E-FILED
Gregory Hilton, Clerk,
Supreme Court of Maryland
10/10/2024 5:07 AM

IN THE SUPREME COURT OF MARYLAND

MARYLAND STATE BOARD OF ELECTIONS, *et al.*,	*	
Appellants,	*	September Term
v.	*	No. 26
ANTHONY AMBRIDGE, *et al.*,	*	
Appellees.	*	

* * * * * * * * * * * * * *

MOTION TO CORRECT RECORD

COME NOW, Appellees, by and through counsel, Thiru Vignarajah, Esq., pursuant to Md. R. Rev. Ct. App. & Spec. App. 8-414, to respectfully ask this Honorable Court to order that a material error and omission in the record be CORRECTED, and in support thereof state as follows:

1. This Motion is filed contemporaneously with a Motion to Shorten Time.

2. Pursuant to Md. R. Rev. Ct. App. & Spec. App. 8-414(b), this Motion includes an Affidavit in support executed by Appellee Katherine Venanzi. (*See* Exhibit A.)

3. It is presumed the parties are not in agreement as to the proposed correction of the record, so there is no supporting stipulation filed with this Motion.

4. Throughout these proceedings, Appellants have consistently maintained through their respective counsel that if any member of the public had requested the language of Ballot Question F after August 2, 2024, from Baltimore City or the State Board of Elections, the requesting party would promptly have received it.

5. Appellees have now learned from a news report that the City Law Department received such requests in writing in August 2024 and declined them, as late as August 30, 2024.

6. Because of the duty of candor of Counsel for the Mayor and City Council of Baltimore (MCC) and because this is a material omission in a case where Appellants insist that Appellees should have requested the language of Question F after August 2, this material omission in the record should and must be corrected to avoid a miscarriage of justice.

7. On October 9, 2024, hours after oral argument concluded, Counsel for Appellees learned of the material omission in the record from a news article published in the evening hours of

October 9 in the Baltimore Business Journal (BBJ) titled "*Maryland high court hears arguments in Harborplace referendum battle*." The article described the oral argument at the Supreme Court earlier in the day, and its key disclosure was presumably in response to Appellants' statements to the Court that parties could have obtained the language of Question F by asking Baltimore City or the State Board for the ballot language after August 2. (*See* Exhibit B.)

8. The article states that the BBJ unsuccessfully tried four times in August to obtain the language of Question F, including by filing an MPIA request with the City Law Department:

> The Baltimore Business Journal attempted to get a copy of Question F four times in August, including filing a Maryland Public Information Act request with the city law department on Aug. 28. The PIA was sent after Armstead Jones, director of the Baltimore City Board of Elections, advised that the law office had possession of the ballot question in mid-August. The law department denied the request on Aug. 30 in an email that said the law department was "not the custodian of the record you seek."

9. All counsel in these proceedings have a duty of candor: "[A]lthough an attorney in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the attorney must not allow the tribunal to be misled by false statements of law or fact or evidence that the attorney knows to be false." See Md. R. Att'y 19-303.3 - *Candor Toward the Tribunal* (3.3) (emphasis added).

10. It is already in the record in this case that a reporter with the BBJ advised the public on *Midday* on August 20, 2024, that she had requested the language of Ballot Question F and had been rebuffed (E. 69, Apx. 13).

11. Appellant MCB HP Baltimore LLC (MCB) wrote in its Reply Brief that no one could tell from the reporter's statement who the request was made to and what the request consisted of:

> Appellees seemingly contend they would not be able to get a copy of the language by pointing to an assertion by a reporter that she "called the Board of Elections" on August 19, the day before recording a WYPR radio show, but was not provided with the ballot language. There is no additional information from the reporter as to which "Board of Elections" she contacted, who she spoke with, what she asked for, what she was told in response, and whether she was subsequently provided a copy. In contrast, a State Board official has attested that someone who requests the certification letter will receive it within 48 hours. (E.49). (Appellant MCB's Reply Br., at 16).

12. It now appears that Counsel for MCC knew exactly who it was that the reporter contacted (the City Law Department), what exactly was asked for (a copy of the ballot language), what she was told in response (that the document was not in their custody), and whether the reporter was provided with a copy of the language of Question F (she was not).

13. Appellees continue to maintain that imposing an affirmative obligation to request information is a departure from this Court's consistent requirement that a plaintiff "not bury their heads in the sand." But, given the potential significance of one Appellee's failure to request ballot

language from city or state officials after August 2, it seems imperative to correct the record to address this material omission, that is, that the City Law Department did in fact receive requests for this information **in writing** and declined those requests after August 2 and as late as August 30, 2024.

14. Appellees ask only that the record be corrected to include at a minimum the BBJ's article published on October 9, 2024, affirming that it made four unsuccessful requests in August 2024 seeking the ballot language. That fact is a material omission that MCC's counsel had a duty of candor to correct. Appellees would also ask this Court to consider correcting the record to include the written requests and denials that are presumably in the possession of the City Law Department. MCC is in a clear position to confirm (or not) that they received written requests for the ballot language and that the City Law Department provided written responses declining to share that information. Counsel for MCC should promptly provide those written communications to the Court to include in the record to correct that material omission.

