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**IN THE  
SUPREME COURT OF MARYLAND**

---

September Term, 2023

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No. 35

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**BENEDICT J. FREDERICK, III, *et al.*,**

*Appellants,*

v.

**BALTIMORE CITY BOARD OF ELECTIONS, *et al.*,**

*Appellees.*

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On Appeal from the Circuit Court for Baltimore City  
(Althea M. Handy, Judge)

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**BRIEF OF APPELLEE MARYLAND STATE BOARD OF ELECTIONS**

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**BRIEF OF APPELLEE**

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**STATEMENT OF THE CASE**

This appeal presents a dispute over the legality of a proposed charter amendment to the Baltimore City Charter. The Maryland State Board of Elections (the “State Board”) takes no position in that dispute. Resolution of the dispute, however, may have the effect of placing a ballot question on the general election ballot in Baltimore City as provided in Article XI-A, § 5 of the Maryland Constitution. The State Board must know whether to include that question on the Baltimore City ballot in order to timely prepare for the upcoming election.

Federal and state law require the State Board to transmit mail-in ballots to qualified voters by the third weekend in September. 52 U.S.C. § 20302(a)(8)(A) (requiring mail-in ballots be transmitted to certain qualified voters “not later than 45 days before the election”); Md. Code Ann., Elec. Law § 9-306(c)(1) (LexisNexis 2023) (requiring mail-in ballots be transmitted to qualified voters in the State “not later than 43 days before an election”). State law, however, restricts the State Board from printing ballots until September 6, 2024. *See* Elec. Law § 9-207(a)(2) & (e) (requiring the content and arrangement of the general election ballot to be certified at least 64 days before an election and permitting the State Board to begin printing ballots three days after that). The State Board therefore has only a 15-day window in which to design, print, and assemble approximately 500,000 mail-in ballot packets for the 2024 presidential general election. (E. 243 ¶ 19.)

Any resolution of this appeal after September 6th shortens the 15-day period in which the State Board can prepare and print ballots. And shortening that 15-day period imperils the State Board’s ability to meet federal and State deadlines for transmitting mail-in ballots. The State Board thus urges expediency in deciding this appeal.

### **QUESTIONS PRESENTED**

Can the Baltimore City Charter be amended through the referendum process provided at Article XI-A, § 5 of the Maryland Constitution to include the provision submitted by Renew Baltimore?

## STATEMENT OF FACTS

### **Amendments to the Baltimore City Charter Proceed by Referendum**

Article XI-A, § 5 of the Maryland Constitution provides two methods for proposing an amendment to the Baltimore City Charter. The Mayor and City Council can propose a charter amendment by passage of a resolution; alternatively, an amendment can be proposed by the filing of a petition containing the signatures of at least 10,000 voters registered in the city. Md. Const. art. XI-A, § 5. The charter amendment petition must be filed “with the Mayor of Baltimore or the President of the County Council,” and is thereafter referred to voters “at the next general or congressional election.” *Id.* The proposed amendment is adopted by operation of law if it receives a majority of votes “in favor” at the next election. *Id.*

Title VI of the Election Law Article governs how a petition, including a charter amendment petition, is referred to voters. Elec. Law § 6-102(a). Pertinent to this appeal, a petition proposing an amendment to the Baltimore City Charter is forwarded by the Mayor or City Council President to the Baltimore City Board of Elections (the “City Board”). *Id.* § 6-205(a)(3)–(4). The City Board verifies that each submitted signature reliably corresponds to a registered voter in Baltimore City. *Id.* §§ 6-203(b) & 6-207(a). Additionally, the “chief election official of the election authority”—here, the Election Director for Baltimore City—reviews the petition to ensure, among other things, that its subject matter is “authorized by law” and that it seeks a result permissible by the law. *Id.* § 6-206(c)(5). Once the Election Director determines that a charter amendment petition

contains a sufficient number of valid signatures and suffers from no legal deficiencies, he must certify the question for placement on the general election ballot. *Id.* § 6-208(c)(1).

