

EXHIBIT D

STATE BOARD OF ELECTIONS

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

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



Linda H. Lamone
Administrator

Ross Goldstein
Deputy Administrator

June 21, 2006

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

RE: Senate Bill 478 (2005 Session), Election Law, Early Voting

Dear Mr. Roskelly:

The local boards of election have 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. The results of the validation indicate that 16,924 names were accepted. This is an insufficient number of accepted names to meet the 1/3 submission requirement and to continue the petition process.

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.

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

Sincerely,

A handwritten signature in cursive script that reads "Linda H. Lamone".

Linda H. Lamone
Administrator

cc: State Board Members
Office of the Attorney General

E55

EXHIBIT E

STATE BOARD OF ELECTIONS
Policy 2001-01

Public Observation of Petition Verification

July 11, 2001
State Board Meeting, Annapolis, MD

The State Board of Elections was advised by the Attorney General's Office that the process of verifying the signatures on a petition, described in Maryland Annotated Code, Article 33, Section 6-207, being a staff function conducted outside any meeting of the local board of elections, is not subject to the Maryland Open Meetings Act, State Government Article, Title 10, Subtitle 5, and that, therefore, members of the public are not legally entitled to be present during the verification process.

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.

At the same time, the State Board resolved that the results of a petition verification, after the process is completed, should promptly be made available to the public.

EXHIBIT F

AFFIDAVIT OF GEORGE NORBERG

1. I am over eighteen (18) years of age, competent to testify, and I have personal knowledge of the facts and materials set forth herein.

2. I am employed by the United States Postal Service ("USPS") as the station manager for the branch office in the Eastport community of Annapolis, Maryland ("Eastport Post Office"). In this capacity, I am responsible for the day-to-day operations of the Eastport Post Office.

3. During the month of May 2006, the Eastport Post Office received at least 125 pieces of business reply letters addressed to the Marylanders for Fair Elections Committee with postmarks dated May 20-25, 2006.

4. As a result of undue delay, caused by inadvertent staffing shortages at the Eastport Post Office, these business reply letters were not processed or delivered to the Marylanders for Fair Elections Post Office Box in a timely manner. Had the 125 letters addressed to the Marylanders for Fair Elections been properly processed and delivered, all of these letters would have been delivered to the Marylanders for Fair Elections Post Office Box on or before May 31, 2006.

5. As a result of these undue delays, the aforementioned 125 letters were delivered to the Marylanders for Fair Elections Post Office Box on June 6 and June 7, 2006.

6. Neither the USPS, nor the Eastport Post Office, nor any other employee thereof, admits any liability or wrongdoing in connection with this matter. As stated, this matter arose as a result of inadvertent staffing shortages.

I SOLEMNLY AFFIRM under the penalty of perjury and upon personal knowledge that the contents of the foregoing affidavit are true.

6-23-06
Date

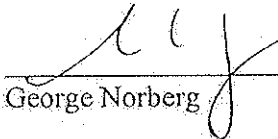

George Norberg

EXHIBIT 1

Confirmation Report - Memory Send

Page : 001
Date & Time: 06-08-06 14:57
Line 1 : 410 974 2010
Line 2 :
Machine ID : MD.STATE BOARD OF ELECTIONS

Job number : 942
Date : 06-08 14:51
To : 914102687725
Number of pages : 016
Start time : 06-08 14:51
End time : 06-08 14:57
Pages sent : 016
Status : OK

Job number : 942

*** SEND SUCCESSFUL ***

MARYLAND
STATE BOARD OF ELECTIONS

Linda H. Lemone
Administrator
Rosa Colistate
Deputy Administrator

FACSIMILE TRANSMITTAL SHEET

TO: Terry Raskelly, Marylanders for Fair Elections FROM: Linda H. Lemone

FAX NUMBER: 410-368-7723 DATE: June 8, 2006

SUBJECT: Referendum Questions - SB 478 and HB 1368

TOTAL NUMBER OF PAGES INCLUDING COVER 16

Urgent Please Reply For Review For your request For your information

NOTES/COMMENTS:

PO Box 6456, Annapolis, Maryland 21401
Voice: 410-389-2240 ext 1-800-332-0693
Fax: 410-974-2019
Home Page: <http://www.elections.state.md.us>
Candidate and Campaign Finance Fax: 410-974-5416

EXHIBIT 2

J. JOSEPH CURRAN, JR.
Attorney General

McDavis@ag.state.md.us

E-MAIL



DONNA HILL STATON
MAUREEN M. DOVE
Deputy Attorneys General

(410) 576-7036

TELECOPIER NO.

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

(410) 576-6356

WRITER'S DIRECT DIAL NO.

April 25, 2006

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

Re: Summaries of SB 478 and HB 1368 for Referendum Petition

Dear Ms. Lamone:

This letter provides the comments of this Office with regard to the request by Marylanders for Fair Elections for an advance determination of the accuracy of their summaries for the petitions to referendum of Senate Bill 478, 2005 Laws and House Bill 1368, 2006 Laws. Under Article XVI, §4 of the State 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 upon." Similarly, under Maryland Code Ann., Election Law Article ("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."

Senate Bill 478

We suggest that the summary be amended as follows:

- For the sake of clarity, the reference to Senate Bill 478 should be followed by the language "2005 Session."
- The summary should include a statement that the bill adds to the Election Law Article a new §10-301.1.

200 Saint Paul Place • Baltimore, Maryland 21202-2021
Main Office (410) 576-6300 • Main Office Toll Free (888) 743-0023 • D.C. Metro. (301) 470-7534
Consumer Complaints and Inquiries (410) 528-8662 • Health Advocacy Unit/Billing Complaints (410) 528-1840
Health Advocacy Unit Toll Free (877) 261-8807 • Homebuilders Division Toll Free (877) 259-4525 • Telephone for Deaf: (410) 576-6372

April 25, 2006

Page 2

- The reference to the hours during which early voting is available should be changed as follows: after the phrase "for 8 hours each day during the prescribed period," add "superseded by Chapter 61, Laws of Maryland 2006."
- The phrase "in the voter's assigned precinct on election day or . . ." should be added before "at an early voting place in the voter's county of residence."
- The summary should add that the bill has become effective as Chapter 5 of the Laws of Maryland 2006.

House Bill 1368

The summary does not disclose the following:

- By operation of Section 5, Sections 2, which contains many provisions to which the summary refers, and 4, which requires that certain regulations be adopted by a local board, apply only to Baltimore City Board of Elections ("Baltimore City"). According to the Maryland Department of State Planning, the definition in Section 5 in fact applies only to Baltimore City.
- Sections 2, 4, and 5 shall remain effective until June 30, 2008, at which time, with no further action required by the General Assembly, they shall be abrogated.
- A report on same day registration and voting is to be filed by the Office of the Attorney General and the State Administrator of Elections with the General Assembly on or before December 31, 2006.

