
IN THE
SUPREME COURT OF MARYLAND

September Term, 2024

No. 26

MARYLAND STATE BOARD OF ELECTIONS, et al.,

Appellants,

v.

ANTHONY J. AMBRIDGE, et al.,

Appellees.

On Appeal from the Circuit Court for Anne Arundel County
(Cathleen M. Vitale, Judge)

BRIEF OF APPELLANT MARYLAND STATE BOARD OF ELECTIONS

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BRIEF OF APPELLANT

STATEMENT OF THE CASE

The Maryland State Board of Elections prepares the “content and arrangement” of all ballots used in Maryland elections. Md. Code Ann., Elec. Law § 9-202(a) (LexisNexis 2023). This appeal presents the issue of whether “preparing the content and arrangement of the ballot” also includes a broad duty to ensure that each ballot question meets all applicable legal requirements.

On September 5, 2024, twenty-three voters registered in Baltimore City filed a petition in the Circuit Court for Anne Arundel County seeking judicial review of the

Baltimore City general election ballot.¹ Four days later, on September 9, the registered voters filed the operative petition in this case, bringing claims under both § 9-209 and § 12-202 of the Election Law Article. The petition alleged that the State Board had acted impermissibly in certifying Ballot Question F, which addresses a proposed charter amendment, on the Baltimore City general election ballot. The voters asserted that the proposed charter amendment was improper “charter material.” They also alleged that the language of the question itself was too unclear to be easily understood. They therefore asked the circuit court to nullify the question, and thereby preclude it from appearing on the ballot, and to return the ballot question to the Baltimore City Solicitor for redrafting.

Having neither drafted the question nor reviewed the legality of its qualification, the State Board took no position on the voters’ substantive challenges. The State Board opposed the petition on procedural grounds, though, arguing that neither provision of the Election Law Article on which the voters relied permitted them to challenge Ballot Question F in this manner.

After a hearing on September 16, 2024, the circuit court ruled in the voters’ favor. Finding that both Election Law §§ 9-209 and 12-202 are proper vehicles, the circuit court

¹ On September 13, 2024, the same registered voters, represented by the same attorney, filed a complaint in the Circuit Court for Baltimore City against the State Board and Baltimore City Board of Elections, challenging Ballot Question F under § 12-202 of the Election Law Article. The voters also sought emergency injunctive relief preventing the State Board from mailing ballots to city voters. The State Board opposed the request for injunctive relief and moved to dismiss the complaint. That matter remains pending before the circuit court. *Anthony J. Ambridge, et al. v. Maryland State Board of Elections, et al.*, Case No. C-24-CV-24-002707 (Cir. Ct. for Baltimore City).

ruled that Ballot Question F poses improper “charter material” and that its language is too unclear to be easily understood. The circuit court therefore nullified the question and ordered that the election results as to the question not be certified.

On September 19, 2024, both the City and MCP HP Baltimore, LLC moved to intervene in the circuit court. After a hearing on September 20, the circuit court granted both requests for intervention. On that same day, all three parties noticed appeals of the circuit court’s judgment directly to this Court under Election Law § 12-203(a).

QUESTIONS PRESENTED

1. Did the circuit court err in interpreting ballot “content,” under Election Law §§ 9-209(a) and 9-205(2), to include a ballot question’s underlying eligibility to qualify for and remain on the ballot, where this Court has already held, in *Ross v. State Board of Elections*, 387 Md. 649 (2005), that ballot “content” does not include a candidate’s underlying eligibility to qualify for and remain on the ballot?

2. Did the circuit court err in ruling that laches does not bar the registered voters’ challenges under Election Law § 12-202 when the voters filed their claim three days after ballot printing had begun, but the ballot question they challenge qualified for the ballot six months earlier and was certified 37 days earlier?

STATEMENT OF FACTS

The Legal Framework Governing Ballot Questions

Article XI-A, § 5 of the Maryland Constitution permits amendments to the Charter of Baltimore City by either of two methods. A charter amendment may be proposed in a

resolution adopted by the Mayor and City Council. Md. Const. art. XI-A, § 5. Alternatively, a charter amendment may be proposed in a petition signed by “not less than . . . 10,000” voters registered in the city. *Id.* Under either method, the proposed amendment is “submitted to the voters of the City . . . at the next general or congressional election occurring after the passage of the resolution or the filing of the petition.” *Id.* If a majority of votes are cast in the amendment’s favor, the proposed amendment is adopted into the charter 30 days after the election. *Id.*

Title 7 of the Election Law Article governs how a charter amendment moves from a proposal to an election. Elec. Law § 7-101(3)(iii). For an amendment proposed by resolution, such as the one in this case, a ballot question relating the amendment to voters “qualifies” for placement on the ballot upon “passage [by the City Council] of a resolution proposing the amendment.” *Id.* § 7-102(c)(3)(i). The State Board plays no role in qualifying the ballot question, which earns a place on the ballot the moment a resolution passes.

Election Law § 7-103 assigns responsibility for certifying ballot question language and governs how those questions must be drafted. The responsibility for drafting a charter amendment question for the voters of Baltimore City falls on the Baltimore City Law Department. Elec. Law § 7-103(c)(3)(i). The Law Department must certify the language of the question to the State Board “not later than the 95th day before the general election.” *Id.* If the Law Department fails to certify a question’s language in time, it falls to the “clerk of the circuit court” to prepare and certify the question language before the first Friday in

August. *Id.* § 7-103(c)(3)(ii). In either event, the law does not grant the State Board any authority to prepare or certify ballot language.

The ballot question itself must contain five components: “(1) a question number or letter as determined under subsection (d) of this section; (2) a brief designation of the type or source of the question; (3) a brief descriptive title in boldface type; (4) a condensed statement of the purpose of the question; and (5) the voting choices that the voter has.” Elec. Law § 7-103(b). The City Law Department is responsible for ensuring that its drafted language sufficiently contains all five components. *Id.* § 7-103(c)(3)(i).

The Election Law Article does not task or authorize the State Board to review, revise, or otherwise engage with the language of a ballot question certified under Election Law § 7-103(c)(3). Instead, upon receipt of certified ballot language, the State Board and local boards of election are responsible for notifying voters of each question. Elec. Law § 7-105. The text of each certified ballot question must be “posted or available for public inspection in the office of the State Board and each applicable local board for 65 days prior to the general election.” *Id.* § 7-105(d)(1). And voters must be affirmatively notified of ballot questions posed in their resident jurisdictions by specimen ballot mailed at least one week before election day, or by mass communication campaign conducted at least three weeks before election day. *Id.* § 7-105(a).

For charter amendments arising out of petitions, the State Board and local boards of elections are more involved. Charter amendment questions petitioned to the ballot must contain the same five components, Elec. Law § 7-103(b), but may be drafted by the petitioning individuals or organization, *id.* § 7-103(c)(5). A completed charter amendment

petition must be filed with the “appropriate governmental body . . . not later than the 99th day before the general election,” *id.* § 7-104(b), and thereafter forwarded to the appropriate board within 24 hours, *id.* § 6-205(a)(3). Once the petition is received by the State Board or a local board, the “chief election official of the election authority shall review the petition.” *Id.* § 6-206(a).²

A chief election official’s review of a charter amendment petition must evaluate it for six potential deficiencies. Elec. Law § 6-206(c). Pertinent here, the chief election official reviews the legal sufficiency of the petition and the referred amendment and determines whether the charter amendment would be unconstitutional or is otherwise prohibited by law. *Id.* § 6-206(c)(5). In undertaking this legal review, the chief election official must seek “the advice of the legal authority.” *Id.* For both the State Board and the Baltimore City Board of Elections, the Office of the Attorney General is the “legal authority.” *Id.* § 6-101(f).

If the chief election official determines that a petition suffers from a legal deficiency, such as the legal impermissibility of the proposed charter amendment, the chief election official must “declare the petition is deficient” and reject the ballot question. *Id.* § 6-206(c). Any “person aggrieved” by the legal deficiency determination may seek judicial review within 10 days. *Id.* §§ 6-209(a)(1), 6-210(e)(1). By operation of law, the officers of the

² The chief election official of a local board of elections is the Election Director. Elec. Law § 2-206(7). The chief election official of the State Board is the State Administrator. *Id.* § 2-103(b)(9).

petition sponsors' campaign finance entity are parties to that judicial review proceeding. *Id.* § 7-104(c)(1).

The State Board's Certification of the General Election Ballot

Entirely separate from the State Board's duty to review petitions and accept legislatively qualified ballot questions, the State Board has the responsibility to certify "the content and arrangement" of the ballots to be used in every election. Elec. Law § 9-202(a). Ballot "content" consists of (1) a heading at the top of the ballot; (2) a statement of each qualified question; (3) the title of each office in the election; (4) the names of each candidate certified to run for each office in the election; (5) each candidate's party designation; (6) space for a voter to cast a write-in vote for each office; and (7) instructions for completing the ballot. *Id.* § 9-205. Ballot "arrangement" refers to the ordering of candidates and questions in accordance with the rubric provided in Election Law §§ 9-210 and 9-211.

In addition to specifying the exact content and arrangement of the ballot, Title 9 of the Election Law Article imposes broader requirements on ballots used in Maryland. Ballots used in an election must be "as uniform as possible," Elec. Law § 9-204(a), with absentee and provisional ballots mirroring the content of their polling place counterparts, *id.* § 9-213. Paper ballots must be printed "in plain, clear type in blank ink." *Id.* § 9-215(a)(1). And local boards must ensure a supply of ballots that meets the needs of the registered voters in their local jurisdiction. *See id.* § 9-215(b). Finally, Election Law § 9-203 imposes normative benchmarks for ballots, mandating that "each ballot shall"

(1) be easily understandable by voters;

- (2) present all candidates and questions in a fair and nondiscriminatory manner;
- (3) permit the voter to easily record a vote on questions and on the voter's choices among candidates;
- (4) protect the secrecy of each voter's choices; and
- (5) facilitate the accurate tabulation of the choices of the voters.

The State Board must certify the “content and arrangement” of the ballot “at least 64 days” before the general election. Elec. Law § 9-207(a)(2). On the same day as certification, the State Board must also publicly display the final “content and arrangement” of the ballot on its website. *Id.* § 9-207(a), (c). After three days of public display, the law permits the State Board to begin printing the ballot for use in the election. *Id.* § 9-207(e).

