Senate had overridden Governor Ehrlich's veto, enacting House Bill 1368 into law.

11. The overt partisanship underlying the dramatic changes to Maryland's election procedures resulting from Senate Bill 478 and House Bill 1368 has led to a public outcry against the General Assembly's actions from Maryland voters and political observers. On April 5, 2006, the editorial page of the *Washington Post* lambasted the General Assembly following the passage of House Bill 1368:

In the sanctified name of expanding the popular vote and widening access to the polls, Maryland Democrats have sacrificed fairness to partisan advantage. The Democrats, who dominate the state legislature in Annapolis, pushed through a bill allowing voting to take place five days before Election Day – but mostly at polling stations in Democratic strongholds.

* * * * *

The locations of many of the polling stations for early voting seem designed to mine Democratic votes, which tend to be in more heavily populated areas. . . . [T]ilting the early-voting system toward heavily Democratic areas in strategically key jurisdictions taints the election even before it occurs.

Tilting Maryland's Vote, Washington Post, Apr. 5, 2006, at A22.

12. Section 1(a) of Article XVI of the Maryland Constitution provides that “[t]he 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.*” (Emphasis added). On April 19, 2006, MFFE initiated the process prescribed by the State Board and authorized under Article XVI to place the laws created by Senate Bill 478 and House Bill 1368, through veto overrides, on the ballot at this November’s election.

13. Section 2 of Article XVI states that “[i]f before [the] 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 . . .” 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 . . .”

14. 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.

15. Consistent with Article XVI of the Maryland Constitution, the 2006 Procedures for Filing a Statewide or a Public Law Referendum Petition, published by the State Board, provides that a petition relating to a statewide law “must be signed by registered voters equal in number to 3% of the votes cast for Governor in the preceding Gubernatorial election.” (Procedures for Filing a Statewide or a Public Law Referendum Petition, Maryland State Board

of Elections (2006), attached as Exhibit A, at 7). The State Board's 2006 Procedures further indicate that "[f]or statewide referendum petitions filed in . . . 2006, that number is 51,185." (*Id.*).

16. The State Board's 2006 Procedures confirm that "[p]etition pages containing more than one-third of the required signatures must be filed with the Secretary of State by 12:00 midnight on May 31" and that "[p]etition pages containing the balance of the required signatures must be filed with the Secretary of State by 12:00 midnight on June 30." (Exhibit A at 8).

17. On May 31, 2006, MFFE filed 20,221 signatures from Maryland voters that support the referendum petition in connection with Senate Bill 478. That same day, MFFE filed 20,687 signatures from Maryland voters supporting the referendum petition in connection with House Bill 1368. The number of signatures filed by MFFE for both Senate Bill 478 and House Bill 1368 far exceeded the thresholds required by the Maryland Constitution and confirmed in the State Board's published procedures. The State Board verified publicly on June 20, 2006 that MFFE had filed the requisite number of signatures under Article XVI by May 31, 2006. *See* Andrew A. Green, *Early Voting Opponents Reach First Goal in Drive to Overturn*, *The Sun*, June 20, 2006, at 1B.

18. On June 8, 2006, Lamone sent a letter to Roskelly, MFFE's Chairman, stating that she had made a determination under Section 6-206(c)(5) of the Election Law Article of Annotated Code of Maryland that MFFE's "petition relating to Senate Bill 478 is deficient and may not be referred to referendum for reasons stated in the enclosed letter dated June 8 from the Office of the Attorney General."¹ (June 8, 2006 Letter from Linda H. Lamone to Thomas Roskelly, attached as Exhibit B). Based on a selective interpretation of Article XVI of the

¹ Although Lamone contends that she sent her letter to Roskelly on June 8, 2006, Roskelly did not actually receive the letter until Saturday, June 17, 2006.

Maryland Constitution, the Office of the Attorney General advised Lamone that any “referendum effort must occur immediately after the regular session at which the legislation is initially passed” and that the required signatures in connection with Senate Bill 478 “should have been filed no later than June 1, 2005.” (June 8, 2006 Letter from Mark J. Davis, Esquire and Robert N. McDonald, Esquire to Linda H. Lamone, attached as Exhibit C, at 1). The Office of the Attorney General came to this conclusion even though Senate Bill 478 did not become a law until January 2006, based on the General Assembly’s override of Governor Ehrlich’s veto.

19. Article XVI, Section 3(d) provides that “[s]ignatures 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.*” (Emphasis added). Section 3(c) specifically defines the terms “pass” or “passed” in Article XVI to mean “*any final action* upon any Act or part of an Act by both Houses of the General Assembly.” (Emphasis added). The opinion of the Attorney General relied on by Lamone ignores Section 3(c)’s definition of “passed” and 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.*” (Emphasis added). 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,” MFFE properly initiated the referendum process in connection with Senate Bill 478 following the passage of the bill by the General Assembly in January 2006.

20. Aside from the plain language of the Maryland Constitution, the Attorney General’s strained interpretation of Article XVI in the instant case would lead to an absurd result, in that it would have required citizens to collect the necessary signatures to bring Senate Bill 478

to a referendum at a time when the Governor had vetoed the bill.² Only as a result of the extraordinary occurrence of a veto override, requiring approval of three-fifths of both houses of the General Assembly, was Senate Bill 478 finally passed into law in January 2006.

21. Significantly, the Office of the Attorney General acknowledged the potential infirmity of its interpretation of Article XVI in its June 8, 2006 letter to Lamone: “because the timing of the referendum drive in these circumstances is an issue of first impression, we recommend that the local boards of election proceed to verify signatures so that the referendum process may continue without interruption in the event that a court reaches a different conclusion.” (Exhibit C at 1).

22. On June 21, 2006, Lamone again wrote to Roskelly in connection with MFFE’s efforts to place Senate Bill 478 on the ballot for referendum in November. (See June 21, 2006 Letter from Linda H. Lamone to Thomas Roskelly, attached as Exhibit D). Lamone informed Roskelly that MFFE would not be able to continue its petition process in connection with Senate Bill 478 for two reasons. First, Lamone maintained that MFFE had not timely sought judicial review of her determination that any attempt to put Senate Bill 478 up for referendum was untimely and should have occurred in 2005:

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).

(Exhibit D).

² The Court of Appeals has recognized the obvious point that a referendum 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).

23. Second, Lamone's June 21, 2006 letter contended that the local boards of election had "completed the validation of the referendum petition signature pages submitted to the Secretary of State on May 31, 2006 on behalf of Senate Bill 478" and that "[t]he results of the validation indicate that . . . [there was] an insufficient number of accepted names to meet the 1/3 submission requirement and to continue the petition process." (*Id.*). Lamone's letter asserts that 16,924 signatures were accepted as a result of the validation in connection with Senate Bill 478, 138 signatures short of the one-third threshold. (*Id.*).

24. In what seems to be a pattern of conduct designed to thwart MFFE's referendum efforts at all costs, Lamone once again ignored the plain language of Maryland statutory law in contending that MFFE failed to timely challenge in court her determination that any referendum in connection with Senate Bill 478 should have been initiated in 2005.

25. 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 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).

26. 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). Moreover, Section 6-201(a) of the Election Law Article states that “[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).