We have identified suggested changes to the summary and have noted the provisions of the Election Law Article to which they pertain:

- EL § 2-102(c). The powers and duties of the State Board are to be exercised by an affirmative vote by a supermajority of the members of the State Board.
- EL § 2-103(c)(3). **This provision applies only to Baltimore City.** The State Board of Elections does not file suit on behalf of a registered voter or an applicant for voter registration; rather, the statute states that "a voter or applicant who has petitioned under paragraph (2) of this subsection may file the suit for injunctive relief if the State Administrator declines or fails to file suit."

- EL § 2-201.1(a)(2)(i). **This provision applies only to Baltimore City.** The language in the petition summary “[r]equiring local boards of election to adopt regulations relating to determination of voter registration eligibility and procedures and timetables for obtaining and processing information about voters’ change of address” is inaccurate because the statute only addresses changes in voters’ addresses and eligibility status. The word “changes” should be added directly before the phrase “voter registration eligibility.”
- EL § 2-206(b). **This provision applies only to Baltimore City.** This sub-section should read “[r]equiring local board of elections’ election director to make regular public reports, on a schedule determined by the State Administrator regarding the number and types of voter registration applications received, accepted and rejected and list the reason for rejection.”
- EL § 2-202(b)(11). This sub-section should read “[e]stablishing administration of voter registration and absentee voting for ballots at nursing homes and assisted living facilities in accordance with procedures established by the State Administrator of Elections.”
- EL § 2-303 (a)(2)(i). This language amends Senate Bill 478. This sub-section should read “[r]equiring local boards of elections to establish a separate voting precinct on the campus or within one-half mile of the campus to specifically serve of a private or public institution of higher education provided the institution has at least 500 registered voters who are students, faculty and staff who attend or work at the institution.”
- EL § 10-301.1(b)(2). This sub-section should read “[c]hanging early voting hours from 8 hours a day to thirteen hours a day running from a prescribed time from 7:00 A.M. to 8:00 P.M. each day.”
- EL § 10-301.1(c)(4). This sub-section should read “[r]equiring that State Board of Elections and each local board to inform the public about early voting and the designated locations in their respective jurisdiction through various forms of media, including a series of public service media announcements, mailings to all registered voters, and other efforts.”

April 25, 2006


Page 4

EL § 2-206(a)(12). This provision applies only to Baltimore City. This sub-section should read "requiring the election director, under the guidance of the local election board, shall to ensure that there is at least one working voting machine or device for every 200 registered voters at each polling place."

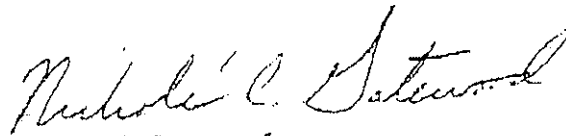
We also wish to call to your attention certain matters that do not relate directly to the petition's format, which is the subject of the advance determination, but that will relate to whether these bills ultimately may be petitioned to referendum. With respect to prior petition efforts, this Office has concluded 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. See Letter from Assistant Attorney Generals Robert A. Zarnoch and Bonnie A. Kirkland to Honorable Donald H. Dwyer, Jr (April 26, 2005) (copy attached). In addition, in 1977, Attorney General Burch concluded that, if the General Assembly repeals or amends a referred bill in good faith, the referendum concerning the original legislation should be removed from the ballot. See 62 Opinions of the Attorney General 405 (1977).

In the case of the petition in question, we have advised you that, based on Article XVI of the State Constitution, you are the appropriate official to make the advance determination. In making your determination on any revised proposal related to SB 478 and HB 1638, you are authorized to approve a summary that is consistent with this letter. If you have any questions about the approved summary, please do not hesitate to contact us.

Very truly yours,



Mark J. Davis
Assistant Attorney General



Nichole C. Gatewood
Staff Attorney

cc: Tom Roskelly, Chairman, Marylanders for Fair Elections

J. JOSEPH CURRAN, JR.
ATTORNEY GENERAL

DONNA HILL STATION
MAUREN DOVE
Deputy Attorney General



ROBERT A. ZARNOCH
Assistant Attorney General
Counsel to the General Assembly

BONNIE A. KIRKLAND
KATHRYN M. ROWE
SANDRA J. COHEN
Assistant Attorneys General

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

Corrected Copy

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.

Constitutional Provisions

An effort to petition to referendum a bill passed by the General Assembly is governed

The Honorable Donald H. Dwyer, Jr.
Page 2
April 26, 2005

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

The Honorable Donald H. Dwyer, Jr.

Page 3

April 26, 2005

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.

The Honorable Donald H. Dwyer, Jr.

Page 4

April 26, 2005

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 this

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*.

The Honorable Donald H. Dwyer, Jr.

Page 5

April 26, 2005

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.

The Honorable Donald H. Dwyer, Jr.
Page 6
April 26, 2005

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

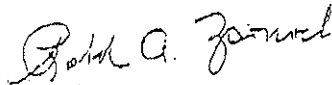
The last proffered construction of the referendum provisions of Article XVI, we believe, more fully comports with the purposes of the Referendum Article. Regardless of the possibility of a gubernatorial veto and a veto override, the petitioner has until May 31 "next after the session" at which the bill 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

EXHIBIT 3

CHAPTER 883

(House Bill 413)

AN ACT concerning

Legislative Bills - Presentment, Signing, Veto, and
effective date [[and Referendum]]

FOR the purpose of making certain changes relating to the
presentment, signing, veto, and effective date [[and
referendum]] of bills that have passed the General
Assembly, correcting certain language, and providing
for the submission of these amendments to the
qualified voters of the State of Maryland for their
adoption or rejection.

By proposing an amendment to the Constitution of Maryland

Article II - Executive Department
Section 17

By proposing an amendment to the Constitution of Maryland

Article III - Legislative Department
Section 30 and 31

[[By proposing an amendment to the Constitution of
Maryland

Article XVI - The Referendum
Section 1(a), 2 and 3(b)]]

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
MARYLAND, (Three-fifths of all the members elected to
each of the two Houses concurring), That the following be
and the same is hereby proposed as an amendment to
Section 17 of Article II - Executive Department, of the
Constitution of Maryland, the same, if adopted by the
legally qualified voters of the State, as herein
provided, to become a part of the Constitution of
Maryland:

Article II - Executive Department

17.