15. Maryland's appellate courts have said that in "exceptional cases, when the requirements of logic are overcome by the demands of justice," it is "proper to exercise the discretionary power of an appellate court in this State to look to a proceeding outside the record of the case before it." *Cf. Cf. Shih Ping Li v. Tzu Lee*, 210 Md. App. 73, 95 (Md. Ct. Spec. App. 2013) (*quoting Dashiell v. Meeks*, 396 Md. 149, 176-77 (2006)). This is the rare case where a correction of the record on appeal is appropriate given that:

    a. It would be a miscarriage of justice for this Court to render its ruling on the false assumption that if a request for Question F had been made after August 2 that it would have been promptly granted, when in fact a request was made and it was denied.

    b. At the outset of this litigation, Counsel for the State Board of Elections promptly supplied all emails in their possession relating to requests for the ballot language.

    c. During the hearing on MCC's and MCB's motions to intervene on September 20, 2024, Counsel for Appellees explicitly noted that part of the prejudice of MCC's belated motion to intervene was that Appellees could not earlier obtain any written requests to the City for the ballot language in August 2024, citing specifically the BBJ reporter's comment on *Midday* on August 20. The City Law Department did not indicate at that time that it had in its possession an MPIA request in writing seeking the ballot language and that it denied that request in writing as late as August 30, 2024.

    d. Like all parties in this matter, MCC received MCB's Reply Brief, in which MCB — presumably none the wiser — noted that, as to the reporter's inquiry, there was no information which Board of Elections was contacted, what was requested, how it was answered, or whether the ballot language was ultimately transmitted to the BBJ reporter. At that point, the duty of candor, pursuant to Md. R. Att'y 19-303.3(a)(1), required MCC at a minimum to advise this Court that the City Law Department had received a request for the information in August 2024 and that the request was denied.

    e. If a local news outlet and a seasoned reporter were unable, after four attempts in August 2024, to obtain a copy of the ballot language in question, despite filing a formal MPIA request with the City Law Department, it is imperative that this fact — which

currently constitutes a material omission known only to MCC's counsel — be a part of this Court's record before it decides whether ordinary citizens could be expected to extract that information from recalcitrant city officials as part of their obligation not to "bury their heads in the sand."

WHEREFORE, for the foregoing reasons and any which may appear to the Court, Appellees respectfully request that this Motion be granted, and this Court issue an Order correcting the record to include the BBJ article published on October 9, 2024. *See* Melody Simmons, *Maryland high court hears arguments in Harborplace referendum battle* (BBJ, Oct. 9. 2024), attached as Exhibit B, as well as all emails in MCC's possession that constitute requests for the ballot language

Respectfully submitted,

THIRUVENDRAN VIGNARAJAH
Counsel for Appellees

Attorney No.: 0812180249
LAW OFFICES OF THIRU VIGNARAJAH
211 Wendover Road
Baltimore, Maryland 21218
Thiru@JusticeForBaltimore.com
(410) 456-7552

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10rth day of October 2024, the foregoing **Motion to Correct Record** was filed via MDEC with the Clerk of the Supreme Court of Maryland, and served via MDEC to the following:

Julia Doyle, Esquire
Daniel M. Kobrin, Esquire
OFFICE OF THE ATTORNEY GENERAL
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
Counsel for Appellant Maryland State Board of Elections

Michael Redmond, Esquire
Ebony M. Thompson, Esquire
BALTIMORE CITY LAW DEPARTMENT
100 Holliday Street
Baltimore, Maryland 21202
Counsel for Appellant Mayor and City Council of Baltimore

Timothy F. Maloney, Esquire
Alyse Prawde, Esquire
JOSEPH, GREENWALD & LAAKE, P.A.
6404 Ivy Lane, Suite 400
Greenbelt, Maryland 20770
Counsel for Appellant MCB HP Baltimore LLC

Thiru Vignarajah

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AFFIDAVIT

1. I am over 18 years of age, and I am competent to testify.

2. My name is Katherine Venanzi, and my address is 3131 N. Calvert St. Baltimore, MD 21218.

3. I was a Petitioner and, on appeal, am an Appellee in the above-captioned case.

4. On October 9, 2024, at around 8:50 p.m., I discovered an article that had just been published, "*Maryland high court hears arguments in Harborplace referendum battle*" in the Baltimore Business Journal (BBJ). It described the oral arguments heard at the Supreme Court earlier in the day.