27. MFFE has not, to this point, 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. MFFE will comply with the dictates of Article XVI, Section 3(b) by filing a complete referendum petition on or before June 30, 2006. Because MFFE has not filed its “petition,” as that term is defined by Maryland law, Lamone’s “determination of deficiency” under Section 6-206(c)(5), based on advice that she received from the Office of the Attorney General, is premature.

28. “Upon the filing of a petition” by MFFE in connection with Senate Bill 478, Lamone will then have the opportunity under Section 6-206 of the Election Law Article to “review the petition” and determine whether it is sufficient. Only if Lamone should declare after June 30, 2006 that MFFE’s petition in connection with Senate Bill 478 is deficient would MFFE then be required to seek judicial review within ten days of that determination under Section 6-210(e)(1) of the Election Law Article.

29. In addition to her premature determination of deficiency, Lamone has also ignored the plain language of the Election Law Article by seeking to verify the signatures filed on May 31, 2006 prior to MFFE filing its final petition. 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 contained in the petition.” Md. Code Ann., Elec. Law § 6-207(a). (Emphasis added). Again, because MFFE has not to date 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, Lamone has improperly proceeded to “verify” the 20,221 signatures submitted by MFFE on May 31, 2006.

30. 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(c). The filing of signatures by MFFE on May 31, 2006 did not constitute the “filing of a petition” that would allow the Administrator to begin the validation of the signatures under Section 6-207(a) of the Election Law Article.³ Accordingly, the contention in Lamone’s June 21, 2006 letter – that the “results of the validation” of the signatures submitted on May 31, 2006 preclude MFFE from continuing the petition process – is without legal basis.⁴

31. Even if Lamone properly initiated the verification of the signatures submitted on May 31, 2006, prior to the completion of MFFE’s petition, her finding that MFFE failed to submit the requisite number of signatures is subject to question for a number of reasons. First,

³ The Court of Appeals similarly acknowledged that a referendum petition under Article XI-A of the Maryland Constitution is “complete” when the “petition has the requisite number of signatures.” *Ficker v. Denny*, 326 Md. 626, 632, 606 A.2d 1060, 1063 (1992).

⁴ Moreover, of significant and immediate concern to MFFE is the chilling effect of Lamone’s June 21, 2006 letter, based on an erroneous application of the law, on MFFE’s signature-gathering efforts. Supporters from around Maryland have questioned whether it is necessary to continue to obtain signatures from voters that favor placement of Senate Bill 478 on the ballot for a referendum. Because MFFE must file its completed petition, with all necessary supporting signatures from Maryland voters, by June 30, 2006, the timing of Lamone’s most recent letter fuels speculation that the Administrator seeks to subvert MFFE’s referendum drive, even apart from her misinterpretation of the law.

The Sun reported on Tuesday, June 20, 2006 that the State Board had confirmed that MFFE had “collected more than the 17,062 valid signatures necessary to meet a first deadline in a petition drive against early voting procedures adopted by the General Assembly.” Andrew A. Green, *Early Voting Opponents Reach First Goal in Drive to Overturn*, *The Sun*, June 20, 2006, at 1B. In the June 21, 2006 letter to Roskelly, however, Lamone and the State Board turned 180 degrees, by asserting that MFFE had submitted an insufficient number of signatures “to meet the 1/3 submission requirement and continue the petition process.”

32. On Friday, June 23, 2006, *The Gazette* reported of suspicions by Maryland Republican Party officials that “Democratic leaders met with state Elections Administrator Linda H. Lamone and told her to invalidate the petition drive after the state Board of Elections told Marylanders for Fair Elections on Monday that the group was close to collecting signatures required to put the issue to referendum in November.” Margie Hyslop, *Brouhaha Over Early Voting Petition Boils*, *The Gazette*, June 23, 2006.

33. The concerns surrounding the highly partisan effort to implement early voting in Maryland in time for November’s general election has been further exacerbated not only by the unexplained retraction by the State Board of its earlier public confirmation of MFFE’s attainment of the one-third threshold, but also by the secretive manner in which Lamone and the State Board have undertaken the verification of the signatures submitted by MFFE. Indeed, in response to MFFE’s request that it be allowed to observe the verification process performed by local election boards, Lamone forwarded to Roskelly the State Board’s Policy on Public Observation of Petition Verification:

The State Board determined that there should be a uniform, statewide policy on whether or not members of the public are permitted to be present. Accordingly, the State Board adopted a strong policy against any local

board voluntarily permitting members of the public to witness the verification process.

(State Board of Elections, Policy 2001-01, Public Observation of Petition Verification, attached as Exhibit E).

34. Lamone's June 21, 2006 letter declared MFFE's petition deficient based on her determination, pursuant to Section 6-206(c)(3) of the Election Law Article, that "[a]n examination of unverified signatures indicates that the petition does not satisfy [the] requirements of law for the number or geographic distribution of signatures." Md. Code Ann., Elec. Law § 6-206(c)(3). Although MFFE submitted 20,221 signatures in support of a referendum on Senate Bill 478 on May 31, 2006, Lamone has concluded that 3,159 of the signatures filed cannot be verified. Because Lamone and the State Board are now asserting that MFFE only submitted 16,924 of the 17,062 signatures required by May 31, 2006, Roskelly and MFFE request that the Court, under Section 6-209(a) of the Election Law Article, independently review the signatures deemed invalid by Lamone to determine whether she has improperly denied inclusion of any signatures in her calculations. *Id.* § 6-209(a) ("A person aggrieved by a determination made under § 6-202, § 6-206, or § 6-208(a)(2) of this subtitle may seek judicial review.").

35. In addition, the Court should compel Lamone and the State Board to consider at least 125 additional letters containing signatures in support of MFFE's petition for a referendum on Senate Bill 478. During the month of May 2006, the Post Office in the Eastport community of Annapolis ("Eastport Post Office") received at least 125 business reply letters addressed to the Marylanders for Fair Elections Committee with postmarks dated May 20-25, 2006. (Affidavit of George Norberg, Station Manager of the Eastport Post Office, attached as Exhibit F, ¶ 3).

36. As a result of undue delay, caused solely by inadvertent staffing shortages at the Eastport Post Office, these business reply letters were not processed or delivered to MFFE's Post Office Box in a timely manner. (Exhibit F ¶ 4). Had the 125 letters addressed to MFFE been properly processed and delivered, all of these letters would have been delivered to MFFE's Post Office Box on or before May 31, 2006. (*Id.*). Instead, through no fault of MFFE, at least 125 letters postmarked May 20-25, 2006 were delivered to the MFFE Post Office Box on June 6 and June 7, 2006. (*Id.* ¶ 5).

37. The letters received by MFFE in late May averaged between three and four signatures each from Maryland voters supporting the placement of Senate Bill 478 on November's ballot for referendum. With the addition of these signatures, there is little doubt that MFFE would have exceeded the one-third threshold. Even if the Administrator and State Board acted properly in prematurely verifying the first submission of signatures supporting a referendum on Senate Bill 478, as a matter of equity, the letters containing signatures supporting MFFE's referendum drive that are postmarked between May 20 and May 25, 2006, and that the Postal Service simply neglected to place in MFFE's Post Office Box by May 31, 2006, should be counted by the Administrator and State Board in determining whether MFFE timely reached the one-third threshold.

COUNT I
(Declaratory Judgment)

38. Plaintiffs incorporate by reference the allegations in paragraphs 1-37, as if set forth herein.

39. Section 6-209(b) of the Election Law Article provides that “[p]ursuant 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.”
Md. Code Ann., Elec. Law § 6-209(b).