**The State Board Cannot Ascertain the Final General Election Ballot Until Late in the Summer Before a General Election.**

Although, the State Board gathers most of the information for the general election ballot from the results of the primary election, Elec. Law § 8-202(a)(1)(i), the contents of the ballot are not fixed at that time. A candidate nominated to run in the general election can be removed from the ballot under statutorily specified circumstances. For instance, a candidate may decline a party's nomination for office up to the "first Tuesday in August" preceding the general election (August 6, 2024), *id.* § 5-801(b)(2)(ii); and, that candidate may be replaced on the ballot by the 88th day before the general election (August 9, 2024), *id.* §§ 5-1002(b)(1)(i), 5-1003(b)(4), 5-1004(b). If a candidate dies or becomes disqualified from office more than 85 days before the general election, *id.* § 5-801(d), the candidate can be replaced on the ballot by the 81st day before the election (August 16, 2024), *id.* §§ 5-1002(b)(1)(ii), 5-1003(b)(5), 5-1004(b)(2).<sup>1</sup>

Candidates from non-principal political parties<sup>2</sup> do not participate in the primary election. Elec. Law § 5-702(1)(ii). Instead, non-principal parties must nominate

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<sup>1</sup> These deadlines do not apply to a vacancy on the ballot created by the death, disqualification, or declination of a candidate for Governor or Lieutenant Governor. Because candidates for Governor and Lieutenant Governor run as a ticket, Elec. Law § 5-205(b), a vacancy in one office is addressed by different rules, and on a different timeline, than other public offices. *See* Elec. Law § 5-1005.

<sup>2</sup> The principal political parties are the two parties whose gubernatorial candidates received the highest and second-highest number of votes at the last preceding gubernatorial election. Elec. Law § 1-101(dd), (jj) & (kk).



candidates by certification to the appropriate election authority before close of business on the first Monday in August (August 5, 2024). *Id.* § 5-703.1(d) & (e). Likewise, candidates unaffiliated with a political party may appear on the general election ballot by filing a petition with the appropriate local board of elections, or State Board for certain statewide offices, before close of business on the first Monday in August (August 5, 2024). *Id.* § 5-703(f). The local board, or State Board, thereafter must process the candidacy petition within 20 days (August 25, 2024), *id.* § 6-210(c), and the candidate may seek judicial review of that process within 10 days of its conclusion (September 5, 2024), *id.* § 6-210(e)(1).

Finally, a multitude of late-summer deadlines govern the submission and certification of ballot questions. As it relates to this appeal, a petition proposing an amendment to a local government charter must be filed by the 99th day before the general election (July 29, 2024). Elec. Law § 7-104(b). The local board of elections must process the charter amendment petition within 20 days (August 19, 2024), *id.* § 6-210(c), and the proponents of the petition may seek judicial review of the local board's determination within 10 days of the determination or the 69th day before the election, whichever is earlier (August 28, 2024), *id.* § 6-210(e)(2).

The State Board, therefore, cannot ascertain the contents of the general election ballot with any finality until all of these deadlines, and their associated periods for judicial review, have passed. At the same time, the State Board must certify and publish the final general election ballot “at least 64 days before the election” (September 3,

2024).<sup>3</sup> Elec. Law § 9-207(a)(2). Within two days of that certification, a registered voter may seek judicial review of the ballot’s “content and arrangement, or to correct any administrative error.” *Id.* § 9-209(b). If no judicial review is sought, the State Board may begin printing general election ballots after the third day of public display (September 6, 2024). *Id.* § 9-207(e).

### **Federal and State Law Leave Little Time to Prepare Ballots.**

Federal law requires the State Board to begin sending mail-in ballots to qualified “absent uniformed services voter[s]” and “overseas voter[s]” by September 21, 2024. 52 U.S.C. § 20302(a)(8)(A). These voters may choose to receive their mail-in ballots by mail or by electronic transmission. *Id.* § 20302(f)(1). The State Board must therefore finalize both paper and web-delivery ballots by September 21. Two days later, on September 23, 2024, the State Board must send mail-in ballots to every qualified voter in the State who has made a timely request to receive one. Elec. Law § 9-306(c)(1).

