In the Court of Appeals
of Maryland

September Term, 2008

No. 61

JANE DOE et al.,

Appellants/Cross-Appellees,

v.

MONTGOMERY COUNTY BOARD OF ELECTIONS

Appellee/Cross-Appellant.

Appeal from the Circuit Court for Montgomery County
(Hon. Robert A. Greenberg, Judge)

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STATEMENT OF THE CASE

The parties cross-appeal from the July 24, 2008 decision of the Montgomery County Circuit Court in this election law case. The circuit court ruled that a referendum petition challenging a transgender non-discrimination law unanimously enacted by the Montgomery County Council did not carry the signatures of the 5% of registered County voters required under State and County law to halt operation of legislation and bring it to referendum. (App22) Yet the court below incorrectly ordered that the referendum vote must nonetheless proceed. (App24) Appellants/Cross-Appellees ("Appellants") are concerned Montgomery County registered voters who object to this unlawful referendum and who filed their timely challenge to it within 10 days of the March 6, 2008 certification of the referendum for ballot by Appellee/Cross-Appellant Montgomery County Board of Elections ("BOE").

Appellants respectfully seek reversal of the circuit court ruling upholding the referendum and affirmance of the ruling declaring the petition to be insufficient. Appellants further seek a declaration that the non-discrimination law is to take immediate effect and that the referendum is de-certified and may not proceed.

QUESTIONS PRESENTED FOR REVIEW

1. Did the circuit court err in ruling, contrary to the strict compliance standard dictated by this Court in an unbroken line of decisions, that specific signature requirements prescribed under the election laws for referenda petitions need not be met, with the result that a referendum petition carrying an insufficient number of valid signatures was certified for the ballot?
2. Did the circuit court err in holding that the BOE is required to include inactive voters in calculating the total number of registered voters in Montgomery County and, thus, in calculating 5% of that number to determine the number of signatures required on the petition for referendum?[1]

[1] This question is presented in the BOE's cross-appeal.

3. Did the circuit court err in ruling that a voter challenge to certification of a referendum petition that failed to carry the required number of signatures, which challenge was filed within ten days of the certification, is nonetheless partially time-barred?

PRELIMINARY STATEMENT

The court below held that the BOE improperly excluded inactive voters from the pool of registered County voters from which the 5% voter signature requirement for a referendum must be derived. The circuit court ruled, correctly, that based on its miscalculation, the BOE illegally certified for the ballot a petition with insufficient voter support: "Plainly [the petition sponsor] did not gather enough signatures to meet the five percent threshold." (App22)[2] Yet the court nonetheless went on to rule that the referendum should proceed and be placed on the ballot at the November 4, 2008 general election because, according to the court, Appellants' suit filed within 10 days of the BOE's referendum certification was untimely. (App23-24) To reach this result the court applied an irrational and unconstitutional interpretation of statute of limitations provisions that eviscerates the rights of concerned voters to challenge manifestly illegal referenda.

The referendum also suffers from another fatal defect requiring de-certification, and even the BOE concedes that Appellants' challenge on this issue indisputably was timely. Thousands of petition signatures counted by the BOE failed to comply with the most basic safeguards specified by the General Assembly in § 6-203(a) of the Election Laws in the Maryland Code ("Elec. Code") — mandatory and easily satisfied requirements that signers use their full names of registration or names and initials in signing. As a result, in this regard as well the petition was far short of the number of valid signatures necessary for certification. Ignoring a long string of unbroken precedents of this Court holding specifically in the referendum context that such

[2] The BOE cross-appeals this portion of the circuit court's ruling. Appellants defend the court's ruling on this issue in Point III below.

requirements must be complied with strictly, the court below held that this express provision of the Election Code may be disregarded. (App16)

The BOE paints Appellants' plea that the election laws be adhered to in the referendum context as an attempt to "disenfranchise" voters. What the BOE does not acknowledge, however, are the rights of Montgomery County voters to have laws duly enacted by their elected representatives take effect unless specific prerequisites to halt that process by referendum are satisfied. The "referendum is a concession to an organized minority and a limitation upon the rights of the people." *City of Takoma Park v. Citizens for Decent Gov't*, 301 Md. 439, 448, 483 A.2d 348, 353 (1984) (internal quotation marks omitted).

> The exercise of the right of referendum is drastic in its effect. The very filing of the [referendum] petition, valid on its face, suspends the operation of any of a large class of legislative enactments and provides an interim in which the evil designed to be corrected by the law may continue unabated, or in which a need intended to be provided for, may continue unsatisfied.

Id., *quoting Tyler v. Sec'y of State*, 229 Md. 397, 402, 184 A.2d 101, 103-04 (1962). When a petition sponsor is permitted to cut corners and circumvent legal requirements to get a referendum on the ballot, those who would have been protected by the legislation halted by the inadequate petition suffer, and the right to representative democracy is undermined.

Ignoring this Court's considerable body of precedent specifically addressing referendum petitions and consistently reaffirming the strict compliance standard, the BOE instead claimed below that *Nader for President 2004 v. Maryland State Board of Elections*, 399 Md. 681, 926 A.2d 199 (2007), and *Maryland Green Party v. Maryland Board of Elections*, 377 Md. 127, 832 A.2d 214 (2003), allow referendum prerequisites to be disregarded. The BOE's reliance on those cases is doubly ironic.

First, *Green Party* and *Nader* did not even involve referenda. Instead, they turned on concerns about disenfranchising individual voters from participating in the petition process for party and candidate ballot access. The Court recognized that type of petition as central to participation in the system of representative democracy through the selection

of governing officials and as tantamount to casting a vote for a candidate at the ballot box. Requiring adherence to safeguards against insufficient referendum petitions that halt operation of enacted laws should not be confused with efforts to put up roadblocks to anyone's right to participate in the selection of political candidates or vote in elections. This case involves straightforward application of very specific statutory provisions, which at most place only minimal burdens on participation in the political process and which over and over again this Court has held must be complied with strictly in the referendum context.

Especially ironic is the BOE's utter disregard of the holding in *Green Party* that *is* most directly relevant here. This Court addressed in *Green Party* discriminatory treatment of inactive voters and broadly concluded that "*any* statutory provision or administrative regulation which treats 'inactive' voters differently from 'active' voters is invalid." *Green Party*, 377 Md. at 153, 832 A.2d at 229 (emphasis added). Yet the BOE maintains that it may nonetheless exclude registered inactive voters from being counted in the pool of total County voters at least 5% of whom must support the referendum petition. While counting the signatures of those inactive voters who support the petition in the numerator of the equation, the BOE dramatically skewed the outcome by excluding entirely from the denominator those inactive voters who did not support and sign the petition. If there has been any "disenfranchisement" of voters in this case, it has been at the hands of the BOE in its treatment of inactive voters, who have been effectively denied the ability to have their lack of support for the referendum petition factor into the referendum process. The circuit court correctly held that the BOE should not have excluded these voters from its calculations and that, when counted as they must be, the petition carries insufficient signatures to go to referendum. (App22) That ruling should be affirmed.

What cannot pass muster is the circuit court's determination that this manifestly insufficient referendum petition nonetheless should continue to suspend operation of a duly enacted non-discrimination law and proceed to the November 4, 2008 general election ballot. The court wrongly applied the 10-day time limitations in Elec. Code § 6-

210(e) to block concerned voters who filed suit just eight days after the BOE's certification from seeking judicial relief from this concededly illegal referendum. That provision governs the time in which aggrieved sponsors, who receive statutory notice of election boards' adverse determinations, may challenge particular determinations, not the time in which concerned registered voters may challenge illegal certification of referenda. But even if the 10-day limitations did apply here, Appellants satisfied it by filing within 10 days of the BOE certification they challenge. The draconian standard the lower court applied not only is inconsistent with the requirements of the Election Code but also with the case or controversy principle and rights of due process.

STATEMENT OF FACTS

A. Enactment Of The Non-Discrimination Law.

On November 13, 2007, following public hearings, the Montgomery County Council unanimously passed Montgomery County Bill No. 23-07, the "Non-discrimination — Gender Identity" Law (the "non-discrimination law"). (E223) It was signed into law by County Executive Isiah Leggett on November 21, 2007. (*Id.*)

The non-discrimination law adds "gender identity" to the categories protected under the County's anti-discrimination provisions. (E227) Its effect is to protect transgender people in the County from discrimination in employment, public accommodations, housing, and cable television and taxicab service. (E224, 227-35) It is similar to the many transgender anti-discrimination provisions already enacted in more than 100 jurisdictions nationally, including in 13 states, Baltimore City, and Washington, D.C. *See* National Gay and Lesbian Task Force, *Jurisdictions with Explicitly Transgender-Inclusive Nondiscrimination Laws*, http://www.thetaskforce.org/downloads/reports/fact_sheets/all_jurisdictions_w_pop_4_08.pdf (last visited August 18, 2008).

The County Council enacted the Law to address discrimination on the basis of gender identity, which has been the cause of unemployment, poor housing, poverty, lack of safety, and other social ills for transgender people in the County. (E224-25) The Law was scheduled to go into effect on February 20, 2008. (E223)

B. MCRG's Efforts To Thwart Operation Of The Non-Discrimination Law.

A small contingent of foes of anti-discrimination protections for transgender people, unable to persuade a single one of the duly elected Council representatives of the people of Montgomery County to vote against the measure, turned to the referendum process in their effort to halt the non-discrimination law from taking effect. Calling themselves Maryland Citizens for a Responsible Government ("MCRG"), they launched a website opposed to transgender rights protections, www.notmyshower.net, and commenced a petition signature-gathering drive. Applying fear-mongering tactics, MCRG mischaracterized this thoroughly vetted law designed to protect transgender people from being turned away from jobs, stores, restaurants, and taxicabs, as a supposed effort to allow children to be threatened in bathrooms and shower stalls. *See, e.g.*, MCRG, *Bathrooms*, http://www.notmyshower.net/bathrooms.shtml (last visited August 18, 2008).

C. The Process And Requirements For Bringing A Law To Referendum.

The process and requirements for bringing a County-enacted law to a referendum are laid out in a series of provisions in Article XVI of the Maryland Constitution; Title 6 of the Election Code; COMAR Title 33, Subtitle 6; §§ 114-15 of the Montgomery County Charter; and Article II of Chapter 16 of the Montgomery County Code. The referendum procedure and requirements are highly detailed, requiring compliance with a number of specific preconditions before a petition may be certified. *See, e.g.*, Elec. Code tit. 6. For example, only a registered Montgomery County voter may sign a petition. Elec. Code § 6-203(b)(2). To be deemed valid, a signature must be signed with the voter's name as it appears on the statewide voter registration list or with the surname of registration and at least one full given name and the initials of any other names. *Id.* § 6-203(a)(1). Signatories must also provide, in print, their name as signed, their address, and the date of signing. *Id.* § 6-203(a)(2); Montgomery County Code § 16-6.

To ensure that the referendum has sufficient popular support to warrant halting operation of the law and bringing it to general vote, the referendum sponsor must submit

within specified time-frames valid signatures of 5% of registered Montgomery County voters as of the date the act became law. *See* Montgomery County Charter §§ 114-15; Montgomery County Code § 16-6. Signatures of at least 2.5% of registered voters must be submitted within 75 days of enactment of the challenged law — in this case by February 4, 2008 — and the remainder to total at least 5% of all voters by 90 days after enactment — here by February 19, 2008. *See* Montgomery County Charter § 115.

D. The BOE's Calculation Of The 5% Signature Requirement.

The BOE advised MCRG that 5% of registered Montgomery County voters on November 21, 2007, the date the non-discrimination law was signed into law, totaled 25,001. This number was calculated and expressed by the BOE without public notice. It was provided on November 30, 2007 to MCRG through a brief private email communication; that email did not disclose that the BOE had excluded inactive voters in its calculations. (E572-73)

Only during the June 2008 hearing on the parties' cross-motions for summary judgment did the BOE publicly reveal for the first time that it had excluded over 50,000 registered voters designated "inactive" from the total number of County registered voters from which it had calculated the 5% signer requirement. (App19; E553) Voters designated "inactive" in the voter registration rolls who had signed the petition nonetheless had their signatures counted towards the 5% supporter requirement. (App20) The BOE further conceded that the computer database it uses to track voter registration does not preserve on a day-to-day basis records of numbers of registered voters, whether active or inactive, and so the BOE had no records for November 21, 2007 on which it had based its 25,001 calculation. (E756-57) It also had no record of how many inactive voters had been excluded from that calculation. Nor did it have any way to reconstruct those figures after the fact. (E756-59, 797-801) There thus is no publicly available information by which a concerned voter could verify now — or at any point after November 2007 — whether the 5% voter figure of 25,001 was calculated with or without inactive voters (or any other category of voters, for that matter) in the overall pool of voters. The BOE asserts in its petition for certiorari that "[t]his determination and

documents reflecting this determination by the [BOE] were a matter of public record and available for inspection by the public at the [BOE's] office." (E629) But the BOE has submitted no documents in this case and can point to none in the record that would have "reflect[ed]" that the BOE excluded inactive voters in its calculations. (E518-21, 800-01) Certainly none were available by February 20, 2008, the point when the court below claimed that a voter challenge needed to have been filed. (App23) Indeed, the BOE never revealed this information in discovery, and even counsel to the BOE apparently did not learn until the litigation was well underway that BOE staff had excluded inactive voters. (E357 n.1, 552-55)

The State Board of Elections ("State Board") posts on its website on a monthly basis a chart titled "Voter Registration Activity Report." (E519, 521, 427-50) The chart has a section titled "TOTAL ACTIVE REGISTRATION," broken down by county, with sub-columns breaking the numbers down further by party affiliation or unaffiliated status. (E521) In this area of the chart is a sub-column labeled "TOTAL," which is the sum of all the party affiliation sub-columns. The chart reporting data as of November 30, 2007 states the "TOTAL" for Montgomery County to be 499,975. (*Id.*) A separate section in the chart is labeled "ACTIVITY," with sub-columns labeled "CONF MAILING" and "INACTIVE." In the "INACTIVE" sub-column for Montgomery County, the number 52,269 appears. There is no explanation offered on the website or in the charts themselves of the meaning of these and other columns of information appearing on the chart. Nor is there any way to discern from the chart that voters presumably designated "inactive" and tallied in the "INACTIVE" sub-column were not counted among voters in the separate section of the chart breaking down voters by party affiliation. (*Id.*; E800-01)

Given that the BOE does not preserve daily voter statistics and could not proffer the numbers of registered active and inactive voters as of November 21, 2007 for purposes of resolving this issue, the parties and court below resorted to an estimated figure based on the State Board's monthly data. (E756-58) At the hearing the BOE represented that the figures reported in the November 30, 2007 chart differed from but likely were close to those as of November 21, 2007. (*Id.*) The BOE advised that the

52,269 "inactive" voter figure in the November 30, 2007 chart was not included in the separate party affiliation total. Adding these figures together, there were 552,244 total registered voters in Montgomery County as of November 30, 2007. Five percent of that total is 27,615, the number of valid signatures the court below held the MCRG petition would have to carry to meet a requirement of 5% of registered County voters. (App22)

E. Certification Of The Petition By The BOE.

MCRG attempted to satisfy its signature requirements by filing 15,146 purported petition signatures on February 4 and 15,506 purported signatures on February 19, 2008, a total of 30,652 signatures. (E49, 83) Even given the actual 27,615 signature requirement, MCRG submitted purported signatures well in excess of the number it needed to qualify for a referendum.

These filings caused the non-discrimination law to be halted from taking effect pending the determination by the BOE whether to certify the petition, and, if certification resulted, pending the outcome of the referendum. Montgomery County Charter § 115. In the meantime, transgender individuals, recognized by a unanimous County Council to be victims of discrimination, continue to suffer from the lack of protections that had been mandated by the non-discrimination law.

The BOE asserted below that its review of MCRG's petition was mainly limited to determining whether information provided by a purported signer was sufficient to verify whether the individual was a registered Montgomery County voter. According to the BOE, even if the person had not provided a full signature, printed name, or address, so long as some information provided on the petition page matched with a registered County voter, the signature was credited by the BOE towards the total. (E65, 83-84) The BOE conceded that it intentionally disregarded specific requirements spelled out in the election laws, such as those dictating that the signer's full name of registration or surname of registration and at least one full given name and initials of others be provided by the signer in order for the signature to be validated. (E68-69)

Using this methodology, the BOE certified the petition on March 6, 2008 based on its determination that 13,467 signatures from the February 4 submission and 13,416 from

the February 19 submission, a total of 26,883, should be counted. (E83-84) The circuit court ultimately ruled that 26,813 of these petition signatures are valid. (App19) Appellants challenge that ruling. (*See* Points I-II).

F. The Proceedings Below.

Appellants, 12 registered Montgomery County voters, represent a cross-section of Montgomery County. They include a Captain in the County police department, a homemaker, a student, a decorated veteran, an educator, a banker who is chairman of the Greater Silver Spring Chamber of Commerce, clergy people, the Mayor of Takoma Park, the head of the County chapter of the National Organization of Women, and a former Vice President of the Maryland NAACP — among them two individuals who are transgender and another whose sibling is. (E503-05)

Concerned that the non-discrimination law was being halted by an insufficient referendum effort, Appellants initiated this complaint on March 14, 2008, eight days after the BOE's certification, pursuant to Elec. Code § 6-209.[3] (E14) With leave of court, Appellants filed an amended complaint on July 8, 2008 following the BOE's disclosure of its exclusion of inactive voters from its calculations. (E502, 795) They seek judicial review of the certification and a declaratory judgment decertifying the petition. The parties cross-moved for summary judgment. A hearing was held in the circuit court on June 11-12 and July 9, 2008.

