**IN THE**
**SUPREME COURT OF MARYLAND**

---

September Term, 2024

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No. 26

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**MARYLAND STATE BOARD OF ELECTIONS,** *et al.*,

*Appellants*,

v.

**ANTHONY J. AMBRIDGE,** *et al.*,

*Appellees.*

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

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# REPLY BRIEF OF APPELLANT MARYLAND STATE BOARD OF ELECTIONS

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# REPLY BRIEF OF APPELLANT

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## REPLY ARGUMENT

### I. THE PLAINTIFFS DID NOT PROCEED WITH DILIGENCE IN PRESSING THEIR BALLOT CHALLENGE.

#### A. Neither *Abrams v. Lamone* nor *Ademiluyi v. Egbuonu* Supports Plaintiffs' Argument That They Diligently Sought Information in Support of Their Ballot Challenge.

This Court's cases applying the doctrine of laches to late-filed ballot challenges have a common theme and state a consistent message: Laches bar a late-filed ballot challenge if the dilatory plaintiff "'had knowledge, or the means of knowledge, of the facts'"

underlying his cause of action. *Ademiluyi v. Egbuonu*, 466 Md. 80, 127-28 (2019) ("*Egbuonu*") (quoting *Parker v. Board of Election Supervisors*, 230 Md. 126, 131 (1962)). As this Court explained in *Egbuonu*, the "*Abrams* [case] . . . expounded that plaintiffs, within the context of judicial challenges to elections, have a certain duty to stay informed." 466 Md. at 129 (citing *Abrams v. Lamone*, 398 Md. 146, 159 n.18 (2007)). Thus, a plaintiff must have acted with reasonable diligence in seeking out information about his claim from any and all available sources, be those sources media reports, *see Ademiluyi v. Maryland State Bd. of Elections*, 458 Md. 1, 43 (2018) ("*Ademiluyi*"); *Abrams*, 398 Md. at 159 n.18; *Ross v. State Bd. of Elections*, 387 Md. 649, 671 (2005), the State Board's website, *Abrams*, 398 Md. at 159 n.18; a Maryland Public Information Act Request to the State Board, *see Egbuonu*, 466 Md. at 129-30; or the results of general research undertaken to uncover information, regardless of whether published in media reports, *see Ademiluyi*, 458 Md. at 43; *Liddy v. Lamone*, 398 Md. 233, 243-45 (2007). That is, a "voter may not simply bury his or her head in the sand and, thereby, avoid the triggering of the 10-day statutory time period, prescribed by [Election Law] § 12-202, in which to 'seek judicial review from any act or omission relating to an election.'" *Egbuonu*, 466 Md. at 129 (quoting *Abrams*, 398 Md. at 159 n.18).

Neither *Abrams*, nor *Egbuonu*, supports the plaintiffs' argument that they need only monitor media reports and the State Board's website, which the Court in *Abrams* described only as the "principal" sources available to the plaintiff in that case. *Abrams*, 398 Md. at 159 n.18. Contrary to plaintiffs' arguments, in both these cases, the Court discussed the plaintiffs' diligence or lack of diligence within the context of specific information available

to the plaintiff in the case then before the Court. In *Abrams*, information was publicly available in media reports on the State Board's website, and the Court observed that the plaintiff lacked diligence because he failed to discover the information sooner than he did. But because the issue was not properly before the Court, it addressed the merits. And in *Egbuonu*, the Court concluded that the plaintiffs acted with diligence because, since the information was *not* available online, plaintiffs made a request from the State Board under the Maryland Public Information Act, and (unlike our plaintiffs) the *Egbuonu* plaintiffs did so months before ballot certification; the plaintiffs here could have done the same and obtained the ballot language well before it was posted on the State Board's website.

As in *Egbuonu*, well before posting the ballot language, the State Board and City Law Department here possessed information that would not be posted on a website until the publication of the general election ballot, the plaintiffs knew that the State Board had that information, and they could have obtained it directly from the State Board though a simple request for public information. Mr. Ambridge's own efforts to participate in drafting the ballot language at issue highlight his awareness that the City Solicitor was drafting ballot language, which would be provided to the State Board and certified on August 2. (E. 65-66, 67.) Yet Mr. Ambridge made no effort after August 2 to obtain that ballot language from either the City Solicitor or the State Board.

### B. *Smigiel v. Franchot* and *Stop Slots MD 2008 v. State Board of Elections* Illustrate How Plaintiffs Should Have Diligently Pressed Their Challenges to Ballot Question F and the Charter Amendment it Proposed.