### **Ballot Preparations Require Weeks of Preparation by the Local Board of Elections and the State Board.**

To fulfill its statutory duties, the State Board must produce different ballots for different electoral needs. First, the State Board must print specimen ballots to notify

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<sup>3</sup> Election day for the 2024 general election will be November 5, 2024. *See* Elec. Law § 8-301(a)(2) (“A statewide general election shall be held on the Tuesday following the first Monday in November.”) The 64th day before election day is Monday, September 2, 2024, which also happens to be a “legal holiday”—Labor Day. Gen. Provis. § 1-111(a)(10). When a computation of time required by the Election Law Article directs an action to take place on a “legal holiday,” that act “shall be performed on the next regular business day.” Elec. Law § 1-301(b). Certification and display of the general election ballot will therefore take place on the 63rd day before the general election, Tuesday, September 3, 2024.

voters of the election, its candidates, and its ballot questions. Elec. Law §§ 7-105(a)(1), 8-102(a)(1) & 9-214(1). Second, the State Board must prepare and print a uniform ballot for use in mail-in voting and in-person voting. Elec. Law § 9-204(a). And third, election officials must redesign the 17-inch uniform ballot so that it will print properly on 8.5-inch by 11-inch paper. (E. 247 ¶ 13.) This allows voters to receive a mail-in ballot by web-delivery, mark that ballot by online ballot marking tool, print the completed ballot on a home printer, and return it to the local board of elections for canvassing. Elec. Law §§ 9-306(b)(3) & 9-308.1(a)(1). (E. 247 ¶ 13.)

Additionally, the State Board must produce “test decks” of each ballot—pre-production samples “created to run through the State’s voting system equipment.” (E. 242 ¶ 12.) Test decks are printed and sent to each local board of elections “to ensure that the final ballots, as designed by [the State Board], can be accurately and reliably read by the voting system equipment.” (E. 242 ¶ 12.) Before printing any ballots, then, test decks must be printed, shipped to local boards, and tested. (E. 242 ¶ 12.) And while test decks for mail-in ballots are only tested on ballot scanners used during mail-in ballot canvassing, test decks for in-person ballots “must be scanned on every scanner in the State used during early voting and election day.” (E. 247 ¶ 13.)

On September 6, 2024, at the first opportunity to begin ballot production, the State Board will begin the eight-day process of creating digital image files of the nearly 2,000 general election ballot styles for each ballot format (specimen ballots, mail-in and in-person ballots, web-delivery ballots and test decks). (E. 247 ¶ 14.) Election officials will create the digital image files for mail-in ballots and in-person ballots, and their respective

test decks, first, so as to allow them to be printed first. (E. 247 ¶¶ 14-15.) Then, on September 8, 2024, the State Board will begin the three-week process for printing over “20,000,000 different physical ballot sheets.” (E. 247 ¶ 15.) Any changes to the ballot during those three weeks would require the digital file creation process and printing process to begin anew for the ballots of the affected jurisdiction. (E. 247 ¶ 15.)

For mail-in ballots specifically, the process will start with sending digital image files of test decks to the State’s mail-in ballot printing vendor as soon as possible after September 6; and printing, over a two-to-three-day period, test decks of mail-in ballots for all 24 jurisdictions in the State. (E. 242 ¶¶ 12-13.<sup>4</sup> The vendor will then ship the printed test decks to each of the 24 local jurisdictions, including Baltimore City, requiring another three days’ time. (E. 242 ¶ 12.) Each jurisdiction will scan their respective test decks through the ballot scanners that will be used during the mail-in canvass, requiring another two-to-three days of work. (E. 242 ¶ 14.) Once all jurisdictions confirm that the test decks scanned reliably and accurately, the State Board will direct its vendor to begin printing ballots. (E. 243 ¶ 17.)

Printing mail-in ballots requires the State’s vendor to print a ballot, print an associated outgoing envelope and return envelope (as prescribed by Election Law § 9-310(a)), print mail-in ballot instructions and “other inserts,” and package them together for mailing to a voter. (E. 241 ¶ 6.) The State Board anticipates “directing the

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<sup>4</sup> The State Board cannot, and therefore does not, produce ballot materials on its own. Instead, the State Board relies on a third-party vendor, contracted through the public procurement process, for the industrial printing and assembly of mail-in ballot packets. (E. 241 ¶ 9.)

printing and assembly of at least 500,000” of these “ballot packets” for the 2024 presidential general election. (E. 243 ¶ 19.) The State’s vendor requires at least 6-7 business days to print and assemble the half-a-million mail-in ballot packets. (E. 243 ¶ 18.)