The circuit court rendered its decision on July 24, 2008.[4] Appellants filed a notice of appeal on July 28, 2008 and a petition for certiorari and expedited review on August 5,

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[3] MCRG sought to intervene in the action. The circuit court denied intervention but permitted MCRG to appear as *amicus*. (App1-2) The State Board also appeared as *amicus*. (E104)

[4] Appellants contended below that the BOE certified the petition for referendum even though it was riddled with numerous evident defects, ranging, for example, from validation of signature entries purportedly of multiple signers that obviously — and fraudulently — were made by a single hand (App17), to violations of requirements relating to the integrity of circulator affidavits (App10-12), to misleading summaries of the purported purpose of the referendum printed on the petition sheets (App5). The circuit court made various rulings on these issues, some in Appellants' favor and others

2008. The BOE filed a notice of cross-appeal on August 5, 2008 and petitioned as well for certiorari on August 8, 2008. This Court granted both petitions for certiorari on August 11, 2008. (E636)

ARGUMENT

I. The Lower Court Erred In Failing To Apply The Strict Compliance Standard That Governs Referendum Petitions.

The election law provisions governing referenda are not merely general guidelines to take or leave when circulating and evaluating a petition challenge to duly enacted legislation. Acknowledging the significant impact on representative democracy from bringing an enacted law to referendum, and the safeguards that must be satisfied before that may occur, this Court repeatedly has confirmed that only strict compliance with the prescribed requirements will suffice.

Representative democracy is the prevailing form of government provided by the United States Constitution, all 50 states, and local home rule governments. The founders established a republican form of government to protect minority and civil rights from the "tyranny of the majority." During the Progressive Era, concerns about legislative abuses by elected officials who had become the captives of "great corporations" led Maryland and a number of other states to allow for public referenda of legislative enactments, as a "supplement to the principle of representation." *Kelly v. Marylanders for Sports Sanity, Inc.*, 310 Md. 437, 451, 530 A.2d 245, 252 (1987) (internal quotation marks and citation omitted). *See also* Daniel M. Warner, *Direct Democracy: The Right of the People to Make Fools of Themselves; The Use and Abuse of Initiative and Referendum, A Local Government Perspective*, 19 Seattle U. L. Rev. 47, 48-53 (1995).

While initially designed as a check on the political influence of robber barons, "[t]oday, direct democracy is used comparatively infrequently to curb abuses in government or otherwise to control elected officials." Derrick A. Bell, Jr., *The*

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not. Appellants contend that the circuit court erred in all its adverse rulings on these points. However, in the interests of expediting the appeal and narrowing the issues to those that would certainly be dispositive of whether the referendum must be decertified in its entirety, Appellants only pursue certain key issues on appeal.

Referendum: Democracy's Barrier to Racial Equality, 54 Wash. L. Rev. 1, 18 (1978). Instead, in more recent decades referenda increasingly have been used by dissident factions as a tool to undermine legislative civil rights advances of historically persecuted groups. Civil rights laws enacted to rectify discrimination against African-Americans, gay people, and — most currently — transgender people, have been targeted in referenda efforts sponsored by civil rights opponents. *See id.* at 14-15; William E. Adams, Jr., *Pre-Election Anti-Gay Ballot Initiative Challenges: Issues of Electoral Fairness, Majoritarian Tyranny, and Direct Democracy*, 55 Ohio St. L.J. 583 (1994). In deciding whether to enact anti-discrimination laws, legislators have the benefit of testimony and scientific data and are charged with representing the needs of *all* their constituents and not just the majority, while referenda call on voters to make often ill-informed decisions on emotionally charged issues. In this arena, "referenda are often used to appeal to the worst types of irrational fears." *Id.* at 595.

Maryland's constitutional and statutory provisions governing referenda balance the interests behind direct democracy with concerns about its shortcomings. Thus referenda may subvert representative democracy only where procedural and substantive checks on its exercise are satisfied. Moreover, Maryland courts vigorously enforce these checks on the referendum process. Contrary to the suggestion of the court below and the BOE, these requirements are not counter-democratic or "hyper-technical" efforts to "disenfranchise voters," but rather meaningful safeguards built into the referendum process to protect legislative advances from unjustified attack.

The referendum attempt in this case joins other ignoble efforts in Maryland history to stop anti-discrimination laws from taking effect. *Takoma Park*, a leading case affirming the requirement of strict compliance with referendum requirements, involved judicial review of a referendum effort by Citizens for Decent Government ("CDG"), apparent namesake of present sponsor Citizens for a Responsible Government. CDG in *Takoma Park* sought repeal of Montgomery County's sexual orientation non-discrimination law — a precursor to the transgender non-discrimination law under attack here. *See* 301 Md. at 443-44, 483 A.2d at 350-51. The issue in *Takoma Park* was

whether only partial compliance with specific referendum requirements mandated by the Montgomery County Code should suffice, or whether strict compliance was required. *Id.* at 449, 483 A.2d at 353-54. The circuit court in the present case adopted the position advanced by the *Takoma Park* sponsor that the specific terms of the referenda law need not be given a "literal reading," (App14), and are merely "directory, not mandatory" (App16).

But this Court expressly rejected this very argument in *Takoma Park*, holding instead that *strict* compliance with referendum requirements is *mandatory*: "*[t]he statutory provisions* [which establish the referendum procedure] *are mandatory*" because access to such a procedure is a "privilege" that was "conce[ded]" to the citizens by the Maryland Constitution. 301 Md. at 448-50, 483 A.2d at 353-54 (emphasis added), *quoting Gittings v. Bd. of Sup'rs of Elections for Baltimore County*, 38 Md. App. 674, 681, 382 A.2d 349, 353 (1978). The Court found that the failure to include an accurate description of the subject of the referendum meant that the petition sponsors had not properly availed themselves of that privilege, and, therefore, the "decision made by the lawfully designated representatives of the entire body politic" must stand. 301 Md. at 449, 483 A.2d at 353. The Court distinguished between pre-election petition review, where strict compliance must apply, and post-election review, where substantial compliance arguments might be permissible: "When the court considers, prior to an election, an attempt to prevent the statute from going into force by use of a referendum petition, there must be strict compliance with the prerequisite of such suspension." *Id.* at 446, 483 A.2d at 352, *quoting Pickett v. Prince George's County*, 291 Md. 648, 659, 436 A.2d 449, 455 (1981).

Similarly, in *Barnes v. State ex rel. Pinkney*, 236 Md. 564, 204 A.2d 787 (1964), a case very closely on point, this Court did not permit a petition effort that failed to comply with the letter of the law to halt operation of Maryland's newly enacted public accommodations act prohibiting discrimination based on race, color, creed, or national origin. *Id.* at 568, 204 A.2d at 788-89. The Court declined to adopt a standard that specific signature requirements are merely "directory," instead holding that such

requirements as that petition signers give their full names in print were mandatory and not in conflict with the constitutional right of referendum. *Id.* at 571-73, 204 A.2d at 791-92. Moreover, the Court held that the government had no authority to waive these "mandatory" provisions in the petition certification process. *Id.* at 574-75, 204 A.2d at 792-93. Because an insufficient number of signatures complied with these requirements, the petition was not entitled to stop operation of the anti-discrimination law or put the law to a public vote. *Id.*

Indeed, in case after case the Court has made clear that all applicable requirements must be followed for a referendum petition to succeed. "[S]tringent language employed [by the referendum procedure] . . . shows an intent that those seeking to exercise the referendum in this State must, as a condition precedent, strictly comply with the conditions prescribed." *Takoma Park*, 301 Md. at 448, 483 A.2d at 353, *quoting Tyler*, 229 Md. at 402, 184 A.2d at 104. *See Ferguson v. Sec'y of State*, 249 Md. 510, 240 A.2d 232 (1968) (holding provisions of referendum procedure to be mandatory); *Abell v. Sec'y of State*, 251 Md. 319, 247 A.2d 258 (1968) (holding referendum petition deadlines to be mandatory); *Tyler*, 229 Md. 397, 184 A.2d 101 (enforcing strict compliance with circulator affidavit requirement); *Phifer v. Diehl*, 175 Md. 364, 1 A.2d 617 (1938) (invalidating petition due to insufficient number of signatures); *see also Gittings*, 38 Md. App. at 679-681, 382 A.2d at 351-53 (affirming summary judgment entered in favor of referendum opponents due to petition sponsors' "fail[ure] to meet the constitutional and statutory requirements which authorize the exercise of the [referendum] privilege").

This Court has specifically rejected precisely what the circuit court asserted is proper here — reading as not "literal" the plain commands of the election laws governing referenda to allow petitions that do not comply with the letter of the law to qualify for referenda. The "Court cannot by construction eliminate a mandatory provision deliberately adopted by the General Assembly." *Takoma Park*, 301 Md. at 447, 483 A.2d at 353 (internal quotation marks and citations omitted).

The BOE relied below on *Nader* and *Green Party*, two recent cases dealing with Election Code Title 6 petitions. But those cases did not involve referenda petitions,

addressing instead standards that apply to voter signature petitions for a different purpose, to put a political party and candidate on the election ballot. The Court in both cases was concerned with the close ties between the petition process to qualify a political party and put a candidate on the ballot and the ultimate ability to vote for a candidate to hold representative office. *See Nader*, 399 Md. at 703-04, 926 A.2d at 212 ("[T]his Court has . . . equated the nominating petition process to voting in this State."); *Green Party*, 377 Md. at 151, 832 A.2d at 228 ("[I]f the only method left open for the members of a political party to choose their candidates is via petition, then the right to have one's signature counted on a nominating petition is integral to that political party member's right of suffrage."). *See also*, *e.g.*, Elec. Code § 4-102(a)(1) (new political party is established by filing signature petition).

In *Nader* the Court held unconstitutional as applied a provision not at issue here, § 6-203(b)(2) of the Election Code, which called for petition signers to identify their county of registration. That provision had been applied by the election board to disqualify some voters from participation in a statewide petition process to place a national party and presidential candidate on the Maryland ballot. County residence is immaterial in such a petition process open to all registered voters statewide. The Court held that given the close connection between the nominating petition process for a political party and presidential candidate and the ability to vote for the candidate of one's choice at the ballot, the same procedural safeguards should be afforded to nominating petition signers as are afforded to voters on election day. *Nader*, 399 Md. at 698-705, 926 A.2d at 209-13. The Court further held that the State Board erred in failing to use the single, unified statewide list of registered voters to review petition signatures rather than county-based lists, and rejected the contention that added burdens on the board of elections could justify allowing it to cut corners in the petition review process. *Id.* at 705-06, 926 A.2d at 213-14.

Green Party likewise involved the right to participate in the selection of political party candidates, which this Court recognized as an integral aspect of the right to vote. 377 Md. at 151, 832 A.2d at 228. Significantly, in addressing the standards that apply

when the right to select a political candidate is at stake, neither *Nader* nor *Green Party* even mentioned the long line of referenda cases that includes *Takoma Park* and *Barnes*. This is not surprising, given that the strict construction of election law requirements appropriate and, indeed, mandatory in the referendum context does not and should not necessarily carry over to hinder the ability of voters to participate on party nominating petitions or candidate elections. In that context the "drastic" effect a referendum petition has on the democratic process is not a countervailing concern. The Maryland cases specifically addressing pre-election referenda requirements, not cases addressing the distinct political candidate context, govern whether specific legal requirements must be complied with strictly here.[5]

The BOE's reliance here on *Green Party* to justify its certification of the petition is particularly inapt, given that the case instead should compel halting the referendum from proceeding any further. *Green Party* is most on point in its consideration of board of elections procedures that discriminate against inactive voters. It held that inactive voters may not be treated differently from other voters in their ability to participate in the electoral process. Regulations disqualifying registered voters from nominating candidates simply because they had been designated "inactive" were thus held unconstitutional. 377 Md. at 151-52, 832 A.2d at 228-29. As discussed in Point III below, to the extent rights to participate in the political process are at stake in the present case, *Green Party* confirms that it is the rights of inactive voters that are being infringed. These voters are as entitled as any others to be counted in the pool of County voters whose views on the MCRG petition should have been taken into account.

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[5] *Takoma Park* itself illustrates that different standards of review are applied under Maryland election law depending on the context — and that in this context strict compliance is the mandatory standard. In that case the Court explicitly distinguished standards that might apply to evaluate a referendum *post-election* with the strict compliance standard that governs in the referendum context *pre-election*. 301 Md. at 446-47, 483 A.2d at 352.

II. Thousands Of Purported Petition Signatures Are Invalid Because They Do Not Comply With Signatory Information Requirements Specified In Elec. Code § 6-203(a)(1), Requiring De-Certification Of The Petition.

In certifying MCRG's petition, the BOE failed to apply § 6-203(a)(1) of the Election Code, which specifies the signature information required from a petition signer to safeguard the integrity of the referendum process. The text of this provision is unambiguous in what precisely is required. Yet the court below held that the strict compliance standard dictated by this Court has been implicitly overruled by the General Assembly and, moreover, that the express requirements of § 6-203 may be ignored. (App16) It is undisputed that the BOE credited as valid 5,735 purported signatures filed with MCRG's February 19, 2008 submission that fail to comply with the terms of § 6-203(a)(1), and that Appellants' challenge to these purported signatures is not time-barred. (App8, 13) It is further undisputed that if these signatures are held to be invalid (as they should be), the petition carries insufficient valid signatures and must be de-certified.

According to subsection (a) of § 6-203,

> (a) To sign a petition [for referendum], an individual shall:
>
> > (1) sign the individual's name as it appears on the statewide voter registration list or the individual's surname of registration and at least one full given name and the initials of any other names . . .

Subsection (b) of § 6-203 further provides that "[t]he signature of an individual shall be validated and counted *if . . . the requirements of subsection (a)* of this section *have been satisfied*" (emphasis added).

Section 6-203 leaves absolutely no ambiguity about its requirements: for an individual's signature to be counted as valid, the individual *shall* sign his or her name as it appears on the statewide voter registration list or with his or her full last name and at least one full given name and the initials of any other given names. If a signature fails to meet this unequivocal standard, it must be rejected as invalid, and cannot be counted towards certification. This Court already held in *Barnes* that referenda petitions must comply with precise signer requirements like those provided in § 6-203(a). 236 Md. at 571-72, 204 A.2d at 791 (upholding requirement that signer print name adjacent to

signature). Such requirements "safeguard the privilege which the Constitution grants," *id.* at 571, 204 A.2d at 791, and may not be waived here.

Yet MCRG submitted thousands of signatures that failed to meet the statutory requirement, and the BOE uniformly counted them as valid. Thus, for example, the BOE counted towards the February 19 total the "signature" of someone purportedly signing merely as "Katie," apparently because a "Katie M. Toth" could be found in the voter registration records at the same address. (E264-65) It similarly counted as a signature the entry "A. Mars," apparently because an "Amy Ann Mars" could be found at the address given. (E290-91)

The court below and the BOE attempt to justify the obvious inconsistency between § 6-203(a)'s specific requirements and the BOE's policy to *waive* these requirements based on a number of arguments that conflict with controlling legislation and this Court's clear dictates.

First, they place principal reliance on a different provision of the Election Code, § 6-207(a)(2), which they claim should be read to negate the plain terms of § 6-203(a). (App13-16) Section 6-207(a) provides:

> (1) Upon the filing of a petition, and unless it has been declared deficient under § 6-206 of this subtitle, the staff of the election authority shall proceed to verify the signatures and count the validated signatures contained in the petition.
>
> (2) The purpose of signature verification under paragraph (1) of this subsection is to ensure that the name of the individual who signed the petition is listed as a registered voter.

The circuit court and BOE suggest that § 6-207(a)(2), enacted in 2006, repealed the detailed requirements of § 6-203. Under this logic, so long as the BOE can figure out a way to determine whether an individual who seems to have signified *some* intent to sign a referendum petition is a registered voter, there need be no compliance with other, more specific, signature and information requirements.

This reasoning contravenes the text of the relevant provisions, canons of statutory construction, and the legislative history of §§ 6-203 and 6-207. Section 6-203(a) could

not be clearer or more precise in what it requires. Adherence to the literal language of § 6-203 is required not only by the strict compliance standard that specifically governs referendum measures, but also by more general rules of statutory construction. In ascertaining the meaning of a statutory provision, the court first will look to the "normal, plain meaning of the language," and, if the language is clear and unambiguous, will not look past those terms. *Bienkowski v. Brooks*, 386 Md. 516, 536-37, 873 A.2d 1122, 1134-35 (2005) (internal quotation marks and citations omitted). Moreover, this Court has repeatedly stressed that it "construe[s] a statute as a whole so that no word, clause, sentence, or phrase is rendered surplusage, superfluous, meaningless, or nugatory." *Mayor and Town Council of Oakland v. Mayor and Town Council of Mountain Lake Park*, 392 Md. 301, 316, 896 A.2d 1036, 1045 (2006) (*citing Moore v. State*, 388 Md. 446, 453, 879 A.2d 1111, 1115 (2005)).

Interpreting § 6-203(a) to allow noncompliant signatures to stand as "genuine" valid signatures would render its provisions meaningless. *See Barnes*, 236 Md. at 571, 204 A.2d at 790. Tortured efforts to read other provisions of the Election Code into these unambiguous terms should be rejected.

On its face, § 6-207(a)(2) cannot reasonably be read as trumping and nullifying the specific language of § 6-203(a). Indeed, the two are separate, distinct commands, each of which must be complied with strictly. Section 6-207(a)(2) explains that the purpose of "signature verification" under § 6-207(a)(1) is to ensure that signers are registered voters. That "verification" under § 6-207(a)(1) is a distinct step from "validation" of signatures: the BOE is to "verify" signatures of individuals (i.e., determine if they are "registered") and then to count those that are "validated." "Validated," in turn, is the term used in § 6-203(b)'s directive, quoted above, that a "signature of an individual shall be validated and counted if: (1) the requirements of subsection (a) of this section have been satisfied" — including § 6-203(a)(1)'s signature requirement. "Validation" and "verification" of signatures thus are two distinct requirements under the Election Code, the first hinging on whether the detailed identifying information required under § 6-203(a) has been provided by the signer, and the second on whether the signer is a registered voter. *Both* sets of

requirements must be met; it is not enough that a person who purportedly affixes something short of a full signature and other required information on a petition is a registered voter.

It is particularly inappropriate to take the position that § 6-203(a)(1) can be construed out of existence given the legislative history of that subsection and of § 6-207(a)(2). Both §§ 6-203 and 6-207 were originally enacted in 1998. Acts 1998, ch. 585 § 2 (eff. Jan 1, 1999). Prior to that time, the Election Code did not specify how individuals should sign their names, requiring only that "names" be printed after signatures. *See Barnes*, 236 Md. at 570-71, 204 A.2d at 790-91; prior § 7-1 of Art. 33. The 1998 revisions added such detailed specifications as those codified at § 6-203(a)(1). That particular revision evidences the General Assembly's intention to make the requirements regarding referendum petitions more specific and rigorous, not less so.