To guard against haste or partial legislation and
encroachment of the Legislative Department upon the
co-ordinate Executive and Judicial Departments, every
Bill which shall have passed the House of Delegates[[.]]
and the Senate shall, before it becomes a law, [[BE
SEALED WITH THE GREAT SEAL, AND]] be presented [[BY THE
PRESIDING OFFICER OF THE HOUSE IN WHICH IT ORIGINATED]]
to the Governor of the State; [;] [[WITHIN SIX DAYS OF
PASSAGE IF THE GENERAL ASSEMBLY IS IN SESSION. ANY BILL
PASSED DURING THE LAST TEN DAYS OF A REGULAR OR SPECIAL
SESSION SHALL BE SEALED WITH THE GREAT SEAL AND PRESENTED
BY THE PRESIDING OFFICER OF THE HOUSE IN WHICH IT

ORIGINATED TO THE GOVERNOR NO LATER THAN 15 DAYS AFTER ADJOURNMENT. WITHIN 30 DAYS AFTER PRESENTMENT.]] if [he] [[THE GOVERNOR]] he approves he shall sign it, but if not he shall return it with his objections to the House in which it originated, which House shall enter the objections at large on its Journal and proceed to reconsider the Bill; if, after such reconsideration, three-fifths of the members elected to that House shall pass the Bill, it shall be sent with the objections to the other House, by which it shall likewise be reconsidered, and if it pass by three-fifths of the members elected to that House it shall become a law; but in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill PRESENTED TO THE GOVERNOR WHILE THE GENERAL ASSEMBLY IS IN SESSION shall not be returned by [[the Governor]] WITH HIS OBJECTIONS within six days (Sundays excepted), [[after it shall have been presented to him, WHILE THE GENERAL ASSEMBLY IS IN SESSION,]] the same shall be a law in like manner as if he signed it[, unless the General Assembly shall, by adjournment, prevent its return, in which case it shall not be a law] , unless the General Assembly shall, by adjournment, prevent its return, in which case it shall not be a law.

ANY BILL PRESENTED TO THE GOVERNOR WITHIN SIX DAYS (SUNDAYS EXCEPTED), PRIOR TO ADJOURNMENT OF ANY SESSION OF THE GENERAL ASSEMBLY, OR AFTER SUCH ADJOURNMENT, SHALL BECOME LAW WITHOUT THE GOVERNOR'S SIGNATURE UNLESS IT SHALL BE VETOED BY THE GOVERNOR WITHIN 30 DAYS AFTER ITS PRESENTMENT.

Any bill [[which is]] so vetoed by the Governor [[following the adjournment of the General Assembly]], or any bill which fails to become a law by reason of not having been signed by the Governor following the adjournment of the General Assembly, shall be returned to the House in which it originated, immediately after said House shall have organized at the next regular or special session of the General Assembly. Said bill may then be reconsidered according to the procedure specified hereinabove. [[If the bill is]] ANY BILL [passed] ENACTED over the veto of the Governor, [[it]] OR ANY BILL WHICH SHALL BECOME LAW AS THE RESULT OF THE FAILURE OF THE GOVERNOR TO ACT WITHIN THE TIME HEREIN ABOVE SPECIFIED, shall take effect [on June 1 following.] 30 DAYS AFTER THE GOVERNOR'S VETO IS OVER-RIDDEN, OR ON THE DATE SPECIFIED IN THE BILL, WHICHEVER IS LATER, unless the bill is an emergency measure [to]] IN WHICH EVENT IT SHALL take effect when [passed] ENACTED. No such vetoed bill shall be returned to the Legislature when a new General Assembly of Maryland has been elected and sworn

since the passage of the vetoed Bill.

[[IF THE GOVERNOR NEITHER SIGNS NOR VETOES THE BILL WITHIN THE TIME HEREIN PRESCRIBED, THE BILL SHALL BECOME LAW.]]

The Governor shall have power to disapprove of any item or items of any Bills making appropriations of money embracing distinct items, and the part or parts of the Bill approved shall be the law, and the item or items of appropriations disapproved shall be void unless repassed according to the rules or limitations prescribed for the passage of other Bills over the Executive veto.

SECTION 2. AND BE IT FURTHER ENACTED, (Three-fifths of all the members elected to each of the two Houses concurring), That the following be and the same is hereby proposed as an amendment to Section 30 and 31 of Article III - Legislative Department, of the Constitution of Maryland, the same, if adopted by the legally qualified voters of the State, as herein provided, to become a part of the Constitution of Maryland:

Article III - Legislative Department

30.

Every Bill, when passed by the General Assembly, and sealed with the Great Seal, shall be presented BY THE PRESIDING OFFICERS OF THE HOUSE IN WHICH IT ORIGINATED TO THE GOVERNOR, who,] FOR HIS APPROVAL - [[WITHIN SIX DAYS OF PASSAGE IF THE GENERAL ASSEMBLY IS IN SESSION. ANY BILL]] ALL BILLS PASSED DURING [[THE LAST TEN DAYS OF]] A REGULAR OR SPECIAL SESSION SHALL BE PRESENTED TO THE GOVERNOR FOR HIS APPROVAL NO LATER THAN [[15]] 20 DAYS AFTER ADJOURNMENT. WITHIN 30 DAYS AFTER PRESENTMENT, [[THE GOVERNOR,]] if [[he]] THE GOVERNOR approves [[it,]] THE BILL, he shall sign the same in the presence of the presiding officers and Chief Clerks of the Senate and House of Delegates. Every Law shall be recorded in the office of the Court of Appeals, and in due time, be printed, published and certified under the Great Seal, to the several Courts, in the same manner as has been heretofore usual in this State.

31.

[No Law passed 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 be otherwise expressly declared therein.] A LAW PASSED BY THE GENERAL ASSEMBLY SHALL TAKE EFFECT THE FIRST DAY OF JUNE NEXT AFTER THE SESSION AT WHICH IT MAY BE PASSED.

UNLESS IT BE OTHERWISE EXPRESSLY DECLARED THEREIN OR PROVIDED FOR IN THIS CONSTITUTION.

[[THE GENERAL ASSEMBLY MAY BY PUBLIC GENERAL LAW ESTABLISH A UNIFORM EFFECTIVE DATE FOR ALL BILLS WHICH IT PASSES AND WHICH ARE SIGNED BY THE GOVERNOR. IN NO EVENT SHALL ANY BILL TAKE EFFECT PRIOR TO 30 DAYS AFTER IT HAS BEEN SIGNED BY THE GOVERNOR UNLESS IT IS AN EMERGENCY MEASURE TO TAKE EFFECT WHEN ENACTED, AND THE GENERAL ASSEMBLY MAY ESTABLISH A LATER EFFECTIVE DATE IN ANY BILL WHICH IT PASSES. IF THE GOVERNOR NEITHER SIGNS NOR VETOS THE BILL WITHIN THE TIME HEREIN PRESCRIBED, THE BILL SHALL BECOME LAW.]