40. Under Section 3-409 of the Maryland Uniform Declaratory Judgments Act, there exists an actual controversy of justiciable issues between the parties within the jurisdiction of this Court, and a declaratory judgment by the Court will terminate the present controversy between the parties. *See* Md. Code Ann., Cts. & Jud. Proc. § 3-409.

WHEREFORE, Plaintiffs respectfully request that this Court grant a declaratory judgment that:

- (a) Lamone’s determination, under Section 6-206(c)(5) of the Election Law Article, of the deficiency of MFFE’s petition was premature since MFFE has yet to file its “petition,” as that term is defined and used in the Election Law Article and Article XVI of the Maryland Constitution;
- (b) Lamone must await the filing of MFFE’s petition on or before June 30, 2006 before making any declaration of deficiency regarding the petition;
- (c) Lamone’s contention that MFFE’s petition in connection with Senate Bill 478 should have been filed in 2005, after the Governor’s veto and prior to any “final action” of the General Assembly, is erroneous;
- (d) Defendants’ alleged verification of the signatures submitted by MFFE on May 31, 2006 was premature since the initiation of the verification process can only commence under Section 6-207(a) of the Election Law Article “[u]pon the filing of a petition;”
- (e) Defendants must await the filing of MFFE’s petition on or before June 30, 2006 before making any determination under Section 6-206(c)(3) that “[a]n examination of

unverified signatures indicates that the petition does not satisfy [the] requirements of law for the number . . . of signatures;”

(f) In the event that the Court deems Defendants to have properly undertaken the verification of the signatures submitted by MFFE on May 31, 2006, Defendants are required to provide to the Court, for an independent review, all unverified signatures “in order assure the integrity of the electoral process;”

(g) Defendants must include in the count of signatures submitted on May 31, 2006, any signatures in the at least 125 letters sent to MFFE that were postmarked between May 20-25, 2006 and that the Postal Service inadvertently failed to deliver to MFFE in time for the May 31, 2006 submission.

(h) That this Court award Plaintiffs the costs of these proceedings, and other such further relief as this Court deems necessary and proper.

COUNT II (Writ of Mandamus)

41. Plaintiffs incorporate by reference the allegations in paragraphs 1-40, as if set forth herein.

42. In her June 21, 2006 letter to Roskelly, Lamone contends that MFFE’s alleged failure to submit the requisite number of signatures supporting a referendum on Senate Bill 478 by May 31, 2006 and the failure to seek judicial review of her alleged June 8, 2006 determination of deficiency “ends the petition process for Senate Bill 478.” (Exhibit D).

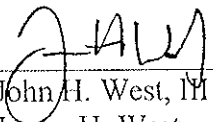
43. Lamone’s June 21, 2006 letter is premised on an erroneous interpretation of Article XVI of the Maryland Constitution and the applicable provisions of the Election Law Article. Notwithstanding Lamone’s misunderstanding of Maryland law, Defendants have a clear duty to accept MFFE’s petition – as long as it is filed on or before June 30, 2006 – to place

Senate Bill 478 on the ballot for referendum at November's general election and proceed to verify the signatures submitted under Section 6-207(a) of the Election Law Article.

44. Based on the plain language of the Maryland Constitution and the Election Law Article, Plaintiffs have a clear right to submit the petition relating to Senate Bill 478 on or before June 30, 2006.

45. No adequate remedy exists by which Plaintiffs can petition to have Senate Bill 478 placed on November's ballot for referendum.

WHEREFORE, pursuant to Maryland Rule 15-701, Plaintiffs respectfully request that this Court issue a Writ of Mandamus ordering Defendants to accept MFFE's petition to place Senate Bill 478 on the ballot for referendum and proceed to verify the signatures submitted under Section 6-207(a) of the Election Law Article.



John H. West, III
James H. West
West & Costello, LLC
409 Washington Avenue, Suite 1010
Towson, Maryland 21204
410-296-4655

Attorneys for Thomas Roskelly and
Marylanders for Fair Elections, Inc.

VERIFICATION

I solemnly swear under the penalties of perjury and under oath that the contents of the foregoing Verified Complaint are true and correct to the best of my knowledge, information, and belief.

DATE:

THOMAS ROSKELLY

6-26-06

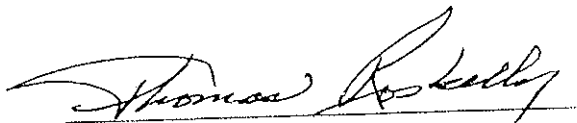


EXHIBIT A

**MARYLAND
STATE BOARD OF ELECTIONS**

**PROCEDURES FOR FILING
A STATEWIDE OR
A PUBLIC LOCAL LAW
REFERENDUM PETITION**

**GUBERNATORIAL ELECTION
NOVEMBER 7, 2006**

Published by:

**The State Board of Elections
Linda H. Lamone, Administrator**

151 West Street, 2nd Floor
P.O. Box 6486
Annapolis, MD 21401-0486

(410) 269-2840
Toll Free Number: (800) 222-VOTE
MD Relay Service: (800) 735-2258

Revised: March, 2005

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*Maryland State Board of Elections
Referendum Petition Procedures*

General Information

Election Date

November 7, 2006

Filing Location

Secretary of State
Jeffrey Building, 16 Francis Street
Annapolis, Maryland 21401
410-974-5521
1-888-874-0013

Statutory References

Maryland Constitution, Article XVI
Election Law Article, Annotated Code of Maryland:
Title 1 – Definitions and General Provisions
Title 6 - Petitions
Title 7 - Questions
Title 9, Subtitle 2 – Voting, Ballots
Title 13 - Campaign Finance

Contacts:

Donna J. Duncan - Petition Information
Mary Cramer Wagner - Petition Information
Natasha Walker -- Petition Information
Ross K. Goldstein - Campaign Finance Information
410-269-2840 or 1-800-222-8683

Web Site:

www.elections.state.md.us

Summary of Deadlines

Review full Maryland election calendar for complete list of election-related dates.

- May 1
Deadline to submit petition format for advance determination of sufficiency.
- May 31, Midnight
Deadline to file more than one-third of required petition signatures with Petition Fund Report and information page.
- June 30, Midnight
Deadline to file balance of required petition signatures with new Petition Fund Report and new information page.

A political committee must be established with the appropriate State or local election office at the time a petition sponsor knows or anticipates that a referendum question will be placed on the ballot and *before* money is collected or spent to support or oppose the question.

The Referendum Process

Any person or group may attempt to void an Act or any part of an Act passed by the General Assembly by referring that Act to a vote of the electorate in a general election. This is accomplished by obtaining the requisite number of signatures on a Referendum Petition and submitting that petition, along with other required documents, to the Secretary of State within a specified period of time. If the legal requirements are met, including confirmation of the number and validity of voters' names, the question of whether the referred Act will take effect will appear on the general election ballot.

Ballot Placement

Acts or parts of Acts passed at the 2005 and 2006 Sessions of the General Assembly, if they are successfully petitioned to referendum, will appear on the next general election ballot (November 7, 2006).