The General Assembly amended § 6-203 further in 2005 for greater clarity. Acts 2005, ch. 572, § 1 (eff. Jan. 1, 2006). Among the changes was replacement in § 6-203(a)(1) of the words "registration list" with "statewide voter registration list." The fact that the General Assembly revisited the wording of this provision so recently and preserved the precise requirements of § 6-203(a)(1) reinforces that it intended those requirements to continue to apply with full force.

The legislative history of § 6-207(a)(2), added in 2006, also reflects that that provision was not intended to repeal the specific requirements appearing elsewhere in the Election Code at § 6-203(a)(1). The amendment to § 6-207(a)(2) was intended to relieve election boards of responsibility to "verify the authenticity of signatures, in acknowledgment of the administrative and practical difficulty in adhering to that requirement." Md. Dep't of Legis. Servs., 90 Day Rep., 2006 Sess., Pt. C, S.B. 101 (Ch. 65), at C-10. Thus § 6-207(a)(2) relieves election boards of the affirmative obligation to compare the handwriting on petition signatures with the handwriting on voter registration cards. While making this clarification, the General Assembly left intact § 6-203(a)(1), further demonstration that its specific provisions were neither being repealed by the revision to § 6-207 nor were intended to be ignored by election boards. If anything, the

General Assembly's decision to forego handwriting comparisons left all the more important § 6-203(a)(1)'s safeguard, discussed below, against forgery and abuse in the referendum process.

Had the General Assembly meant for § 6-203(a)(1) to cease to apply, it would have amended the Election Code further to reflect that goal. Neither boards of election nor the courts have the "right under the law to grant such a dispensation." *Gittings*, 38 Md. App. at 679, 382 A.2d at 351. Instead, any alterations to the plain dictates of the statute must come from the General Assembly, not "by judicial construction." *Selinger v. Governor*, 266 Md. 431, 437, 293 A.2d 817, 820 (1972).

Second, the BOE argued below that § 6-203(a)(1)'s signature requirement is a "hypertechnical" (E70) burden on voters, many of whom "do not even know how their name appears on the statewide voter registration list" and so "could not easily comply" with the requirement. (E72) The BOE and circuit court suggested that enforcing this statutory requirement infringes on the rights of voters to participate in the referendum process. (App14; E68) This argument is wrong on several counts.

Far from a "hypertechnical" burden, the signature requirement is a safeguard against fraud and abuse. The General Assembly did not state in the Election Code that purported signers are merely required to provide enough information for the BOE to determine that a person bearing at least a similar name is registered. It demanded that more detailed information be provided than what the BOE relied upon here, which, frankly, is no more than could be pulled from a local telephone directory. Without the information the General Assembly wisely required, an overly-zealous petition circulator could simply leaf through a phonebook and sign for County residents using the name and address information provided. Based on the standards the BOE admits it applied, these "signatures" would all pass muster, even though only partial name information was provided, so long as there was overlap with some of the data in the voter registration list.[6]

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[6] The BOE's claim below that birth date data provided by signers is an added check against forgery or mistaken identity where incomplete name information is provided, even if it were legally relevant, would not change the analysis. (E69) Date of birth is in

The General Assembly's simple expedient of requiring signers to identify themselves by their full names and/or initials is an important safeguard against the fraud that can easily occur in a referendum petition process. *See, e.g.*, *Citizens Comm. for D.C. Video Lottery Terminal Initiative v. D.C. Bd. of Elections and Ethics*, 860 A.2d 813, 816 (D.C. 2004) (describing circulator practice of forging names out of telephone directory); *In re Armentrout*, 457 N.E.2d 1262, 1264-65 (Ill. 1983) (describing "roundtabling" practice where group of partisans take turns forging names from telephone directory on referendum petition). Indeed, here the court below saw fit to disqualify dozens of signatures that on their face "raise genuine suspicion about authenticity." (App17); *see, e.g*, (E910-15) These purported signatures, which included a number that appeared to have been made by the same hand, were particularly obvious and crude examples of suspicious signature entries. (E877) (circuit court finding that "[i]t's patent to me the same person filled every one of these [signature entries] out"). The BOE's decision to validate the many purported signatures that fail to comply with § 6-203(a)(1) removes an important safeguard against less easily detected manipulation of the referendum process.

Moreover, Maryland law is clear that referendum requirements cannot be jettisoned by boards of elections or petition sponsors simply because compliance poses some burden. "If the burden [of a referendum provision] is too heavy, the remedy is by an appropriate [legislative] amendment" to the provision, not simply by disregarding it. *Ferguson*, 249 Md. at 517, 240 A.2d at 236.

Beyond this, however, the factual premise of the BOE's argument does not even withstand scrutiny. It is impossible to see how it would unduly burden voters to ask that they sign using at least their last name, one full given name, and the initials of any other names. Montgomery County residents may not know exactly how their names appear on

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fact one item of information that the Election Code *does not* specify is required, and COMAR specifically provides it is only *optional* and its absence "does not invalidate the signature." *See* COMAR 33.06.03.06(C). Indeed, the BOE validated numerous incomplete signatures even where the signer did not include a date of birth. *See, e.g.*, (E290-309) (examples of incomplete signatures *without* date of birth information nonetheless counted as valid by the BOE).

the voter registration list, but they surely can be presumed to know their own first, middle, and last names. Petition circulators need only ask interested signers to include this statutorily-required information. As it was, the majority of signers — albeit not enough to certify the referendum — apparently were advised of this requirement and had no difficulty signing with their required names or initials. (E735-36) Even if there were any leeway in applying this requirement, it is nonsense to claim it imposes an unfair burden on Montgomery County voters.

Nor would enforcing this requirement unduly burden the BOE (even could this excuse the BOE's obligation to comply with state law). The election law squarely places the responsibility to perform this analysis on "the chief election official" of the relevant "election authority," here, the BOE. *See* Elec. Code § 6-206(a). The BOE conceded below that its staff already checks each purported signature against the voter registration list to confirm registration. (E83-84) BOE staff can confirm at that step whether the signature is complete or not. On Appellants' side, volunteers were able to perform this analysis using BOE-provided voter registration databases; the record includes thousands of pages demonstrating the results of this analysis. (E904-07)

Just last week, in *Lemons v. Bradbury*, No. 08-35209, 2008 WL 3522418 (9th Cir. Aug. 14, 2008), the United States Court of Appeals for the Ninth Circuit upheld as reasonable Oregon referendum petition requirements similar to those at issue here. The court rejected a constitutional challenge by disappointed referendum proponents to state procedures to verify petition signatures. Those requirements had resulted in invalidation of a referendum effort seeking repeal of a civil rights law establishing domestic partnership for same-sex couples. The Ninth Circuit noted the reasonableness of enforcing the requirement that petition signers use their full name as they registered to vote, and upheld a signature matching procedure even though signers were not later given the opportunity to rehabilitate non-compliant signatures. *Id.* at *5. The court characterized these requirements as only a "minimal burden" on the right to participate in the referendum process. *Id.* The court further noted the state's greater need for such safeguards in the referendum context as opposed to other voting contexts, given the ease

with which referendum petitions may be abused. *Id.* (finding that "fraudulent signatures" are more likely on referendum petitions because they "are often gathered by privately hired signature gatherers who are paid a fixed amount for each signature they obtain").

Third, the circuit court and the BOE further claimed that § 6-103(a) of the Election Code authorizes election boards to adopt guidelines for signatures that depart from the specific requirements enacted by the General Assembly in § 6-203(a). (App16; E67-68) Section 6-103(a) provides that the "State Board shall adopt regulations, *consistent with this title*, to *carry out the provisions of this title*" (emphasis added). This provision obviously does not give election boards carte blanche to adopt guidelines that are plainly *inconsistent* with the detailed requirements specified in § 6-203 of this title. A policy requiring materially less information than is required by § 6-203(a)(1) could not possibly be "consistent" with the statute's mandate that "[t]o sign a petition, an individual *shall"* supply at least their surname and one full given name and other initials.

Finally, the BOE and State Board revealed below that Maryland election boards have disregarded § 6-203 in the past and suggested that this should relieve the BOE from any obligation to comply with its clear terms now. (E112-13) This argument contradicts well-established Maryland law. As this Court explained in *Bouse v. Hutzler*, 180 Md. 682, 687, 26 A.2d 767, 769 (1942):

> Where the language [of a statute] is clear and explicit, and susceptible of a sensible construction, it cannot be controlled by extraneous considerations. No custom, however long and generally it has been followed by officials, can nullify the plain meaning and purpose of a statute. An administrative practice contrary to the plain language of a statute is a violation of the law; and a violation of the law, even though customary, does not repeal the law.

The Court thus routinely has held that "[a]n administrative agency's construction of [a] statute is not entitled to deference . . . when it conflicts with unambiguous statutory language." *Marriott Employees Fed. Credit Union v. Motor Vehicle Admin.*, 346 Md. 437, 446, 697 A.2d 455, 459 (1997); *see also Himes Assocs., Ltd. v. Anderson*, 178 Md. App. 504, 535-36, 943 A.2d 30, 47-48, *cert. denied*, 405 Md. 291, 950 A.2d 829 (2008).

The thousands of signatures that fail to comply with § 6-203(a)(1) should be disqualified, requiring de-certification of the petition.

III. The Circuit Court Correctly Ruled That The BOE Erred In Excluding Inactive Voters From Its Calculation Of Required Petition Signatures, With The Result That The Petition Failed To Carry Signatures Of 5% Of Registered County Voters.

Section 114 of the Montgomery County Charter requires that a petition to send a law to referendum must contain the signatures of 5% "of the registered voters of the County." The Charter uses the phrase "registered voters" without qualification. It means 5% of all registered County voters, whether denominated "active" or "inactive" by the BOE.

The lower court correctly ruled that the BOE violated the law by excluding inactive voters from the denominator of the equation to determine whether the petition had the support of at least 5% of County voters. (App19-20) The court recognized that this error by the BOE caused "a petition signed by a deflated percentage of voters" to send a "validly-enacted law" to the ballot. (App21) The BOE cross-appeals from the lower court's ruling. In defense of its decision to exclude over 50,000 registered voters from participation in the referendum process and to certify a petition lacking support of 5% of all County voters, the BOE relied below on two main contentions, both of which the lower court rightly rejected.

First, the BOE argued that Elec. Code § 3-503(d) and dicta in a May 2004 lower court ruling in *Green Party*, which allow considering inactive voters differently for specific administrative purposes, control this issue. (E482-84, 496) It further claimed that the completely distinct "administrative purposes" for which inactive voters by express statutory provision may be excluded from consideration can justify the BOE's decision to exclude those voters when it comes to the referendum process. (E485-90) But the BOE neglected to acknowledge that amendments to the Election Code superseded that dicta and squarely contradict the BOE's position, as do the rulings of this Court in *Green Party* and *Gisriel v. Ocean City Board of Supervisors of Elections*, 345 Md. 477, 501-504, 693 A.2d 757, 769-71 (1997).

Second, the BOE contended that excluding inactive voters from the baseline tally of all registered voters, while nevertheless counting their signatures when they support MCRG's petition, somehow advances the "enfranchisement" of voters. (E490-91) The very opposite is true. Indeed, to the extent a signature on the petition can be seen as a "vote" for the referendum measure (a point pressed by the BOE itself), *not* having a signature on the petition must be seen as a "vote" *against* the measure, and, at minimum, implicit sanction to have the process of representative democracy proceed without interference. The BOE's methodology strikes at the very heart of that right for inactive voters. It completely disregards the "votes" of inactive voters who do not sign and support the petition by excluding them from the pool of voters at least 5% of who must approve the petition. The BOE continues to do exactly what this Court in *Green Party* said is forbidden: follow a system that "treats 'inactive' voters differently from 'active' voters." 377 Md. at 153, 832 A.2d at 229. The BOE further disregards the harm its skewed methodology causes the rights of Montgomery County voters and residents overall, who are entitled to have laws enacted by their elected representatives take effect unless specific requirements for a referendum are complied with strictly.

A. Recent Amendments To The Election Code Supersede The 2004 Unpublished *Green Party* Circuit Court Dicta And Make Clear That Inactive Voters May Not Be Excluded From The Referendum Process.

The BOE relies on Elec. Code § 3-503(d) to exclude inactive voters from the definition of "registered voters" for purposes of calculating the total pool of voters in the County. Section 3-503(d) provides that "[r]egistrants placed into inactive status may not be counted for official administrative purposes including establishing precincts and reporting official statistics." The BOE contends that this language excludes "inactive" voters for purposes of referendum petition calculations, on the asserted belief that such calculations are merely an "official administrative purpose."

The BOE similarly relies on a 2004 unpublished ruling by the circuit court on remand in the *Green Party* case, which included these provisions:

a. Maryland voters placed in "inactive" status may, but need not, be included in determining the total number of registered voters for

purposes of fixing the number of signatures needed on a petition (where the number needed is a percentage or proportion of the total registered voters) or in determining whether 1% of registered voters are affiliated with a particular party; and

b. Election officials may decide whether to count voters placed in "inactive" status as registered voters for such purposes as reporting voter turnout, calculating the number of precincts required to serve the voters in a particular geographic area, calculating the number of voting machines or poll workers needed to serve a particular precinct, etc. (E496)

The BOE claims that quoted provision "a." above currently authorizes its practice to exclude inactive voters from the pool of total registered voters for purposes of determining the number of signatures required on a petition. What the BOE ignores are more recent amendments to the Election Code and legislative history making clear that the BOE's reliance on § 3-503 and the unpublished circuit court dicta in *Green Party* is entirely misplaced.

In 2005 the General Assembly amended the Election Code expressly to disallow omitting inactive voters from the pool of registered voters for purposes of fixing the number of signatures needed on a petition. Thus provision "a." in the *Green Party* declaration has been superseded by statutory amendment, a point apparently overlooked by the BOE.

Prior to 2005, subject matter now contained in § 3-503 was codified in § 3-504(f). Subsections (3)-(5) of § 3-504(f) formerly read as follows:

(3) An inactive voter who fails to vote in an election in the period ending with the second general election shall be removed from the registry.

(4) Individuals whose names have been placed on the inactive list may not be counted as part of the registry.

(5) Registrants placed on the inactive list shall be counted only for purposes of voting and not for official administrative purposes including petition signature verification, establishing precincts, and reporting official statistics. (E394-95)

In 2005, subsequent to the 2004 *Green Party* declaratory judgment, the General Assembly amended these provisions by deleting the following struck out text and adding the text in boldface in re-designated § 3-503:

> ~~(3)~~ **(c)** An inactive voter who fails to vote in an election in the period ending with the second general election shall be removed from the ~~registry~~ **statewide voter registration list**.
>
> ~~(4) Individuals whose names have been placed on the inactive list may not be counted as part of the registry.~~
>
> ~~(5)~~ **(d)** Registrants placed ~~on the~~ **into** inactive ~~list shall~~ **status may not** be counted ~~only for purposes of voting and not~~ for official administrative purposes including ~~petition signature verification,~~ establishing precincts~~,~~ and reporting official statistics. (E406)

Significantly, in the same act, the General Assembly also struck this provision formerly at Elec. Code § 1-101(mm): "'Registered voter' does not include an individual whose name is on a list of inactive voters." (E397) The current version of § 1-101 does not contain a definition of "registered voter."

These 2005 revisions make clear the General Assembly's intention that inactive voters be counted in the total number of registered voters for petition purposes. Inactive voters are to be included for purposes of "petition signature verification." They also are to be "counted as part of the registry" of voters. While the General Assembly left intact provisions codified at § 3-503(d) allowing exclusion of inactive voters only "for official administrative purposes" specifically including "establishing precincts and reporting official statistics," it deleted all references in the Election Code that would permit exclusion of inactive voters for purposes of fixing the number of signatures needed on a petition.

Moreover, the Department of Legislative Services Fiscal and Policy Note Regarding House Bill 723 (2005) (E421), further establishes the General Assembly's intention to insure that inactive voters would be considered for purposes of petitions. The Note explains: "The bill repeals a provision exempting an inactive voter from being considered a registered voter." (E423) The term "registered voter" is precisely the term used by Montgomery County Charter § 114 to define who must be included in the

formula to determine the number of signatures required for a referendum. The legislative intent demonstrated by the 2005 amendments is apparent. Prior law excluded inactive voters from being counted as part of a referendum petition process. Current law requires inactive voters to be counted — and not just as part of the numerator of the equation, but also as part of the denominator. Inexplicably, the BOE has not caught up to the current requirements of the law.[7]

In a further effort to justify its exclusion of inactive voters here, the BOE focused below on the two "administrative purposes" specified in § 3-503(d) for which exclusion of inactive voters expressly *is* permitted: "establishing precincts" and "reporting official statistics." It offered why it makes sense to present data excluding inactive voters when "establishing precincts" (so that resources can be properly allocated to polling places based on anticipated voter turnout), or when "reporting official statistics" (so that voter turnout data can be more accurately analyzed). (E486-87, 498-99) It also observed that excluding inactive voters for these purposes does not "disenfranchise" any voters or prejudice the democratic process. But none of that has anything to do with, much less justifies, the BOE's practice of excluding inactive voters from participation in the petition process (that is, unless the inactive voter affirmatively supports the petition, in which case the BOE counts them in), to the detriment of thousands of inactive voters and the overall integrity of the referendum process.

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[7] The BOE apparently was misguided by the State Board. Tellingly, the Director of Election Management for the State Board revealed in a declaration filed below that the State Board has been excluding inactive voters for petition purposes based on the now superseded version of § 3-503(d) adopted in 1994. (E497) (Second Decl. of Donna Duncan at ¶ 3) ("Since January 1, 1995, the effective date of Chapter 370, Laws of Maryland 1994, now codified as Election Law Article ("EL") §3-503(d), [the State Board's] consistent policy and practice has been to not count inactive voters for the purpose of determining how many signatures are needed to satisfy a petition signature requirement."). As discussed above, that version had explicitly called for excluding inactive voters for purposes of "petition verification," but in 2005 it and other provisions of the Election Code were amended to eliminate any discretion on the part of the BOE to exclude inactive voters from participation in the referendum petition process. It appears that the State Board has not conformed its "policy and practice" to the later requirements of the 2005 amendments to the Code.