BILLS PASSED OVER THE GOVERNOR'S VETO SHALL TAKE EFFECT 30 DAYS AFTER THE GOVERNOR'S VETO IS OVER-RIDDEN OR AT A LATER DATE IF SPECIFIED IN THE BILL.

SECTION 3. AND BE IT FURTHER ENACTED, (Three-fifths of all the members elected to each of the two Houses concurring), That the following be and the same is hereby proposed as an amendment to Section 1(a), 2 and 3(b) of Article XVI - The Referendum, of the Constitution of Maryland, the same, if adopted by the legally qualified voters of the State, as herein provided, to become a part of the Constitution of Maryland:

Article XVI - The Referendum

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; OR IF THE BILL BECOMES LAW WITHOUT THE SIGNATURE OF THE GOVERNOR.]]

[[2.]]

[No law] [[ANY BILL enacted by the General Assembly shall take effect]] [until the first day of June next after the session at which it may be passed,] [[30 DAYS AFTER IT HAS BEEN SIGNED BY THE GOVERNOR, OR AT A LATER DATE IF SPECIFIED IN THE BILL, unless it]] [contain] [[CONTAINS a Section declaring such law an emergency law and necessary for the immediate preservation of the public health or safety, and 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; provided, however, that said period of suspensio may be

extended as provided in Section 3 (b) hereof. If] (before said first day of June) [], WITHIN 30 DAYS OF EITHER THE SIGNING BY THE GOVERNOR, OR THE OVERRIDING OF THIS VETO, OR WITHIN 30 DAYS AFTER THE BILL BECOMES LAW WITHOUT THE SIGNATURE] [(OF THE GOVERNOR, OR PRIOR TO THE LATER EFFECTIVE DATE SPECIFIED IN THE BILL, 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; provided, however, that no measure creating or abolishing any office, or changing the salary, term or duty 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.]]

[[].

(b) If more than one-half, 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,] [[WITHIN 30 DAYS AFTER IT HAS EITHER BEEN SIGNED BY THE GOVERNOR OR THE GOVERNOR'S VETO IS OVERRIDDEN, OR WITHIN 30 DAYS AFTER IT HAS BECOME LAW WITHOUT THE GOVERNOR'S SIGNATURE, 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,] [[FOR THIRTY DAYS THEREAFTER, with like effect.]]

SECTION 4] 2. AND BE IT FURTHER ENACTED, That the foregoing section hereby proposed as an amendment to the Constitution of Maryland, at the next general election to be held in this State in November, 1974,

shall be submitted to the legal and qualified voters thereof for their adoption or rejection in pursuance of directions contained in Article XIV of the Constitution of this State. At that general election, the vote on this proposed amendment to the Constitution shall be by ballot, and upon each ballot there shall be printed the words "For the Constitutional Amendments" and "Against the Constitutional Amendments", as now provided by law. Immediately after the election, all returns shall be made to the Governor of the vote for and against the proposed amendment, as directed by Article XIV of the Constitution, and further proceedings had in accordance with Article XIV.

Approved May 31, 1974.

EXHIBIT 4

VETO DATES - 1965 - 2006

Last day of Session	Last veto date
April 10, 2006	May 26, 2006
April 11, 2005	May 26, 2005
April 12, 2004	May 26, 2004
April 7, 2003	May 22, 2003
April 8, 2002	May 16, 2002
April 9, 2001	May 17, 2001
April 10, 2000	May 18, 2000
April 12, 1999	May 27, 1999
April 13, 1998	May 21, 1998
April 7, 1997	May 22, 1997
April 8, 1996	May 22, 1996
April 10, 1995	May 24, 1995
April 11, 1994	May 26, 1994
April 12, 1993	May 27, 1993
April 10, 1992	May 26, 1992
April 8, 1991	May 24, 1991
April 9, 1990	May 25, 1990
April 10, 1989	May 25, 1989
April 11, 1988	May 27, 1988
April 13, 1987	June 2, 1987
April 7, 1986	May 27, 1986
April 8, 1985	May 28, 1985
April 9, 1984	May 29, 1984
April 11, 1983	May 31, 1983
April 12, 1982	June 1, 1982
April 13, 1981	May 19, 1981
April 7, 1980	May 27, 1980
April 9, 1979	May 29, 1979
April 10, 1978	May 29, 1978
April 11, 1977	May 26, 1977
April 12, 1976	May 17, 1976
April 7, 1975	May 15, 1975
April 8, 1974	May 31, 1974
April 9, 1973	June 1, 1973
April 8, 1972	June 9, 1972
April 12, 1971	May 28, 1971
March 31, 1970	May 26, 1970
March 25, 1969	May 28, 1969
March 26, 1968	May 7, 1968
March 28, 1967	May 4, 1967
March 29, 1966	May 6, 1966
March 30, 1965	May 4, 1965

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

----- x	:	
THOMAS ROSKELLY, et al.,	:	
	:	COPY
Plaintiffs,	:	
	:	
v.	:	Civil No. C-2006-115044
	:	
LINDA H. LAMONE, et al.,	:	
	:	Annapolis, Maryland
Defendants.	:	
----- x	:	June 29, 2006

MOTIONS HEARING

WHEREUPON, proceedings in the above-entitled matter commenced.

BEFORE: THE HONORABLE PAUL A. HACKNER, Judge

APPEARANCES:

FOR THE PLAINTIFFS:

JOHN H. WEST, Esquire
JAMES H. WEST, Esquire
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Towson, MD 21204

FOR THE DEFENDANTS:

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I N D E X

	<u>Page</u>
Preliminary Discussions	3
<u>Arguments:</u>	
James West, Esquire Attorney for the Plaintiffs	7
Rebuttal	53
Mark Davis, Esquire Attorney for the Defendants	37
Robert Zarnoch, Esquire Attorney for the Defendants	46

Keynote: "----" indicates inaudible in the transcript.

P R O C E E D I N G S

1
2 THE COURT: Good morning. Please be seated.

3 (A chorus of good mornings.)

4 THE COURT: This is the case of Thomas Roskelly, et
5 al. versus Linda Lamone, et al., C-06-115044. Counsel, could I
6 ask you to please identify yourselves, spell your last names
7 for the reporter.

8 MR. WEST: James West on behalf of Mr. Roskelly and
9 the Marylanders for Fair Elections.

10 THE COURT: Yes, sir.

11 MR. WEST: John West also on behalf of the
12 Plaintiffs.

13 THE COURT: All right. Yes, sir. And this
14 gentlemen?

15 MR. ROSKELLY: Mr. Roskelly.

16 THE COURT: Okay. Very good, sir. Thank you.

17 MR. DAVIS: Mark Davis on behalf of the State
18 Defendants, Linda Lamone and the State Board of Elections.

19 THE COURT: Yes, sir. Thank you.

20 MR. ZARNOCH: Robert Zarnoch on behalf of the same
21 Defendants, Z-a-r-n-o-c-h.

22 THE COURT: All right.

23 MS. LAMONE: Good morning, Linda Lamone.

24 THE COURT: Good morning, Ms. Lamone.

25 All right. Now I hope, as a preliminary I hope that

1 you all got the word that I wasn't going to start until 9:30 so
2 that nobody was here at 9:00 because I had a pre-existing
3 dental appointment. So this is the highlight of my morning so
4 far.