Signatures may be placed on a Referendum Petition anytime after an Act has been passed by both houses of the General Assembly and before July 1 of the same year. Signatures may be placed on a Referendum Petition before the Governor signs the Act. The process cannot be initiated after May 31 of the year of passage. Signatures may be gathered between June 1 and June 30 only if more than one-third of the required signatures were filed with the Secretary of State before June 1.

Petition Signature Page

The petition signature page is used to collect the names, addresses, and signatures of voters who support having an Act or part of an Act of the General Assembly placed on the ballot for approval or rejection by the voters. A form prescribed or approved by the State Board of Elections must be used. The State Board will supply a specimen signature page form or the form may be printed from the State Board web site (see form SBE 6-201-3C). The petition sponsor is responsible for completing the form properly and producing the quantity needed.

Advance Determination of Sufficiency

A petition sponsor may seek advance determination of the sufficiency of the completed signature page format. **A written request for advance determination must be filed with the State Board of Elections not later than May 1.** The State Administrator of Elections will make a determination of sufficiency within 5 business days after receiving the request. The petition sponsor will be notified of the Administrator's determination within 2 business days after the determination is made.

Petition Signature Page Content

Each signature page must contain either:

- The full text of the Act; or
- A fair and accurate summary of the substantive provisions of the Act, which has been approved by the Attorney General. If the petition sponsor elects to print a summary of the Act on each signature page, each circulator must have the full text of the Act present at the time and place that each signature is placed on the page. The signature page must state that the full text is available from the circulator.

The text or summary is ordinarily printed or copied onto the back of each signature page. This is the recommended practice. Although the State Board will accept signature pages to which the text or summary is stapled or otherwise attached, this is not recommended, because the attached pages may become separated during the signature collection process or during the verification process after the petition signatures are filed. If a signature page does not contain the required text or summary when it reaches the local election board for verification, the signatures on the page will not be counted.

Only one side of the petition page may be used for signatures.

A person may not sign a petition for the same referendum more than once.

All signatures on a signature page should be of voters residing in the one local jurisdiction (county or Baltimore City) identified at the top of the page.

Each signature page of the petition must contain a statement, to which each signer subscribes, that:

1. The signer supports the purpose of the petition, and

*Maryland State Board of Elections
Referendum Petition Procedures*

2. Based on the signer's information and belief, the signer is a registered Maryland voter and is eligible to have his/her signature counted.

Each registered voter signing the petition must provide the following information on the signature page (all information except the signature must be printed or typed in the appropriate space on the form):

1. Signature (use name as it appears in voting records, no nicknames);
2. Date of signing (to be valid, signatures on a Referendum Petition may be obtained only after the Act is passed by the General Assembly. However, signatures may be placed on a Referendum Petition before the Governor signs the Act.);
3. Signer's printed full name, as it was signed;
4. Signer's current permanent residence address (including street, house and apartment number, town, and zip code). A business address is insufficient, and a post office box address will be sufficient only if there is no street and house number designation for the voter's residence and only if the post office box address is on record with the election office. Homeless people can be registered voters even without residence addresses, if they can show that they live and receive mail in Maryland. When signing a petition, a homeless person should use his or her voter registration address; and
5. Date of Birth: Each registered voter is asked to include his/her date of birth on the petition. The date of birth greatly assists the local board to identify a voter and therefore to validate the voter's signature. If a voter refuses to provide a year of birth, the circulator should request month and day of birth as a minimum. A signature will not be invalidated merely because date of birth is omitted.

Note: The petition circulator may fill in the information on the petition page, except for signature, only at the request of the signer.

Circulator's Affidavit

Each signature page of the petition must include an affidavit, completed by a circulator who is an individual (not a business or organization), stating that:

1. All identifying information given by the circulator is true and correct;
2. Signatures were placed on the petition in the circulator's presence; and
3. Based on the circulator's best knowledge and belief, each signature on the page is genuine and each signer is a registered voter at the address listed.

The circulator must sign and date the affidavit, but should wait until *after* all petition signers have signed and dated the page. Any signature on the page that is dated after the circulator's affidavit is

invalid.

A petition circulator must be at least 18 years old when any signature covered by the affidavit is placed on the petition. Maryland law does not require the petition circulator to be a registered voter or a Maryland resident.

Number of Signatures

For a referendum on an Act that is a statewide law, the petition must be signed by registered voters equal in number to 3% of the votes cast for Governor in the preceding Gubernatorial election. For statewide referendum petitions filed in 2003 through 2006, that number is 51,185. Not more than half the required signatures may be from any one county or Baltimore City.

For a referendum on an Act that is a public local law, the petition must be signed by registered voters equal in number to 10% of the votes cast for Governor in the affected jurisdiction in the preceding Gubernatorial election. 2002 Gubernatorial vote totals, by county, are included in this package or may be viewed on the State Board web site.

It is recommended that the petition be signed by at least 20% more voters than the number required, since past experience has indicated that a substantial number of signatures are likely to be invalid.

Note: In jurisdictions where residents move frequently, the invalidity rate may be higher.

Removal of Signatures

A signature may be removed from the petition by:

1. The signer, if the State Board of Elections receives written application from the signer before the page containing the signature is filed; or
2. The circulator or petition sponsor, if it is concluded that the signature does not satisfy the requirements of the law.

A signature removed by the circulator or sponsor may not be included in the number of signatures stated on the information page.

Information Page

An information page prescribed by the State Board of Elections must be used to identify the petition sponsor and, if the sponsor is an organization, the individual designated to receive notices. A summary of the number of petition pages and the number of signatures being filed for each county must also be provided on the information page.

Filing the Petition

At the time of filing, the signature pages of the petition must be sorted by county, as indicated at the top of the page. The petition sponsor is responsible for this sorting.

The information page and the signature pages must be filed with the Secretary of State at 16 Frances Street, Jeffrey Building, Annapolis (410-974-5521 or 1-888-874-0013). The sponsor must include a breakdown of the number of petition pages and number of signatures, by county or Baltimore City, on the information page.

The Secretary of State will issue a receipt for petition pages submitted and will transmit the entire petition to the State Board of Elections. The State Board will transmit the pages for each county/Baltimore City, as sorted by the petition sponsor, to the appropriate local board of elections for verification.

Petition Fund Report

At the time of filing a petition, or any part of a petition, a Petition Fund Report, on a form approved by the State Board of Elections, must also be filed. This report must show all contributions and expenditures made in connection with the petition-gathering effort. The report should not include contributions and expenditures made in connection with the promotion or defeat of the referendum question *after* the question qualifies for the ballot. A new Petition Fund Report must be submitted each time petition signatures are filed with the Secretary of State, whether or not financial transactions have occurred.

If the Petition Fund Report described above is not filed, the entire petition may be invalidated if timely challenged.

Deadline to File Petition

Petition pages containing more than one-third of the required signatures must be filed with the Secretary of State by *12:00 midnight on May 31*.

Petition pages containing the balance of the required signatures must be filed with the Secretary of State by *12:00 midnight on June 30*.

Verification of Petition

Unless the State Board of Elections authorizes use of random sampling procedures, the local board of elections staff must review each name on every signature page sent to them and indicate which names are valid (that is, names of duly registered Maryland voters) and which are invalid. The local board of elections staff is also responsible for examining the format of each signature page to verify that legal requirements have been met.

If the local board staff determines that a signer is not a registered Maryland voter, that signature will

Maryland State Board of Elections
Referendum Petition Procedures

be disallowed, but the disallowance will not affect or impair any other portion of the signature page.