5. In the article, I learned that the BBJ unsuccessfully tried four times in August to obtain the language of Question F, including by filing an MPIA request with the City Law Department:

> The Baltimore Business Journal attempted to get a copy of Question F four times in August, including filing a Maryland Public Information Act request with the city law department on Aug. 28. The PIA was sent after Armstead Jones, director of the Baltimore City Board of Elections, advised that the law office had possession of the ballot question in mid-August. The law department denied the request on Aug. 30 in an email that said the law department was "not the custodian of the record you seek."

6. I am prepared to testify to the above and state the above to be true, under penalty of perjury.

I state the above with personal knowledge and under penalties of perjury.

10/9/2024
DATE

Katherine A Venanzi
KATHERINE VENANZI

EXHIBIT A

The Business Journals

EXHIBIT B

BaltimoreBusiness Journal
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Maryland high court hears arguments in Harborplace referendum battle

A rendering of the MCB Real Estate plans for a massive redevelopment of Harborplace. The project requires a change the city's charter to allow residential units at the Inner Harbor.
MCB Real Estate

By Melody Simmons – Senior Reporter, Baltimore Business Journal
Oct 9, 2024

Listen to this article 5 min

STORY HIGHLIGHTS

- Maryland Supreme Court debates legality of Harborplace referendum.
- Anne Arundel Circuit Court Judge Cathleen M. Vitale previously declared the referendum unconstitutional.
- MCB plans $500 million Harborplace overhaul with 900 apartments.

The debate over the controversial overhaul of Harborplace stretched all the way to Annapolis on Wednesday as the state's highest court heard arguments about the legality of a referendum that would allow the massive project to move forward.

The Maryland Supreme Court heard debate over topics ranging from the legalities of zoning and land use to even the timing of the release of the referendum. The court is expected to quickly rule on the matter as the Nov. 5 General Election approaches.

As of now, Question F on all city ballots has been voided based on a Sept. 16 ruling by Anne Arundel Circuit Court Judge Cathleen M. Vitale who declared the city charter referendum unconstitutional and poorly written. The judge's ruling was appealed last month by the city and the Maryland Board of Elections.

For nearly an hour and a half Wednesday, the high court heard arguments from a group of city residents who oppose the referendum — and a defense of the question by the Maryland Attorney General and the city law office. The spirited debate was held in an ornate, wood-paneled courtroom weeks before the election as anxious officials from Harborplace developer MCB Real Estate and a group of 30 Baltimore residents looked on.

The referendum question asked voters to allow MCB to add 900 luxury apartment units to Light Street's waterfront promenade in two towers on what today is public parkland. The move is part of an ambitious $500 million plan by MCB to remake Harborplace and replace the decades-old, two-story glass retail pavilions with a residential, commercial and retail complex with expanded green space and new promenade.

In order to proceed, MCB and the city sought changes to the city charter to allow for the privately owned and developed residential towers. The new zoning and height allowances would pave the way for the project to move forward, MCB co-founder and principal P. David Bramble has said for several months. But some city residents led by former city councilman Tony Ambridge and Ted Rouse, a local developer and the son of Harborplace developer James Rouse, filed the lawsuit as members of the grassroots Inner Harbor Coalition.

During the arguments before the Maryland Supreme Court, both sides sparred over the validity of the referendum and whether or not voters would be able to decipher the obtuse language.

The ballot question states: "Question F is for the purpose of amending the provision dedicating for public park uses the portion of the city that lies along the Northwest and South Shores of the Inner Harbor, south of Pratt Street to the water's edge, east of Light Street to the water's edge, and north of the highway to the water's edge, from the World Trade Center around the shoreline of the Inner Harbor including Rash Field with a maximum of 4.5 acres north of an easterly extension of the south side of Conway Street plus access thereto to be used for eating places, commercial uses, multifamily residential development and off-street parking with the areas used for multifamily dwellings and off-street parking as excluded from the area dedicated as a public park or for public benefit."

Daniel Kobrin, assistant attorney general, told the court that voiding the ballot question would "erode trust" in the state's system because it was already on printed and mail-in ballots and will remain on the Nov. 5 election slate. He also said the group protesting the referendum had adequate time to file a challenge under a timeframe in state election laws.

"They should have been more diligent," Kobrin said.

Michael Redmond, chief solicitor in the city law department, agreed. He told the seven-member court that Question F was legal and constitutional, and took issue with challenges to the referendum's validity by Thiru Vignarajah, who represented the Inner Harbor Coalition.

Vignarajah charged that the city withheld public release of the referendum language until early September as a tactic to keep opponents and some voters guessing.

The Baltimore Business Journal attempted to get a copy of Question F four times in August, including filing a Maryland Public Information Act request with the city law department on Aug. 28. The PIA was sent after Armstead Jones, director of the Baltimore City Board of Elections, advised that the law office had possession of the ballot question in mid-August. The law department denied the request on Aug. 30 in an email that said the law department was "not the custodian of the record you seek."

After the hearing, Vignarajah said he was cautiously optimistic.

"It was very clear the justices had done their homework and were fully engaged in the wide range of issues," he said.

MCB officials did not respond to a request for comment following the appeals hearing.