Errors in the “content and arrangement” of a ballot may be addressed in one of two ways. An error can be communicated to the State Administrator within two days of ballot certification and fixed by internal processes. *See* Elec. Law § 9-207(e) (printing to begin after correction of noted errors); *id.* § 9-209(c) (providing judicial review of the State Administrator’s decision to *not* correct a noted administrative error). Alternatively, a registered voter may seek judicial review of “the content and arrangement” of the ballot, “or to correct any administrative error,” by filing a sworn petition in the Circuit Court for Anne Arundel County within two days of certification. *Id.* § 9-209(a). The circuit court may afford relief by correcting the “administrative error” on its own; issuing a show-cause order why an “administrative error” should not be corrected; or “tak[ing] any other action required to provide appropriate relief.” *Id.* § 9-209(b). Judicial review of the ballot may not be initiated, however, after the 62nd day before the election. *Id.* § 9-209(c).

Baltimore City Certifies a Charter Amendment Question to the State Board

On March 4, 2024, the Baltimore City Council passed Council Bill 23-0444. (E. 37.) The bill resolved to amend Article I, § 9 of the City Charter, in accordance with Article XI-A, § 5 of the Maryland Constitution, by placing a ballot question before the City’s voters at the 2024 general election. (E. 38.) The Mayor signed Council Bill 23-0444 on March 11, 2024, and the Chief Solicitor for Legal Advice and Opinions of the City Law Department approved the bill for “Form and Legal Sufficiency” on March 12, 2024. (E. 39.)

One month later, on April 19, 2024, plaintiff Anthony Ambridge, a registered voter who resides in Baltimore City, contacted the Chief Solicitor by email. (E. 65-66.) Mr. Ambridge asked to review the language of the ballot question and to suggest changes or edits to that language before the question was “sent to State for Certification.” (E. 66.) Having received no response, Mr. Ambridge followed up on May 13 with a second email requesting an opportunity to “weigh[] in on the short title of the referendum, before it is sent to State Board of Elections.” (E. 65.) The Chief Solicitor responded that same day and declined input “from any group or individual other than those required by the law.” (E. 64.)

On July 16, 2024, Mr. Ambridge emailed the Office of the Attorney General to request the same thing: an opportunity to review the ballot question language “before it is sent to State Board of Elections for Certification.” (E. 67-68.) Two days later, Mr. Ambridge forwarded that email to the State Board’s assigned assistant attorney general and

requested acknowledgment that the email had been received. (E. 67.) The State Board’s attorney acknowledged his personal receipt of the email. (E. 67.)

On August 2, 2024, the City Solicitor transmitted to the State Board a letter certifying the language of the ballot question in accordance with Election Law § 7-103(c)(3)(i). (E. 40.) The letter noted that it “provided the form in which the proposed amendment is to be submitted to the voters (which has been drafted and approved by the Department of Law).” (E. 40.) It identified the question as “Ballot Question F.” (E. 40.) The City Solicitor provided courtesy copies of the letter to multiple public officials, including the Mayor of Baltimore, the Attorney General, and Chief Solicitor of the City Law Department. (E. 41.)

On September 2, 2024, the State Board posted to its website the final content and arrangement of all ballots to be used in the 2024 general election. (E. 44.) This included the general election ballot for Baltimore City, which presented Ballot Question F. (E. 45.)

Voters File a Challenge to the Qualification and Certification of Ballot Question F on September 5, But They Do Not Add Their Claim Under Election Law § 12-202 Until September 9.

On September 5, 2024, Mr. Ambridge and 22 other registered voters who reside in Baltimore City filed a one-page petition for judicial review of the Baltimore City general election ballot under Election Law § 9-209(a). (E. 31.) On September 9, the registered voters amended their petition to add a cause of action under Election Law § 12-202(a), and filed a memorandum explaining the basis for the petition. (E. 35.) The petition purported to seek review of the ballot’s “content”—specifically, Question F—by challenging the legal propriety of the charter amendment that the question proposed and the clarity of the

language that the question used. (E. 35.) The additional cause of action challenged Question F on the same substantive bases, but under the provision that permitted judicial relief for any “act or omission” that violated a law related to an election. (E. 35.)

The State Board responded to the petition on September 13, 2024. Although the State Board took no position on the substantive arguments against Question F, it sought dismissal of the petition on procedural grounds. First, the State Board argued that judicial review of a ballot’s “content” under § 9-209 does not encompass substantive challenges to the legality of a ballot question. Second, the State Board argued that even though a § 12-202 suit can be an appropriate vehicle for mounting such a challenge, laches barred plaintiffs’ challenge because they filed it, after an unreasonable delay, three days after ballot printing had begun.

The State Board Begins Printing Ballots on September 6, 2024 to Meet Legal Deadlines for Transmitting Mail-in Ballots

The election calendar gives the State Board only a very short period to prepare and print the general election ballot. On or before September 21, 2024, the State Board had to transmit mail-in ballots to qualified uniformed servicemembers and overseas voters. 52 U.S.C. § 20302(a)(8)(a). On or before September 23, the State Board had to transmit mail-in ballots to all voters in the State who had timely requested one. Elec. Law § 9-306(c)(1). For the 2024 general election, the State Board anticipated preparing and transmitting approximately 500,000 mail-in ballots. (E. 53.)

The State Board cannot know (and did not know here) who and what to place on that ballot until all applicable candidacy and certification deadlines have expired. (E. 55.)

The Election Law Article permits candidate replacement as late as 81 days before the general election (here, August 16, 2024), Elec. Law §§ 5-1002(b)(1)(ii), 5-1003(b)(5), 5-1004(b)(2), and permits ballot access for unaffiliated candidates as late as the third week in August, *id.* §§ 5-703.1(d) & (e), 6-210(c). Ballot questions may be added in the last days of August. *Id.* §§ 7-104(b), 6-210(c). A finalized ballot also must be displayed for three days by the 64th day before the election (here, September 3, 2024). And ballot printing cannot begin until three days after the ballot is first publicly displayed. *Id.* § 9-207(e). September 6, 2024, was therefore the first day the State Board could begin printing the general election ballot.

On September 6, though, the State Board had only two weeks before the federally imposed deadline for transmitting mail-in ballots to overseas voters and uniformed servicemembers. In 2010, when Congress imposed that deadline, *see* Military and Overseas Voter Empowerment Act, Pub. L. No. 111-84, Sec. 579 (Oct. 28, 2009) (codified at 52 U.S.C. § 20302(a)(8)(A)), the State needed to account for only approximately 115,000 total mail-in ballot requests. *See Absentee Statistics: 2010 Gubernatorial General Election*, Md. State Bd. of Elections (Nov. 23, 2010) (accessible at https://elections.maryland.gov/press_room/2010_stats/gg_Statewide.pdf). Today, in the same two-week period, the State Board must prepare for “at least” five times as many requests. (E. 53.)

As of September 6, then, the State Board needed to accomplish the following in 15 days:

1. Create a digital image file for each of the 1974 general election ballot styles that will be used in the 2024 general election. Two-hundred and ninety-five of those ballot styles will be used in Baltimore City. (E. 55.)
2. Import final ballot design data into MDVOTERS, the statewide election database. This allows each jurisdiction in the State to verify that each ballot style corresponds to the correct electoral precinct, with the right candidates and questions appearing on the right ballots at a precinct level. (E. 56.)
3. Concurrently transmit final ballot designs, and associated test decks, for mail-in ballots (and envelopes and inserts) to printing vendor. (E. 51-52.)
4. Have printing vendor print test decks of each mail-in ballot style. (E. 52.)
5. Ship printed test decks to each local board of elections. (E. 52.)
6. Test mail-in canvass equipment in each jurisdiction by manually running each test deck through mail-in canvass ballot scanners. (E. 52.)
7. Complete pre-production for the printing of mail-in ballots. Pre-production requires the State Board and printing vendor to work together to lay out each ballot style in a printing template so that a metal printing plate can be produced for each of the 1974 ballot styles. (E. 56.)
8. Print 500,000 mail-in ballots. (E. 51, 53.)
9. Print 500,000 outgoing envelopes. (E. 51, 53.)
10. Print 500,000 return envelopes. (E. 51, 53.)
11. Print 500,000 ballot instructions. (E. 51, 53.)
12. Assemble 500,000 mail-in ballot packets from printed materials. (E. 51, 53.)

As of the filing of this brief, all ballots have been printed and sent to all voters who have requested one.

Under the best of circumstances, where there are no material errors in the design process, no scanning issues during the testing phase, and no mechanical problems with printing two million items over the course of one week, the State Board estimated that it could accomplish the necessary ballot development and printing in 13 to 16 days. (E. 53.)

The State Board therefore began printing ballots on September 6 to avoid any possibility of violating federal law by failing to transmit overseas mail-in ballots in a timely fashion.

On September 16, 2024, the Circuit Court Rules That the State Board Is Responsible for All Ballot Language Certified to It and Orders Post-Election Relief

The circuit court ruled from the bench in the registered voters’ favor. In a written memorandum issued after the hearing (E. 18.), the court explained its bench ruling.

The court rejected the State Board’s defense that laches bars the voters’ challenge under Election Law § 12-202. (E. 22-23.) The court ruled that, for purposes of § 12-202, the “act or omission” giving rise to both of the voters’ claims—improper charter material and unclear ballot language—occurred when the State Board publicly displayed the general election ballot on September 2, 2024. (E. 23.) Accordingly, the court ruled that the voters’ institution of a suit under Election Law § 12-202 on September 9, 2024, did not reflect an unreasonable delay.

Addressing the scope of the State Board’s review, the circuit court ruled that the mandate that “[e]ach ballot shall contain . . . a statement of each question that has met all of the qualifications to appear on the ballot,” Elec. Law § 9-205(2), requires the State Board to ensure that every ballot question certified to it meets every applicable legal standard and requirement. (E. 27.) And, according to the circuit court, Election Law § 9-203 “sets forth the standard by which [a] ballot question is judged.” (E. 27.) Therefore, a ballot’s “content” encompasses whether qualified questions meet the standards set by § 9-203, including the directive that the ballot be “easily understandable by voters,” Elec. Law § 9-203(1), and “present all candidates and questions in a fair and nondiscriminatory

manner,” *id* § 9-203(2). (E. 27-28.) Thus, the circuit court concluded that the clarity of a ballot question’s language is an issue addressable in a suit under Election Law § 9-209. (E. 28.)