However, if the signature page is not in proper form or if required information for the circulator is not provided on the signature page, the entire page will be invalidated.

Within 20 calendar days after the petition is filed, the local board of elections will complete the verification and summarize the results.

The State Administrator of Elections will determine the sufficiency of the number of valid signatures on the entire petition, based on the verification reports submitted by the local boards of elections.

Within 2 business days after completion of the verification process, the State Administrator of Elections will notify the petition sponsor, in writing, of the results - that is, whether the number of valid signatures is sufficient or insufficient to meet the requirement for placing the referendum question on the ballot.

If the petition includes the required number of valid signatures and otherwise meets legal requirements, the question will appear on the next statewide general election ballot.

Prohibitions - Election Law Article, §16-401

A person may not willfully and knowingly:

1. give, transfer, promise, or offer anything of value for the purpose of inducing another person to sign or not sign any petition;
2. request, receive, or agree to receive, anything of value as an inducement to sign or not to sign any petition;
3. misrepresent any fact for the purpose of inducing another person to sign or not to sign any petition;
4. sign the name of any other person to a petition [except when assisting someone with a disability];
5. falsify any signature or purported signature to a petition;
6. obtain, or attempt to obtain, any signature to a petition by fraud, duress, or force;
7. circulate, cause to be circulated, or file with an election authority a petition that contains any false, forged, or fictitious signatures;
8. sign a petition that the person is not legally qualified to sign;
9. sign a petition more than once; or

10. alter any petition after it is filed with the election authority.

Compliance with Maryland Campaign Finance Laws

The petition sponsor must establish a ballot issue committee as soon as the sponsor knows or anticipates that the referendum question will be placed on the ballot, and before any contributions are accepted or any expenditures are made in connection with the passage or defeat of the question.

For a statewide petition, the committee is established with the State Board of Elections. For a petition relating to a public local law, the committee is established with the local board of elections for that jurisdiction.

Ballot issue committees are required to file Campaign Finance Reports (which are distinct from Petition Fund Reports). Campaign Finance Reports are due on the second Friday preceding the General Election and on the third Tuesday following the General Election (see §13-309 of the Election Law Article.)

Campaign Finance Reports reflect monies collected and spent by a political committee in connection with the promotion or defeat of the referendum question; they should not include financial activity in connection with the petition-gathering process.

The State Board of Elections Candidacy and Campaign Finance Division will provide a form (Statement of Organization) to establish a campaign finance entity, as well as Campaign Finance Report forms, a schedule of report due dates, and information about reporting and procedures.

Miscellaneous Information

If a petition with the required number of valid signatures is filed with the Secretary of State before June 1, the Act will not take effect until 30 days after the general election. If the electorate rejects the Act, it will not take effect at all.

If one-third of the required signatures are timely filed, but the total number required are not timely filed, the Act will not take effect until June 30.

An Act passed as emergency legislation will become law on the date it is signed by the Governor and will remain in force, notwithstanding a Referendum Petition, pending the results of the referendum. If rejected by the electorate, the law is repealed 30 days after the election.

*Maryland State Board of Elections
Referendum Petition Procedures*

An Act passed less than 45 days before June 1 will not take effect until 31 days after its passage. If more than one-third of the required signatures are submitted within 30 days after the Act was passed, the remaining signatures may be filed within the next 30 days, and the effective date of the Act will be postponed during this additional 30-day period.

Acts concerning liquor and most appropriations are exempt from referendum.

Questions about referenda on local ordinances (legislation passed locally and not by the General Assembly) should be referred to the appropriate local government.

Associated Documents

Petition Form
Information Page
Petition Fund Report
Statement of Organization for Maryland Committees and Slates
2002 General Election vote totals for Governor, by county
Election Calendar
Petition Question and Answer Sheet

Forms and additional information can be obtained from the State Board of Elections web site:
www.elections.state.md.us.

DOD\forms\SBE-6-201-3A Rev. 3/05

EXHIBIT B

MARYLAND

STATE BOARD OF ELECTIONS

P.O. BOX 6486, ANNAPOLIS, MD 21401-0486 PHONE (410) 269-2840

Gilles W. Burger, Chairman
Thomas Fieckenstein, Vice Chairman
Joan Beck
Bobbie S. Mack
A. Susan Widerman



Linda H. Lamone
Administrator

Ross Goldstein
Deputy Administrator

June 8, 2006

Mr. Tom Roskelly, Chairman
Marylanders for Fair Elections
934 Bay Ridge Ave., #303
Annapolis, MD 21403

Dear Mr. Roskelly:

I have reviewed the petitions filed on May 31, 2006, by Marylanders for Fair Elections to begin the referral to referendum of Senate Bill 478 (2005 Session) and House Bill 1368 (2006 Session). 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 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.

Please feel free to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda H. Lamone", is written over a horizontal line.

Linda H. Lamone
Administrator

E38

EXHIBIT C

J. JOSEPH CURRAN, JR.
Attorney General

Mdavis@oag.state.md.us

E-MAIL



DONNA HILL STATON
MAUREEN M. DOVE

Deputy Attorneys General

(410) 576-7036

(410) 576-6356

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

June 8, 2006

TELECOPIER NO.

WRITER'S DIRECT DIAL NO.

Linda H. Lamone
Administrator, State Board of Elections
P.O. Box 6486
Annapolis MD 21401-0486

Dear Ms. Lamone:

You have requested advice relating to an effort to petition to referendum two bills relating to early voting. On May 31, 2006, Marylanders for Fair Elections (MFE) submitted signatures in an effort to satisfy the constitutional requirement that they file one-third of the necessary signatures by that date to petition those bills to referendum. You ask:

(1) May Senate Bill 478 of the 2005 Session be referred to referendum for the 2006 ballot and, if it is not referable, should the filed petition signature pages be verified?

(2) When will House Bill 1368 of the 2006 Session take effect pursuant to Section 2 of the Article XVI of the Maryland Constitution if MFE ultimately submits the required number of signatures to petition that bill to referendum?

In our view, the answers to your questions are as follows:

(1) Senate Bill 478 (2005) may not be referred to referendum at this time because a referendum effort must occur immediately after the regular session at which the legislation is initially passed. Thus, the required signatures should have been filed no later than June 1, 2005. In addition, because most of the provisions of Senate Bill 478 were subsequently amended by House Bill 1368 (2006), those provisions of the bill may not be petitioned to referendum. However, because the timing of the referendum drive in these circumstances is an issue of first impression, we recommend that the local boards of election proceed to verify signatures so that the referendum process may continue without interruption in the event that a court reaches a different conclusion.

June 8, 2006

Page 2

(2) House Bill 1368 (2006) was enacted as an emergency law and thus will remain in effect despite the petition; it will be repealed 30 days after the election if it is rejected by a majority of the voters at the November election.