While the exclusion of inactive voters for the purposes still expressly permitted by § 3-503(d) assertedly further administration of democratic government, the same cannot be said of excluding such voters for purposes of fixing the number of registered voter signatures needed on a petition.

B. Beyond Its Inconsistency With Current Election Law, The BOE's Methodology Infringes The Interests Of Inactive Voters And More Broadly The Montgomery County Body Politic.

The BOE's methodology has a flaw even more fundamental than its violation of recent amendments to the Election Code. It also is unconstitutional.

The BOE asserted below that by counting the signatures of inactive voters towards the requisite number for certification, while excluding more than 50,000 inactive voters from the total pool of registered voters out of which the 5% requirement must be calculated, no voters suffer "disenfranchisement" and the democratic process is furthered, not harmed. In fact this theory entirely disregards the unconstitutional impact the BOE's practice actually has on Montgomery County inactive voters and the integrity of the referendum process.

The BOE claims that a signature on a referendum petition is tantamount to a "vote" and that the right to exercise that "vote" must be respected. But to the extent a signature on the petition can be seen as a "vote" for the referendum measure, *not* placing one's signature on the petition must be seen as a "vote" *against* the measure, and, at minimum, implicit sanction to have the process of representative democracy proceed without interference. The BOE's methodology excludes County registered inactive voters from the political process by refusing to count *their* "vote" *not* to sign a referendum petition and *not* to block from taking effect a law enacted by elected representatives. The methodology disregards the fact that the only way to oppose a petition is by not signing it and by having the absence of one's signature on the petition weighed in determining overall voter support for the referendum. Thus the decision not to sign a referendum petition, or simply to leave to elected representatives the task of lawmaking, is every bit as important to participation in the political process as the

decision to sign a petition. Inactive voters benefit from and are governed by the transgender protection law as much as active voters. They deserve equal weight with other voters in a referendum petition process challenging that law.

Integral to the privilege of referendum under § 114 of the County Charter is the requirement that the petition garner the support of at least 5% of the "registered voters" in the County. If fewer than 5% of registered voters can be persuaded to sign the petition, then the will of those voters who do not support it by signature must be respected and the law enacted by the peoples' elected representatives is entitled to go into effect. Those 95+% of County voters who do not sign the petition may not have their implicit right to reject a referendum petition and to have their elected officials enact laws infringed by fewer than 5% of County voters who favor the referendum. To allow fewer than 5% of County voters — whether active or inactive — to trigger a referendum gives the desires of each of the individual members of this minority faction greater weight than is given to the 95+% of other voters who have not supported the petition. This is contrary to the most basic one person-one vote mandate of our democratic system. "[T]he right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds v. Sims*, 377 U.S. 533, 555 (1964).

The BOE's methodology strikes at the very heart of this fundamental precept. It gives inordinate political strength to active voters, who alone have their disapproval of the petition effort counted, and to those inactive voters who support the petition, who alone among inactive voters have their choice in the matter counted. It also gives inordinate weight overall to voters who support and sign the petition, whether active or inactive, since their "votes" are given greater weight than the "votes" of the total pool of registered voters who did not sign. "The idea that one group can be granted greater voting strength than another is hostile to the one man, one vote basis of our representative government." *Moore v. Ogilvie*, 394 U.S. 814, 819 (1969).

Green Party specifically forbade such differential treatment of inactive voters in the political process. The Court noted that "[d]isqualification from the right to vote in

Maryland is limited to voters who either are convicted of infamous or other serious crimes or who are under care or guardianship for a mental disability. . . . Nowhere in Article I does it state or suggest that voting rarely, sporadically, or infrequently, are grounds for being stricken from the uniform [voter] registry." *Green Party*, 377 Md. at 143, 832 A.2d at 223 (internal citation omitted). The Court explained that "[t]here is no constitutional reason why a once-qualified registered voter, who chooses not to vote frequently, should find his or her right to take part in the [candidate] nomination process curtailed." *Id.* at 151, 832 A.2d at 228.

> [W]e stress that the Maryland Constitution sets forth the *exclusive* qualifications and restrictions on the right to vote in the State of Maryland. The Legislature may not impose additional qualifications or restrictions by requiring voters to cast their votes frequently. Nor may the Board regulate the registry to effect such unconstitutional ends. . . . For the foregoing reasons, we hold that any statutory provision or administrative regulation which treats " inactive" voters differently from "active" voters is invalid.

Id. at 152-53, 832 A.2d at 229 (emphasis in original).

The Court concluded that a "dual registration system" treating inactive voters differently from active voters — what in essence the BOE applied here — is "antithetical" to the Maryland Declaration of Rights and violates Article I of the Maryland Constitution. *Id.* at 150, 832 A.2d at 227-28.

Furthermore, in *Green Party* the Court specifically addressed precisely the issue here — the need to include inactive voters among the pool of total registered voters to calculate a signature percentage requirement. The Court explicitly rejected the methodology the BOE now defends, that of counting signatures of inactive voters in the number of allegedly valid signatures while not counting such inactive voters in the total number of registered voters in the jurisdiction. The Court offered the very methodology now used by the BOE as the main example of the "unnecessary confusion and the specter of statistical manipulation," *id.* at 152, 832 A.2d at 228, risked by a system that differentiates between active and inactive voters:

> If inactive voters are not counted for petition purposes, then consistency would demand that they cannot be counted among the total number of

> voters which the percentage signature requirement is based upon. . . . For instance, if the total number of registered voters in an election district is 11,000, but 1000 of these voters are on the inactive registration list, then a one percent signature requirement would apparently direct a petition-circulator to obtain 100 signatures, or 1% of 10,000. On the other hand, if inactive voters' names are permitted to appear on petitions, then, in the example above, the circulator must collect 110 signatures to meet the requirement of 1% of 11,000.

Id. (citation omitted).

In certifying the MCRG petition, the BOE engaged in the very "statistical manipulation" this Court condemned in *Green Party*. The circuit court specifically made this finding in its decision below:

> [S]ome 200 inactive voters signed the instant petitions, although those signatories were not included in the denominator established by [the BOE]. The court rejects [the BOE's] argument that inactive voters should be excluded from the denominator because to do otherwise would artificially inflate the number of signatures required to successfully petition for referendum. . . .
>
> To accept [the BOE's] arguments would mean that citizens could successfully place a matter on referendum without obtaining the signature of a single active voter. In this case, for instance, the signatures of approximately one-half of the current list of inactive voters would be sufficient to petition for referendum, even though none of those voters would be counted in the denominator. (App20-21)

The requirement that inactive voters be counted both in the numerator and denominator of the equation to determine the percentage of registered signers is further compelled by this Court's reasoning in *Gisriel*, 345 Md. at 501-504, 693 A.2d at 769-71. *Gisriel* held that inactive voters on the voter registration lists were required to be included when calculating the number of signatures needed to reach the percentage of qualified voter signatures to petition for a referendum in Ocean City. At the time, the Ocean City Charter instructed its Board of Supervisors of Elections to remove voters from its rolls for inactivity if they failed to vote for a prescribed period. *Id.* at 502, 693 A.2d at 769. However, some voters remained on the rolls despite qualifying for removal under the provision. The city charter included a referendum provision similar to Montgomery County's, requiring signatures of 20% of registered voters. The Ocean City Board

calculated the required number of signatures based on the number of voters on the voter rolls, including those who qualified for removal, at the date of the petition filing.

This Court upheld this methodology as correct and, in fact, required. *Id.* at 502-04, 693 A.2d at 769-71. The Court explained, "the 128 residents of Ocean City who had not voted in the preceding two general municipal elections, but whose names remained on the voter registration list, were not unqualified voters. In no event should their names be removed from the voter registration list." *Id.* at 504, 693 A.2d at 770. The Court further explained that "the voter registration lists are conclusively presumed to be the lists of all qualified voters at any given point in time, as long as reasonable remedies are available periodically to delete from the lists the names of unqualified voters." *Id.* at 505, 693 A.2d at 771. When the BOE here calculated the number of signatures required for MCRG's petition to be successful, it disregarded this crucial principle and ignored tens of thousands of voters who were registered and presumed to be qualified.

The import of these opinions is clear: treating inactive voters differently from active voters and diluting their right to be counted among other voters on matters of substantive concern to the community is unconstitutional. It violates the rights to participate in the political process guaranteed under the Maryland Constitution, along with rights of due process, equal protection, and representative democracy. The BOE's methodology on the MCRG petition was fundamentally flawed and cannot launch an invalid referendum to a place on the ballot.[8]

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[8] In an *amicus* brief below MCRG contended that the constitutional defects in the petition should be overlooked because the BOE's error was in "good faith" and MCRG detrimentally relied on it. (E451-73) Appellants responded to these arguments in briefing below. (E545-49) In summary, this Court has held that absent very compelling circumstances, not found here, "election officials [may not] effectively change the law by giving erroneous, ambiguous, or misleading instructions to the voters." *Lamb v. Hammond*, 308 Md. 286, 311, 518 A.2d 1057, 1069 (1987). *See also City of Seat Pleasant v. Jones*, 364 Md. 663, 684-85, 774 A.2d 1167, 1179-80 (2001) (administrative errors made by election officials in exercise of their discretion may be overlooked by courts, but not errors in non-discretionary execution of substantive legal requirements). Furthermore, detrimental reliance or promissory estoppel are not available against the State or its agencies (including the BOE) in the performance of governmental, public, or

IV. The Circuit Court Incorrectly Held That The Statute Of Limitations Barred Appellants' Challenge To The BOE's Concededly Unlawful Exclusion Of Inactive Voters And Certification Of A Concededly Insufficient Referendum Petition.

Having concluded that the BOE violated the law in excluding inactive voters and that the petition does not satisfy the requirements for referendum, the circuit court nonetheless held that Appellants' challenge to the sufficiency of the petition, filed within 10 days of the BOE's certification, is time-barred. The circuit court ruled that the 10-day statute of limitations set forth in Elec. Code § 6-210(e) governing challenges brought under § 6-209(a) applies to bar Appellants' challenge under § 6-209(b), and further set the 10-day trigger at a completely arbitrary date. (App5-6, 23) On the basis of this erroneous ruling, the circuit court then concluded that the concededly insufficient referendum should be placed on the ballot for the November 4, 2008 general election. (App23-24) This ruling should be reversed.

First, the lower court's ruling conflicts with the text of the statutes themselves, which make clear that the statute of limitations set forth in § 6-210(e) does not apply to this action brought by these Appellants.

Second, even assuming that § 6-210(e)'s 10-day limitations period did apply, the lower court erred by concluding that Appellants were required to file on or before February 20, 2008. Such a ruling would require that there had been a "determination" of some kind by the BOE on February 10, 2008. No such determination was made on that date.

Third, the court erred by imputing constructive knowledge of the BOE's faulty methodology to Appellants, in violation of long-standing "discovery rule" case law of

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enforcement duties. *See, e.g., ARA Health Servs., Inc. v. Dep't of Pub. Safety and Corr. Servs.*, 344 Md. 85, 96, 685 A.2d 435, 440 (1996). Even if such a theory did extend to a State agency, promissory estoppel or detrimental reliance are inapplicable where the alleged promise on which a party relied would have been a promise to act illegally. *See, e.g., Queen v. Agger*, 287 Md. 342, 346, 412 A.2d 733, 735 (1980). The courts may not enforce an alleged "promise" by the BOE to violate election laws and the Constitution by excluding inactive voters and certifying an insufficient referendum petition.

this Court, which holds that actual knowledge, not constructive knowledge, is required to trigger the running of the statute of limitations.

Fourth, the court erred by failing to calculate the statute of limitations, even assuming there was one, from the date of the BOE's relevant triggering action, which was March 6, 2008, when the BOE certified the referendum for ballot. This lawsuit was filed on March 14, 2008, within 10 days of this action by the BOE.

Fifth, the circuit court's interpretation of § 6-210(e) further runs afoul of the "case or controversy" requirement, which limits the jurisdiction of the courts to hear declaratory judgment disputes. The lower court's ruling would have required Appellants to file in court prior to MCRG's final submission of the petition and completion of the BOE's review, and thus before there was an actual dispute for the courts to resolve.

Finally, the circuit court's interpretation of § 6-210(e) violates the due process rights of Appellants, in derogation of Article 24 of the Maryland Declaration of Rights and of the "Open Courts" provisions of Article 19 of the Maryland Declaration of Rights.

A. The Statute Of Limitations Set Forth In § 6-210(e) Does Not Apply To This Action.

Section 6-209(a) provides that "[a] person aggrieved by a determination made under § 6-202, § 6-206, or § 6-208(a)(2) of this subtitle may seek judicial review. . . ." Section 6-209(b) is far broader — it allows "any registered voter" to seek "declaratory relief as to any petition with respect to the provisions of this title or other provisions of law." Only § 6-209(a) uses the word "determination," and it does so only with respect to determinations under three particular provisions of law: §§ 6-202, 6-206, and 6-208(a)(2).[9] Each of these provisions applies to BOE determinations directed at a petition

[9] Section 6-202(a) authorizes election authorities to review the format of a petition "in advance of filing the petition, for a determination of its sufficiency." Section 6-206 empowers election authorities to make initial determinations, "promptly at the time of filing," of a petition's sufficiency regarding certain issues "other than the validity of signatures," § 6-206(b)(1). Election authorities may issue determinations of deficiency based on issues unrelated to the submitted signatures, such as timeliness, subject matter, format, or constitutionality, § 6-206(c)(1), (4)-(5), as well as determinations of deficiency based on insufficiency of signatures apparent from either "the information provided by

sponsor in the course of the petition process, with notice of these determinations directed as well only to the sponsor. *See also* Elec. Code § 6-210(b) (directing notice of determinations to "sponsor"). In contrast, § 6-209(b) makes no reference whatsoever to "determinations."

Section 6-210(e) states in relevant part that "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 it relates." Significantly, this section uses the word "determination," which as noted above is used in § 6-209(a) but not in § 6-209(b).

Section 6-210(e) does not apply to Appellants' challenge to the insufficiency of petition signatures. This is not a challenge to one of the three types of "determinations" specified in § 6-209(a), which relate to other aspects of the petition review process, not to a challenge to the sufficiency of the number of signatures submitted. Instead, both substantive issues on appeal (noncompliance with Elec. Code § 6-203 and certification based on an undercount of number of required signatures) involve challenges to the BOE's March 6, 2008 decision that the petition carried a sufficient number of valid signatures. That decision by the BOE was made pursuant to § 6-208(a)(1), which directs the election authority to "determine whether the validated signatures contained in the petition are sufficient to satisfy all requirements established by law relating to the number . . . of signatures," and to § 6-208(b), which directs the election authority to certify that "a petition has satisfied all requirements established by law." Neither § 6-208(a)(1) nor § 6-208(b) is specified in § 6-209(a) as one of the three types of "determinations" subject to "judicial review" by a "person aggrieved" — i.e., a petition sponsor. Challenges based on violations of these distinct provisions therefore are not subject to § 6-210(e)'s limitation on challenges to the "determinations" "provided in § 6-209" — namely § 6-

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the sponsor," § 6-206(c)(2), or "an examination of unverified signatures," § 6-206(c)(3). Section 6-206 determinations are not mandatory and may be deferred "pending further review," § 6-206(b)(2). Section 6-208(a)(2) authorizes election authorities, "[a]t the conclusion of the verification and counting processes," to "determine whether the petition has satisfied all other requirements established by law for that petition," and if so, to certify the petition for ballot, § 6-208(b)(1)-(2).

202, 6-206, or 6-208(a)(2) determinations challenged by "aggrieved persons" under § 6-209(a)(1) — and so § 6-210(e) does not apply to Appellants' voter challenge brought under § 6-209(b).

It is further evident from § 6-209(a)'s use of the phrase "person aggrieved" that Appellants' action was not subject to that provision nor to the § 6-210(e) statute of limitations. While not defined in this section or elsewhere in the Election Code, the term "person aggrieved" is familiar in Maryland administrative law parlance — it is used to determine who has standing to seek judicial review of an administrative agency determination. *See, e.g.*, Lab. & Empl. Code § 9-737; Code art. 66B, § 2.09(a)(1).

Sugarloaf Citizens' Association v. Department of Environment stated two requirements to be a "person aggrieved." The person or entity (1) must have been a party to the administrative proceeding and (2) must have an interest separate and distinct from that of the general public. 344 Md. 271, 287-288, 686 A.2d 605, 614 (1996). *See also Jordan Towing, Inc. v. Hebbville Auto Repair, Inc.*, 369 Md. 439, 442, 800 A.2d 768, 770 (2002) ("A party is aggrieved and there is standing if the party suffers some 'special damage . . . differing in character and kind from that suffered by the general public.'"), *quoting Weinberg v. Kracke*, 189 Md. 275, 280, 55 A.2d 797, 799 (1947).

Appellants meet neither requirement to be considered a "person aggrieved." They were not parties at the administrative agency level — only MCRG was a "party" in the proceedings before the BOE. Nor were they "aggrieved" as defined by Maryland law. They neither possessed nor claimed any "specific interest . . . different from . . . the public generally," *Sugarloaf*, 344 Md. at 288, 686 A.2d at 614, nor "suffer[ed] 'some special damage differing in character and kind from that suffered by the general public,'" *Jordan Towing*, 369 Md. at 442, 800 A.2d at 770. Instead, Appellants' standing arose as "registered voters," pursuant to § 6-209(b).

It is apparent that the General Assembly intended § 6-209(a) to afford standing to a representative of an "aggrieved" petition sponsor to challenge, within 10-day time-frames during the petition process, certain adverse interim determinations by the BOE. Given that Appellants were not "persons aggrieved by a determination" pursuant to § 6-

209(a), it therefore follows that they were not entitled to seek "judicial review" under that provision of the "determinations" enumerated in that section, and that § 6-210(e), which applies by its specific terms to "judicial review of a determination, as provided in § 6-209 of this subtitle," is equally inapplicable to Appellants' claims.

What Appellants are entitled to, and what they sought, was for the circuit court to "grant declaratory relief as to [the] petition with respect to the provisions of this title or other provisions of law."[10] Elec. Code § 6-209(b). The circuit court concluded that the petition did not meet the requirements of the law.

B. Assuming That The 10-Day Statute Of Limitations Did Apply, The Circuit Court's Finding That Appellants Were Required To File A Challenge To The Insufficiency Of The Petition Based On The Exclusion Of Inactive Voters On Or Before February 20, 2008 Was Plain Error.