On the merits, the circuit court ruled that the charter amendment proposed in Question F was “a final rezoning scheme of legislative character” and thus was improper material to appear in a local charter. (E. 26.) The court did not make clear whether it was addressing that issue under Election Law § 9-209 or § 12-202.

Finally, the circuit court reviewed the question’s language and found it wanting under the standard articulated in *Stop Slots, Md. 2008 v. State Bd. of Elections*, 424 Md. 163 (2012). (E. 29.)

In addressing the appropriate remedy, the circuit court acknowledged that revising the general election ballot could not address Question F’s shortcoming as improper “charter material,” nor was it even feasible at this late date in the election calendar. (E. 30.) The court thus ordered a post-election remedy by directing the Baltimore City Board of Election to “not certify the results of Ballot Question ‘F.’” (E. 30.)

SUMMARY OF ARGUMENT

The registered voters are residents of Baltimore City who sought to revise or remove a ballot question from the city’s 2024 general election ballot. The challenged ballot question arose from a charter amendment resolution passed by the Baltimore City Council, signed by the Mayor of Baltimore, and approved for legal sufficiency by the Chief Solicitor of the City Law Department in March 2024. (E. 37.) Because a local government proposed

the charter amendment question, the State Board played no role in the question's development, drafting, or review. Once the question passed the local legislative process, it qualified for the ballot. Elec. Law § 7-102(c)(3)(i) (LexisNexis 2023). And the authority to draft and certify the question's language fell on the City Law Department. *Id.* § 7-103(c)(4)(i).

Because the State Board played no role in adopting the proposed charter amendment or drafting its ballot language, the registered voters' efforts to challenge those activities under Election Law § 9-209 were misplaced. Section 9-209(a) permits judicial review of the State Board's certification of the "content and arrangement" of the ballot or "to correct any administrative error." The list of items that constitute ballot "content," Elec. Law § 9-205, does not include the underlying eligibility requirements for a ballot question. This omission underscores that the General Assembly did not intend the cause of action to be a vehicle for substantively challenging the legal sufficiency of a legislatively proposed charter amendment or the language of its ballot question—matters over which the State Board exercises no control. *Ross*, 387 Md. at 661-67. That is unsurprising, for the cause of action can be filed just hours before ballots begin printing. Elec. Law § 9-207(e). Accordingly, the circuit court erred in permitting either of the two challenges to proceed under Election Law § 9-209. (E. 26, 29.)

The circuit court further erred in permitting either challenge to proceed under Election Law § 12-202. (E. 23.) Although this provision is an appropriate vehicle for the voters' claims, they filed their § 12-202 action on September 9, 2024, three days after the ballot-printing process had already begun. Their late-stage filing therefore ensured, at a

minimum, voter confusion and potential under-voting of a qualified ballot question. At worst, their filing could have interrupted electoral operations by forcing the State Board to reprint and re-send general election ballots to every registered voter in the City. The voters could have brought their challenge much sooner, because the Baltimore City Solicitor drafted and certified the language of Ballot Question F on August 2, 2024, 37 days before the voters filed. (E. 40.) And the Mayor and City Council enacted the resolution creating the charter amendment that the voters assail as inappropriate “charter material” six months earlier, on March 11, 2024. (E. 37.) Laches therefore barred the voters’ cause of action under § 12-202. *Ross*, 387 Md. at 668-70.

ARGUMENT

I. THIS COURT REVIEWS WITHOUT DEFERENCE THE CIRCUIT COURT’S RULINGS INTERPRETING A STATUTE AND DETERMINING THE APPLICATION OF LACHES.

The scope of Election Law § 9-209 is a matter of statutory interpretation. *Ross*, 387 Md. at 661. Review of a circuit court’s interpretation of statutory language proceeds under a de novo standard. *Gables Constr., Inc. v. Red Coats, Inc.*, 468 Md. 632, 645 (2020).

Likewise, this Court reviews without deference the timeliness of an Election Law § 12-202 action, in the context of laches. *Lamone v. Schlakman*, 451 Md. 468, 480 (2017). Aspects of a laches analysis may present mixed question of fact and law. *Liddy v. Lamone*, 398 Md. 233, 246-47 (2007) (holding that whether the elemental facts underlying the defense have been established is a question of fact reviewed under the clearly erroneous standard). But a circuit court’s ultimate determination “whether a party is precluded by

laches from challenging an action of another party” receives no deference on review. *Schlakman*, 451 Md. at 480; *accord State Ctr., LLC v. Lexington Charles Ltd. P’ship*, 438 Md. 451, 585 (2014).

II. IN AUTHORIZING JUDICIAL REVIEW OF THE STATE BOARD’S CERTIFICATION OF BALLOT “CONTENT,” SECTION 9-209 DOES NOT AUTHORIZE JUDICIAL REVIEW OF THE ELIGIBILITY OF BALLOT QUESTIONS.

Election Law § 9-209(a) permits judicial review of the “content and arrangement” of the ballot—i.e., what items the ballot includes, how they are formatted, and in what order they appear. It does not extend to substantive challenges to a candidate’s or question’s eligibility to be on the ballot. In other words, under § 9-209, a reviewing court can ask whether the candidate or question *did* qualify for the ballot, but not whether the candidate or question *should* have qualified for the ballot. Expanding Election Law § 9-209 to hold the State Board accountable for whether a candidate or question *should* have qualified for the ballot would improperly read text into the Election Law Article; would conflict directly with this Court’s precedent; would require the State Board to exercise powers that it does not possess; and would yield untenable results that cannot be what the General Assembly intended in authorizing judicial review of ballot “content and arrangement.”

A. Under This Court’s Reasoning in *Ross*, the Plain Language of the Election Law Article Directs the State Board to Certify Ballot Questions that Qualified for the Ballot.

Election Law § 9-209 grants a cause of action to “a registered voter” to seek judicial review of the “content and arrangement” of a ballot in the days before an election begins. Whether a substantive challenge to the legality of a ballot question falls within the scope

of that cause of action is a question of statutory interpretation. This Court conducts “an analysis involving statutory interpretation by looking to the plain, normal meaning of the language in the statute.” *Maryland State Bd. of Elections v. Libertarian Party of Md.*, 426 Md. 488, 520 (2012). If the statutory language is “clear and unambiguous,” the analysis ends. *Id.*

This is not the first time that this Court has interpreted the appropriate scope of judicial review under Election Law § 9-209. In *Ross*, this Court addressed whether judicial review under § 9-209 was the appropriate vehicle for challenging a candidate’s eligibility to remain on the ballot. Evaluating the provision’s plain language and statutory context, this Court held that it was not. *Ross*, 387 Md. at 667. *Ross*’s reasoning applies fully to challenges, like the one here, aimed at the eligibility of ballot questions.

The candidate in *Ross* sought to disqualify his electoral opponent based on alleged campaign finance violations. *Id.* at 654-56. The candidate filed a petition for judicial review under § 9-209, alleging that his opponent should not have been certified for the ballot because of her alleged violations. *Id.* at 656-57. This Court disagreed and held that judicial review under § 9-209 was not the appropriate vehicle to challenge a candidate’s eligibility for the ballot. *Id.* at 667.

This Court in *Ross* first traced how, for over a century, Maryland law provided a “private cause of action” to correct “errors” or “mistakes” in the ballot. *Id.* at 662-64. Reviewing the contemporary language in Election Law § 9-209, the Court observed that the present-day law remained consistent with the past. “The errors subject to judicial review under Section 9-209,” the Court explained, “whether arising from the content and

arrangement of the ballot or other facial aspects of the ballot, are confined to the various characteristics of the ballot, not the qualifications or lack thereof of the candidates.” *Id.* at 665.

The Court then focused on the plain language of the statute, which permits review of a ballot’s “content and arrangement.” *Id.* “Arrangement” consisted “of the general format of the ballot”—i.e., the “appearance and order of the information contained on the ballot,” as governed by Election Law §§ 9-206, 9-210, and 9-211. *Id.* “Content,” in turn, consisted of the enumerated items that Election Law § 9-205 requires to appear on the ballot:

- (1) a heading as provided in § 9-206(a) of this subtitle;
- (2) a statement of each question that has met all of the qualifications to appear on the ballot;
- (3) the title of each office to be voted on;
- (4) the name, as specified in the certificate of candidacy, or as otherwise provided in Title 5 of this article, of each candidate who has been certified by the State Board;
- (5) a party designation for certain candidates as provided in this subtitle;
- (6) a means by which a voter may cast write-in votes, as provided in this subtitle; and
- (7) instructions to voters as provided in this subtitle.

Id. at 666 (quoting Elec. Law § 9-205).

The only “category of content” related to candidates, the Court observed, was in § 9-205(4): “the name . . . of each candidate who has been certified by the State Board.” Because the challenged candidate *was* certified at the time of her inclusion on the ballot,

rightly or wrongly, the candidate’s name was proper “content” for the ballot under § 9-209 review. *Ross*, 387 Md. at 666.

This Court in *Ross* thus concluded that the plain language of Election Law § 9-209 “does not provide a vehicle for a registered voter to challenge the candidate’s underlying eligibility as determined by the State Board.” *Id.* Instead, § 9-209 judicial review provided only “a mechanism by which such a voter may contest the inclusion of the name of a candidate who is not certified by the State Board or the exclusion of the name of one who is certified.” *Id.* at 667. In other words, a circuit court reviewing “content and arrangement” could ask whether the ballot material at issue *was* qualified, not whether it *should* have been qualified.

Ross forecloses the current effort to substantively challenge Ballot Question F under § 9-209. Because of *Ross*’s underlying rationale—that the State Board’s role under Election Law § 9-209(a) is ministerial—it makes no difference that *Ross* decided a challenge to candidacy. Under § 9-209(a), a registered voter may seek review only of the ballot’s “content and arrangement.” “Content,” as it relates to a ballot question, means “each question that has met all the qualifications to appear on the ballot.” Elec. Law § 9-205(2). If a ballot question “has met” its necessary qualifications, it is proper “content” for the ballot under § 9-209 review. The only question, then, is what qualifications must the ballot question meet?