5 If you would like, let me I guess work backwards.
6 And I recognize that there's a hot deadline on this and I'm
7 going to accommodate that. My thought was candidly to hear
8 your arguments, I reviewed the file, I did as much research as
9 I could yesterday, and my thoughts were to hear your argument
10 and then give you a decision tomorrow morning at 9:00, give you
11 an oral opinion.

12 Would that meet your timing standards or would you
13 -- I mean I will, if you need a decision today I'll do it, I
14 may not be as articulate as I'd like to be perhaps.

15 MR. DAVIS: That's fine with the Defendants, Your
16 Honor.

17 MR. WEST: Your Honor, could I have just one
18 second?

19 THE COURT: Yes, absolutely. Go ahead.

20 (Pause.)

21 MR. WEST: Your Honor?

22 THE COURT: Yes, sir.

23 MR. WEST: The one concern, and I don't want to
24 rush the Court into a decision, but the one concern I have is
25 no matter how this proceeding turns out what is crucial is this

1 June 30 deadline which was mandated by the Maryland
2 Constitution. And no matter what happens we would ask the
3 Court in its order to order Ms. Lamone and the State Board of
4 Elections to preserve all of the records that have been filed,
5 to accept the final position that will be filed tomorrow which
6 will have 90,000 plus signatures in support of Senate Bill 478.
7 So that the record relating to this petition is filed timely
8 under the Maryland Constitution and is preserved no matter what
9 happens down the road.

10 THE COURT: Counsel, do you have any position on
11 that? It's not to say that it's going to be acceptable or that
12 it's going to meet your standards but at least to accept it, to
13 preserve it and so forth?

14 MR. DAVIS: We certainly have no objection to
15 accepting and preserving the records, Your Honor.

16 THE COURT: All right. Okay. So that would be,
17 again, I'm not aware that there's a difference between
18 resolving the case today or tomorrow. So with that
19 understanding I think that should satisfy you, is that correct,
20 Mr. West?

21 MR. WEST: Yes, it does. Thank you, Your Honor.

22 THE COURT: All right. That's fine. And again,
23 it's just, I think you all recognize I just learned of this
24 case yesterday afternoon and I want to make sure that I don't
25 overlook something.

1 The other thing I'm going to ask, I guess I just
2 want to make sure I don't forget and that's why I'm asking you
3 up front. There are a number of issues, some of which are sort
4 of threshold issues: the question of whether or not this
5 petition for judicial review is timely or untimely and so
6 forth. And again, and just sort of looking down the road to
7 see what might best suit the parties in terms of a record in
8 this case, if I were to decide the preliminary motion, and I
9 haven't prejudged anything, I'm just throwing out the
10 possibilities.

11 If I were to decide that the action is untimely
12 would you still like me to address the merits of it in the
13 event that the appellate court disagrees with me or would you,
14 I don't want to rule on a threshold issue and then have the
15 Court of Special Appeals or the Court of Appeals say well,
16 Hackner was wrong on that so go back and address it on the
17 merits.

18 To give you as much of my thoughts as I can on all
19 issues and then the Court can pick and choose whatever they
20 wish to accept or reject.

21 MR. DAVIS: Your Honor, we think that makes sense
22 in the interest of judicial economy for the Court to decide all
23 of the issues.

24 MR. WEST: We would agree with that.

25 THE COURT: All right. All right. Very good. So,

1 Mr. West it's your request for judicial review and I'm happy to
2 hear from you if you like.

3 MR. WEST: Thank you, Your Honor. May I use the
4 podium?

5 THE COURT: You're welcome to do that or if your
6 more comfortable behind counsel table that's fine as well.

7 MR. WEST: This will be fine, Your Honor.

8 Your Honor, I can appreciate the short time line
9 that you've been working under here and these are not easy
10 issues to grasp. It's certainly not an area of the law that
11 the average practitioner is familiar with.

12 But we are here in connection with the referendum
13 drive on Senate Bill 478. As the Court is aware from the
14 papers that have been filed, Senate Bill 478 deals with early
15 voting legislation that was passed by the General Assembly
16 over, passing it over a veto in January 2006.

17 The early voting legislation envisioned by Senate
18 Bill 478 would require early voting and polling locations in
19 all of the Counties of Maryland and the City of Baltimore from
20 the Tuesday through Saturday prior to the election day in both
21 the primary and the general.

22 And in the southernmost populace jurisdictions there
23 would be three locations for early voting and in every other
24 county there would be at least one location.

25 Senate Bill 478 was initially passed by the General

1 Assembly on April 9, 2005. The Governor vetoed the bill May
2 20, 2005. By January 17, 2006 both Houses of the General
3 Assembly overrode that veto. Now Article 16 of the Maryland
4 Constitution, Section 1A envisions that a registered voter can
5 petition to have an act placed on the ballot for referendum in
6 two situations.

7 Number one is when an act is passed by the General
8 Assembly and approved by the Governor. Number two is when an
9 act is passed by the General Assembly over the veto of the
10 Governor. That comes directly out of the language of Section
11 1A.

12 Marylanders for Fair Elections initiated the process
13 to place Senate Bill 478 on the ballot for referendum after
14 Senate Bill 478 was passed by the General Assembly over the
15 veto of the Governor. Which is exactly what Article 16,
16 Section 1A says.

17 The term "passed" is a defined term in Article 16.
18 Section 3C of Article 16 defines "pass" or "passed" as "...any
19 final action upon any act or part of an act by both houses of
20 the General Assembly." Section 3D then says it allows one to
21 collect signatures for petition at any time after the act is
22 passed.

23 I think its important to look at Senate Bill 478 in
24 light of the definition of passed that is set forth in Section
25 3C of Article 16 and the usage of that term in Section 1A. Was

1 the approval of Senate Bill 478 in April 2005 the "final
2 action" of both houses of the General Assembly on Senate Bill
3 478? The answer is obviously no. Both houses of the General
4 Assembly took up Senate Bill 478 again in January 2006 to
5 consider a veto override and in fact both houses of the General
6 Assembly, in their final action on Senate Bill 478, overrode
7 the Governor's veto in January 2006.

8 The plain language, Section 1A of Article 16 further
9 confirms the General Assembly's "final action" in connection
10 with 478 occurred at the time of the veto override. Section 1A
11 specifically states that a petition to submit an act to the
12 voters by referendum can occur upon the passage of an act over
13 the veto of a Governor.