From start to finish, then, and under perfect circumstances, the State Board anticipates that it will need 13-16 days to ready mail-in ballot packets for transmission by the September 21, 2024 deadline imposed by federal law. (E. 243 ¶ 19.)

While the production process for printing ballots is ongoing, the State Board must also design a web-delivery ballot for transmission before the September 21, 2024 federal deadline. 52 U.S.C. § 20302(a)(7). Quality assurance testing of the secure web-delivery system requires “approximately two weeks” of work, and can only take place after the web-delivery ballot has been designed and finalized. (E. 249-50 ¶ 18.) Redesigning the 17-inch ballot into an 8.5-inch by 11-inch format therefore acts a bottleneck for the preparation of the web-delivery system. (E. 250 ¶ 18.) Accordingly, the State Board aims to have the web delivery ballot ready for quality assurance testing by September 10, 2024. (E. 250 ¶ 18.)

And separate from ballot creation, the State Board must ready its election results reporting system for use after polls close on November 5, 2024. Testing of the reporting system requires “finalized ballot information” and requires “approximately two months to complete.” (E. 250 ¶ 19.) Any delay in ascertaining the contents of the general election ballot necessarily delays the start of that two-month testing period. And testing must be complete by November 1, 2024. *Id.*

## SUMMARY OF ARGUMENT

The State Board does not seek to persuade this Court how to decide the issues on appeal; the State Board asks this Court to decide those issues expeditiously. *See* Elec. Law § 6-209(a)(4) (“The Supreme Court of Maryland shall give priority to hear and decide an appeal [of a petition seeking judicial review of a petition determination] as expeditiously as the circumstances require.”) On September 6, 2024 a 15-day window will open to complete a 13–16-day task. The State Board intends to use each day of that 15-day windows towards the preparation of ballots so that it may meet the mail-in ballot transmission deadlines imposed by 52 U.S.C. § 20302(a)(8)(A) and Election Law § 9-306(c)(1). Failure to resolve the instant appeal before September 6 will jeopardize the State Board’s ability to meet those deadlines.

## ARGUMENT

### **I. THIS COURT REVIEWS ISSUES OF CONSTITUTIONAL INTERPRETATION DE NOVO.**

The circuit court interpreted whether the proposed charter amendment constituted appropriate “charter material” under Article XI-A, § 5. This Court reviews interpretations of the State’s constitution under a de novo standard. *In re Emergency Remedy by State Bd. of Elections*, 483 Md. 371, 391 (2023).

### **II. THE STATE BOARD DOES NOT CHALLENGE OR DEFEND THE CIRCUIT COURT’S RULING BECAUSE THE STATE BOARD HAD NO ROLE IN CERTIFYING THE CHARTER AMENDMENT QUESTION.**

The State Board played no role in reviewing or certifying the legality of the proposed charter amendment petition. The City Board received and processed the

proposing petition. Elec. Law § 6-205(a)(3). The City's Election Director determined the legal sufficiency of the petition's subject matter. *Id.* § 6-206(c)(5). And while regulations promulgated by the State Board governed the process for validating and verifying signatures, COMAR 33.06.05.01–.05, the State Board has not adopted regulations directing the legal review of a petition's subject matter.

The State Board accordingly took no position in the circuit court on the propriety of the Election Director's legal determination of the proposed charter amendment. And the State Board takes no position now on the circuit court's ruling that found no legal error in that determination.