The Election Law Article provides only one qualification for a ballot question referring a charter amendment to the voters of a single jurisdiction. Specifically, a charter amendment question “shall qualify . . . upon . . . the passage by the governing body of the

county a resolution proposing the amendment.” Elec. Law § 7-102(c)(3)(i). And the “statement” of the question, *id* § 9-205(2), is the language prepared and certified by the authority specified in Election Law § 7-103(c). Here, on March 11, 2024, the Mayor and City Council enacted Council Bill 23-0444, proposing the charter amendment at issue. (E. 37.) And the City Solicitor prepared and certified the language to the State Board on August 2, 2024. (E. 40.) Thus, when the State Board certified the “content and arrangement” of the Baltimore City ballot on September 2, with that question and language, the question had “met all qualifications to appear on the ballot.” Elec. Law § 9-205(2). “[T]he inclusion of [the question] on the ballot at the time of its display by the State Board was appropriate under the terms of [Election Law § 9-205(2)].” *Ross*, 387 Md. at 666.

B. The Circuit Court’s Interpretation Improperly Adds Language to the Election Law Article.

The circuit court distinguished *Ross* by relying on the phrase “each question that has met all the qualifications to appear on the ballot” in Election Law § 9-205(2), which the court interpreted to mean that the State Board must ensure that every ballot question certified to it meets every applicable legal standard and requirement. (E. 27.) That interpretation is flawed, however, because it “add[s] . . . language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute.” *Baltimore Police Dep’t v. Open Justice Balt.*, 485 Md. 605, 647 (2023) (quotation omitted). The circuit court interpreted the phrase “all the qualifications to appear on the ballot” to mean all possible legal requirements attendant to a ballot question. But the statute does not say “all possible legal requirements”; it says only “qualifications.” And “qualification,” in the context of

ballot questions, is a specific term denoting a triggering event, or set of events, that causes a question to earn a spot on a ballot. *See* Elec. Law § 7-102 (entitled “Qualification of questions” and providing the qualification event for each type of ballot question).

The remainder of the statutory framework confirms that if the General Assembly intended § 9-205(2) to apply only to a ballot question that “has met all the requirements established by law,” it knew how to say that. A *petition* question relating to a proposed charter amendment qualifies only once there is a determination that it “satisfied all the requirements established by law” for charter amendment petitions. Elec. Law § 7-102(c)(3)(ii). And a ballot question relating to a law referred to the voters under Article XVI of the Maryland Constitution qualifies only upon a certification that the referring petition “satisfies all the requirements” established by the Maryland Constitution. The General Assembly, however, did not use phrasing like that in § 9-205(2). Instead, it used the language “has met all qualifications.” Elec. Law § 9-205(2). The provision thus has a plain meaning: the State Board must include on the ballot every question whose triggering event for placement on the ballot has occurred.

A second, equally problematic flaw in the circuit court’s interpretation is that it is unsupported by the statutory framework of which § 9-205(2) is a part. *See, e.g., Lockshin v. Semsker*, 412 Md. 257, 276 (2010) (“[T]he plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute.”) Under the circuit court’s interpretation, the State Board bears responsibility for ensuring that each ballot question meets all applicable legal requirements, and the State Board errs by certifying a ballot with a question that falls

short of those standards. But the Election Law Article does not provide the State Board with any mechanism to enforce those requirements or standards, nor did the circuit court identify one.

The process by which a petition question qualifies for the ballot is instructive as a point of sharp contrast. Title 6 of the Election Law Article sets out a detailed process by which the chief election official of an election authority ensures that only legally sufficient petition questions reach the ballot. First, the Election Law Article assigns the responsibility to review a petition question for legal sufficiency to one person: the chief election official. Elec. Law § 6-206(a). Second, the chief election official must seek the advice of legal counsel in reviewing the legality of a petition’s subject matter. *Id.* § 6-206(c)(5). Third, the statutory framework provides a calendar for when and how the chief election official must make a legal determination, notify interested parties of that determination, and reject legally insufficient questions. *Id.* § 6-210(d), (e). Fourth, the statutory framework provides for judicial review of statewide questions in the Circuit Court for Anne Arundel County and for judicial review of local questions “in the circuit court for the county in which the petition is filed.” *Id.* § 6-209(a)(1). And fifth, a circuit court sitting in review of a ballot question is authorized to provide “declaratory relief” under the Maryland Uniform Declaratory Judgment Act “as to any petition” and the legal controversy it may present. *Id.* § 6-209(b).

No such framework exists for ballot questions certified to the State Board by a governmental authority. The Election Law Article says nothing about how the State Board, a five-member political body that exercises its powers and authority only by supermajority

vote, Elec. Law §§ 2-101(a), 2-102(c), might review and determine the legality of a ballot question. There is no prescribed timeline for the State Board to conduct such review, make a determination, or notify the local government of that determination. There is no framework for the State Board to remedy a legally flawed ballot question: Should it reject the question? Should it revise it on its own? Should it return the question to the governmental authority for reformulation? And while judicial review of a petition question takes place in the local circuit court and includes a necessary declaratory component, judicial review of “content and arrangement” can only take place in Anne Arundel County and involves no declaratory relief. *Id.* § 9-209(a), (b). The circuit court’s reading of § 9-502(2) thus cannot be squared with the provision’s statutory context.

C. The Circuit Court’s Interpretation Fundamentally Alters the Responsibility and Authority of the State Board.

Any interpretation of Election Law § 9-205(2) that permits a registered voter to challenge the legality of a ballot question under Election Law § 9-209 would lead to untenable results and should be rejected on that basis. *See Breck v. Maryland State Police*, 452 Md. 229, 248 (2017) (explaining that a court must avoid a statutory construction that leads to illogical, absurd, or anomalous results).

First, such an interpretation would grant the State Board, an executive agency, quasi-judicial review over enactments by the State Legislature and county governments. Most possible ballot questions qualify for the ballot based on the enactment of a legislative provision or the result of some other legislative process. *See* Elec. Law § 7-102(a)(2), (a)(3), (c)(2), (c)(3)(i), (d), (e), (f), (g), (h). Rejecting the question from the ballot

nullifies the legislative enactment, which existed solely to propose and qualify the question. Before this ruling, only a court of competent jurisdiction had authority to nullify a legislative enactment that suffered from due process shortcomings or resulted from an improper legislative process. *See Stop Slots*, 424 Md. at 179-88 (determining whether an act of the General Assembly referred to voters suffered from non-delegation and contingent legislation flaws). Under the circuit court’s ruling, however, the State Board would now have authority, as part of its responsibility to certify ballot “content,” to nullify a Baltimore City Council resolution, Elec. Law § 7-102(c)(3)(i), a charter board enactment, *id.* § 7-102(c)(2), or a law passed by the Maryland General Assembly, *id.* § 7-102(a)(3) & (e).³

Moreover, expanding the State Board’s power under Election Law § 9-209 to include deciding substantive challenges to a question’s eligibility would give two bites at the apple to litigants who wish to challenge a ballot question. For questions reaching the ballot by petition, a litigant could first challenge the question under Election Law § 6-209, contesting the determination made by the “chief election official” that the petition met all applicable legal requirements. *See, e.g., Baltimore City Bd. of Elections v. City of Baltimore*, __ Md. __, No. 34, Sept. Term, 2023, 2024 WL 3982016 (Aug. 29, 2024) (per curiam order). And the litigant would file that challenge “in the circuit court for the county

³ It is not clear what recourse a governmental entity might have in response to the State Board’s exercise of such authority. Judicial review of the State Board’s ballot “content” decision nullifying a legislative enactment would be confined to “registered voter[s].” Elec. Law § 9-209(a). And the special provision permitting judicial relief for any “act or omission relating to an election” that violates a law applicable to the elections process is likewise confined to “registered voter[s].” *Id.* § 12-202(a).

in which the petition [was] filed.” Elec. Law § 6-209(a)(1)(ii). That same litigant, or any registered voter, could then mount an identical challenge to the same question in response to the State Board’s later certification of ballot “content” under Election Law § 9-209. And the challenge under § 9-209 would be filed in the Circuit Court for Anne Arundel County. *Id.* § 9-209(a). The local board of elections and State Board would face separate challenges to the same question, on the same grounds, in two different courthouses.

The same would be true for questions reaching the ballot by legislative process. A litigant could first challenge the ballot question by filing a request for declaratory judgment against the governmental entity that qualified the question and certified its language. *See e.g. Atkinson v. Anne Arundel County*, 428 Md. 723, 741 (2012) (reviewing declaratory judgment action regarding whether collective bargaining provision was proper “charter material”); *see also Kelly v. Vote Know Coalition of Md.*, 331 Md. 164, 167 (1993) (reviewing declaratory judgment action regarding whether language for ballot question referring an act of the General Assembly to voters was sufficiently clear and understandable). Dissatisfied with that outcome, that litigant, or any other registered voter, could challenge the question again on the same grounds in response to the State Board’s certification of ballot “content” under Election Law § 9-209. Once again, the local government and State Board would end up separately defending the same question on the same grounds, potentially in two different courthouses.

III. LACHES BARS THE PLAINTIFFS’ SECTION 12-202 CLAIM BECAUSE THEY DID NOT CHALLENGE BALLOT QUESTION F UNTIL THE ONLY REMAINING REMEDIES WOULD UPSET ELECTORAL PREPARATIONS OR CONFUSE VOTERS.

Election Law § 12-202(a) permits a registered voter to seek judicial relief from a violation of a law applicable to elections when “no other timely and adequate remedy is provided by [the Election Law Article.]” This cause of action would have been the correct vehicle for challenging Ballot Question F as improper charter material and insufficiently understandable by voters—but only if that claim had been filed in a timely manner. The registered voters in this case filed their Election Law § 12-202 claim to revise or remove the ballot question from the ballot on September 9, 2024 (E. 33), three days after the State Board began printing ballots and twelve days before the federal deadline for transmitting mail-in ballots to qualified overseas voters and uniformed servicemembers. (E. 52.) Yet the charter amendment they challenged as improper “charter material” had been enacted six months before by the Mayor and City Council of Baltimore. (E. 37.) And the ballot language challenged here as insufficiently understandable had been certified 37 days earlier. (E. 40.) Under these circumstances, the registered voters’ § 12-202 suit is barred by laches.