14 Now the State contends that the petition must be
15 filed after the General Assembly initially approves the bill,
16 regardless of the Governor's veto. This argument makes no
17 sense for a number of reasons.

18 Number one, this argument ignores the definition of
19 passed as a "final action" of both houses of the General
20 Assembly. The veto override is the final action. The petition
21 process can then begin after the bill is passed into law
22 through veto override.

23 THE COURT: Let me interrupt you a second though.
24 Isn't the referendum supposed to take that gap from the time it
25 is an act to the time it becomes a law? I mean I think you

1 just said after it becomes a law it's still subject to the
2 referendum. Isn't that the whole problem? It has to be a bill
3 that's not yet law.

4 MR. WEST: Well, Section 1A of Article 16
5 specifically says that upon the veto override that one can
6 petition for referendum. So I do not think that is the, that's
7 not what the plain language Section 1A states. Otherwise that
8 phrase would not be in Section 1A.

9 THE COURT: All right.

10 MR. WEST: The State's argument ignored, not only
11 does it ignore Section 1A which acknowledges specifically that
12 a petition for referendum can be submitted if an act is passed
13 by the General Assembly over a veto of the Governor, but this
14 interpretation advanced by the State really makes no sense on a
15 common sense level.

16 If an act is vetoed by the Governor why would
17 someone go through the time, effort and expense of going
18 through the petition process? The bill at that point is dead,
19 it has been vetoed by the Governor. It is not the law. And
20 only in the unusual, extraordinary occurrence of a legislative
21 override of that veto, which requires three-fifths approval of
22 both houses of the General Assembly, is that act resuscitated
23 and brought back to life.

24 So I think that, and I think the Court of Appeals
25 has even recognized in the Salinger case that it would be a

1 futile effort to undergo the petition process in the event of a
2 gubernatorial veto.

3 Once the Senate Bill 478 had been passed into law
4 through a veto override did the petition process make sense in
5 this case.

6 Now on June 8, 2006 Ms. Lamone sent a letter to
7 Mr. Roskelly, the chairman of the Marylanders for Fair
8 Elections stating that she had made a determination based on
9 advice of the Office of the Attorney General that the petition
10 filed by Marylanders for Fair Elections was deficient.

11 Ms. Lamone was relying on the advice of the Office
12 of the Attorney General and stating that the petition process
13 should have occurred in 2005, at the time that the bill had
14 been vetoed by the Governor, rather than 2006. And I think
15 what comes through when you look at the letter of advice from
16 the Attorney General to Ms. Lamone is there is hardly a great
17 deal of confidence expressed in that advice and the Attorney
18 General has readily acknowledged that a court may very well
19 disagree with this opinion and therefore advised Ms. Lamone to
20 continue with the petition process.

21 Ms. Lamone also sent a letter to Mr. Roskelly on
22 June 21, 2006 stating that the petition filed by Marylanders
23 for Fair Elections could not continue for two reasons. Number
24 one, Ms. Lamone contended the Marylanders for Fair Elections
25 had not timely contested her decision that the petition was

1 deficient within 10 days of her June 8, 2006 letter.

2 And number two, Ms. Lamone contended that the
3 Marylanders for Fair Elections had failed to submit the
4 necessary number of signatures by May 31 to continue with the
5 petition process.

6 As set forth more fully in the complaint, Your
7 Honor, both of the bases relied upon by Ms. Lamone are
8 incorrect as a matter of law. And I'd just like to go through
9 that analysis with you.

10 Article 16, Section 2 requires a petition to be
11 filed with the Secretary of State. Then you go to the Election
12 Law Article and you look at Section 6-205(a)(2) which requires
13 the Secretary of State then to deliver the petition to the
14 State Board of Elections within 24 hours.

15 Under Section 6-206(a) of the Election Law Article
16 once the petition has been delivered to the State Board the
17 Administrator, Ms. Lamone, is required to review the petition
18 and determine whether it is deficient or not. Significantly,
19 the legislature has defined the term "petition". And that
20 definition is found at Section 6-101(i) of the Election Law
21 Article.

22 And petition means "All of the associated pages
23 necessary to fulfill the requirements of a process established
24 by law to put an act on the ballot". And you look further to
25 Section 6-201(a) of the Election Law Article and that requires

1 a petition to contain not less than the total number of
2 signatures required by law. Marylanders for Fair Elections has
3 not to this point filed a petition, as that term is defined
4 under Maryland Law, with all of the associated pages necessary
5 and all the signatures required by law to place Senate Bill 478
6 on the ballot.

7 And I think what's crucial here in this analysis is
8 if we look at Section 3B of Article 16 of the Maryland
9 Constitution, and that section makes clear that there is only a
10 single referendum petition that is filed. And that is filed on
11 June 30. There is not one petition that is filed on May 31 and
12 a second petition that's filed on June 30, there is only one
13 petition and that is filed on June 30.

14 Section 3B refers to a complete petition and what is
15 required to complete the referendum petition. And when you
16 read Article 16, Section 3B of the Maryland Constitution,
17 Section 6-101(i) --

18 THE COURT: Let's stick with B since you directed
19 my attention to it.

20 MR. WEST: Okay.

21 THE COURT: It says "If more than one-third but
22 less than the full number of signatures required to complete
23 any referendum petition is filed on or before the first day of
24 June..." so doesn't that suggest that there is an incomplete
25 petition that's been filed and then you complete it?

1 MR. WEST: But, the thing --

2 THE COURT: You're reading this as there is
3 nothing, that whatever has been filed so far is nothing until
4 it's all filed.

5 MR. WEST: What has been filed so far is
6 signatures, it is not the petition. Section 3B, I think -- in
7 Section 3B of Article 16 read together with Section 6-101(i),
8 Section 6-201(a), when you read all of those together what is
9 clear is that you have one unitary petition that's filed on
10 June 30. What is required to be filed by May 31 is signatures,
11 it's not the petition.

12 THE COURT: Well, if I follow your argument to its
13 conclusion than why are we here? You haven't filed anything so
14 there's nothing to debate.

15 MR. WEST: Well, the reason we are here is because
16 the Administrator has been a determination or has at least
17 communicated to the Plaintiffs that the petition process can't
18 continue because what has been filed so far is deficient as a
19 matter of law. And that's why we're here for a declaratory
20 judgment that that determination is incorrect.

21 THE COURT: So you're not really requesting
22 judicial review, you're filing an independent action. Because
23 your caption is a judicial review. A judicial review can only
24 be filed after there has been a determination. Your position
25 is that you can't have a determination until the petition has

1 been filed.