Background

Enactment of Bills

Senate Bill 478 (2005), Chapter 5, Laws of Maryland 2006, created a new §10-301.1 of the Election Law Article ("EL") of the Annotated Code. The bill provided for early voting eight hours each day beginning the Tuesday before a primary or general election through the Saturday before the election at early voting places and required each local board of election to establish the early voting places in its county, including at least three such places in the six most populous counties in the State and in Baltimore City. The bill was passed by both houses as of April 9, 2005, and vetoed by the Governor on May 20, 2005. The veto was overridden by both houses as of January 17, 2006; the bill therefore became law effective February 16, 2006 pursuant to Article II, §17(d) of the Constitution.¹

House Bill 1368 (2006), Chapter 61, Laws of Maryland 2006, among other things, repealed and reenacted with amendments EL §10-301.1(b) and (c) and thereby modified the law created by Senate Bill 478 in several respects: it extended the early voting period to between 7 a.m. and 8 p.m. each day; it specified the sites in each of the seven most populous jurisdictions where early voting is to occur; it required early voting in other counties of the State to take place in the county seat (except in Charles County, where the early voting place is to be in Waldorf)²; and directed the state and local boards to inform the public about early voting and the location of early voting polling places in each county.³ House Bill 1368

¹ Article II, §17(d) provides in pertinent part: "Any Bill enacted over the veto of the Governor, or any Bill which shall become law as the result of the failure of the Governor to act within the time specified, shall take effect 30 days after the Governor's veto is over-ridden, or on the date specified in the Bill, whichever is later. If the Bill is an emergency measure, it shall take effect when enacted."

² The State Administrator of Elections is to select another site "proximate to the site rejected, that is accessible to voters" if the Administrator determines, or a local election director provides notice, that a site specified cannot be used to accommodate early voting. EL §10-301.1(c)(3).

³ House Bill 1368 also contained provisions relating to issues that Senate Bill 478 did not address, such as the requirements that the powers and duties of the State Board of Elections be exercised by a supermajority of its members, EL §2-102(c); that a local board establish a separate precinct to serve colleges and universities, EL §2-203(a)(2)(i); and that each polling place be equipped with computers that contain records of registered voters in the county that is networked to

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passed both houses as emergency legislation as of March 29, 2006. The Governor vetoed the bill on April 7, 2006. However, both houses overrode the veto as of April 10, 2006 and thus the bill became effective immediately pursuant to Article II, §17(d) of the Constitution.

Advance Determination

On April 19, 2006, MFE requested an advance determination under EL §6-206 of the accuracy of its proposed summaries for the petitions as to the two bills.⁴ On April 25, 2006, this Office provided comments on the summaries and called attention to matters that related to whether these bills may ultimately be petitioned to referendum. In particular, in the context of a possible petition drive relating to a different bill, this Office had previously concluded that a petition drive for a referendum must occur immediately after the session of the Legislature at which the bill is initially passed by the General Assembly. See Letter from Assistant Attorneys General Robert A. Zarnoch and Bonnie A. Kirkland to Honorable Donald H. Dwyer, Jr. (April 26, 2005) ("Dwyer letter") (copy attached). In addition, in a 1977 opinion, Attorney General Burch concluded that, if the General Assembly repeals or amends a referred bill in good faith, a referendum concerning the original legislation should be removed from the ballot. See *62 Opinions of the Attorney General 405 (1977)* ("1977 Opinion").

Analysis

Timeliness of the Petition Drive

We first address whether MFE's attempt to commence the referral of Senate Bill 478 (2005) to referendum by filing signatures on May 31, 2006, is timely. In the *Dwyer* letter, our Office provided advice regarding a similar set of facts. There, the issue was whether a successful referendum effort in 2005 in regard to the Medical Decision Making Act of 2005 would be blocked by a veto override in 2006 and whether such events would necessitate a new referendum drive. This Office advised that one-third of the necessary signatures would have to be filed before June 1, 2005, (with the remainder filed before June 30, 2005) and that a referendum drive could not begin in 2006 following a possible legislative override of a veto

other computers. EL §10-302(b). The bill also contained a number of provisions relating to election administration in Baltimore City only. See House Bill 1368, Sections 2 and 5.

⁴ Under Article XVI, §4 of the Constitution, each paper that is part of the petition "shall contain the full text, or an accurate summary approved by the Attorney General, of the Act or part of Act petitioned." Similarly, under EL §6-201(c)(2), each signature page of such a petition must contain either "a fair and accurate summary of the substantive provisions of the proposal" or "the full text of the proposal."

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of the bill. The *Dwyer* letter concluded that, even if the bill were to be vetoed in 2005, it would be necessary for the referendum signatures to be validated at the same time.⁵

We believe the analysis in the *Dwyer* letter applies with respect to Senate Bill 478 (2005). As noted, Senate Bill 478 was vetoed by the Governor on May 20, 2005, but the veto was later overridden and the bill became effective February 16, 2006. An effort to petition a bill to referendum is governed by Article XVI of the Constitution. Section 1(a) of Article XVI makes it clear that a bill that becomes effective over the veto of the Governor may be petitioned to referendum.⁶ However, the Article makes no further reference to a veto or override and instead addresses petition-gathering in all circumstances and governing time-frames. In particular, §2 states that, except for an emergency law, no law shall take effect “until the first day of June next after the session at which it may be passed.” Section 2 also states that such a law shall be referred to the voters if a referendum petition is filed before “said first day in June.” For a public general law, §3(a) requires the collection of signatures of three percent of qualified voters and §3(b) provides for the filing of one-third of such signatures before the first day in June, with the time extended to June 30 for the balance of the signatures. The effect of a successful petition drive is to suspend the bill petitioned, unless it is emergency legislation.

As outlined in the *Dwyer* letter, there are several possible interpretations of Article XVI as it applies to the timing of a referendum. Under one possible reading, MFE’s filing of signatures a year after the veto would be timely because petitioners were not required to do anything unless and until the veto was overridden, which did not happen until January 17, 2006. However, this prolonged period of signature-gathering is at odds with Article XVI, §2’s focus on the June 1st “after the session at which [the bill] may be passed.” Article XVI, §2.

Another possible reading of Article XVI is that the General Assembly’s override of the Governor’s veto triggers a new right to gather signatures until May 31 (or June 30) of the

⁵ At the time that the advice was given, the Governor had not acted on the bill. The Governor subsequently vetoed the bill on May 20, 2005; the Legislature did not override that veto. No referendum petition or signatures were ever filed with respect to the bill.

⁶ Section 1(a) 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 any 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.*

Maryland Constitution, Article XVI. (emphasis added)

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subsequent year. In support of such an interpretation, §3(c) of Article XVI defines passage as “any final action” by both houses and does not include a veto override in the definition of “enactment.”⁷ However, these definitions were not added to Article XVI until 1976 and are unrelated to the interplay between a veto override and a referendum effort.

In 1976, §3 was amended in three principal respects: the number of signatures required to be submitted before June 1 was reduced from one-half to one-third; the legislation defined “pass” and “passed” to mean any final action by both houses of the General Assembly and “enact” and “enacted” to mean approval of an act by the Governor; and signatures on a petition for referendum were expressly authorized at any time after the act is passed. *See* Chapter 548, Laws of Maryland 1976, ratified Nov. 2, 1976. The intent of the legislation was apparently to ensure an adequate time to gather signatures on a referendum petition *before* the effective date of the bill. Thus, under Article XVI, a new law (other than an emergency measure), if properly petitioned to referendum, does not take effect until the voters have spoken.