The Circuit Court erroneously ruled that Appellants were required to file a court action with respect to the BOE's improper calculation of the 5% requirement "on or before February 20, 2008, and perhaps earlier." (App23) Under the court's reasoning, for a filing to have been required on February 20, 2008 there must have been a "determination" — as defined in § 6-209(a) — on February 10, 2008 that triggered § 6-210(e)'s 10-day limitations period. As set forth above, § 6-210(e) does not even apply to this action by registered voters under § 6-209(b). But even if it did, the circuit court's ruling that a filing was required on February 20, 2008 was simply wrong. There is no evidence in the record (or otherwise) that a § 6-209(a) determination, or any other

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[10] Apellants recognize that the end result of this argument is that there is no statute of limitations specified in the Election Code for a "registered voter" to bring a claim for declaratory relief pursuant to § 6-209(b). This does not mean, however, that there is no deadline for such a claim, as this Court has recognized a laches defense in the case of a challenge by a registered voter to the qualifications of a candidate to be on the ballot. *Liddy v. Lamone*, 398 Md. 233, 244, 919 A.2d 1276, 1283-1284 (2007) ("laches 'applies when there is an unreasonable delay in the assertion of one's rights and that delay results in prejudice to the opposing party.'"), *quoting Frederick Road Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 117, 756 A.2d 963, 985 (2000). No such claim could be made on the record in this case. *See also Parker v. Bd. of Election Sup'rs*, 230 Md. 126, 186 A.2d 195 (1962) (applying laches to challenge to nominating petition).

determination, for that matter, was made by the BOE on February 10, 2008. Appellants are aware of no event occurring on that day that even conceivably could have triggered a limitations period.

C. The Circuit Court Incorrectly Applied A Constructive Notice Analysis To The Statute Of Limitations Issue.

The court ruled that Appellants were on "constructive notice" of the actions of the BOE, even prior to the final determination by the BOE to certify the referendum for the ballot on March 6, 2008. (App8) This conclusion of law, unsupported by either decisional or statutory authority, is in direct contravention of governing Maryland law and was therefore error.

This Court has adopted the "discovery rule" that "tolls the accrual of the limitations period until the time the plaintiff discovers, or through the exercise of due diligence, should have discovered, the injury" giving rise to the plaintiff's cause of action. *Frederick Road Ltd. P'ship v. Brown & Sturm*, 360 Md. 76, 95-96, 756 A.2d 963, 973 (2000). Although it originated in the tort setting, this Court has held "the discovery rule to be applicable generally in all actions." *Poffenberger v. Risser*, 290 Md. 631, 636, 431 A.2d 677, 680 (1981). Thus, in claims for judicial review of agency actions, "[a]s a matter of fairness, the [period for filing the challenge] cannot begin to run until it is reasonable for the parties to discover the action taken." *Clarke v. Greenwell*, 73 Md. App. 446, 453, 534 A.2d 1344, 1348 (1988); *see also Crofton Partners v. Anne Arundel County*, 99 Md. App. 233, 243, 636 A.2d 487, 492 (1994) ("Implicit in the requirement that an appeal lies only from a final decision, however, are the correlative requirements that the aggrieved party know that the decision has been made and that the decision is final").

This Court was faced in *Poffenberger* with whether to require actual notice or whether constructive notice was sufficient to trigger the running of the statute of limitations. Rejecting the use of constructive notice in this context, the Court held that "[a]s . . . constructive notice . . . would recreate the very inequity the discovery rule was designed to eradicate, we now hold *this type of exposure does not constitute the requisite*

knowledge within the meaning of the rule." 290 Md. at 636-638, 431 A.2d at 680-681 (emphasis added). Instead, the Court required actual knowledge, which it defined as "knowledge of circumstances which ought to have put a person of ordinary prudence on inquiry (thus, charging the individual) with notice of all facts which such an investigation would in all probability have disclosed if it had been properly pursued." *Id.* at 637, 431 A.2d at 681.

No facts in the record support the notion that the Appellants were at any time on inquiry notice of any action of the BOE. Nor, as set forth in Section D of the Statement of Facts, was there any publicly available information by which Appellants or anyone else could have discerned that the BOE had determined to depart from legal standards and exclude inactive voters from its calculations. Even in response to discovery requests once litigation had commenced, the BOE did not divulge that it had followed a methodology excluding inactive voters. To this day, the BOE cannot produce the data or records it used to calculate the signature requirement. The circuit court's ruling thus disregarded the clear requirements of *Poffenberger* and should be vacated on this basis.

D. Assuming The Statute Of Limitations Applied, Appellants Had 10 Days To File Their Action From March 6, 2008, The Date The BOE Certified The Petition For The General Election Ballot.

Even if the 10-day limitations provision of § 6-210(e) did apply to Appellants' challenge to the BOE's undercount of the required number of signatures, their challenge was timely filed. Appellants seek review of the March 6 determination by the BOE that the petition carried a sufficient number of signatures for certification. This action was filed within 10 days of that determination and so is not time-barred.

Notably nowhere in the Election Code or other relevant laws is provision made for a board of elections to reach an interim "determination" or supply notice of the number of registered voters needed to satisfy a signature requirement. Nor does the law provide that once an election board makes such a calculation it may not correct an error and recalculate the required number during the process. In contrast, the Election Code charges the election board with responsibility to make other specific interim

"determinations," which, once made, are binding on it. For example, if an election authority issues an "advance determination" under § 6-202 that the format of a petition complies with legal requirements, the board cannot later issue an inconsistent determination on that issue. *See* § 6-206(d).

Here the only final determination the BOE made respecting the number of signatures it would require to certify the petition came on March 6, 2008, when it issued its determination to certify based on the fewer than 27,615 signatures (the actual number required) it counted as valid. (E88-89) Eight days later Appellants filed for judicial review of that determination.

The BOE argued below that either of two earlier communications from the BOE to MCRG triggered Appellants' 10-day filing requirement. The BOE first argued that Appellants were required to challenge its erroneous exclusion of inactive voters within 10 days of the BOE's November 2007 "notice" to MCRG, wherein the BOE claims it "issued publicly its determination that the form [of the petition] was sufficient *and* that 25,001 signatures were required." (E477) (emphasis added). Far from being a publicly issued notice, the November 30 communication was nothing more than a private email to an MCRG representative. (E572-73) Nor did the email in any way suggest that the BOE had excluded inactive voters from its calculations, and nor would there have been any reason to suspect that the BOE had taken that unlawful step. Further, if the email contained notice of any determination at all, that determination was only an advance determination as to the form of the petition pursuant to § 6-202, which did not and could not establish the number of signatures that ultimately would be needed for the petition. The simple fact that the email contained notice of one statutory "determination," however, cannot render every statement accompanying that notice a determination as well. While the BOE provided MCRG this preliminary tally on November 30, it did so informally, without notice to the public, and in a manner that was neither binding nor final.

The BOE also argued that its calculation of the 5% threshold was an "implicit" component of its February 20 letter to MCRG. (E630) That letter stated only the BOE's

conclusion that MCRG's first, February 4, signature submission included "valid, accepted signatures" totaling more than the 12,501 the BOE claimed were needed to reach the sponsor's first deadline. (E87) The BOE contended below that Appellants were required either to raise a challenge within 10 days of that communication or be barred forever from challenging subsequent uses of its erroneous methodology in challenges to subsequent determinations regarding later-submitted signatures. (E477)

The February 20 letter was not, however, one of the determinations challengeable under § 6-209(a). It is plain on the letter's face that it is not a § 6-202 advance determination, because it concerns review undertaken after the petition was submitted. It is equally clear that the letter was not a § 6-206 time-of-filing determination, because the letter concerned conclusions from the BOE's signature validation review. Section 6-206 plainly states that it authorizes only determinations regarding issues "other than the validity of signatures," § 6-206(b)(1), including signature insufficiency based only on "the information provided by the sponsor," § 6-206(c)(2), or "an examination of unverified signatures," § 6-206(c)(3). Finally, the February 20 letter is clearly not a § 6-208 certification determination. It did not take place "[a]t the conclusion of the verification and counting processes," and the BOE did not "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."

These facts alone establish that the February 20 letter was not a trigger for calculating the statute of limitations for a § 6-209(a) challenge (assuming this even could be considered such a challenge), which, by definition, can only concern one of those three statutorily-enumerated determinations. Section 6-210(e) unambiguously requires that the challenged determination be used as the starting date for calculating its timeliness requirement. Any application of the requirement based on a February 20 date was thus error.

Moreover, even if the February 20 letter was a "determination," it would, at most, trigger the 10-day limitations period for a challenge regarding whether the right number was used for *that particular determination* — specifically, the determination that MCRG

had fulfilled the necessary requirements under Montgomery County Charter § 115 to meet its first signature submission deadline to allow the petition process to continue to the second deadline. Under § 115, only if the sponsor then assembles a sufficient number of signatures by the second deadline is the petition complete and eligible for final certification. This certification, performed pursuant to § 6-208(b) of the Election Code, is the final process by which a petition is approved and qualified to be placed on the general election ballot. Thus the BOE's February 20 determination did nothing to override the BOE's duty to issue a later determination — the March 6 determination — regarding the sufficiency of the full number of signatures on the petition at the time of final certification. It is that determination Appellants challenge.

The circuit court based its erroneous holding on its reading of *Roskelly v. Lamone*, 396 Md. 27, 912 A.2d 658 (2006). (App23) *Roskelly*, however, concerned the timeliness of a § 6-209(a) challenge by a petition *sponsor* to a § 6-206 time-of-filing determination. Petition sponsor Roskelly submitted a partial petition on May 31, 2006. On June 8, the State Board issued a § 6-206 determination that the petition was not timely and would not be referred to referendum, but that local boards would continue counting the signatures in case that determination was overturned by a timely legal challenge. On June 21, the State Board sent Roskelly another letter, informing him that he had not gathered enough valid signatures and that that this, along with the earlier deficiency, rendered the petition defective. Roskelly was away on vacation when the notices arrived. He challenged both determinations on June 27, nineteen days after the fatal § 6-206 determination. *Id.* at 32-36, 41 n.18, 912 A.2d at 661-63, 666 n.18. This Court held that Roskelly should have filed his challenge to the § 6-206 determination within 10 days of June 8. 396 Md. at 41, 912 A.2d at 666.

This case differs from *Roskelly* in numerous ways. First, Roskelly was a petition *sponsor*, while Appellants here are petition opponents. Section 6-209(a) clearly applied to Roskelly, and no contention to the contrary was made in that case. The Appellants, however, are petition opponents who do not qualify as "persons aggrieved" pursuant to § 6-209(a). Second, Appellants filed their challenge within 10 days of the BOE's statutory

determination of the sufficiency of the number of purportedly valid signatures. But in *Roskelly*, a § 6-206 determination clearly was made, it applied to him as petition sponsor, and he did not file within 10 days of that determination. Furthermore, as petition sponsor, Roskelly was sent actual notice of the Board's adverse determination, and so, unlike here, was in a position to know that a triggering event for filing suit had occurred. Moreover, in *Roskelly* the adverse decisions the Board was making were transparent and fully disclosed. In contrast, the problem here is an election board's undisclosed, private decision to apply an unlawful methodology in calculating a numerical requirement. There was no way to discern from publicly available information that the number the BOE derived for the 5% signature requirement was the product of an illegal methodology.

The circuit court appears to read *Roskelly* for the unsupportable proposition that a petition opponent must file a § 6-209(a) challenge within 10 (or zero, given the clear error addressed in Section IV.C) days of an election authority's undisclosed decision to follow an illegal methodology as it proceeds in a petition process. *Roskelly*, however, stands for precisely what § 6-210(e) dictates and what Appellants advocate: that only a § 6-209(a) challenge to one of the determinations specified in that provision needs to be filed within 10 days of the determination by an aggrieved sponsor who was given notice of the determination. 396 Md. at 41, 912 A.2d at 666.

E. The Circuit Court's Interpretation Of The Time Limitation Conflicts With The "Case or Controversy" Requirement For A Declaratory Judgment Action.

The circuit court's erroneous application of the statute of limitations also calls for the filing of unripe, nonjusticiable claims. Under Maryland law, "[a] controversy is justiciable when there are interested parties asserting adverse claims *upon a state of facts which must have accrued* wherein a legal decision is sought or demanded." *Prof'l Staff Nurses Ass'n v. Dimensions Health Corp.*, 346 Md. 132, 140, 695 A.2d 158, 162 (1997) (quotations omitted) (emphasis added). "[T]he existence of a justiciable controversy is an absolute prerequisite to the maintenance of a declaratory judgment action." *Boyds Civic Ass'n v. Montgomery County Council*, 309 Md. 683, 689, 526 A.2d 598, 601

(1987), *quoting Hatt v. Anderson*, 297 Md. 42, 45, 464 A.2d 1076, 1078 (1983). This Court warned in *Hatt* that addressing non-justiciable issues "would place courts in the position of rendering purely advisory opinions, a long forbidden practice in this State." *Id.* at 46, 464 A.2d at 1078.

A case is non-justiciable if it is unripe. "Generally, an action for declaratory relief lacks ripeness if it involves a request that the court 'declare the rights of parties upon a state of facts which has not yet arisen, [or] upon a matter which is future, contingent and uncertain." *Boyds*, 309 Md. at 690, 526 A.2d at 602 (alteration in original), *quoting Brown v. Trustees of M.E. Church*, 181 Md. 80, 87, 28 A.2d 582, 586 (1942). "In a declaratory judgment proceeding, the court will not decide future rights in anticipation of an event which may never happen, but will wait until the event actually takes place. . . ." *Tanner v. McKeldin*, 202 Md. 569, 579, 97 A.2d 449, 454 (1953).

Thus *Hatt* dismissed a claim for declaratory relief by a firefighter who had argued that a new regulation prohibiting him from criticizing superior officers violated his First Amendment rights, because there was no evidence in the record as to any actual or threatened dispute regarding the interpretation or application of that regulation. 297 Md. at 46-47, 464 A.2d at 1078-79. *Hamilton v. McAuliffe*, 277 Md. 336, 341, 353 A.2d 634, 638 (1976), similarly dismissed a declaratory judgment action that sought to bar a court from ordering a party to undergo a blood transfusion at some time in the future. The Court noted that there was no evidence the plaintiff would require blood transfusions and further stated that "[w]hether an individual has the right to refuse a blood transfusion necessarily turns upon facts existing at the moment. . . . The declaratory judgment process is therefore ill fitted as a vehicle to declare the rights of parties in future circumstances as yet unknown." *Id.* (citations omitted).

Here the circuit court's interpretation of § 6-210(e) violates the fundamental case or controversy requirement. Under the court's ruling, a voter is expected to file a lawsuit by an arbitrarily early date, perhaps before even knowing whether a petition gathering process is actually underway, the identity of the sponsor, steps taken and determinations made by the BOE, methodologies used by the BOE, what if any defects may exist in the

process, or whether the sponsor is succeeding in gathering sufficient signatures by the deadlines. Where such "future, contingent and uncertain" facts remain unknown and unknowable, a declaratory judgment action could not properly be filed.

F. The Circuit Court's Interpretation Of § 6-210(e) Violates Articles 19 And 24 Of The Maryland Declaration Of Rights By Robbing Voters Of Any Meaningful Opportunity To Exercise Their Statutory Right To Challenge Illegally Certified Petitions.

The circuit court's draconian application of the statute of limitations also yields the inequitable result of rendering it all but impossible for a concerned voter to challenge an illegal referendum petition, in violation of Articles 19 and 24 of the Maryland Declaration of Rights.

It is well-settled that "application of a statute of limitations in such a way as would effectively preclude a person from pursuing an available cause of action before it was possible to bring that action [is] impermissible under Article 19 of the Maryland Declaration of Rights." *Trembow v. Schonfeld*, 393 Md. 327, 345 n.9, 901 A.2d 825, 836 n.9 (2006) (*citing Piselli v. 75th St. Med.*, 371 Md. 188, 808 A.2d 508 (2002)). Article 19 guarantees:

> That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.

This article has been held to be synonymous with the guarantee of due process. *Murphy v. Edmonds*, 325 Md. 342, 365, 601 A.2d 102, 113 (1992). Article 19 "generally prohibits unreasonable restrictions upon traditional remedies or access to the courts. . . ." *Piselli*, 371 Md. at 206, 808 A.2d at 518. The Court "has consistently held that the Legislature cannot divest the courts of the inherent power they posses [sic] to review and correct actions by an administrative agency which are arbitrary, illegal, capricious or unreasonable." *Crim. Injuries Comp. Bd. v. Gould*, 273 Md. 486, 501, 331 A.2d 55, 65 (1975). When confronted with an interpretation of a statute of limitations that violates Article 19 and a contrary one that does not, the Court selects the non-violating interpretation. *See Piselli*, 371 Md. at 216-219, 808 A.2d at 524-26.

Due process requires that "the Legislature cannot cut off all remedy and deprive a party of his right of action by enacting a statute of limitations applicable to an existing cause of action in such a way as to preclude any opportunity to bring suit." *Allen v. Dovell*, 193 Md. 359, 363-64; 66 A.2d 795, 797 (1949). Article 24 of the Declaration of Rights likewise protects such due process rights, guaranteeing:

> That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

The circuit court, however, selected an interpretation of § 6-210(e) that effectively denies anyone but a petition sponsor the ability to challenge unlawful actions of boards of elections concerning referendum petitions, even where the result is a concededly illegal referendum. A 10-day statute of limitations is, needless to say, a demanding requirement. Petition sponsors, however, benefit from stringent duties of election authorities to inform them of the authorities' determinations in time for sponsors to make a timely § 6-209(a) filing. *See* Elec. Code §§ 6-206(e), 6-208(c), 6-210(b). Registered voters other than sponsors, however, receive the benefit of no such notice duties. The Court acknowledged in *Roskelly* that notice is necessary for the statute of limitations to run for sponsors' § 6-209(a) challenges. *Roskelly*, 396 Md. at 41 n.18, 912 A.2d at 666 n.18 .