**III. THE STATE BOARD MUST ACCOMPLISH A GREAT DEAL OF BALLOT PREPARATION IN A SHORT PERIOD OF TIME; RESOLVING THIS APPEAL AFTER SEPTEMBER 6TH WOULD SHORTEN THAT PERIOD FOR BALLOT PREPARATION.**

The election calendar permits the State Board a very short period to prepare and print the general election ballot. The State Board cannot know who-and-what to place on that ballot until the expiration of all applicable candidacy and certification deadlines. But once those deadlines pass, federal law functionally permits the State Board two weeks before mail-in ballot transmission begins. In 2010, when Congress imposed the federal deadline to transmit mail-in ballots, *see* The Military and Overseas Voter Empowerment Act, Pub. L. No. 111-84, Sec. 579 ( Oct. 28, 2009) (codified at 52 U.S.C. § 20302(a)(8)(A)), the State only needed to account for approximately 115,000 total mail-in ballot requests. *See Absentee Statistics: 2010 Gubernatorial General Election*, Md. State Bd. Of Elections (Nov. 23, 2010) (accessible at chrome-

extension://efaidnbmnnnibpcajpcglclefindmkaj/https://elections.maryland.gov/press\_room/2010\_stats/gg\_Statewide.pdf). Today, in the same two-week period, the State Board must prepare for “at least” five times as many requests. (E. 241 ¶ 6.)

September 3, 2024, will be the last permissible day the State Board can certify and publicly display the general election ballot. Elec. Law § 9-207(a)(2). Election officials cannot functionally ascertain final ballot content any earlier because the Election Law Article permits candidate replacement as late as 81 days before the general election (August 16, 2024), *id.* §§ 5-1002(b)(1)(ii), 5-1003(b)(5), 5-1004(b)(2), and ballot access for unaffiliated candidates as late as the third week in August, *id.* §§ 5-703.1(d) & (e), 6-210(c). Moreover, ballot questions may be added to the ballot in the last days of August. *Id.* §§ 7-104(b), 6-210(c). September 6, 2024, will therefore be the first day the State Board can begin printing the general election ballot. Elec. Law § 9-207(e).<sup>5</sup>

The State Board will then need to accomplish the following in a fifteen-day span:

1. Create a digital image file for each of the 1990 general election ballot styles that will be used in the 2024 presidential general election. Two-hundred and ninety-five of those ballot styles will be used in Baltimore City. (E. 247 ¶ 14.)
2. Import final ballot design data into MDVOTERS, the statewide election database. This allows each jurisdiction in the State to verify that each ballot style corresponds to the correct electoral precinct (ensuring that the right candidates and questions are on the right ballots, at a precinct level). (E. 249 ¶ 16.)

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<sup>5</sup> Section 9-207(e) provides that, “[u]nless a delay is required by court order, the State Board may begin to print the ballots after certification and 3 days of public display and correct any noted errors.” Despite the syntax issue in the statutory language, the State Board interprets this provision to not require an additional three days of display after any changes to the ballot. Therefore, any order by this Court in this appeal issued between September 3 and September 5 would not cause a delay past September 6.



3. With ballot finalized and verified, transmit final ballot designs for web-delivery to State Board IT officials. This allows the IT officials to begin web-delivery system testing. (E. 249-50 ¶ 18.)
4. Concurrently transmit final ballot designs, and associated test decks, for mail-in ballots (and envelopes, and inserts) to printing vendor. (E. 242 ¶ 11.)
5. Have printing vendor print test decks of each mail-in ballot style in county and Baltimore City. (E. 242 ¶ 11.)
6. Ship printed test decks to each local board of elections. (E. 242 ¶ 14.)
7. Test mail-in canvass equipment in each jurisdiction by manually running each test deck through mail-in canvass ballot scanners. (E. 242 ¶ 15.)
8. Complete pre-production for the printing of mail-in ballots. Pre-production requires the State Board and printing vendor to work together to lay out each ballot style in a printing template so that a metal printing plate can be produced for each of the 1990 ballot styles. (E. 247 ¶ 15.)
9. Print 500,000 mail-in ballots. (E. 241, 243 ¶¶ 6, 19.)
10. Print 500,000 outgoing envelopes. (E. 241, 243 ¶¶ 6, 19.)
11. Print 500,000 return envelopes. (E. 241, 243 ¶¶ 6, 19.)
12. Print 500,000 ballot instructions. (E. 241, 243 ¶¶ 6, 19.)
13. Assemble 500,000 mail-in ballot packets from printed materials. (E. 241, 243 ¶¶ 6, 19.)