Plaintiffs claim that they cannot identify a single other case in which a challenge to ballot language, or a challenge to an amendment proposed by a ballot question, was initiated before certification of the "content and arrangement" of the final ballot. Appellees Br. 25. And they cite to *Smigiel v. Franchot*, 410 Md. 302 (2009) as supporting their argument that a challenge to a ballot question or its underlying subject matter "could only proceed after the ballot language was final." Appellees' Br. 26. But *Smigiel* does not stand for that proposition. In fact, *Smigiel* and its successor, *Stop Slots MD 2008 v. State Board of Elections*, 424 Md. 163 (2012), together provide a blueprint for exactly when and how plaintiffs should have made their challenges to Ballot Question F and the charter amendment it presents.

*Smigiel* involved a request for declaratory judgment that challenged the legality of a proposed amendment to the Constitution and any ballot question language that could be written for it. 410 Md. at 309-10. The plaintiffs in *Smigiel* filed their challenge in December 2007, almost a year before ballot certification and one month after the General Assembly enacted the legislation that proposed the constitutional amendment (which qualified a question on the amendment's adoption to appear on the ballot). *Id.* at 309. This Court addressed the substantive challenge to the amendment, holding that it was constitutional. *Id.* at 318-19. The Court declined to address the ballot question language

issue because it was not ripe for judicial review—the Secretary of State had not yet drafted the language of the question. *Id.* at 319-20.

*Stop Slots MD 2008* followed *Smigiel* as a challenge to the amendment's ballot question language after the Secretary drafted and certified the ballot question to the State Board. *Smigiel*, 410 Md. at 320 n.9. For the general election in 2008, the deadline for the Secretary of State to draft and certify statewide ballot questions to the State Board was August 18, 2008. *See* Md. State Bd. of Elections, *2008 Presidential Election Calendar* (accessible at https://elections.maryland.gov/pdf/2008_pres_election_calendar.pdf); *see also* Elec. Law § 7-103(c)(1) (LexisNexis 2007) (requiring Secretary of State to certify statewide ballot questions by the third Monday in August). The plaintiffs in *Stop Slots MD 2008* filed an Election Law § 12-202 challenge to the Secretary's certified ballot language ten days after that deadline, on August 28, 2008. *Smigiel*, 410 Md. at 320 n.9. The State Board was not due to certify the content and arrangement of the ballot under Election Law § 9-207 until September 10, 2008. *See 2008 Presidential Calendar*; *see also* Elec. Law § 9-207(a)(1)(i) (LexisNexis 2007).

*Smigiel* does not permit a litigant to postpone challenging a ballot question or the amendment it poses until final ballot certification. *Smigiel* illustrates that a diligent challenge to the legality of a constitutional amendment is brought soon after the enactment of the legislation that proposes the amendment. *Stop Slots MD 2008* illustrates that a diligent § 12-202 challenge to ballot language is made within 10 days of a governmental entity drafting and certifying ballot language to the State Board as required by Election Law § 7-103(c). Neither case countenance was the plaintiffs have tried to do here, filing a

request for judicial relief under Election Law § 12-202 to substantively change the ballot months and weeks after the "acts" they challenge took place.

Plaintiffs also misplace reliance on cases involving petition-initiated charter amendments, Appellees' Br. 26, which are not relevant to the question of when a challenge to the substance of a City Council-initiated amendment becomes ripe. A challenge to a petition-initiated charter amendment would not become ripe until the Election Director certifies that the petition has the necessary number of signatures and otherwise has met all requirements for inclusion on the ballot, because it is at that point that the measure's inclusion on the ballot is a certainty (barring judicial review). Elec. Law § 6-208. But in the context of a City Council-initiated charter amendment, again, its inclusion on the ballot is guaranteed, and thus the question of its constitutionality is ripe, as soon as the City Council passes the necessary resolution.

### C. Neither the State Board nor the City of Baltimore Prevented the Plaintiffs from Acquiring Information Necessary to Press Their Ballot Challenge.