2 MR. WEST: Right.

3 THE COURT: So I then come to the question, then
4 have you filed it prematurely?

5 MR. WEST: Well, I think that if we waited any
6 longer to file this petition then we would be subjecting
7 ourselves to potential further late filing.

8 THE COURT: Okay.

9 MR. WEST: And it's really just to preserve the
10 record. I do agree with you, Your Honor, that the --

11 THE COURT: I'm not saying that the declaratory
12 judgment as a remedy is necessarily inappropriate, I'm just, in
13 terms of a judicial review, as I understand it is an
14 administrative appeal so to speak. That can only happen if
15 there is a determination. And your view is that it has to come
16 only after a petition has been filed.

17 MR. WEST: Right.

18 THE COURT: And so you get into a sort of
19 circuitous argument I guess.

20 MR. WEST: Well, that is correct, Your Honor. And
21 I think that our position is that any determination that the
22 Administrator made in this case was required to take place
23 after the filing of the petition.

24 THE COURT: Okay.

25 MR. WEST: So really the reason we are here is

1 because we had gotten an indication from the Administrator that
2 what has been done is incorrect as a matter of law and we
3 needed the Court to intervene right away to make sure the
4 petition process goes forward as the Constitution envisions.

5 THE COURT: Okay.

6 MR. WEST: When you look at Section 3B of Article
7 16, Section 6-101(i), Section 6-201(a), all together it is
8 clear that the Marylanders for Fair Elections has not filed its
9 petition with all the associated pages necessary and all
10 required signatures. This will be done by tomorrow. There are
11 over 90,000 signatures that will be filed as of tomorrow in
12 support of Senate Bill 478.

13 Because --

14 THE COURT: You mean in support of the petition.

15 MR. WEST: Yes.

16 THE COURT: In support of the referendum on 478.

17 MR. WEST: Yes. Yes. Thank you.

18 Because Marylanders for Fair Elections has not filed
19 its petition, as that term is defined by Maryland Law, Ms.
20 Lamone's determination that whatever was filed on May 31 was
21 deficient, was premature. That decision should not have taken
22 place until after the final petition was filed.

23 Once the petition is filed Ms. Lamone can then make
24 her determination. If she feels based on advice of counsel
25 that this petition should have occurred back in 2005, she can

1 communicate that to Mr. Roskelly and Marylanders for Fair
2 Elections. And then at that point the Plaintiffs will have 10
3 days to seek judicial review under 6-210(e)(i).

4 In addition to the premature determination of
5 deficiency, Ms. Lamone also ignored the plain language of the
6 Election Law Article by seeking to verify the signatures that
7 were filed on May 31 prior to Marylanders for Fair Elections
8 filing its petition.

9 Section 6-207(a) of the Election Law Article is
10 clear, upon the filing of a petition the staff of the Election
11 authority shall proceed to verify the signatures contained in
12 the petition. Because Marylanders for Fair Elections has not
13 filed a petition with all the associated pages necessary under
14 Maryland Law, including all the required signature pages,
15 Ms. Lamone improperly proceeded to verify the 20,221 signatures
16 submitted by the Plaintiffs on May 31, 2006.

17 Once the final petition is filed, as required by
18 Section 3B of Article 16, on June 30 the Administrator can then
19 proceed to have the signatures verify. This view is consistent
20 with the Court of Appeals view of the referendum petition
21 process under Article 11A of the Maryland Constitution and the
22 case of Thicker v. Denny, 326 Md. 626 at 632 --

23 THE COURT: Give me the cite again, please.

24 MR. WEST: 326 Md. 626 at 632. The Court there
25 acknowledged that a petition under Article 11A of the Maryland

1 Constitution which deals with petitions at the county level,
2 that a petition is complete when the petition has the requisite
3 number of signatures.

4 Ms. Lamone's contention that the results of the
5 validation of signatures submitted by May 31 preclude
6 Marylanders for Fair Elections from continuing the petition
7 process is premature and should never had happened to this
8 point.

9 Even though the Administrator is required by law to
10 wait until the final petition was filed to enter into the
11 verification process, what has occurred, the verification
12 process that apparently has occurred to this point is subject
13 to some pretty serious questions.

14 As the Court has probably seen from the pleadings,
15 the Administrator has determined that Marylanders for Fair
16 Elections was 138 signatures short of the one-third threshold
17 based on the verification process that occurred. The
18 Administrator has taken the position that these signatures,
19 there should have been 17,062 verified signatures filed by May
20 31 and that they were 138 short based on the verification
21 process that occurred.

22 There are a couple of problems with what happened
23 here. First of all, I think it's important to point out that
24 this process took place in secret. Marylanders for Fair
25 Elections asked to observe the process and was flat out refused

1 and told that even if the local boards of elections that
2 actually do the verifications were to agree to have observers
3 come in and observe the process, the State Board of Elections
4 said no, there were, no observers were to be allowed.

5 And secondly, and really more importantly, Your
6 Honor, is there were significant problems with the database
7 that was used to perform the verification of signatures. And
8 this has all developed quickly, Your Honor. We just found out
9 about these things in the last day.

10 And I don't have witnesses and I don't have an
11 affidavit, but I would like to make a proffer to the Court
12 through this argument as to what we found out because it does
13 raise very serious questions about the validity of what has
14 happened here in this verification process.

15 The State has implemented for the first time in its
16 history in 2006 a state-wide voter registration database called
17 MD-voters. And this has never previously been used in an
18 election. Up until this point each county had its own
19 individual database that they tracked registered voters with.

20 There have been significant problems implementing
21 the MD-voters database and someone who is not terribly
22 technology savvy, I can appreciate that it must be a very
23 daunting task to incorporate 24 different jurisdictions
24 databases into one state-wide database. But as you might
25 imagine, there have been problems.

1 When we have reached out and spoken to members of a
2 handful of the local boards of elections yesterday. And what
3 comes through when you talk to these people is that there is a
4 very low degree of confidence in the MD-voters database. And
5 not only is there a low degree of confidence in the accuracy of
6 the results through MD-voters, but the training has really been
7 insufficient.

8 In one example that we heard about there was a
9 conference call among local boards of elections staff members
10 where they were supposed to walk through how to use the MD-
11 voters database and apparently the screen that they were
12 looking at on the conference call went blank. So they had no
13 way of seeing what the instructor was talking about on the
14 conference call and they had to sort of envision what was being
15 told to them orally.

16 Now, I think its important that the Court understand
17 how different of an approach different counties have gone about
18 this verification process. And this really raises some pretty
19 serious concerns about what the overall results of this process
20 are.

21 There is the MD-voters database which is the state-
22 wide database and then each county apparently continues to
23 maintain its own county database, the Legacy database. In
24 Harford County we learned that the local board of elections
25 there ran signatures through the Maryland database and the

1 local Harford County database before sending in the results of
2 the verification process.