Not all 500,000 mail-in ballot packets will be sent on Saturday, September 21, 2024. The federal deadline mandates ballots be sent to qualified voters living overseas and uniformed servicemembers stationed outside the State. 52 U.S.C. § 20302(a)(8)(A). Ballots not sent on that Saturday, however, will be mailed to voters living in the State two days later, on Monday, September 23, 2024. Elec. Law § 9-306(c)(1).

Delaying the time to begin the ballot production may have deleterious effects on the State Board's ability to meet the applicable federal and State deadlines. Under the

best circumstances, where there are no material errors in the design process, no scanning issues during the testing phase, and no mechanical problems with printing two million items over the course of one week, the State Board anticipates using nearly every day of the fifteen-day period between September 6 and September 21 in order to meet its legal obligations. (E. 243 ¶ 19.)

### **CONCLUSION**

The State Board of Elections respectfully requests this Court issue an order resolving this appeal before September 6, 2021.

Respectfully submitted,

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**CERTIFICATION OF WORD COUNT AND COMPLIANCE WITH RULE 8-112**

1. This brief contains 3,302 words, excluding the parts of the brief exempted from the word count by Rule 8-503.

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

/s/ Julia Doyle

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Julia Doyle

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

**Constitution of Maryland. Article XI-A. Local Legislation.**

**Section 5. Charter Amendments.**

Amendments to any charter adopted by the City of Baltimore or by any County of this State under the provisions of this Article may be proposed by a resolution of the Mayor of Baltimore and the City Council of the City of Baltimore, or the Council of the County, or by a petition signed by not less than 20% of the registered voters of the City or County, provided, however, that in any case 10,000 signatures shall be sufficient to complete a petition. A petition shall be filed with the Mayor of Baltimore or the President of the County Council. An amendment so proposed shall be submitted to the voters of the City or County at the next general or congressional election occurring after the passage of the resolution or the filing of the petition. If at the election the majority of the votes cast for and against the amendment shall be in favor thereof, the amendment shall be adopted and become a part of the charter of the City or County from and after the thirtieth day after said election. The amendments shall be published by the Mayor of Baltimore or President of the County Council once a week for five successive weeks prior to the election in at least one newspaper published in said City or County.

**United States Code. Title 52. Voting and Elections.**

**§ 20302. State Responsibilities.**

(a) In general

Each State shall--

(1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office;

(2) accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election;

(3) permit absent uniformed services voters and overseas voters to use Federal write-in absentee ballots (in accordance with section 20303 of this title) in general elections for Federal office;

(4) use the official post card form (prescribed under section 20301 of this title) for simultaneous voter registration application and absentee ballot application;

(5) if the State requires an oath or affirmation to accompany any document under this chapter, use the standard oath prescribed by the Presidential designee under section 20301(b)(7) of this title;

(6) in addition to any other method of registering to vote or applying for an absentee ballot in the State, establish procedures--

(A) for absent uniformed services voters and overseas voters to request by mail and electronically voter registration applications and absentee ballot applications with respect to general, special, primary, and runoff elections for Federal office in accordance with subsection (e);

(B) for States to send by mail and electronically (in accordance with the preferred method of transmission designated by the absent uniformed services voter or overseas voter under subparagraph (C)) voter registration applications and absentee ballot applications requested under subparagraph (A) in accordance with subsection (e); and

(C) by which the absent uniformed services voter or overseas voter can designate whether the voter prefers that such voter registration application or absentee ballot application be transmitted by mail or electronically;

(7) in addition to any other method of transmitting blank absentee ballots in the State, establish procedures for transmitting by mail and electronically blank absentee ballots to absent uniformed services voters and overseas voters with respect to general, special, primary, and runoff elections for Federal office in accordance with subsection (f);

(8) transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter--

(A) except as provided in subsection (g), in the case in which the request is received at least 45 days before an election for Federal office, not later than 45 days before the election; and

(B) in the case in which the request is received less than 45 days before an election for Federal office--

(i) in accordance with State law; and

(ii) if practicable and as determined appropriate by the State, in a manner that expedites the transmission of such absentee ballot;

(9) if the State declares or otherwise holds a runoff election for Federal office, establish a written plan that provides absentee ballots are made available to absent uniformed services voters and overseas voters in manner<sup>1</sup> that gives them sufficient time to vote in the runoff election;

(10) carry out section 20304(b)(1) of this title with respect to the processing and acceptance of marked absentee ballots of absent overseas uniformed services voters; and

(11) report data on the number of absentee ballots transmitted and received under subsection (c) and such other data as the Presidential designee determines appropriate in accordance with the standards developed by the Presidential designee under section 20301(b)(11) of this title.