The doctrine of laches focuses on the plaintiff's diligence in acquiring knowledge of the facts that support his claim. *Egbuonu*, 466 Md. at 127-28 (quoting *Parker*, 230 Md. at 131). A plaintiff cannot avoid the bar of laches by complaining that the defendants could have or should have made it easier for the plaintiff to acquire that information. Thus, here, the plaintiffs cannot avoid dismissal by pointing to the timing of either the City Solicitor's certification of the ballot language or the State Board's posting of the ballot language to its website. Appellees' Br. 25. Both the State Board and the Solicitor met their statutory deadlines, and Mr. Ambridge was aware of those deadlines. Thus, plaintiffs knew or

should have known that they could obtain the ballot language by request any time after August 2, which was a full month before the State Board posted it on the website. This Court's cases do not permit a plaintiff to sit back and wait for the information to be delivered to the plaintiff by the most convenient means possible. This Court's cases require a plaintiff to pursue available information with diligence.

Laches bar this late-filed ballot challenge because the plaintiff "'had knowledge, or the means of knowledge, of the facts'" underlying his cause of action. *Egbuonu*, 466 Md. at 127-28 (quoting *Parker*, 230 Md. at 131).

### D. The Record Establishes Prejudice to the Electorate, the City, and the State Board.

Plaintiffs suggest that there was no real prejudice because the State Board did not need to alter any ballot mailings. Appellees' Br. 27. But that was the case only because the circuit court accepted the plaintiffs' "proper charter material" challenge; because the circuit court held that the underlying amendment could not be adopted, the language remaining on the ballot was irrelevant. But if this Court were to hold that the amendment is proper charter material, but the ballot language is insufficient, any resulting remedy will lead to significant confusion and prejudice both to the State Board and the voters. *See Liddy*, 398 Md. at 254. Either new ballot language would need to be somehow communicated to voters weeks after the posting of mail-in ballots has begun (and at least some voters have already voted); or, if the Court were to hold that Question F should be invalidated outright solely on the basis of inadequate ballot language (as plaintiffs suggest, Appellee Br. 51-52), then voters will be denied the opportunity to vote on a charter

amendment that is in fact proper charter material solely because plaintiffs' delay in seeking review has left no time to revise the language.

## II. ELECTION LAW § 9-203 NEITHER ESTABLISHES QUALIFICATIONS FOR BALLOT QUESTIONS NOR AUTHORIZES THE STATE BOARD TO EDIT A BALLOT QUESTION CERTIFIED TO IT BY A GOVERNMENTAL AUTHORITY.

In describing its standard of review under the Constitution and the Election Law, this Court has explained that "[i]t should be emphasized that judicial review of the ballot title is limited to discerning whether the language certified "convey[s] with reasonable clarity the actual scope and effect of the measure." *Kelly v. Vote Know Coalition of Md., Inc*., 331 Md. 164, 174 (1993) (quoting *Surratt v. Prince George's County*, 320 Md. 439, 447 (1990)).

In cases where the General Assembly has referred a law to the voters, this Court has evaluated a challenge to a ballot question under Article XVI, § 5(b) of the Constitution of Maryland, and those provisions of the Code setting standards for ballot questions for both state and local enactments, Election Law § 7-103 and its predecessors. For local questions, the Court has evaluated challenges under Election Law § 7-103 and its predecessors.

Article XVI, § 5(b) of the Constitution requires that where a referred law exceeds 200 words, that "the full text shall not be printed on the official ballots, but the Secretary of State shall prepare and submit a ballot title of each such measure in such form as to present the purpose of said measure concisely and intelligently." Election Law § 7-103(b) requires that ballot questions contain 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.

Election Law § 9-203 imposes general standards for the ballot, but this Court has never even hinted that this provision, or any other, imposes any duty on the State Board to reformulate ballot questions drafted by either the Secretary of State or a local official in performing their duties under Election Law § 7-103(c). The standards imposed by Election Law § 9-203(1) & (2) apply to guide the entity charged with drafting a ballot question and to inform judicial review of a question's language. *See Stop Slots MD 2008*, 424 Md. at 209. For the reasons established in the State Board's opening brief, Appellant's Br. 22-27, the standards do not grant the State Board editorial authority over the Secretary of State (statewide ballot questions) and the county attorney (local ballot questions). The circuit court erred in faulting the State Board for failing to exercise a duty entrusted by law to the City Solicitor.

## 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 2288 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/ Julia Doyle
_____
Julia Doyle

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

### Constitution of Maryland, Article XIV

#### § 5. Publication of text of proposed measures

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

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

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**CERTIFICATE OF SERVICE**

I certify that, on this 8th day of October 2024, the Reply Brief of Appellant in the captioned case was filed electronically and served electronically by the MDEC system on all persons entitled to service, and that on the next business day two copies will be served by first class mail on all parties entitled to service.

/s/ Julia Doyle
_____
Julia Doyle