In an action for judicial relief under Election Law § 12-202, the party seeking relief must prove four elements for each claimed violation of the Election Law Article: (1) the “absence” of another adequate remedy in the Article; (2) an “act or omission relating to an election”; (3) that the act or omission contravened a “law applicable to the elections process”; and (4) that the act or omission “may change or has changed the outcome” of an

election. *Suessman v. Lamone*, 383 Md. 697, 714 (2004). The action must be filed “in the appropriate circuit court” within 10 days of the challenged “act or omission, or the date the act or omission became known to the petitioner.” Elec. Law § 12-202(b). But the 10-day deadline is not a statutory limitations period. Rather, because § 12-202 creates a cause of action in equity, the 10-day filing period “provides a benchmark for the application of laches.” *Schlakman*, 451 Md. at 485.

Laches is an affirmative, equitable defense against “stale” claims. *Liddy*, 398 Md. at 243. No bright-line rule exists to dictate when a defense of laches must apply; instead, the defense “must be determined by the facts and circumstances of each case.” *Id.* at 244 (quoting *Ross*, 387 Md. at 669). Laches bars an action when there is unreasonable delay in asserting a claim, and the plaintiff’s delay causes prejudice to the defending party. *Id.* (quoting *Frederick Rd. Ltd. P’ship v. Brown & Sturm*, 360 Md. 76, 117 (2000)). The § 12-202 claim here meets both of these requirements and therefore is barred.

A. Filing a Ballot Challenge Three Days After Ballot Printing Began Prejudiced the Electorate and the State.

There can be little doubt that the September 9 assertion of a § 12-202 claim seeking to change the Baltimore City ballot prejudiced the State. *See Ademiluyi v. Egbuonu*, 466 Md. 80, 124 (2019) (noting that prejudice constitutes anything that places an opposing party “in a less favorable position.”) Where a plaintiff seeks injunctive relief that changes the rules of an election while that election is ongoing, prejudice is measured in the disruption to ongoing electoral operations. *Curtin v. Virginia State Bd. of Elections*, 463 F. Supp. 3d 653, 660 (E.D. Va. 2020). And with good reason: the State has a “compelling

interest in preserving the integrity of its election process.” *Liddy*, 398 Md. at 250 (quoting *Purcell v. Gonzalez*, 549 U.S. 1, 4 (2007)). Court orders that change how an election is run can create “voter confusion” and a “consequent incentive to remain away from the polls.” *Liddy*, 398 Md. at 250 (quoting *Purcell*, 549 U.S. at 4-5). And that risk only increases as litigation extends later into the election calendar. *Liddy*, 398 Md. at 250 (quoting *Purcell*, 549 U.S. at 5). Accordingly, federal courts are heavily cautioned against “alter[ing] the election rules on the eve of an election.” *Republican Nat’l Comm. v. Democratic Nat’l Comm.*, 589 U.S. 423, 425 (2020).

Here, the voters’ decision to file suit only on the eve of ballot printing endangered the State Board’s ability to prepare and print ballots ahead of applicable legal deadlines and to conduct an orderly election. Until September 6, 2024, the State Board could have revised the ballot in response to a court order by removing a question. As of September 9, however, printing of ballots was underway so that the State Board could meet its obligations under federal and state law. (E. 52.) By filing a § 12-202 challenge to Ballot Question F when they did, the registered voters in this case cast a cloud of uncertainty over the election. And because of their delay, the plaintiffs’ claim, if successful, would require the State Board to either (1) continue printing a ballot with a nullified question on it; or (2) revise and reprint ballots for Baltimore City in violation of federal and state deadlines for transmitting mail-in ballots. *See Schlakman*, 451 Md. at 489-90 (noting that the filing of a lawsuit in late September would upset electoral operations by throwing mail-in ballot preparations into turmoil).

Had these plaintiffs filed their claim 30 days earlier, by contrast, Baltimore City voters would have received a general election ballot free from ambiguity. Because of the late filing in this case, city voters will instead vote a ballot potentially uncertain if their preference “for” or “against” ballot Question F will count.

B. The Registered Voters Have Offered No Justification for Their Failure to Diligently Press Their Electoral Claims.

The prejudice suffered by the State’s election operations negates the reasonableness of the registered voters’ decision to file their § 12-202 claim when they did. *See Liddy*, 398 Md. at 251. Laches bars a claim for injunctive relief when a plaintiff “fails to timely assert his or her rights due to his or her own negligence or lack of diligence.” *Ademiluyi*, 466 Md. at 124. The diligence requirement is crucial: parties may be barred by laches when they possess knowledge of a claim, “or the means of knowledge” to uncover facts giving rise to the claim, but delay in asserting that claim. *Buxton v. Buxton*, 363 Md. 634, 646 (2001).

Assessing diligence therefore requires a court to determine when a claim became ripe—“i.e. the earliest time at which [the party was] able to bring [its] claims”—and measure that against when the action was filed. *State Ctr.*, 438 Md. at 590. In doing so, a court may weigh the “motivation” of the plaintiffs and when their “initial objections” to the subject matter of the litigation arose. *Id.* at 608; *see Anderson v. Great Bay Solar I, LLC*, 243 Md. App. 557, 614 (2019) (“[W]hen a party knows that construction is scheduled to occur, they must diligently protect their rights, and waiting until the defendant incurs significant construction costs before filing suit may result in the claim being barred by

laches.”) The date when a plaintiff acquires *actual* knowledge giving rise to the claim is neither dispositive nor necessarily relevant, contrary to the circuit court’s ruling. (E. 23.) *See Skeen v. McCarthy*, 46 Md. App. 434, 439 (1980) (“In Maryland it is well settled that in order to establish laches as a defense it is not necessary that a defendant show that the plaintiff had actual knowledge of his claim. . . . In fact, it is well settled that time begins to run, for purposes of laches, from the time the party charged with it should have had knowledge or the means of knowledge of facts giving rise to his right or cause of action.”)

In the context of elections, diligence assumes even greater importance. Because of the potential harm to the electorate posed by late-breaking electoral litigation, “any claim against a state electoral procedure must be expressed expeditiously.” *Liddy*, 398 Md. at 259 (quoting *Ross*, 387 Md. at 671). Thus, “[d]iligence in the compressed timeline applicable to elections is measured differently from how it might be measured in other contexts.” *Voters Organized for the Integrity of Elections v. Baltimore City Elections Bd.*, 214 F. Supp. 3d 448, 454 (D. Md. 2016). Voters have a duty to keep themselves informed of election activities and must seek out information where it is known to be available, rather than wait for that information to be delivered to them. *Abrams v. Lamone*, 398 Md. 146, 159 n.18 (2007); *see also Ademiluyi*, 466 Md. at 130 (noting with approval plaintiff’s diligence in obtaining candidate’s party affiliation documentation through MPIA request to the State Board when the State Board was in sole possession of that record).

Applying these principles, this Court held in *Liddy* that laches barred a candidacy challenge brought on the eve of an election because of the plaintiffs’ lack of diligence. The plaintiff in *Liddy* filed an action under Election Law § 12-202 seeking to disqualify a

candidate for Attorney General from the ballot only 18 days before the general election. *Id.* at 236. The plaintiff alleged that the candidate did not meet the qualifications to serve as Attorney General, and permitting him to run on the general election ballot was therefore an “act” in violation of the Election Law. *Id.* The plaintiff provided sworn testimony that he learned of the potentially disqualifying information on October 16, only four days before filing suit, while “conducting some research on the internet.” *Id.* at 239 n.9.

Despite the plaintiff’s promptness in filing suit after he acquired actual knowledge of his potential claim, this Court held that laches barred the candidacy challenge. *Id.* at 255. The Court first noted that the October 20 filing date prejudiced the State Board and “the electorate as a whole.” *Id.* at 254. The State Board could not reverse its electoral preparations at that point in the election calendar, and the electorate was at risk of being confused at best and disenfranchised at worst by any election-eve pronouncement on a candidate’s eligibility. *Id.* at 254-55. And the late filing further prejudiced the candidate, who had relied on the State Board’s certification of his candidacy and his victory in the primary election. *Id.* at 253.

On the issue of diligence, this Court in *Liddy* was clear. The candidate for Attorney General filed his certificate of candidacy on June 28, 2006. *Id.* at 253. A challenge to that candidacy became ripe on that day. *Id.* It made no difference that the plaintiff gained actual knowledge of the potentially disqualifying information only four days before filing his challenge. “The appellant’s challenge, in fact, could have been brought at any time after [the candidate’s] June 28, 2006 filing of his certification of candidacy.” *Id.*

1. The Registered Voters Delayed Unreasonably for Six Months in Pursuing Their “Charter Material” Claim.

Liddy makes clear that laches applies to the registered voters’ claim that the charter amendment question should not have qualified because the proposed amendment is not proper “charter material.” The City’s March 11, 2024 resolution created and proposed an amendment to Article I, § 9 of the Baltimore City Charter. (E. 37.) The resolution contained the full text of the proposed amendment. (E. 38.) Because a “charter material” challenge asserts an inherent flaw in the character of the amendment itself, *see Cheeks v. Cedlair Corp.*, 287 Md. 595, 601-02 (1980), March 11 was “the earliest time the [registered voters were] able to bring [their] claim[.]” *State Ctr.*, 438 Md. at 590. And whether or not they possessed the “means of knowledge” to uncover that claim in March 2024, the registered voters possessed actual knowledge of the resolution, and its effort to amend the city charter, by April 2024. (E. 65-66, 68.) Their delay in filing any action until September 9, 2024, 143 days after the resolution’s passage, was unreasonable and thus barred by laches.