(b) Designation of single State office to provide information on registration and absentee ballot procedures for all voters in State

(1) In general

Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed services voters and overseas voters with respect to elections for Federal office (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(2) Recommendation regarding use of office to accept and process materials

Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all absent

uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(c) Report on number of absentee ballots transmitted and received

Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the general public.

(d) Registration notification

With respect to each absent uniformed services voter and each overseas voter who submits a voter registration application or an absentee ballot request, if the State rejects the application or request, the State shall provide the voter with the reasons for the rejection.

(e) Designation of means of electronic communication for absent uniformed services voters and overseas voters to request and for States to send voter registration applications and absentee ballot applications, and for other purposes related to voting information

(1) In general

Each State shall, in addition to the designation of a single State office under subsection (b), designate not less than 1 means of electronic communication--

(A) for use by absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State to request voter registration applications and absentee ballot applications under subsection (a)(6);

(B) for use by States to send voter registration applications and absentee ballot applications requested under such subsection; and

(C) for the purpose of providing related voting, balloting, and election information to absent uniformed services voters and overseas voters.

(2) Clarification regarding provision of multiple means of electronic communication

A State may, in addition to the means of electronic communication so designated, provide multiple means of electronic communication to absent uniformed services voters and overseas voters, including a means of electronic communication for the appropriate jurisdiction of the State.

(3) Inclusion of designated means of electronic communication with informational and instructional materials that accompany balloting materials

Each State shall include a means of electronic communication so designated with all informational and instructional materials that accompany balloting materials sent by the State to absent uniformed services voters and overseas voters.

(4) Availability and maintenance of online repository of State contact information

The Federal Voting Assistance Program of the Department of Defense shall maintain and make available to the public an online repository of State contact information with respect to elections for Federal office, including the single State office designated under subsection (b) and the means of electronic communication designated under paragraph (1), to be used by absent uniformed services voters and overseas voters as a resource to send voter registration applications and absentee ballot applications to the appropriate jurisdiction in the State.

(5) Transmission if no preference indicated

In the case where an absent uniformed services voter or overseas voter does not designate a preference under subsection (a)(6)(C), the State shall transmit the voter registration application or absentee ballot application by any delivery method allowable in accordance with applicable State law, or if there is no applicable State law, by mail.

(6) Security and privacy protections

(A) Security protections

To the extent practicable, States shall ensure that the procedures established under subsection (a)(6) protect the security and integrity of the voter registration and absentee ballot application request processes.



(B) Privacy protections

To the extent practicable, the procedures established under subsection (a)(6) shall ensure that the privacy of the identity and other personal data of an absent uniformed services voter or overseas voter who requests or is sent a voter registration application or absentee ballot application under such subsection is protected throughout the process of making such request or being sent such application.

(f) Transmission of blank absentee ballots by mail and electronically

(1) In general

Each State shall establish procedures--

(A) to transmit blank absentee ballots by mail and electronically (in accordance with the preferred method of transmission designated by the absent uniformed services voter or overseas voter under subparagraph (B)) to absent uniformed services voters and overseas voters for an election for Federal office; and

(B) by which the absent uniformed services voter or overseas voter can designate whether the voter prefers that such blank absentee ballot be transmitted by mail or electronically.

(2) Transmission if no preference indicated

In the case where an absent uniformed services voter or overseas voter does not designate a preference under paragraph (1)(B), the State shall transmit the ballot by any delivery method allowable in accordance with applicable State law, or if there is no applicable State law, by mail.

(3) Security and privacy protections

(A) Security protections

To the extent practicable, States shall ensure that the procedures established under subsection (a)(7) protect the security and integrity of absentee ballots.

(B) Privacy protections

To the extent practicable, the procedures established under subsection (a)(7) shall ensure that the privacy of the identity and other personal data of an

absent uniformed services voter or overseas voter to whom a blank absentee ballot is transmitted under such subsection is protected throughout the process of such transmission.