3 In Montgomery County, and this is we really learned
4 about a pretty significant problem, it is my understanding that
5 they used the MD-voters database to verify the signatures that
6 were submitted in support of a petition for referendum on
7 Senate Bill 478 and turned in the results to the State Board of
8 Elections.

9 After doing so it was recognized that at least one
10 of the staff members had been inputting the information
11 completely wrong into the MD-voters. They went back and
12 checked the invalidated signatures on their local database and
13 found out that 121 of the signatures that had been invalidated
14 using MD-voters were in fact valid, these were actually
15 registered voters in Montgomery County.

16 And what occurred at that point was that the
17 Montgomery County Board of Elections then sent a letter to the
18 Administrator saying we realized we made a mistake in using MD-
19 voters and we are submitting an additional 121 names to the
20 State Board that support the petition on 478. And I think this
21 happened earlier this week, I think maybe Monday.

22 And what was the reaction of the State Board
23 Administrator? Was it thank you for taking the time to get it
24 right? Was it we value the integrity of the petition process
25 and we want to make sure that every signature counts? No.

1 What happened was counsel for the Administrator sent a letter
2 to Kevin Karpinsky who is the attorney for the Montgomery
3 County Board of Elections saying that the conduct of the
4 Montgomery County Board of Elections was illegal.

5 And I have a copy of the letter that was sent to the
6 Montgomery County Board of Elections if Your Honor would like
7 to see them.

8 THE COURT: I'm not sure how appropriate it is for
9 me to start receiving evidence at this point.

10 MR. WEST: Well, I don't think it was that ---
11 being surprised by their side because they were the ones that
12 sent the letter, but I will proffer that that's what occurred
13 if you don't want the letter.

14 THE COURT: It's not that I don't want it, I just
15 want to know what the parameters are if this is an evidentiary
16 hearing are you going to argue the issues that are presented by
17 the pleadings.

18 MR. WEST: The reason for it is that this all came
19 about yesterday. This is all --

20 THE COURT: All right. Nobody stood up and
21 objected to your proffer, so.

22 MR. WEST: Right.

23 MR. DAVIS: Your Honor, I object to the proffer. I
24 think that the Court does need to establish some parameters.

25 THE COURT: I wasn't inviting an objection.

1 MR. DAVIS: Well, I was waiting for the invitation
2 in fact. I think counsel got pretty far afield. This law suit
3 is a moving target. It's very different from what we saw
4 filed. Today is Thursday, it filed Tuesday and I didn't get
5 the papers until 4:00 o'clock Tuesday afternoon and --

6 THE COURT: I'm going to stick with the pleadings.

7 MR. DAVIS: Thank you.

8 THE COURT: Okay, counsel, I think in all fairness.
9 I realize that it's a moving target from your perspective as
10 well, but --

11 MR. WEST: We're under a very tight time line here,
12 Your Honor.

13 THE COURT: Yes, but I --

14 MR. WEST: We're learning as we go and every time
15 we uncover another stone we see another problem. And that's
16 why --

17 THE COURT: The problem is I have to make a
18 decision based on a certain set of allegations and certain
19 responses and I can't have a dialogue in which we sort of feel
20 our way through the complaint as we go.

21 MR. WEST: All right. That's fine, Your Honor.
22 Thank you.

23 What I think is important and if it would be
24 acceptable to the Court I will make this in the spirit of a
25 proffer, because if the Court's not going to accept the

1 evidence --- no one is disputing that these 121 signatures that
2 were found to be valid by the Montgomery County Board of
3 Elections were filed on May 31. And no one is disputing in
4 fact that these are valid signatures.

5 What is being disputed is the timing of the
6 discovery by the Montgomery County Board of Elections
7 apparently as to when these were determined to be valid. And I
8 think that what happened in Montgomery County raises serious
9 concerns about what is going on state-wide because some
10 counties are only using the MD-voters database to verify
11 signatures.

12 And I think what happened in Montgomery County
13 really highlights the need to cross-check in every county where
14 signatures have been invalidated those allegedly invalid
15 signatures with the county database. I think that's the only
16 way that we're going to be sure that the process has occurred
17 the way its supposed to occur and that people who have signed
18 on in support of the referendum for Senate Bill 478, that their
19 signature counts.

20 I am aware that Baltimore County and Prince George's
21 County at least, we only talked to a handful of the local
22 boards, but those two counties which are two of the largest in
23 Maryland only used the MD-voters database and they did not
24 cross-check the results with their own county database.

25 And I would make a proffer to the Court, I have an

1 affidavit from Robert Antonetti who is the Administrator in
2 Prince George's County who has said, it was verified that they
3 only tested the signatures through the MD-voters database, that
4 they did not test them with the county database and that to
5 ensure the accuracy of the verification process that these
6 should be run through the county database. It would take
7 minimal time and effort to do so if the Court ordered the
8 invalidated signatures to be returned to the local boards to be
9 run through the county database.

10 MR. DAVIS: I object to the proffer, Your Honor.

11 THE COURT: All right. Your objection is noted.

12 MR. WEST: Under 6-209(a)(2) of the Election Law
13 Article the Court has wide discretion to assure the integrity
14 of the electoral process. I think its appropriate for this
15 Court to order the Administrator to return all of the
16 invalidated signatures to the local boards to have them cross-
17 checked with the local databases. That is the only way we are
18 going to get the answer here because of the serious concerns
19 that exist in connection with MD-voters.

20 There is one final issue, Your Honor, in connection
21 with the number of signatures that have been counted in
22 connection with the May 31 filing and that deals with the
23 problems that occurred at the Eastport Post Office which are
24 set forth in the complaint.

25 THE COURT: Before you move into that, I'm trying

1 to recall the number of signatures that were deemed
2 unqualified.

3 MR. WEST: The total number was 3,159 for the May
4 31 filing.

5 THE COURT: I'm sorry, say the number again, three
6 thousand what?

7 MR. WEST: 3,159 I believe was the number.

8 THE COURT: Okay. Thank you.

9 MR. WEST: And that ---

10 THE COURT: So you were short 138, but --

11 MR. WEST: On the State's count short 138, but if
12 you add in the 121 from Montgomery County than you're only
13 short 17.

14 THE COURT: I hear you. Okay.

15 MR. WEST: And I'm highly confident after talking
16 to the local boards of election that if we run these
17 invalidated signatures through the local databases there will
18 be at least 17 that come up.

19 Under this last point about the post office, there
20 were at least 125 letters that were post-marked between May 20
21 and 25 that were delivered to the Eastport Post Office which is
22 that's where all of the signatures in support of Senate Bill
23 478 were being sent. And because of staffing shortages and
24 through no fault of Marylanders for Fair Elections these
25 letters were not delivered to the Marylanders for Fair