Applying the § 6-210(e) statute of limitations to run from the date of notice to petition *sponsors* for challenges by *registered voters* creates the absurd result of enforcing an exceedingly harsh 10-day statute of limitations against parties who receive no notice of the challenged determinations at all. Even the most diligent voters would rarely, if ever, be able to meet such a deadline, and their efforts could be easily thwarted by election authorities' and petition sponsors' refusal speedily and voluntarily to inform inquiring voters that a triggering "determination" had been made. In this case, the BOE would have had to volunteer that it had chosen to apply an illegal mathematical formula in deriving a number that on its face no one would have reason to question. The effective denial of relief here violates Articles 19 and 24.

Appellants, registered voters of Montgomery County, have been effectively denied the ability to challenge a concededly unlawful referendum, which has stopped operation of a duly-enacted County law in violation of rights of representative democracy, based on an arbitrary application of a statute of limitations provision that does not even govern them. This flies in the face of basic guarantees of due process.

V. Relief Should Be Granted From This Illegal Referendum To Protect The Integrity Of The Electoral Process.

The court is empowered under the Election Code to "grant relief as it considers appropriate to assure the integrity of the electoral process." Elec. Code § 6-209(a)(2). A referendum petition acknowledged by the circuit court to be legally insufficient, and challenged in the courts just eight days after being unlawfully certified by the BOE, is daily blocking a duly-enacted civil rights law from taking effect and is slated for vote on the November general election ballot. It would make a travesty of the referendum process if this concededly illegal referendum were permitted on the ballot. Appellants respectfully submit that this Court should exercise the responsibility and authority vested in it by the General Assembly to protect the integrity of the electoral process and halt this unlawful referendum from proceeding.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that the Court (1) affirm the lower court's ruling that the BOE incorrectly excluded inactive voters from its calculations and that the petition fails to carry the required number of signatures, and (2) reverse the lower court's rulings that (a) Appellants' objections to the manifestly insufficient petition are time-barred, and (b) signature entries that fail to comply with § 6-203(a) were appropriately counted. Appellants further request that the Court enter a declaratory judgment de-certifying the petition for referendum and enjoining the referendum from proceeding on the November 4, 2008 ballot.

Date: August 19, 2008

Respectfully submitted,

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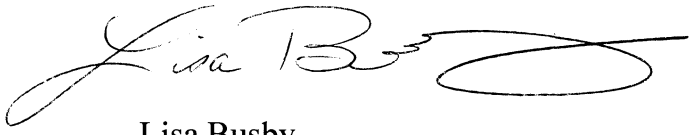
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two copies of Appellant/Cross-Appellees Brief and Record Extract were delivered First Class postage pre-paid to Kevin Karpinski and Victoria M. Shearer, Karpinski, Colaresi & Karp, Board of Elections, 120 East Baltimore Street, Suite 1850, Baltimore, Maryland 21202 on this 20th day of August 2008.

Respectfully submitted,



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CITATION AND VERBATIM TEXT OF STATUTES AND RULES

Maryland Constitution, Article 1, § 1
§ 1. Elections by ballot; qualifications to vote

All elections shall be by ballot. Except as provided in Section 3 of this article, every citizen of the United States, of the age of 18 years or upwards, who is a resident of the State as of the time for the closing of registration next preceding the election, shall be entitled to vote in the ward or election district in which the citizen resides at all elections to be held in this State. A person once entitled to vote in any election district, shall be entitled to vote there until the person shall have acquired a residence in another election district or ward in this State.

Maryland Constitution, Article 16, § 1(a)
§ 1. Reservation of power in people

The people reserve to themselves power known as The Referendum, by petition to have submitted to the registered voters of the State, to approve or reject at the polls, any Act, or part of any Act of the General Assembly, if approved by the Governor, or, if passed by the General Assembly over the veto of the Governor.

Maryland Declaration of Rights, Article 7
Article 7. Free and frequent elections; right of suffrage

That the right of the People to participate in the Legislature is the best security of liberty and the foundation of all free Government; for this purpose, elections ought to be free and frequent; and every citizen having the qualifications prescribed by the Constitution, ought to have the right of suffrage.

Maryland Declaration of Rights, Article 19
Article 19. Relief for injury to person or property

That every man, for any injury done to him in his person or property, ought to have remedy by the course of the Law of the Land, and ought to have justice and right, freely without sale, fully without any denial, and speedily without delay, according to the Law of the Land.

Maryland Declaration of Rights, Article 24
Article 24. Due process

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of

his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

Maryland Code, Election Law § 3-503
§ 3-503. Inactive status

Placement on Inactive Status

(a) If a voter fails to respond to a confirmation notice under § 3-502(c) of this subtitle, the voter's name shall be placed into inactive status on the statewide voter registration list.

Restoration to active status

(b) A voter shall be restored to active status on the statewide voter registration list after completing and signing any of the following election documents:
(1) a voter registration application;
(2) a petition governed by Title 6;
(3) a certificate of candidacy;
(4) an absentee ballot application; or
(5) a written affirmation of residence completed on election day to entitle the voter to vote either at the election district or precinct for the voter's current residence or the voter's previous residence, as determined by the State Board.

Removal from statewide voter registration list

(c) An inactive voter who fails to vote in an election in the period ending with the second general election shall be removed from the statewide voter registration list.

Not counted for administrative purposes

(d) Registrants placed into inactive status may not be counted for official administrative purposes including establishing precincts and reporting official statistics.

Maryland Code, Election Law § 6-101
§ 6-101. Definitions

Generally

(a) In this title the following words have the meanings indicated.

Affidavit

(b) "Affidavit" means a statement executed under penalty of perjury.

Chief election official

(c) "Chief election official" means:
(1) the State Board; or
(2) as to a local petition, the local board for that county.

Circulator

(d) "Circulator" means an individual who attests to one or more signatures affixed to a petition.

Election authority

(e) "Election authority" means:

(1) the State Board; or
(2) as to a local petition, the local board for that county.

Legal authority

(f) "Legal authority" means:
(1) the Attorney General; or
(2) as to a local petition, the counsel to the local board appointed under § 2-205 of this article for that county.

Local petition

(g) "Local petition" means a petition:
(1) on which the signatures from only one county may be counted; and
(2) that does not seek to:
(i) refer a public local law enacted by the General Assembly; or
(ii) nominate an individual for an office for which a certificate of candidacy is required to be filed with the State Board.

Page

(h) "Page" means a piece of paper comprising a part of a petition.

Petition

(i) "Petition" means all of the associated pages necessary to fulfill the requirements of a process established by the law by which individuals affix their signatures as evidence of support for:

(1) placing the name of an individual, the names of individuals, or a question on the ballot at any election;

(2) the creation of a new political party; or

(3) the appointment of a charter board under Article XI-A, § 1A of the Maryland Constitution.

Sponsor

(j) "Sponsor" means the person who coordinates the collection of signatures for a petition and who, if the petition is filed, is named on the information page as required by § 6-201 of this title.

Maryland Code, Election Law § 6-102
§ 6-102. Applicability

Generally

(a) Except as provided in subsection (b) of this section, this title applies to any petition authorized by law to place the name of an individual or a question on the ballot or to create a new political party.

Not applicable to municipal petitions

(b) This title does not apply to a petition filed pursuant to Article 23A of the Code.

Title construed consistent with Maryland Constitution

(c) This title may not be interpreted to conflict with any provision relating to petitions specified in the Maryland Constitution.

Maryland Code, Election Law § 6-103
§ 6-103. Regulations; guidelines; forms

Regulations

(a)(1) The State Board shall adopt regulations, consistent with this title, to carry out the provisions of this title.

(2) The regulations shall:
(i) prescribe the form and content of petitions;
(ii) specify procedures for the circulation of petitions for signatures;
(iii) specify procedures for the verification and counting of signatures; and
(iv) provide any other procedural or technical requirements that the State Board considers appropriate.

Guidelines, instructions, and forms

(b)(1) The State Board shall:
(i) prepare guidelines and instructions relating to the petition process; and
(ii) design and arrange to have printed sample forms conforming to this subtitle for each purpose for which a petition is authorized by law.
(2) the guidelines, instructions, and forms shall be provided to the public, on request, without charge.

Maryland Code, Election Law § 6-201
§ 6-201. Contents of petitions

Generally

(a) A petition shall contain:
(1) an information page; and
(2) signature pages containing not less than the total number of signatures required by law to be filed.

Information page

(b) The information page shall contain:
(1) a description of the subject and purpose of the petition, conforming to the requirements of regulations;
(2) identification of the sponsor and, if the sponsor is an organization, of the individual designated to receive notices under this subtitle;
(3) the required information relating to the signatures contained in the petition;
(4) the required affidavit made and executed by the sponsor or, if the sponsor is an organization, by an individual responsible to and designated by the organization; and
(5) any other information required by regulation.

Signature page

(c) Each signature page shall contain:
(1) a description of the subject and purpose of the petition, conforming to the requirements of regulations;
(2) if the petition seeks to place a question on the ballot, either:
(i) a fair and accurate summary of the substantive provisions of the proposal; or
(ii) the full text of the proposal;
(3) a statement, to which each signer subscribes, that:
(i) the signer supports the purpose of that petition process; and
(ii) based on the signer's information and belief, the signer is a registered voter in the county specified on the page and is eligible to have his or her signature counted;
(4) spaces for signatures and the required information relating to the signers;
(5) a space for the name of the county in which each of the signers of that page is a registered voter;
(6) a space for the required affidavit made and executed by the circulator; and
(7) any other information required by regulation.

Petition relating to questions

(d) If the petition seeks to place a question on the ballot and the sponsor elects to print a summary of the proposal on each signature page as provided in subsection (c)(2)(i) of this section:

(1) the circulator shall have the full text of the proposal present at the time and place that each signature is affixed to the page; and
(2) the signature page shall state that the full text is available from the circulator.

Signature page to meet requirements at all times

(e) A signature page shall satisfy the requirements of subsections (c) and (d)(2) of this section before any signature is affixed to it and at all relevant times thereafter.

Maryland Code, Election Law § 6-202
§ 6-202. Advance determinations

Generally

(a) The format of the petition prepared by a sponsor may be submitted to the chief election official of the appropriate election authority, in advance of filing the petition, for a determination of its sufficiency.

Advice of legal authority

(b) In making the determination, the chief election official may seek the advice of the legal authority.

Maryland Code, Election Law § 6-203
§ 6-203. Signers; information provided by signers

Generally

(a) To sign a petition, an individual shall:
(1) sign the individual's name as it appears on the statewide voter registration list or the individual's surname of registration and at least one full given name and the initials of any other names; and
(2) include the following information, printed or typed, in the spaces provided:
(i) the signer's name as it was signed;
(ii) the signer's address;
(iii) the date of signing; and
(iv) other information required by regulations adopted by the State Board.

Validation and counting

(b) The signature of an individual shall be validated and counted if:
(1) the requirements of subsection (a) of this section have been satisfied;
(2) the individual is a registered voter assigned to the county specified on the signature page and, if applicable, in a particular geographic area of the county;
(3) the individual has not previously signed the same petition;
(4) the signature is attested by an affidavit appearing on the page on which the signature appears;
(5) the date accompanying the signature is not later than the date of the affidavit on the page; and
(6) if applicable, the signature was affixed within the requisite period of time, as specified by law.

Removal of signature

(c)(1) A signature may be removed:
(i) by the signer upon written application to the election authority with which the petition will be filed if the application is received by the election authority prior to the filing of that signature; or

(ii) prior to the filing of that signature, by the circulator who attested to that signature or by the sponsor of the petition, if it is concluded that the signature does not satisfy the requirements of this title.

(2) A signature removed pursuant to paragraph (1)(ii) of this subsection may not be included in the number of signatures stated on the information page included in the petition.

Maryland Code, Election Law § 6-204
§ 6-204. Circulators; affidavit of the circulator

Generally

(a) Each signature page shall contain an affidavit made and executed by the individual in whose presence all of the signatures on that page were affixed and who observed each of those signatures being affixed.

Requirements

(b) The affidavit shall contain the statements, required by regulation, designed to assure the validity of the signatures and the fairness of the petition process.

Age of circulator

(c) A circulator must be at least 18 years old at the time any of the signatures covered by the affidavit are affixed.

Maryland Code, Election Law § 6-205
§ 6-205. Filing of petitions

Generally

(a)(1) Unless otherwise required by the Maryland Constitution, a petition shall be filed, in person by or on behalf of the sponsor, in the office of the appropriate election authority.

(2) If the Maryland Constitution provides that a petition shall be filed with the Secretary of State, the Secretary of State shall deliver the petition to the State Board within 24 hours.

(3) If the Maryland Constitution provides that a petition shall be filed with an official or governmental body of a county, the official or governmental body, after determining that the petition is in conformance with the requirements of law, shall dispatch the petition to the local board for that county within 24 hours.

(4) A petition forwarded under paragraph (2) or (3) of this subsection shall be processed under this subtitle as if it had been filed with the election authority.

Regulations

(b) The regulations adopted by the State Board may provide that the signature pages of a petition required to be filed with the State Board be delivered by the sponsor, or an individual authorized by the sponsor, to the appropriate local board or boards for verification and counting of signatures.

Acceptance of petition

(c) A petition may not be accepted for filing unless the information page indicates that the petition satisfies any requirements established by law for the time of filing and for the number and geographic distribution of signatures.

Additional signatures

(d) Subsequent to the filing of a petition under this subtitle, but prior to the deadline for filing the petition, additional signatures may be added to the petition by filing an amended information page and additional signature pages conforming to the requirements of this subtitle.

Maryland Code, Election Law § 6-206
§ 6-206. Determinations at time of filing

Review by chief election official

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

Determinations

(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.

Declaration of deficiency

(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.

Consistency with advance determination

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

Notice

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

Maryland Code, Election Law § 6-207
§ 6-207. Verification of signatures

Generally

(a)(1) Upon the filing of a petition, and unless it has been declared deficient under § 6-206 of this subtitle, the staff of the election authority shall proceed to verify the signatures and count the validated signatures contained in the petition.
(2) The purpose of signature verification under paragraph (1) of this subsection is to ensure that the name of the individual who signed the petition is listed as a registered voter.

State Board to establish process

(b) The State Board, by regulation, shall establish the process to be followed by all election authorities for verifying and counting signatures on petitions.

Random sample verification

(c)(1) The process established under subsection (b) of this section shall provide for optional verification of a random sample of signatures contained in a petition.

(2) Verification by random sample may only be used, with the approval of the State Board:

(i) for a single-county petition containing more than 500 signatures; or

(ii) in the case of a multicounty petition, by a local board that receives signature pages containing more than 500 signatures.

(3) Verification under this subsection shall require the random selection and verification of 500 signatures or 5% of the total signatures on the petition, whichever number is greater, to determine what percentage of the random sample is composed of signatures that are authorized by law to be counted. That percentage shall be applied to the total number of signatures in the petition to establish the number of valid signatures for the petition.

(4)(i) If the random sample verification establishes that the total number of valid signatures does not equal 95% or more of the total number required, the petition shall be deemed to have an insufficient number of signatures.

(ii) If the random sample verification establishes that the total number of valid signatures exceeds 105% of the total number required, the petition shall be deemed to have a sufficient number of signatures.

(iii) If the random sample verification establishes that the total number of valid signatures is at least 95% but not more than 105% of the total number required, a verification of all the signatures in the petition shall be conducted.

Maryland Code, Election Law § 6-208
§ 6-208. Certification

Generally

(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.

Certification

(b) 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.

Notice

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

Maryland Code, Election Law § 6-209
§ 6-209. Judicial review

Generally

(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 assure the integrity of the electoral process.

(3) Judicial review shall be expedited by each court that hears the cause to the extent necessary in consideration of the deadlines established by law.

Declaratory relief

(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.

Maryland Code, Election Law § 6-210
§ 6-210. Schedule of process

Request for advance determination

(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) Within 5 business days of receiving the request for an advance determination, the election authority shall make the determination.

Notice

(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.

Verification and counting

(c) The verification and counting of validated signatures on a petition shall be completed within 20 days after the filing of the petition.

Certification

(d) Within 2 business days of the completion of the verification and counting processes, or, if judicial review is pending, within 2 business days after a final judicial decision, the appropriate election official shall make the certifications required by § 6-208 of this subtitle.

Judicial review

(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 it relates.

(2) If the petition seeks to place the name of an individual or a question on the ballot at any election, judicial review shall be sought by the day specified in paragraph (1) of this subsection or the 63rd day preceding that election, whichever day is earlier.

Maryland Code, Election Law § 6-211
§ 6-211. Prohibited practices and penalties

Offenses and penalties relating to the petition process shall be as provided in Title 16 of this article.

Montgomery County Charter § 114
Sec. 114. Referendum.

Any legislation enacted by the Council shall be submitted to a referendum of the voters upon petition of five percent of the registered voters of the County except legislation (1) appropriating money or imposing taxes, (2) prescribing Councilmanic districts, (3) authorizing the issuance of bonds or other financial obligations for a term of less than twelve months, and (4) authorizing obligations for public school sites, construction, remodeling, or public school buildings, whenever the total amount of such obligations authorized to be issued in any one year does not exceed one-fourth of one percent of the assessable base of the County.

Montgomery County Charter § 115
Sec. 115. Referendum Procedure.

Any petition to refer legislation to the voters of the County shall be filed with the Board of Supervisors of Elections within ninety days following the date on which the legislation shall become law provided that fifty percent of the required signatures accompanying the petition are filed within seventy-five days following the date on which the legislation becomes law. When a referendum petition has been filed, the legislation to be referred shall not take effect until thirty days after its approval by a majority of the registered voters of the County voting thereon. Emergency legislation shall remain in force from the date it shall become law notwithstanding the filing of a petition for referendum but shall stand repealed thirty days after rejection by a majority of the registered voters voting thereon.

Montgomery County Code § 16-5
Sec. 16-5. Petition-Form.

A petition for a referendum on any legislation, or part thereof, enacted by the Council and subject to referendum under the charter, shall be composed of one or more sheets, each in substantially the following form:

"REFERENDUM PETITION"

"We, the undersigned registered voters of Montgomery County, Maryland, do hereby petition for a referendum vote on [the provisions (identifying them briefly) of] the act entitled 'An Act [inserting title], enacted by the County Council for Montgomery County, Maryland, at its [insert month and year] legislative session."

Montgomery County Code § 16-6
Sec. 16-6. Same-Signatures, etc.