If the Constitution were construed to provide for petition drives to begin after a veto override, it would likely result in such bills becoming effective for several months and then suddenly being suspended if the requisite number of valid signatures were obtained. In the case of Senate Bill 478, which took effect on February 16, 2006, or thirty days after the veto override, the legislation would be suspended on June 1st. This seems at odds with the scheme set out in Article XVI. For example, emergency legislation that has already become effective is not suspended by the submission of petitions signed by a relatively small percentage of the electorate; rather, such legislation remains effective until rejected by a majority of voters at the polls. In addition, under such a construction of the Constitution, the organizers of a petition drive would likely have more than double the amount of time that the framers deemed adequate for gathering signatures for bills that were not vetoed.⁸ This possible interpretation thus appears illogical and contrary to the basic scheme of Article XVI.

⁷ Section 3(c) states:

In this Article, “pass” or “passed” means any final action upon any Act or part of any 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.

Maryland Constitution, Article XVI.

⁸ With respect to Senate Bill 478 (2005), the organizers of the petition drive would have had the period between April 9 to May 31 in 2005 -- 52 days -- to gather the initial set of signatures. By contrast, if signatures could be gathered after a veto override, they would have had the period between January 16 and May 31 in 2006 -- 135 days.

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The most sensible interpretation of Article XVI is that MFE had until May 31 “next after the [2005] session” at which the bill was passed to gather the first one-third of the signatures. Such a construction does not double the signature-gathering period or create the illogical result of legislation taking effect on February 16, 2006, only to be suspended on June 1, 2006.⁹

There is additional support for this conclusion when the possible deadlines for vetoes are considered. Article III, §30 requires that the Governor sign a bill within 30 days after presentment, which must occur no later than 20 days after adjournment.¹⁰ Thus, the Governor must veto a bill within 50 days after adjournment. Ever since the 50-day rule was adopted by the voters in 1974, veto decisions typically have been announced the last week of May. When the session ends on April 12 or 13, the 50 days expires June 1 and 2, respectively – after the May 31 petition deadline. On two occasions during the last 25 years (1982 and 1987), veto announcements were made after the petition deadline. *See Analysis of Veto Dates*, Department of Legislative Services (May 24, 2006). If the Constitution were construed to allow for a petition drive after a veto override in such years, this would allow a petitioner who failed to obtain the required signatures in the year of passage a second opportunity to seek a referendum on the same bill. These facts support the conclusion that signatures must be gathered in the year a bill is passed.

Amendment of Senate Bill 478 by House Bill 1368

As noted, House Bill 1368 (2006) repealed and reenacted with amendments EL §10-301.1(b) and (c), which were originally enacted by Senate Bill 478 (2005). In the 1977 Opinion, Attorney General Burch considered whether the repeal and re-enactment of a law giving new taxing authority to Prince George’s County would affect the pending referendum of the law. He observed that the Court of Appeals had expressly recognized the authority of the General Assembly “to act on the subject matter of a referred law either during the period between its referral and the vote thereon or after approval or rejection by the voters.” 62

⁹ The State Board and the local boards of election have been actively preparing for and implementing the early voting legislation since it became effective. Suspending these operations would make little sense.

¹⁰ Section 30 provides in pertinent part:

All bills passed during a regular or special session shall be presented to the Governor for his approval no later than 20 days after adjournment. With 30 days after presentment, if the Governor approves the bill, he shall sign the same

Maryland Constitution, Article III, §30.

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Opinions of the Attorney General at 406 (quoting *First Continental v. Director*, 229 Md. 293, 302 (1962)). Noting that “the great weight of authority supports the proposition that the legislature may validly repeal a referred statute,” he concluded that if a law is repealed and reenacted with amendments, the measure should be removed from the ballot. *Id.* at 408-09. “If the referred law is validly repealed, it should be removed from the ballot and in the event such a repeal is accompanied by a new enactment, then that new enactment may be petitioned for referendum under Article XVI.” *Id.* at 409. Attorney General Burch explained that if a referred law is repealed and reenacted for the purpose of frustrating a referendum, than the subsequent enactment, if challenged in court, would likely be declared invalid. *Id.*

In other words, because most of the provisions of Senate Bill 478 (2005) were repealed and reenacted by House Bill 1368 (2006), those provisions of Senate Bill 478 may not be referred to referendum, though House Bill 1368, the new enactment, may be referred to referendum.

Verification of Signatures on the Petition to Refer Senate Bill 478

While we believe that the above analysis is the most sensible construction of the relevant constitutional provisions, these are issues of first impression which a court might decide differently. For that reason, we recommend that signature verification proceed so that the referendum process can continue without interruption in the event that a court reaches a different conclusion.

Effective Date of House Bill 1368

You have also asked whether House Bill 1368 (2006) remains in effect if the petitioners obtain the required number of signatures to bring the bill to referendum. Article XVI, §2 provides for different effective dates for referred legislation depending on whether the bill is passed as emergency legislation or in the normal course. If the requisite number of signatures is obtained:

[T]he 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.*

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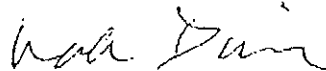
Article XVI, §2 (emphasis added). House Bill 1368 was passed as emergency legislation. Thus, it remains in force until at least the November 2006 election; if it is rejected by the voters at the election, it is repealed 30 days after the election.

Conclusion

In our view, Senate Bill 478 may not be referred to referendum because a referendum drive must occur immediately after the regular session at which the legislation was initially passed; thus, the required signatures should have been filed no later than June 1, 2005. Moreover, most provisions of the bill were repealed and reenacted by House Bill 1368 in January 2006 and thus may not be referred. However, because the timing of the referendum drive in these circumstances is an issue of first impression, we recommend that the local boards of election proceed to verify signatures so that the referendum process may continue without interruption in the event that a court reaches a different conclusion.

Finally, House Bill 1368 was enacted as an emergency law and will accordingly remain in effect despite the petition; it will be repealed 30 days after the election if it is rejected by a majority of the voters at the November election.

Very truly yours,



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THE ATTORNEY GENERAL OF MARYLAND
OFFICE OF COUNSEL TO THE GENERAL ASSEMBLY

April 26, 2005

The Honorable Donald H. Dwyer, Jr.
1432 Isted Rd
Glen Burnie MD 21060-7407

Dear Delegate Dwyer:

You have requested advice on the impact of a gubernatorial veto in May, 2005 and a legislative override of that veto in 2006 on a successful referendum effort completed within months after the 2005 regular session. Your inquiry arises in the context of the present effort to petition to referendum SB 796 (Medical Decision Making Act of 2005). The Governor has not indicated whether he will sign or veto the legislation or allow it to become law without his signature. Pursuant to Article II, §17 and Article III, §30 of the Maryland Constitution, the Governor will have 50 days or until May 31, 2005 to make his decision - - the same day the initial batch of referendum signatures must be filed. Your specific concern is whether a successful referendum effort in 2005 would be blocked by a veto override in 2006 and whether these events would necessitate a new referendum drive.

For reasons detailed below, it is our view that, regardless of the possibility of a gubernatorial veto or legislative override, a referendum effort must occur immediately after the regular session at which the legislation was initially passed. With respect to SB 796, the initial required signatures must be filed before June 1, 2005. Such a referendum drive cannot begin in 2006 following legislative override of the veto. In addition, it is our view that even if the bill were vetoed, it would be necessary for the referendum signatures to be validated promptly. Finally, if legally sufficient signatures are submitted by the May 31 / June 30 deadlines, the effectiveness of a legislative override of the veto would nevertheless be suspended as a result of the previously gathered signatures.