2. The Registered Voters Delayed Unreasonably for Thirty-Seven Days in Pursuing Their Ballot Language Claim.

Libby’s emphasis on the need for diligence also confirms that the registered voters’ delay in challenging the language of Ballot Question F was unreasonable. The voters have asserted, and the circuit court ruled, that they did not possess actual knowledge of the ballot’s language until September 2, 2024, when that language was posted to the State Board’s website as part of the certification and public display of all general election ballots. (E. 23.) They have further asserted that they acted diligently in trying to ascertain the ballot

language beforehand because they emailed the City Law Department and Office of the Attorney General in May and July 2024, respectively. (E. 56, 68.) Both arguments miss the mark.

First, as to the plaintiffs' lack of actual knowledge until September 2, contrary to the circuit court's ruling, actual knowledge is not the benchmark for applying laches. *Buxton*, 363 Md. at 646. Instead, the registered voters had a duty to apprise themselves of ongoing electoral activities, *Ademiluyi*, 466 Md. at 130, especially those relating to an electoral activity that they had been following and seeking to oppose. *See State Ctr.*, 438 Md. at 608. The voters were not entitled to wait until the ballot language was delivered to them but should have sought the language in a timely manner.

Had they done so, the record shows that they would have received the language in early August. August 2 was the deadline for the City Solicitor to "prepare and certify" the language of Ballot Question F to the State Board. Elec. Law § 7-103(c)(3)(i). That deadline was not secret. It was established by law and posted on the State Board's website, *see* Md. State Bd. of Elections, *2024 Elections Calendar*, available at <https://elections.maryland.gov/elections/2024/2024%20Elections%20Calendar.pdf> (last accessed Sept. 25, 2024). And the City Solicitor met that deadline. On August 2, she transmitted a letter to the State Board, with courtesy copies sent to multiple public figures, certifying the question and publishing its language. (E. 40.) The voters therefore possessed "the means of knowledge" to uncover their claim soon after August 2. *Liddy*, 398 Md. at 253. But they did not bring their claim until 37 days later, when ballot printing was already underway.

Second, the plaintiffs' emails to the City Law Department and the Office of the Attorney General well before the August 2 certification deadline did not constitute the requisite diligence. The flaw in the voters' contrary claim is that they never sought the question's language from the State Board of Elections (or, for that matter, from any other entity) after the August 2 deadline. The voters should have known that the State Board would need to possess the certified ballot language in order to place it on the ballot. And the record in this case shows that there was even some actual knowledge that the State Board would have the certified ballot question on August 2. (E. 66.) The record also shows that, due to the time-sensitive nature of ballot question challenges, the State Board would have provided the City Solicitor's letter to a requesting individual within 48 hours of a request. (E. 49.) The voters therefore had ample opportunity to obtain the ballot language from the State Board through the exercise of ordinary diligence, but they made no effort to do so.

The circuit court's ruling, however, treats the State Board's certification of ballot "content and arrangement" as the date on which voters are deemed to learn of all earlier governmental acts on which the ballot rests, so that a voter cannot be charged with "know[ing]" of an "act or omission . . . inconsistent with [the Election Law Article]" until the final ballot is posted on the State Board's website. Elec. Law § 12-202(a)(1), (b)(1). Neither the Election Law Article nor the cases interpreting its provisions countenance such a view. *See e.g. Schlakman*, 451 Md. at 490. And with good reason: the Board certifies ballots' content and arrangement very late in the election calendar: only 23 days before mail-in ballots must be transmitted to every qualified voter in the State. *See Elec. Law*

§ 9-306(c)(1). Certification under § 9-207 cannot be regarded as opening a 10-day period for initiating litigation over all possible underlying legal deficiencies with scarcely twice as much time until ballots must be delivered and even less time until they must be printed.

To that end, Election Law §§ 9-207, 9-208, and 9-209 should be read as further “benchmark[s]” for the application of laches in this case. *Schlakman*, 451 Md. at 485. A laches analysis generally requires a court to “look to the General Assembly for guidance” in determining the reasonableness of when a plaintiff filed the action. *Murphy v. Liberty Mut. Ins. Co.*, 478 Md. 333, 343 n.4 (2022). While that guidance is usually a statute of limitations, *Fraternal Order of Police v. Montgomery County*, 446 Md. 490, 509 (2016), here, it is the operational calendar the General Assembly established for designing, producing, and reviewing the final ballot.

Sixty-four days before an election, the State Board must finalize the ballot. Elec. Law § 9-207(a)(1), (2). Three days later, the State Board may begin printing the ballot. *Id.* § 9-207(e). And 16 days after that, the State Board must begin sending the ballot to voters. 52 U.S.C. § 20302(a)(8)(a); Elec. Law § 9-306(c)(1). For two days at the outset of this 19-day preparatory period, a registered voter is permitted to seek judicial review of facial errors that can be corrected on an expedited basis—i.e., ballot “content,” “arrangement,” and “administrative error[s].” Elec. Law § 9-209(a). And under no circumstances may a voter initiate judicial review after the 62nd day before the election. *Id.* § 9-209(c). Beginning at that point, if an error is discovered, “the State Administrator shall determine what measures a local board may take” to notify voters of the issue. *Id.* § 9-208(a).

The General Assembly thus expressed a desire to foreclose substantive ballot challenges during the ballot preparation period by narrowing the scope of judicial review and requiring litigants to bring challenges within two days. In light of that desire, laches must apply to a § 12-202 challenge filed after the final ballot is posted, and especially after that two-day period. A contrary conclusion would permit an end-run around the operational calendar for ballot preparations and challenges established in Election Law §§ 9-207 through 9-209 and would encourage the very sorts of disruptions that those provisions seek to avoid.

CONCLUSION

The judgment of the Circuit Court for Anne Arundel County should be reversed.

Respectfully submitted,

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CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112

1. This brief contains 10,625 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

2. This brief complies with the font, spacing, and type size requirements stated in Rule 8-112.

/s/ Daniel M. Kobrin

Daniel M. Kobrin

TEXT OF PERTINENT PROVISIONS
(Rule 8-504(a)(10))

Annotated Code of Maryland – Election Law

§ 6-206. Determinations at time of filing.

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

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

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

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

(c) The chief election official shall declare that the petition is deficient if the chief election official determines that:

(1) the petition was not timely filed;

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

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

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

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

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

(ii) the petition seeks:

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

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

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

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

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

§ 6-208. Certification.

(a) At the conclusion of the verification and counting processes, the chief election official of the election authority shall:

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

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

(b) If a petition sponsor's ballot issue committee fails to provide proof of filing the report required under § 13-309(e) of this article, the chief election official may not certify the petition.

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

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

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

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

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

§ 6-208. Certification.

(a) At the conclusion of the verification and counting processes, the chief election official of the election authority shall:

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

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

(b) If a petition sponsor's ballot issue committee fails to provide proof of filing the report required under § 13-309(e) of this article, the chief election official may not certify the petition.

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

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

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

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

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

§ 6-209. Judicial review.

(a)

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

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

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

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

(3) A judicial proceeding under this section shall be conducted in accordance with the Maryland Rules, except that:

(i) the case shall be heard and decided without a jury and as expeditiously as the circumstances require; and

(ii) an appeal shall be taken directly to the Supreme Court of Maryland within 5 days after the date of the decision of the circuit court.

(4) The Supreme Court of Maryland shall give priority to hear and decide an appeal brought under paragraph (3)(ii) of this subsection as expeditiously as the circumstances require.

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

§ 6-210. Schedule of process.

(a)

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

(2) Except as provided in paragraph (3) of this subsection, within 5 business days of receiving a request for an advance determination, the election authority shall make the determination.

(3) Within 10 business days of receiving a request for an advance determination of the sufficiency of a summary of a local law or charter amendment contained in a petition under § 6-202(b) of this subtitle, the election director shall make the determination.

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

(c)

(1) Except as provided in paragraph (2) of this subsection, the verification and counting of validated signatures on a petition shall be completed within 20 days after the filing of the petition.

(2) If a petition seeks to place the name of an individual on the ballot for a special election, the verification and counting of validated signatures on the petition shall be completed within 10 days after the filing of the petition.

(d) Within 1 business day of the completion of the verification and counting processes, or, if judicial review is pending, within 1 business day after a final judicial decision, the appropriate election official shall make the certifications required by § 6-208 of this subtitle.

(e)

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

(2)

(i) If the petition seeks to place the name of an individual or a question on the ballot at any election, except a presidential primary election, judicial review shall be sought by the day specified in paragraph (1) of this subsection or the 69th day preceding that election, whichever day is earlier.

(ii) If the petition seeks to place the name of an individual on the ballot for a presidential primary election in accordance with § 8-502 of this article, judicial review of a determination made under § 6-208(a)(2) of this subtitle shall be sought by the 5th day following the determination to which the judicial review relates.

(iii) If the petition seeks to place the name of an individual on the ballot for a special election, judicial review shall be sought by the 2nd day following the determination to which the judicial review relates.

(3)

(i) A judicial proceeding under this subsection shall be conducted in accordance with the Maryland Rules, except that:

1. the case shall be heard and decided without a jury and as expeditiously as the circumstances require; and

2. an appeal shall be taken directly to the Supreme Court of Maryland within 5 days after the date of the decision of the circuit court.

(ii) The Supreme Court of Maryland shall give priority to hear and decide an appeal brought under subparagraph (i)2 of this paragraph as expeditiously as the circumstances require.

§ 7-101. Applicability.

This title applies to the following types of ballot questions:

(1) a question relating to:

(i) the creation or adoption of a new Constitution or the calling of a constitutional convention; or

(ii) an amendment pursuant to Article XIV of the Maryland Constitution;

- (2) referral of an enactment of the General Assembly pursuant to Article XVI of the Maryland Constitution;
- (3) a question pursuant to Article XI-A of the Maryland Constitution relating to:
 - (i) the creation of a charter home rule county government;
 - (ii) the approval of a county charter; or
 - (iii) the amendment of a county charter;
- (4) a question relating to the creation of a code home rule county government pursuant to Article XI-F of the Maryland Constitution;
- (5) a question relating to the alteration of county boundaries or the creation of a new county pursuant to Article XIII of the Maryland Constitution;
- (6) a question referred to the voters pursuant to an enactment of the General Assembly;
- (7) a question on an enactment of a charter county pursuant to § 9-205 of the Local Government Article or a code county pursuant to §§ 9-310 through 9-313 of the Local Government Article;
- (8) a question relating to the incorporation of a new municipality pursuant to § 4-204 of the Local Government Article;
- (9) a question on the issuance of a bond pursuant to § 9-934 of the Environment Article; and
- (10) any other question that will be voted on in an election conducted pursuant to this article.