Following the petition, there shall be the signatures of the petitioners who shall be registered voters of the County. Opposite the signature of each signer, there shall appear the residential address of the signer in the county. Below the signature of each signer, the signer's name shall appear in print or type lettering.

Below the signatures on each sheet of the petition, there shall appear an affidavit stating that each signature on the sheet was affixed in the presence of the affiant and that each signature is the signature of the signer affixed by voluntary act of the signer.

All sheets duly filed of a petition for a referendum on the same act shall constitute a single petition for a referendum on that act. The total number of signatures of different registered voters attached to the sheets constituting a single petition shall be not less than the number required by the charter. The number of required signatures must be computed by using the number of registered voters shown in the records of the board of supervisors of elections on the day the act becomes law.

Montgomery County Code, § 16-8
Sec. 16-8. Notice to Council and County Executive; public notice; date of election.

(a) The Board must promptly notify the President of the Council and the County Executive of any referendum petition filed with it and whether the petition is a valid petition requiring a referendum to be held under the Charter.

(b) If notified that the petition requires a referendum to be held under the Charter, the President of the Council must notify the public by advertisement in a newspaper of general circulation in the County that the law, unless it is an expedited law, is not in effect pending a referendum on it.

(c) The referendum must be held at the next regular election for any state or federal officer for which the ballot has not already been approved, or at a special

election to be held on a date designated by the County Executive within 30 days after the Executive received notice under this Section from the Board.

(d) The Board must conduct any referendum and must use the same voting machines or ballots as it uses for other elections.

COMAR Title 33, Subtitle 6, Chapter 3, Subchapter 6
§ 06. Signer identification

A. In General. Each signature page shall contain labeled spaces for providing, adjacent to each signature, the information specified in this regulation.

B. Required Information. When signing the signature page, each signer shall:

(1) Sign the signer's name; and

(2) Provide the following information, to be printed or typed in the appropriate spaces:
(a) Date of signing,
(b) Signer's name as it was signed, and
(c) Current residence address, including house number, street name, apartment number (if applicable), town, and ZIP code.

C. Optional Information.

(1) The circulator shall ask each signer to also provide the signer's date of birth or, at a minimum, month and day of birth.

(2) A signer's failure to provide this birth information does not invalidate the signature.

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

JANE DOE, et. al.	:	
Plaintiffs	:	
v.	:	Case No. 293857-V
	:	
MONTGOMERY COUNTY BOARD OF ELECTIONS	:	
Defendant	:	

MEMORANDUM DECISION AND DECLARATORY JUDGMENT ORDER

Plaintiffs, Citizens of Montgomery County and registered voters therein, have filed a Complaint for Judicial Review and Declaratory Judgment, disputing Defendant Montgomery County Board of Elections' decision to certify a referendum petition. The petition aims to overturn a law passed by the Montgomery County Council, and signed by the county executive on November 21, 2007, prohibiting discrimination based upon gender identity. Plaintiffs question the propriety of the referendum campaign and request a judgment declaratory of the parties' rights.

Defendant contends that it complied with its statutory mandate in processing the petition that requests the referendum, and validating the signatures therein. Both parties have moved for summary judgment.

Maryland Citizens for a Responsible Government (MCRG), the proponent of the referendum initiative, was not sued by Plaintiffs, but sought leave to intervene in the matter as a party. The court declined to permit intervention by order dated April 25, 2008, chiefly on the ground that MCRG's interests in this case were virtually identical to Defendant's, but also because there were no sworn facts upon which the court could conclude that any persons

involved with MCRG were registered voters residing in Montgomery County. No appeal was taken from that decision. See *Hartford Ins. Co. v. Birdsong,* 69 Md. App. 615, 519 A.2d 219 (1987). MCRG has been permitted to file *amicus* briefs on legal issues, and has done so on two occasions during the pendency of the case.

The court heard argument on cross-motions for summary judgment on June 11 and 12, and partial summary judgment was granted in favor of the Defendant on June 12 on two contested issues. An evidentiary hearing was conducted on July 9, although there was no live testimony presented. Only documents were received at that time, as the parties represented that there were no factual disputes on the material issues of the case. After hearing further argument, the court took the matter under advisement.

Montgomery County Code, Article 1, §114 requires the signature of 5% of the registered voters of the county before a referendum challenging legislation passed by the county council can be presented to the general electorate. The signatures may be submitted in two separate filings, on dates fixed by statute. Unfortunately, §114 provides no guidance as to the date on which the number of registered voters is to be determined. *Cf.* MD. CONST. art. XVI, §3 (providing that referendum petitions against an Act passed by the General Assembly must be signed by three percent of "the qualified voters of the State of Maryland, calculated upon the whole number of votes cast for Governor at the last preceding Gubernatorial election..."). The term "registered voters" is not defined in the county code.

The parties stipulated on the record at trial of this matter on July 9 that the calculus date for determining the number of voters should be November 30, 2007, the date nearest to November 21 for which registration figures were published by the State Board of Elections (the

"State Board"). The court accepts that stipulation and finds it to be reasonable in light of the county code's silence regarding an operative date.

Plaintiffs' initial challenge to the validity of the referendum drive was premised on three principal theories: (1) that the petition is defective and misleading, in that it does not fairly apprise a potential signer of the nature of the legislation being challenged; (2) that the first set of signatures, submitted on February 4, 2008, does not contain the requisite total because of defects affecting numerous signatories; and (3) that the second set of signatures, submitted on February 19, 2008, suffers from the same deficiencies set out in (2), above, differing only in number from the first set. Defendant denies each of these three contentions, and further asserts that the first two issues are precluded from the court's consideration because they are barred by the 10-day limitations period set out in MD. CODE ANN., ELEC. §6-210(e) (2003).

There were other miscellaneous allegations set out in Plaintiffs' complaint regarding the referendum campaign. These were not further explicated by Plaintiffs at the summary judgment motion, or the evidentiary hearing, and therefore have not been considered by the court.

During argument on the parties' summary judgment motions, however, a subsequent issue arose: namely, Plaintiffs' claim that the number of registered voters in Montgomery County from which the 5% requirement is derived (hereinafter referred to as the "denominator") was much greater than originally stated. Previously, the parties had assumed the denominator to be 500,012, the number of registered voters on the county's rolls on November 21, 2007, when the questioned law was signed by the county executive. This would mean that 25,001 signatures of county registered voters would be required to place the matter before the electorate. Defendant's counsel indicated during argument on the summary judgment motions, however, that the denominator did not include so-called "inactive" voters. *See Maryland Green Party v. Maryland*

Bd. of Elections, 377 Md. 127, 832 A.2d 214 (2003); *Gisriel v. Ocean City Elections Bd.*, 345 Md. 477, 693 A.2d 757 (1997). Obviously, if the court finds that inactive voters must be considered as "registered" voters, the denominator will be greater than originally claimed by Defendant.

Plaintiffs sought and have been granted leave to amend their complaint, and the new complaint sets forth this corollary theory as to why the number of signatures is insufficient to submit the matter to referendum. The court finds no prejudice to the Defendant in permitting the amendment. The parties and MCRG have had ample opportunity to brief the issue. Plaintiffs have alleged a quantitative insufficiency of signatures since the inception of the case, and the newest theory was suggested in its memorandum of law on the summary judgment issue, more than a week before motions argument. On page 13 of that document, in a footnote that presaged the disclosure of the "active-inactive" controversy, Plaintiffs questioned the validity of a "Petition Signers Report" produced by Defendant in discovery, which suggested that 26,300 (not 25,001) signatures were actually needed for certification.

The court believes that this new theory is based upon the same core of operative facts originally pled by Plaintiffs, and that the amendment will facilitate "a determination based on the true issues of the litigation, and [will avoid] an injustice by reason of a procedural technicality." Niemeyer and Schuett, *Maryland Rules Commentary* 251 (3d ed. 2003).

The matters have been exceedingly well-briefed and argued by the parties. The facts, which are largely undisputed, are set forth in greater detail in the parties' respective briefs and replies. Further facts necessary to the court's decision are set out in the body of this order.

I. The Sufficiency of the Referendum Petition

Plaintiffs claim the form of the petition is legally insufficient as a matter of law. They point particularly to use of the term "bill" throughout the sections of the petition that summarize the legislation questioned, claiming that it is misleading. Plaintiffs also claim that they never learned of the initial determination by Defendant on December 7, 2007, that the form was legally sufficient until discovery commenced in this case.

Because one of the counts of their complaint includes a request for declaratory relief, Plaintiffs assert that they are not subject to the 10-day limitation rule mandated by §6-210(e), which requires a complaint for judicial review of certain determinations of the local elections board to be filed within that period.

Defendant argues, among other things, that challenge to the sufficiency of the form of the petition is untimely, as it should have been brought within 10 days of the determination by the Defendant that the petition was sufficient. It further asserts that, in any event, the petition passes muster because it is in "substantial compliance" with the requirements of Montgomery County Code §16-5, dealing with the form of referendum petitions in general, and clearly states that the challenged legislation was "enacted on November 13, 2007, by the County Council for Montgomery County, Maryland."

Before deciding whether the form of the petition was proper, the court first addresses the limitations issue. Plaintiffs claim they are not subject to the 10-day rule because their complaint also contains a request for a declaratory judgment. It is the court's belief that judicial review as described in MD. CODE ANN., ELEC. §6-209 (2003) includes declaratory relief, which is merely a particular species of review. There is no reason that petitions for judicial review of a local board's decision should be treated differently than petitions for declaratory relief in the context

of the 10-day rule. "Persons aggrieved," as used in §6-209(a)(1), may also be "registered voters," as described in §6-209(b), and vice-versa. If Plaintiffs are correct that a separate limitation rule applies for "judicial review" and "declaratory relief," respectively, a person aggrieved who missed the 10-day deadline but is also a registered voter could skirt the limitations requirement by simply requesting declaratory relief. Such a distinction makes no sense to this court. Furthermore, if the General Assembly desired one section of §6-209 to be subject to the 10-day rule, and the other not, it could have stated so very simply.

The court ruled from the bench on June 12 that a judicial challenge to the legal sufficiency of the petition need not have been filed by December 17, 2007, because the language on the petition appeared on every questioned voter's signature sheet (including those submitted on February 19, 2008, the legitimacy of which – by agreement of the parties – were timely challenged). The court nevertheless went on to hold that the petition did provide adequate notice to its signers.

As noted above, the county code prescribes a form for the petition language, with which "substantial compliance" is necessary. *See* Montgomery County Code §16-5. The test for legal sufficiency enunciated in this state is whether the language "convey[s] with reasonable clarity the actual scope and effect of the measure." *Surratt v. Prince Georges County,* 320 Md. 439, 447, 578 A.2d 745, 749 (1990). Under the case law, the court does not concern itself with the issue of whether, in hindsight, the language could have been better-drafted. *Kelly v. Vote Know Coalition,* 331 Md. 164, 626 A.2d 959 (1993).

While it is true that the term "bill" is used several times in the body of the text of the instant petition, no reasonable person could have been misled as to the status of the legislation. The petition states unambiguously that the bill was enacted, on a date certain, by the county

council. Further, the summary of the legislation fairly stated its content, and a full copy of the statute was available for review by the signer. This court finds substantial compliance with the form language, as prescribed by the county code, and that the petition submitted to registered voters for signature was legally sufficient.

This case is a far cry from *City of Takoma Park v. Citizens for Decent Government,* 301 Md. 439, 483 A.2d 348 (1984), relied upon by Plaintiffs. In that case, wherein a referendum challenge was denied by the Court of Appeals, the title of the challenged law was not set forth in the petition, and there was doubt as to which language in the act was being questioned.

Upon reviewing the case of *Roskelly v. Lamone,* 396 Md. 27, 912 A. 2d 658 (2006), the court has reconsidered its initial ruling from the bench on June 12 that limitations is not also a bar to the petition sufficiency challenge. *Roskelly* held that where provision is made for two separate submissions of signatures on a referendum petition, challenges to the validity of those signatures must be made within 10 days following the election board's determination on each submission.

The court now holds that a challenge to the sufficiency of the petition should have been made within 10 days after the verification of the first set of signatures, or no later than March 2. True though it is that the language on the petition appeared on every questioned voter's signature sheet for both the February 4 and February 19 submissions, *Roskelly* dictates that challenges to the procedure must be made by aggrieved parties as they accrue, and not at a later stage of the proceeding. The result the court reaches on the petition sufficiency issue therefore remains the same, but for the additional reason that limitations bar any remedy.

II. The Sufficiency of the First Set of Signatures

Submission of the first set of signatures is the beginning of a two-step process. *Roskelly* asserts that one cannot wait until the end of the entire process to challenge a determination in the first step (whether denominated as an action for judicial review or a request for declaratory relief). Here, 13,467 of the 15,146 signatures submitted on February 4, 2008, were verified and counted by Defendant on February 20. Plaintiffs' Complaint for Judicial Review and Declaratory Judgment was filed on March 14, well beyond the 10-day limitations period.

Plaintiffs' argument that it had no actual notice of Defendant's first determination regarding signatures, and therefore could not have timely filed for judicial review, is without merit. There was no statutory requirement that anyone be notified of the Defendant's determination as to the validity of the signatures in this case, other than the referendum sponsors. Defendant had no way of ascertaining which persons, other than the sponsors, had an interest in this legislation, and therefore had no duty – statutory or otherwise – to provide notice of the decision to third parties. The proceedings of the local election board are reviewable by the public at any time, and constructive notice of the actions of this governmental agency was therefore provided to Plaintiffs. *See* MD. CODE ANN., ELEC. §2-202 (2003 & Supp. 2007).

Accordingly, limitations bars any remedy to Plaintiffs on the issue of the legal sufficiency of the first set of signatures. Given the apparent likelihood of appellate review of this court's decision, however, it will pass on the merits of Plaintiffs' claim regarding the first set of signatures, under §III, below.

III. The Sufficiency of the Second Set of Signatures

No limitations issue is raised by Defendant on this contention.

Article XVI of the Maryland Constitution is the organic basis for the power of referendum in this state. Title 6 of the *Election Law* article governs the process whereby ballot questions may be placed before the electorate. The court has searched in vain for use of the term "referendum" within the statute, although the word "refer" appears several times. Ostensibly, "ballot question" subsumes "referendum" under the statutory scheme. *See* MD. CODE ANN., ELEC. §6-102(a) (2003).

Title 6 is the latest incarnation of a group of statutes that has been rewritten and/or recodified several times over the years, often without complete consistency or harmony, in the court's view.

Section 6-103 provides for the State Board of Elections ("the Board") to prescribe, *inter alia,* the form and content of the petitions, and to adopt regulations to carry out the provisions of the law. *See* MD. CODE ANN., ELEC. §6-103 (2003); *see also* COMAR 33.06.03.01, *et seq.* (2007).

Section 6-207(a)(1) directs the Board, upon the filing of a petition, to "verify the signatures and count the validated signatures...." MD. CODE ANN., ELEC. §6-207(a)(1) (2003 & Supp. 2007). Of significance is the fact that subsection (a)(2) explains: "The purpose of signature verification under paragraph (1) of this subsection is to ensure that the name of the individual who signed the petition is listed as a registered voter." The Board is also given authority, under subsection (b), to "establish the process to be followed by all election authorities for verifying and counting signatures on petitions," by regulation. *See also* COMAR 33.06.03.06 (2007).

Plaintiffs' challenges to the Defendant's certification of most of the signatures submitted are in six general areas, applicable to both the first and second set of signatures. These categories roughly correspond to those established in Plaintiffs' Exhibit F, Chart of Signature

Defects, which was amended by the parties' handwritten interlineation and admitted into evidence during argument on the motions for summary judgment. The challenges are made to: (1) signatures where the circulator executed the affidavit for his or her own signature on the petition (category C in the chart); (2) signatures where the circulator affidavit is dated prior to the signature of the voter (category D in the chart); (3) signatures affixed to a "non-standard" petition page (category F in the chart); (4) signatures and information that are not in compliance with the requirements of MD. CODE ANN., ELEC. §6-203(a)(1) and (2) (2003 & Supp. 2007) (categories I, L, P, and S in the chart); (5) signatures affixed to pages where there are signs of possible fraud or other irregularities by the signer or circulator (category X in the chart); and, (6) miscellaneous problems (category M in the chart).

(1) Circulator Executed Affidavit for Own Signature (category C)

Plaintiffs contend that 679 signatures should be disqualified from the February 4 filing, and 332 from the February 19 filing because the circulator executed an affidavit as to his or her own signature.

Although certainly not binding precedent, the court finds persuasive the position of the Attorney General's office on this subject. By letter dated April 20, 1987 (attached as Exhibit 6 to Defendant's Motion for Summary Judgment), chief counsel to the Attorney General asserted that there is no constitutional or statutory prohibition preventing a person who circulates a petition from signing and executing an affidavit as to his or her signature.

Such a practice is consistent with the State Board's Guidelines, as well. Plaintiffs have advanced no valid reason why a circulator cannot observe his or her own signature being affixed to a petition, provided that circulator is a registered voter otherwise eligible to sign. The court

disagrees with Plaintiffs' suggestion that the circulator must sign in the presence of another adult, and has not been directed to case or statutory law that supports that proposition.

All questioned signatures in category C are valid.

(2) Circulator's Affidavit Predates Voter's Signature (category D)

Twenty-four such instances of predating exist with regard to the first set of signatures, and 12 in the second. The court, for obvious reasons, disqualifies the 12 signatures in the second set. The first set challenge is barred by limitations for the reasons set out in §2, above. If limitations were not a bar, all 24 signatures would be disqualified.

Plaintiffs contend that all of the signatures obtained under the supervision of a circulator who has executed a predated affidavit should be questioned by the court, and that *Tyler v. Secretary of State,* 229 Md. 397, 184 A.2d 101 (1962) and its progeny compels such a conclusion.

Tyler dealt with the requirements of Article XVI, §4 of the Maryland Constitution, which at that time required a circulator to swear that he or she had personal knowledge that a signer was a registered voter of the state and county. That requirement has since been repealed.

The Court of Appeals held in *Tyler* that, because the circulator falsely swore that certain signatories were registered voters, "the *prima facie* presumption of the validity of the petition, or a sheet thereof...must fail, along with all the signatures thereon, and the burden is cast upon the proponents of the referendum to affirmatively show that the remaining signatures on such petition or sheet thereof are genuine and *bona fide* and that the signers are registered voters...[citations omitted]." 184 A.2d at 105. Defendant presented no such rebuttal at the trial in this matter.