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Constitutional Provisions

An effort to petition to referendum a bill passed by the General Assembly is governed by Article XVI of the Maryland Constitution. Section 1(a) of Article XVI makes it clear that a legislative override of a vetoed bill is subject to being petitioned to referendum. It provides that:

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.* (emphasis added)

Other than this reference to veto override in §1(a), no other mention is made of a veto or a veto override in the Article. Thus, no special procedure is set forth in the Constitution for such occurrences. Rather, the procedures for petition-gathering in all circumstances and the governing time-frames are set forth in §2 and §3 of Article XVI. Specifically, §2 states that, except for an emergency law, no law shall take effect “until the first day of June next after the session at which it may be passed.” Section 2 goes on to state that such a law shall be referred to the voters before “said first day of June” a referendum petition is filed. For a public general law, Section 3(a) requires the collection of signatures of three percent (3%) of certain qualified voters and §3(b) provides that:

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.

Because most regular session legislation is not passed until April, referendum petitioners ordinarily have less than two months to obtain the needed signatures. The effect of a successful petition drive is the suspension of the bill petitioned. Section 3(c) states that:

In this Article, “pass” or “passed” means any final action upon any Act or part of an Act by both Houses of the General

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Assembly; and “enact” or “enacted” means approval of an Act or part of an Act by the Governor.

And § 3(d) provides that:

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.

The last two provisions were added to the Constitution in 1976. See Chapter 548, *Laws of 1976*.¹

Analysis

There is no Maryland case that deals with the interplay of a veto / veto override and a referendum effort. Nor have we found any precedent in any other jurisdiction on this issue.² Thus, the issue you have raised is clearly one of first impression.

In our view, the best approach to resolving the question you have asked is to weigh the possible constructions of the pertinent Article XVI provisions in conjunction with the purposes of the Referendum Article and in light of the consequences of alternative constructions.

1. Year-round signature-gathering.

One possible reading of the relevant provisions of Article XVI is that, in the case of a veto, referendum petitioners need do nothing before May 31st following the passage of the bill. Rather, they could wait for the bill’s veto and then have until the following May 31st to gather signatures in anticipation of suspending a veto override. In our view, such a prolonged period of signature-gathering is at odds with the scheme envisioned in Article XVI. In addition, it appears inconsistent with §2’s focus on the June 1st “after the session at which [the bill] may be passed.”

¹ The purpose and relevance of these provisions are discussed at p.4, *infra*.

² It is not surprising that there is a lack of authority on this issue. In most cases, a veto of a bill would satisfy the referendum petitioners and a veto override would be the exception rather than the rule.

2. Following year signature-gathering

A more plausible reading of Article XVI is that the General Assembly's "passage" of legislation overriding a gubernatorial veto - - typically in January of the year following initial passage - - triggers a new right to gather signatures until May 31 / June 30 of the subsequent year. One premise for such an argument is that §3(c) of the Referendum Article defines passage as "any final action" by both houses of the General Assembly and does not include in the definition of "enactment" a veto override. However, these definitions were a relatively recent addition to the Referendum Article and are completely unrelated to the interplay of a veto / veto override and a referendum effort.

In 1976, § 3 was substantively amended to reduce, from one-half to one-third, the number of signatures required to be submitted before June 1. Chapter 548, *Laws of 1976*. The remainder of the necessary signatures continued to be required by June 30. The legislation also provided that:

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.

Further, the legislation included a definition of "pass" and "passed" to mean any final action upon any Act or part of an Act by both Houses of the General Assembly and "enact" and "enacted" to mean approval of an Act or part of an Act by the Governor.³ Finally, the legislation expressly authorized signatures on a petition for referendum to be signed at any time after the Act is passed.

The intent of Chapter 548 was to ensure an adequate time to gather signatures on a referendum petition before the effective date of the bill. The legislation accomplished

³ The definition of "enact" appears to have been keyed to a provision in the legislation as introduced but later stricken. See Chapter 548, *Laws of 1976*.

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this in several ways: first, it provided for the case of an extended session of the General Assembly, by extending the time period for collecting the requisite number of signatures in such a circumstance. Second, the legislation clarified that petitioners could begin to collect signatures as soon as both Houses of the General Assembly passed a target bill, rather than having to wait for the Governor's action. A period running only from the time of the Governor's action, which could occur any time between Sine Die and 50 days later, could result in the petitioner having only a few days to gather signatures before the June 1 deadline. Third, while not changing the overall number of signatures required for a successful petition, the bill reduced the number of signatures (from one half to one third) that would have to be collected by the May 31st deadline.⁴ Fourth, in the case of late enactment, the bill moved the earliest possible effective date (31 days after passage) to be consistent with the petition process and to prevent the bill from taking effect while the petition process is still underway. Review of the Bill File on Senate Bill 639 and discussion with current and former members of the General Assembly and then-committee staff confirms that the intent of the legislation was to ensure adequate time to collect signatures between the passage of a bill and June 1. The changes were not intended to alter the procedures or time frame for petitioning to referendum a bill becoming law after override.

There are additional reasons for rejecting a subsequent year petition right following a gubernatorial veto. It could more than double the time that the petitioners have to gather signatures. For example, if a veto override occurred in January - - as is typically the case - - petitioners would have roughly four and a half months to secure the necessary signatures, rather than less than two months that would ordinarily apply following a regular session. Moreover, because Article II, §17 of the Constitution ordinarily makes legislation effective 30 days after a veto override, it would be utterly inconsistent with Article XVI to have legislation take effect after an override, only to be suspended on June 1st. The essential thrust of Article XVI is that a new law, if properly petitioned to referendum, does not take effect until the voters have spoken. For these reasons, we believe that the Referendum Article does not permit a referendum drive with respect to a veto override to begin the year following the initial passage of the legislation.

⁴ As introduced, the bill would have required the first one third (as opposed to one half) of the required signatures to be submitted before July 1, with the remainder due before July 15th. While the reduction to one third of the signatures was retained, the provisions relating to July 1 and July 15th were amended out to retain the May 31st deadline with a 30-day extension for the remainder

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3. **Signature - gathering "next after the session" at which the bill passed.**

The last proffered construction of the referendum provisions of Article XVI, we believe, more fully comports with the purposes of the Referendum Article. Regardless of the possibility of a gubernatorial veto and a veto override, the petitioner has until May 31st "next after the session" at which the bill was passed to gather the signatures. Such a construction does not excessively expand the signature-gathering period or result in the anomaly of legislation taking effect only to be subsequently suspended.

In our view, the best construction of Article XVI, is that, regardless of the possibility of a gubernatorial veto or legislative override, a referendum effort must take place immediately after the regular session at which the legislation was initially passed.

Miscellaneous Issues

If the necessary signatures are timely gathered in 2005 and a veto should occur, we believe that, if a successful override should also take place in 2006, the proper result should be the suspension of the effectiveness of the measure. This should be the case despite the dictates of Article II, §17 that legislation take effect 30 days after the override. Lastly, we believe that, if the bill in question were vetoed, it would be necessary for the Secretary of State and election officials to accept the petition and promptly validate the signatures.

Sincerely,

Robert A. Zarnoch
Assistant Attorney General
Counsel to the General Assembly

Bonnie A. Kirkland
Assistant Attorney General

RAZ:BAK:ads