§ 7-102. Qualification of questions.

- (a)
 - (1) A question relating to the holding of a constitutional convention qualifies for the ballot automatically every 20 years pursuant to Article XIV, § 2 of the Maryland Constitution.
 - (2) A question relating to the adoption of a new or altered Constitution qualifies upon its adoption by a duly constituted convention pursuant to Article XIV, § 2 of the Maryland Constitution.
 - (3) An amendment to the Constitution qualifies upon its passage by the General Assembly pursuant to Article XIV, § 1 of the Maryland Constitution.
- (b) A question on an act of the General Assembly pursuant to Article XVI of the Maryland Constitution qualifies upon the certification under Title 6 of this article, that the petition has satisfied all the requirements established by Article XVI.
- (c)
 - (1) A question relating to the creation of a home rule county government qualifies upon either:
 - (i) a determination by the appropriate local authority that the applicable petition has satisfied all the requirements established by law relating to the creation of a charter board; or
 - (ii) the adoption by the governing body of a county of an enactment proposing that the county become a code county.

- (2) A question relating to the approval of a county charter qualifies upon the adoption of a proposed charter by a charter board pursuant to the requirements prescribed by Article XI-A of the Maryland Constitution.
- (3) A question relating to the amendment of a county charter shall qualify either upon:
 - (i) the passage by the governing body of the county of a resolution proposing the amendment; or
 - (ii) a determination by the governing body of the county that a petition submitted has satisfied all the requirements established by law relating to petitions initiating charter amendments.
- (d) A question relating to the creation of a new county or the alteration of county boundaries qualifies upon the enactment of the implementing public general law.
- (e) A question referred to the voters as provided in an enactment of the General Assembly qualifies upon the enactment of the law calling for the question.
- (f)
 - (1) A question on an enactment by a charter county qualifies pursuant to local law and § 9-205 of the Local Government Article.
 - (2) A question on an enactment by a code county qualifies pursuant to local law and §§ 9-310 through 9-313 of the Local Government Article.
- (g) A question relating to the incorporation of a new municipal corporation qualifies upon the determination by the county governing body that the applicable petition has satisfied all the requirements established by law for that petition.
- (h) A referendum on a question of issuance of a bond pursuant to § 9-934 of the Environment Article qualifies upon submission of the question to the appropriate local board.

§ 7-103. Text of questions.

- (a)
 - (1) In this section the following words have the meanings indicated.
 - (2) “County attorney” means:
 - (i) the attorney or law department established by a county charter or local law to represent the county generally, including its legislative and executive officers; or
 - (ii) if the county charter or local laws provide for different attorneys to represent the legislative and executive branches of county government, the attorney designated to represent the county legislative body.
 - (3) “Municipal attorney” means:
 - (i) the attorney or law department established by a municipal charter or local law to represent the municipal corporation generally, including its legislative and executive officers; or
 - (ii) if the municipal charter or local laws provide for different attorneys to represent the legislative and executive branches of municipal government, the attorney designated to represent the municipal legislative body.
- (b) Each question shall appear on the ballot containing the following information:
 - (1) a question number or letter as determined under subsection (d) of this section;

- (2) a brief designation of the type or source of the question;
- (3) a brief descriptive title in boldface type;
- (4) a condensed statement of the purpose of the question; and
- (5) the voting choices that the voter has.

(c)

(1) The Secretary of State shall prepare and certify to the State Board, not later than the 95th day before the general election, the information required under subsection (b) of this section, for all statewide ballot questions and all questions relating to an enactment of the General Assembly which is petitioned to referendum.

(2) The State Board shall prepare and certify to the appropriate local board, not later than the 105th day before the general election, the information required under subsection (b) of this section for all questions that have been referred to the voters of one county or part of one county pursuant to an enactment of the General Assembly.

(3)

(i) The county attorney of the appropriate county shall prepare and certify to the State Board, not later than the 95th day before the general election, the information required under subsection (b) of this section for each question to be voted on in a single county or part of a county, except a question covered by paragraph (1) or paragraph (2) of this subsection.

(ii) If the information required under subsection (b) of this section has not been timely certified under subparagraph (i) of this paragraph, the clerk of the circuit court for the jurisdiction shall prepare and certify that information to the State Board not later than the first Friday in August.

(4)

(i) The municipal attorney of the appropriate municipal corporation shall prepare and certify to the State Board, not later than the 95th day before the general election, the information required under subsection (b) of this section for each question to be voted on in the municipal corporation, except a question covered by paragraphs (1) through (3) of this subsection.

(ii) If the information required under subsection (b) of this section has not been timely certified under subparagraph (i) of this paragraph, the clerk of the circuit court for the county in which the municipal corporation is located shall prepare and certify that information to the State Board not later than the first Friday in August.

(5) The information required under subsection (b) of this section for a question that is being placed on the ballot by petition may be prepared before the petition is certified under § 6-208 of this article.

(d)

(1) Each statewide question and each question relating to an enactment of the General Assembly which is petitioned to referendum shall be assigned a numerical identifier in the following order:

(i) by years of sessions of the General Assembly at which enacted; and

(ii) for each such session, by chapter numbers of the Session Laws of that session.

(2) A question that has been referred to the voters of one county or part of one county pursuant to an enactment of the General Assembly shall be assigned an alphabetical identifier in an order established by the State Board.

(3) Questions certified under subsection (c)(3)(i) or (ii) or (c)(4)(i) or (ii) of this section shall be assigned an alphabetical or alphanumeric identifier in an order established by the certifying authority in consultation with the State Board to prevent duplication or confusion, consistent with and following the questions certified by the State Board.

§ 7-104. Petitions relating to questions.

(a) A petition for the election of a charter board may not be filed unless all of the signatures attached to the petition have been written by the signers within 6 months of the date when the petition is presented to the board.

(b) A petition relating to a question arising under Article XI-A of the Maryland Constitution shall be filed with the appropriate governmental body or officer not later than the 99th day before the general election at which the question is to be voted on.

(c)

(1) The responsible officers of a petition sponsor's ballot issue committee shall be a party to any proceeding to test the validity of the petition.

(2) The proceeding shall be filed in the county where the petition sponsor resides or maintains its principal place of business.

§ 7-105. Publication of questions.

(a) A local board shall provide notice of each question to be submitted statewide and each question to be submitted to the voters of the county, by:

(1) specimen ballot mailed at least 1 week before any early voting period before the general election; or

(2) publication or dissemination by mass communication during the 3 weeks immediately preceding the general election at which a question will appear on the ballot.

(b)

(1) For any question submitted under Article XIV or Article XVI of the Maryland Constitution, the notice required by subsection (a) of this section shall contain the information specified in § 7-103(b) of this title and a brief statement, prepared in clear and concise language, devoid of technical and legal terms to the extent practicable, summarizing the question.

(2) The statement required under paragraph (1) of this subsection shall be:

(i) prepared by the Department of Legislative Services;

(ii) approved by the Attorney General; and

(iii) submitted to the State Board by the first Monday in August.

(3) The statement required under paragraph (1) of this subsection is sufficient if it is:

(i) contained in an enactment by the General Assembly, and the enactment clearly specifies that the statement is to be used on the ballot; or

(ii) consistent with some other process mandated by the Maryland Constitution.

(c) The State Board shall adopt regulations governing notice of questions to appear on the ballot, including the use and content of specimen ballots and the publication or dissemination of notice by mass communication.

(d)

(1) The complete text of a question shall be posted or available for public inspection in the office of the State Board and each applicable local board for 65 days prior to the general election.

(2) Copies of the complete text of all statewide questions shall be furnished by the State Board to the local boards in quantities as determined by the State Board, including quantities sufficient to provide one copy of each for posting in each polling place and in each local board office.

(3) An individual may receive without charge a copy of the complete text of all constitutional amendments and questions from a local board, either in person, by mail, or electronically.

§ 9-202. Responsibilities for preparation.

(a) The State Board shall certify the content and the arrangement of each ballot to be used in an election that is subject to this article.

(b) Each local board shall place questions, names of candidates, and other material on the ballot in that county in accordance with the content and arrangement prescribed by the State Board.

§ 9-203. Standards.

Each ballot shall:

(1) be easily understandable by voters;

(2) present all candidates and questions in a fair and nondiscriminatory manner;

(3) permit the voter to easily record a vote on questions and on the voter's choices among candidates;

(4) protect the secrecy of each voter's choices; and

(5) facilitate the accurate tabulation of the choices of the voters.

§ 9-204. Uniformity.

(a) Subject to the other provisions of this subtitle and to different presentations required or made desirable by different voting systems, all ballots used in an election shall be as uniform as possible.

(b) Except as otherwise specifically provided in this title, or unless a provision is clearly inappropriate to absentee ballots, the provisions of this subtitle relating to ballot content and arrangement shall apply to the arrangement of absentee ballots.

(c) If applicable for the voting system in use, the appropriate components of the voting system shall be configured for a primary election to permit the voter to vote only for the candidates for which the voter is entitled to vote.

§ 9-205. Content.

Each ballot shall contain:

- (1) a heading as provided in § 9-206(a) of this subtitle;
- (2) a statement of each question that has met all of the qualifications to appear on the ballot;
- (3) the title of each office to be voted on;
- (4) the name, as specified in the certificate of candidacy, or as otherwise provided in Title 5 of this article, of each candidate who has been certified by the State Board;
- (5) a party designation for certain candidates as provided in this subtitle;
- (6) a means by which a voter may cast write-in votes, as provided in this subtitle; and
- (7) instructions to voters as provided in this subtitle.

§ 9-206. Arrangement — Format.