Defendant contends that the State Board's Guidelines (Exhibit 5 attached to its Motion for Summary Judgment) direct that a predated circulator's signature requires invalidation only of the questioned voter's signature, and nothing more. The Guidelines, say the Defendant, were promulgated pursuant to §6-103(a)(2), allowing the Board to prescribe "procedures for the verification and counting of signatures." MD. CODE ANN., ELEC. §6-103(a)(2) (2003).

Indeed, in the same year of the *Tyler* decision, the legislature enacted what was codified as Article 33, §169D, which read in pertinent part: "On any petition...submitted...under the provisions of Article 16 of the Constitution, any question concerning, or the invalidity of, the signature of any person on the petition affects that signature only and does not affect or impair any other portion of the petition or petitions." When former Article 33 was recodified in 1998, this provision disappeared from the statutory scheme, although – as stated above – it now appears in the State Board's Guidelines.

The court finds that *Tyler* – at least in the context of this case – has been legislatively overruled. The constitutional violation presented there does not exist here, and both the legislature and the State Board have subsequently approved a procedure invalidating only questioned signatures that are individually infirm. While it is true that no statute *presently* exists dealing with this issue, the court is satisfied that the legislative delegation to the State Board contained §6-103 permits it to disqualify questioned signatures individually, and not in a wholesale fashion.

Accordingly, the 24 questioned signatures in the first submission, and 12 in the second, are disqualified, but no more.

ENTERED

JUL 24 2008

Clerk of the Circuit Court
Montgomery County, Md.

(3) Signatures Affixed to a Non-Standard Petition Page (category F)

Ten such signatures exist for the February 4 submission, none for the February 19 filing. Limitations bars any remedy as to the February 4 filing. If the court were to reach the merits, however, the court would disqualify the signatures. The non-standard petition page, among other problems, contains no affidavit by the circulator. The signatures, but for the limitations problem, would therefore be invalid.

(4) Signatures Not in Compliance with §6-203(a)(1) (categories I, L, P, and S)

This category contains the greatest number of challenged signatures (5,141 for February 4, and 5,735 for February 19). No testimonial evidence was presented regarding this issue, as the parties agreed that it could be decided as a matter of law by resort to the individual petitions. The court has reviewed many of them, and noted the infirmities about which Plaintiffs complain, including failure of the signatory to sign his or her name precisely as it appears in state voter registration records.

Section 6-203 requires an individual signing a petition to sign his or her name as it appears on the state registration list, providing at least one full given name and the initials of any other names. It also requires that the signer's name, as it was signed, be printed or typed, together with the date, the signer's address and any other information required by the State Board's regulations.

The court must decide whether these statutory requirements are mandatory or directory. In making this inquiry, the court finds that the language in §6-203 is rendered ambiguous by virtue of §6-207(a)(2), enacted in 2006, asserting that signature verification is conducted "to ensure that...the individual who signed the petition is...a registered voter." *See* MD. CODE ANN., ELEC. §6-207. Guidelines issued by the State Board of Elections are to the same effect, as are the

relevant COMAR regulations. In making its determination, the court pays appropriate deference to an agency's interpretation of the law it administers. *Christopher v. Montgomery County Dept. of Health and Human Services,* 381 Md. 188, 849 A.2d 46 (2004).

A literal reading of the requirements of §6-203 would lead to absurd results, and potentially culminate in the disenfranchisement of otherwise eligible voters who seek to bring a matter to referendum. If Plaintiffs' contention is correct, the mere omission of an initial in a signer's name would disqualify his or her signature. "John A. Doe" would be disenfranchised because he signed his name "John Doe," even though all other available information on the petition corroborated the fact that John A. Doe was a registered voter in Maryland, residing in Montgomery County.

Likewise, the omission of the signer's name, printed or typed, even though the accompanying signature be written in legible cursive writing, would also effect disqualification if the statute is read literally.

Maryland's Constitution, Article I, §2, commands only that "no person shall vote, at any election, Federal or State...*unless his name appears in the list of registered voters*...(emphasis supplied)." This is the organic basis for the requirements outlined in Title 6 of the *Election Law* article, and underscores what the court perceives to be the ambiguity between §§ 6-203 and 6-207. It lends credence to the proposition that the intent of Title 6 of the *Election Law* article is simply to assure that a petition signatory is a registered voter, and not an impostor or recruited partisan unconnected to the relevant jurisdiction in which the vote is taking place. It is also consonant with the State Board Guidelines, whose directive to resolution of the signature issues raised in this case is to accept most defects "if the identity of the voter can be determined (Defendant's Exhibit 5, attached to its motion for summary judgment)."

The interplay between §6-203 and 6-207 is not a model of clarity. For instance, §6-203 speaks of "validation" and counting of a signature by the board, if all requirements of the section are met. Section 6-207, however, refers to "verify[ing]" and counting the "validated" signatures. No definition of "validate" or "verify" is provided in the statute. The purpose of verification "is to ensure that the [signatory] is listed as a registered voter," §6-207(a)(2), a process that by that time should already have been completed under §6-203(a)(1) ("To sign a petition, an individual shall sign the individual's name as it appears on the registration list or the individual's surname of registration..."), and §6-203(b) ("The signature of an individual shall be validated and counted if: (1) the requirements of subsection (a) of this section have been satisfied..."). Accordingly, it can be argued that "verification" and "validation" amount to the same thing under the statutes.

Both parties contend that resort to rules of statutory construction supports their respective positions. Indeed, as pointed out by Judge Adkins in *Kaczorowski v. City of Baltimore*, 309 Md. 505, 512, 525 A.2d 628, 631 (1987): "Just as in the science of Physics every action has an equal and opposite reaction, so it seems that every canon of statutory construction has an equal and opposite canon."

In the same case, however, the court stated: "What we are engaged in is the divination of legislative purpose or goal. Indeed, as we have explained, the plain-meaning rule 'is not a complete, all sufficient rule for ascertaining a legislative intention [citation omitted]'" *Id.* at 514; 525 A.2d at 632. The court went on to hold that the plain-meaning rule is not rigid, where a literal interpretation of a questioned statute would defeat the legislative intent – here, to enfranchise voters.

The court finds further support for Defendant's position by examining the Fiscal and Policy Note prepared by the Department of Legislative Services, during consideration of the bill that was ultimately codified as §6-207(a)(2) in 2006. Under the heading "Election Law – Petition Verification" is stated: "[T]he purpose of requiring election authority staff to verify signatures...is to ensure that the names of the individuals who signed the petition are registered voters, not to verify the authenticity of the signature."

In conclusion, the court finds that the language of §6-203 is directory, not mandatory, and that the Defendant was responsible for ensuring only that signatories to the petition were registered voters and, as explained *infra,* detecting cases of patent fraud. The court is fully aware of the holding in *Barnes v. State,* 236 Md. 564, 204 A.2d 787 (1964), to the effect that the language in former Article 33, §169 (a predecessor to present §6-203) was mandatory, and not directory. In the court's view, Barnes has become distinguishable by virtue of the statutory changes that have occurred in the 44 years since it was decided. At the time of the court's decision in that case, there was no statutory section comparable to present §§ 6-103 and 6-207, which today explicate the role of the State Board in determining the validity of petition signatures. The legislature has now permissibly and constitutionally delegated much of its authority in determining the validity of signatures to the Board. *See Burroughs v. Raynor*, 56 Md. App. 432, 441, 468 A.2d 141, 145 (1983) ("...[T]he exercise of quasi-judicial authority by an administrative agency is not an unconstitutional usurpation of judicial powers...when...the administrative action is subject to judicial review [citation omitted]").

The court finds that all signatures challenged on the basis of alleged violations of §6-203 are valid, because Defendant determined that all non-disqualified signatories were registered voters and residents of Montgomery County.

(5) Signatures Affixed to Pages Where There Are Signs of Possible Fraud or Other Irregularities by the Signer or Circulator (category X)

The court rejects the suggestion by Defendant that its function in counting signatures is purely ministerial, with no responsibility for detecting fraud. Some degree of discretion must be exercised when the Board is presented with signatures that raise genuine suspicion about authenticity.

Court's Exhibit 1, which was admitted at trial on July 9, is a letter from an Assistant Attorney General to Gene Raynor, an election official in Baltimore City. The letter, dated July 15, 1996, advised that "if a local board of election supervisors can determine with a reasonable degree of certainty that a signature on a petition was made by a person other than the purported signer, the board should invalidate that signature." The Assistant Attorney General conceded that a local election board "cannot be presumed to be handwriting experts," but suggested that the board does not abdicate its responsibility to make a "reasonable judgment" that a signature is illegitimate.

The court finds the reasoning of the letter persuasive. While the Board does not consist of a group of handwriting experts, its role is something more than that of bean-counter. Its employees cannot throw logic and good sense out the window merely because a person whose signature is obviously bogus happens to be a registered voter.

At trial, 46 such signatures were claimed to be suspect for February 4, and 41 for February 19. The court has examined these signatures and finds that a reasonable person would find them questionable. While there can be legitimate arguments made as to whether some of these signatures are patently counterfeit, the court accepts the numbers proffered by Plaintiffs and disqualifies these signatures.

(6) Miscellaneous Problems (category M)

A total of 40 such signatures are claimed to be invalid under this category, 12 for February 4, and 28 for February 19. The court has reviewed these miscellaneous problems which include, among other things, an incomplete printed name, no address, an improperly dated circulator's affidavit, the use of post office boxes for an address, use of ditto marks, crossed out names, no circulator's name, and related matters.

For the February 4 submission, all challenges to the signatures are denied, except for three. An incomplete name, provided there is other information to identify the registered voter, is not a disqualification under the statute, for reasons explained in §(4), above. Likewise, the lack of an address is not sufficient to disqualify, by itself, nor is the use of a post office box or ditto marks.

A circulator's affidavit dated four days after the filing, however, disqualifies all three signatures on page M3.

For the February 19 submission, the following signatures are disqualified: blank line on 2M1; line crossed out on 2M2; line crossed out on 2M3; line crossed out on 2M4; signature without circulator on 2M5; unsigned by circulator petition on 2M6; undated affidavit (two signatures) on 2M7; petition with two circulators (four signatures) on 2M10; blank information lines on 2M12; two people signing on same line on page 2M18; two signatures improperly counted, instead of one, on page 2M30.

The court notes that many people do not write well cursively (including those who may be unfamiliar with the legal significance of affixing a signature in a context such as is presented here), and that sometimes a person's "signature" may be printed, or look more like printing than

cursive writing. Provided there is confirmatory evidence that the voter is registered (such as a birth date or address) there is compliance with the statute, COMAR, and the Board's Guidelines.

In summary, although barred by limitations, 59 signatures could have been disqualified from the February 4 filing. Seventy signatures are disqualified from the February 19 submission, for the reasons stated above. Therefore, 26,813 signatures on the two submissions are valid.

IV. Compliance With Montgomery County Code, Article I, §114

Having found that the referendum petition contains 26,813 valid signatures, the next issue the court considers is whether those signatures constitute at least five percent of the "registered voters" of Montgomery County.

The registered voter figure provided to MCRG by the Defendant was 500,012, the purported number of voters in the county on November 21, 2007, when the gender identity anti-discrimination law was signed by the county executive. Defendant, through counsel, acknowledged in argument on June 11 that this figure did not include "inactive" voters. The parties have stipulated that there were 52,269 Montgomery County inactive voters in the state database, as of November 30, 2007, the date nearest to November 21 for which such figures are still retrievable. Accordingly, if inactive voters are added to the total (552,281), MCRG would need 27,615 voter signatures to validly petition for a referendum.

Gisriel, supra, involved a challenge similar to the one made by Plaintiffs herein, except that there the appellant sought to *exclude* from the denominator certain inactive Ocean City voters. The Court of Appeals held the inactive voters were not unqualified and required that they be included in the denominator.

Six years later in *Green Party, supra*, the same court declared unconstitutional a COMAR regulation authorized by a statute defining the term "registered voter" to exclude "an individual whose name is on the list of inactive voters."

Although the issue presented in *Green Party* was whether an inactive voter should be counted for purposes of determining the number of voters signing a petition ("the numerator"), the court stated: "If inactive voters are not counted for petition purposes, then consistency would demand that they cannot be counted among the total number of voters, which the percentage signature requirement is based upon [citation omitted]....Moreover, since state election officials transmit voter turnout statistics in terms of a percentage of the *active* voter turnout only, this can lead to bizarre outcomes, such as having a voter turnout of more than 100% [citation omitted]. This confusion would not arise if the Board maintained one uniform registry, as required by Article I, §2, of the Maryland Constitution." 377 Md. at 152.

In the wake of the *Green Party* decision, the General Assembly repealed or amended the election law statutory scheme to conform to the Court of Appeals' holding. Among other things, it removed "petition signature verification" from the "official administrative purposes" for which inactive voters were not to be counted. *See* MD. CODE ANN., ELEC. §3-503(d) (2007). It also repealed former definitional §1-101(mm), defining "registered voter" to "not include an individual whose name is on a list of inactive voters."

It should be noted that the court was informed during the trial of this case that some 200 inactive voters signed the instant petitions, although those signatories were not included in the denominator established by Defendant. The court rejects Defendant's argument that inactive voters should be excluded from the denominator because to do otherwise would artificially inflate the number of signatures required to successfully petition for referendum. The legislature

specifically deleted the words "petition signature verification" from what is now §3-503(d) after *Green Party*, recognizing that there was to be no distinction between active and inactive voters except for "official administrative purposes," like establishing precincts and reporting official statistics. Neither of those two situations are presented here, nor can it be said that verification of petition signatures is an "official administrative purpose."

To accept Defendant's arguments would mean that citizens could successfully place a matter on referendum without obtaining the signature of a single active voter. In this case, for instance, the signatures of approximately one-half of the current list of inactive voters would be sufficient to petition for referendum, even though none of those voters would be counted in the denominator. A validly-enacted law could thus be challenged and, perhaps, defeated at the polls by means of a petition signed by a deflated percentage of voters. The court finds this to be in direct contravention to the spirit, if not the holding, of *Gisriel* and *Green Party*.

V. Statute of Limitations

The final question remaining for the court's determination is whether the statute of limitations contained in §6-210 bars the relief sought by Plaintiffs. Limitations was pled by Defendant in its answer as an affirmative defense, and raised in its response to the supplemental memorandum filed by Plaintiffs on the issue of the correct denominator.

Statutes of limitations exist to encourage promptness. "They find their justification in necessity and convenience rather than logic. They represent expedience, rather than principles . . . They represent a public policy about the privilege to litigate." *Walko v. Burger Chef Systems, Inc.*, 281 Md. 207, 210, 378 A.2d 1100, 1101 (1977).

Such statutes are to be strictly construed and the court is not to give them "a strained construction to evade their effect [citation omitted]." *Decker v. Fink*, 47 Md. App. 202, 206, 422 A.2d 389, 391 (1980).

In a pre-election context, time is of the essence. The General Assembly made a legislative determination in enacting §6-210 that those aggrieved by a decision of the local board must promptly lodge an objection by requesting judicial review.

Defendant claims that any challenge to the denominator should have been raised within ten days of the determination by the Defendant that the referendum petitioner (MCRG) needed 25,001 signatures to place the matter on the ballot.

Plaintiffs aver that any 10-day limitations requirement is triggered by the date that Defendant certified the petition, *see* MD. CODE ANN., ELEC. §6-208 (2003), and point to the letter sent by the local board to the county executive, dated March 3, 2008. By that calculation, say Plaintiffs, their judicial challenge was timely filed.

The court notes that information regarding the number of active and inactive voters in Montgomery County was available throughout the time period at issue, on the State Board of Elections website, for any interested citizen to view. The Plaintiffs, and members of MCRG, had unfettered access to these numbers. All of those citizens are presumed to know the law regarding the "active-inactive" dichotomy, which the Court of Appeals eliminated in *Green Party.*

After the decision in that case, it is inescapable that five percent of the registered voters in Montgomery County on November 21, 2007, was not 25,001; it was 27,615. Plainly, MCRG did not gather enough signatures to meet the five percent threshold.

Plaintiffs, however, judicially challenged the denominator too late. As was the case in §1, above, a judicial challenge to the fixing of the denominator should have been filed on or before February 20, 2008, and perhaps earlier. Certainly, Plaintiffs had constructive notice of the denominator no later than that day, when the first set of signatures was verified and counted by Defendant.

The court rejects Plaintiffs' suggestion made at the July 9 hearing that the date the petition was certified to the county executive is the measuring date for seeking judicial review. Certification under §6-208 occurs at the *end* of the signature-gathering process. While it is true that §6-209 provides for judicial review of the certification, it does not give Plaintiffs a second bite at the apple on the denominator issue.

Roskelly mandates that where referendum petitioners are aggrieved by a rejection of signatures at the first step of the signature-gathering process, they are required to seek judicial review within 10 days of the determination. Had the denominator in this case been artificially high, *Roskelly* would have compelled MCRG to seek judicial review within 10 days, lest they be bound by the higher number. It would not have been permissible to allow MCRG to wait until the certification process to seek such review.

Plaintiffs are not entitled to a more deferential standard than the petition sponsors. Because their request for judicial review was filed on March 14, limitations bars any remedy.

It is therefore this 24th day of July, 2008, by the Circuit Court for Montgomery County,

ORDERED, that Defendant's Motion for Summary Judgment on the Complaint for Judicial Relief and Declaratory Judgment is hereby **GRANTED**, and it is further

ORDERED, that judgment is entered in favor of Defendant; and it is further

ENTERED

JUL 24 2008

Clerk of the Circuit Court
Montgomery County, Md.

ORDERED, that this court declares that the petition brought by Maryland Citizens for a Responsible Government contains the requisite number of signatures necessary to place Bill No. 27-07, "Non-Discrimination – Gender Identity" on the November 4, 2008, General Election ballot, for consideration by the voters of this county, and it is further

ORDERED, that Montgomery County certify the ballot question and wording thereof for inclusion on the November 4, 2008, ballot no later than August 18, 2008.

Robert A Greenberg
ROBERT A. GREENBERG, JUDGE
Circuit Court of Montgomery County

ENTERED
JUL 24 2008
Clerk of the Circuit Court
Montgomery County, Md.