(a) Except as provided in subsection (b) of this section, a heading shall be printed at the top of the ballot and shall contain, in the following order:

- (1) the words “Official Ballot”;
- (2) the type of election, i.e., regular or special, primary or general, and any other information required to identify the election being held;
- (3) the date of the election;
- (4) the words “State of Maryland” and the name of the county;
- (5) in a primary election, the name of the political party or the words “nonpartisan ballot”, as applicable, for which the ballot or a portion of the ballot is to be used; and
- (6) if more than one ballot style will be used in the county in the election, the ballot style indicator.

(b) The provisions of subsection (a) of this section do not apply to a voting machine ballot if the State Board determines there is insufficient space.

§ 9-207. Ballots — Certification; display; printing.

(a) The State Board shall certify and publicly display the content and arrangement of each ballot:

- (1) for a primary election, at least 64 days before the election;
- (2) for a general election, at least 64 days before the election;
- (3) for a special primary election, at least 55 days before the election; and
- (4) for a special general election, not later than a date specified in the Governor’s proclamation.

(b) The Supreme Court of Maryland, on petition of the State Board, may establish a later date in extraordinary circumstances.

(c) The State Board shall publicly display the content and arrangement of each certified ballot on its website.

(d) Except pursuant to a court order under § 9-209 of this subtitle, or as provided in § 9-208 of this subtitle, the content and arrangement of the ballot may not be modified after the second day of the public display.

(e) Unless a delay is required by court order, the State Board may begin to print the ballots after certification and 3 days of public display and correct any noted errors.

§ 9-208. Late changes in ballots.

(a) After the printing of ballots has begun and if an error or a change in circumstances affecting the ballots requires the State Board to implement a change in how a voter may cast a valid ballot, the State Administrator shall determine what measures a local board may take to notify voters of:

- (1) the error or change in circumstances; and
- (2) the manner in which the voters may cast valid ballots for that election.

(b) The State Administrator shall immediately take all reasonable steps to notify all candidates on the ballot and any other persons whom the State Administrator considers appropriate:

- (1) on discovery of any change or correction affecting the ballots after the printing of ballots has begun; or
- (2) when the State Administrator implements a change under subsection (a) of this section.

§ 9-209. Judicial review.

(a) Within 2 days after the content and arrangement of the ballot are certified under § 9-207 of this subtitle, a registered voter may seek judicial review of the content and arrangement, or to correct any administrative error, by filing a sworn petition with the Circuit Court for Anne Arundel County.

(b) The circuit court may require the State Board to:

- (1) correct an administrative error;
- (2) show cause why an administrative error should not be corrected; or
- (3) take any other action required to provide appropriate relief.

(c) If an administrative error is discovered after the ballots have been publicly displayed, and the State Administrator fails to correct the administrative error, a registered voter may seek judicial review not later than the 62nd day preceding the election.

(d)

(1) A judicial proceeding under this section shall be conducted in accordance with the Maryland Rules, except that:

- (i) the case shall be heard and decided without a jury and as expeditiously as the circumstances require; and
- (ii) an appeal shall be taken directly to the Supreme Court of Maryland within 5 days of the date of the decision of the circuit court.

(2) The Supreme Court of Maryland shall give priority to hear and decide an appeal brought under paragraph (1)(ii) of this subsection as expeditiously as the circumstances require.

§ 9-210. Arrangement of ballots — Candidates and offices.

(a) The offices to be voted on shall be arranged on the ballot in the following order, as applicable:

- (1) public offices for which voters of the entire State may vote, in the following order:

- (i) President of the United States, or President and Vice President of the United States;
 - (ii) Governor and Lieutenant Governor;
 - (iii) Comptroller;
 - (iv) Attorney General; and
 - (v) United States Senator;
 - (2) Representative in Congress;
 - (3) members of the General Assembly of Maryland, in the following order:
 - (i) Senate of Maryland; and
 - (ii) House of Delegates;
 - (4) members of the governing body of a county, in the following order:
 - (i) county executive; and
 - (ii) county council or county commissioner;
 - (5) offices in the government of the City of Baltimore, in the following order:
 - (i) Mayor;
 - (ii) President of the City Council;
 - (iii) Comptroller; and
 - (iv) member of the City Council;
 - (6) judicial offices, in the following order:
 - (i) judge of the circuit court; and
 - (ii) appellate justices, continuance in office, in the following order:
 - 1. Supreme Court of Maryland; and
 - 2. Appellate Court of Maryland;
 - (7) public offices for which the voters of a county may vote, in the following order:
 - (i) county treasurer;
 - (ii) State's Attorney;
 - (iii) clerk of the circuit court;
 - (iv) register of wills;
 - (v) judge of the orphans' court;
 - (vi) sheriff; and
 - (vii) other offices filled by partisan election;
 - (8) party offices; and
 - (9) offices filled by nonpartisan election.
- (b) Any office not specified in subsection (a) of this section shall be placed on the ballot following the offices specified in subsection (a) of this section.
- (c) Within any category of offices, if the ballot contains one or more contests for at large election and one or more contests for election by district, the contest or contests to be voted on at large shall appear first.
- (d) In a prominent position adjacent to the title of each office, there shall be instructions stating the number of candidates for whom the voter lawfully may vote.
- (e)
- (1) A ballot shall contain the name of every candidate who is authorized under the provisions of this article to appear on the ballot.

(2) Each candidate shall be listed on the ballot in the contest for which the candidate has qualified.

(f)

(1) In a general election, the voter shall be afforded the opportunity to cast a write-in vote for as many positions as are to be filled in a contest.

(2) On a document ballot, in each contest a blank line or lines for write-in voting shall follow the printed names on the ballot.

(3) This subsection does not apply to questions or the continuance in office of appellate justices.

(g)

(1) Except for contests for judicial office or an office to be filled by nonpartisan election, the party affiliation of a candidate who is a nominee of a political party shall be indicated on the ballot.

(2)

(i) A candidate who is not a nominee of a political party or affiliated with a partisan organization shall be designated as an “unaffiliated”.

(ii) A candidate who is affiliated with a partisan organization shall be designated under “other candidates”.

(3) The names of candidates for judge of the circuit court or for a county board of education, and the names of incumbent appellate justices, shall be placed on the ballot without a party label or other distinguishing mark or location which might indicate party affiliation.

(h) In an election of a member of the House of Delegates that is subject to the provisions of § 2-201(d) of the State Government Article, the name of a candidate shall be identified by the county in which the candidate resides.

(i)

(1) If there is an election for members of the House of Delegates who are required to live in a specific county and only a certain number of delegates may be elected from that county, the ballot shall provide that a voter may not vote for more than that number of candidates from that specific county.

(2) In a legislative district where the delegates are to be elected by the voters of a multimember subdistrict that contains more than two counties or parts of more than two counties, a voter may cast a vote for the specified number of delegates to be elected in the subdistrict without regard to the county of residence of the candidate.

(j)

(1) In a primary election:

(i) on a voting machine ballot, the names of the candidates for party nomination shall be grouped together by party; and

(ii) on a document ballot, the ballot shall include only the names of candidates for which the voter is entitled to vote.

(2) In a general election:

(i) on a voting machine ballot, the names of the candidates of a political party shall be grouped together in adjacent rows or columns, and the majority party candidates

shall be placed in the first row or column, followed by the candidates of the principal minority party, followed by other political parties in descending order based on the number of voters registered with the party, and finally by candidates not nominees of a political party; and

(ii) on a document ballot, for each office the names of candidates shall be grouped together by party, with the majority party candidate or candidates listed first, followed by the candidate or candidates of the principal minority party, followed by the candidate or candidates of other political parties in descending order based on the statewide registration of the party, and finally by candidates who are not nominees of a political party.

(3) In both primary elections and general elections, when there is more than one candidate of the same political party for nomination or election to an office, the names of the candidates in the group shall be listed in alphabetical order by surname. In the primary election, candidates for Governor and Lieutenant Governor shall be arranged in the order of surnames of the gubernatorial candidates.

(k) On a voting machine ballot, the arrangement shall use the smallest number of rows or columns necessary, as evenly sized as possible, to accommodate all offices and candidates on the ballot.

§ 9-211. Arrangement of ballots — Questions.

(a) Questions to be voted upon shall be placed on the ballot in the following order:

- (1) those relating to the creation or adoption of a new State Constitution;
- (2) those proposing amendments to the Maryland Constitution;
- (3) those relating to other enactments of the General Assembly;
- (4) those relating to the creation or adoption of, or the amendment or other change in, the charter of a county;
- (5) those relating to other enactments by the governing body of a county; and
- (6) other questions.

(b) The numbering of questions on a ballot shall be as provided in Title 7 of this article.

§ 12-202. Judicial challenges.

(a) If no other timely and adequate remedy is provided by this article, a registered voter may seek judicial relief from any act or omission relating to an election, whether or not the election has been held, on the grounds that the act or omission:

- (1) is inconsistent with this article or other law applicable to the elections process; and
- (2) may change or has changed the outcome of the election.

(b) A registered voter may seek judicial relief under this section in the appropriate circuit court within the earlier of:

- (1) 10 days after the act or omission or the date the act or omission became known to the petitioner; or
- (2) 7 days after the election results are certified, unless the election was a gubernatorial primary or special primary election, in which case 3 days after the election results are certified.

§ 12-203. Procedure.

(a) A proceeding under this subtitle shall be conducted in accordance with the Maryland Rules, except that:

(1) the proceeding shall be heard and decided without a jury and as expeditiously as the circumstances require;

(2) on the request of a party or sua sponte, the chief administrative judge of the circuit court may assign the case to a three-judge panel of circuit court judges; and

(3) an appeal shall be taken directly to the Supreme Court of Maryland within 5 days of the date of the decision of the circuit court.

(b) The Supreme Court of Maryland shall give priority to hear and decide an appeal brought under subsection (a)(3) of this section as expeditiously as the circumstances require.

MARYLAND STATE BOARD OF ELECTIONS,

Appellant,

v.

ANTHONY J. AMBRIDGE, ET AL.,

Appellee.

* IN THE
* SUPREME COURT
* OF MARYLAND
* September Term, 2024
* No. 26

* * * * *

CERTIFICATE OF SERVICE [MDEC]

I certify that, on this 27th day of September, 2024, the Brief of in the captioned case was filed electronically and served electronically by the MDEC system on all persons entitled to service.

/s/ Daniel M. Kobrin

Daniel M. Kobrin