(g) Hardship exemption

(1) In general

If the chief State election official determines that the State is unable to meet the requirement under subsection (a)(8)(A) with respect to an election for Federal office due to an undue hardship described in paragraph (2)(B), the chief State election official shall request that the Presidential designee grant a waiver to the State of the application of such subsection. Such request shall include--

(A) a recognition that the purpose of such subsection is to allow absent uniformed services voters and overseas voters enough time to vote in an election for Federal office;

(B) an explanation of the hardship that indicates why the State is unable to transmit absent uniformed services voters and overseas voters an absentee ballot in accordance with such subsection;

(C) the number of days prior to the election for Federal office that the State requires absentee ballots be transmitted to absent uniformed services voters and overseas voters; and

(D) a comprehensive plan to ensure that absent uniformed services voters and overseas voters are able to receive absentee ballots which they have requested and submit marked absentee ballots to the appropriate State election official in time to have that ballot counted in the election for Federal office, which includes--

(i) the steps the State will undertake to ensure that absent uniformed services voters and overseas voters have time to receive, mark, and submit their ballots in time to have those ballots counted in the election;

(ii) why the plan provides absent uniformed services voters and overseas voters sufficient time to vote as a substitute for the requirements under such subsection; and

(iii) the underlying factual information which explains how the plan provides such sufficient time to vote as a substitute for such requirements.

(2) Approval of waiver request

After consulting with the Attorney General, the Presidential designee shall approve a waiver request under paragraph (1) if the Presidential designee determines each of the following requirements are met:

(A) The comprehensive plan under subparagraph (D) of such paragraph provides absent uniformed services voters and overseas voters sufficient time to receive absentee ballots they have requested and submit marked absentee ballots to the appropriate State election official in time to have that ballot counted in the election for Federal office.

(B) One or more of the following issues creates an undue hardship for the State:

(i) The State's primary election date prohibits the State from complying with subsection (a)(8)(A).

(ii) The State has suffered a delay in generating ballots due to a legal contest.

(iii) The State Constitution prohibits the State from complying with such subsection.

(3) Timing of waiver

(A) In general

Except as provided under subparagraph (B), a State that requests a waiver under paragraph (1) shall submit to the Presidential designee the written waiver request not later than 90 days before the election for Federal office with respect to which the request is submitted. The Presidential designee shall approve or deny the waiver request not later than 65 days before such election.

(B) Exception

If a State requests a waiver under paragraph (1) as the result of an undue hardship described in paragraph (2)(B)(ii), the State shall submit to the Presidential designee the written waiver request as soon as practicable. The Presidential designee shall approve or deny the waiver request not later than 5 business days after the date on which the request is received.

(4) Application of waiver

A waiver approved under paragraph (2) shall only apply with respect to the election for Federal office for which the request was submitted. For each subsequent election for Federal office, the Presidential designee shall only approve a waiver if the State has submitted a request under paragraph (1) with respect to such election.

(h) Tracking marked ballots

The chief State election official, in coordination with local election jurisdictions, shall develop a free access system by which an absent uniformed services voter or overseas voter may determine whether the absentee ballot of the absent uniformed services voter or overseas voter has been received by the appropriate State election official.

(i) Prohibiting refusal to accept applications for failure to meet certain requirements

A State shall not refuse to accept and process any otherwise valid voter registration application or absentee ballot application (including the official post card form prescribed under section 20301 of this title) or marked absentee ballot submitted in any manner by an absent uniformed services voter or overseas voter solely on the basis of the following:

- (1) Notarization requirements.
- (2) Restrictions on paper type, including weight and size.
- (3) Restrictions on envelope type, including weight and size.

**Annotated Code of Maryland, Election Law Article (LexisNexis 2023)**

**§ 9-306. Review of absentee ballot application.**

(a) *In general*—Promptly after receipt of an application, the election director shall review the application and determine whether the applicant qualifies to vote by absentee ballot.

(b) *Form and receipt of absentee ballot*—If the applicant qualifies to vote by absentee ballot, the local board shall provide the ballot by one of the following methods requested by the voter:

- (1) mail;

- (2) facsimile transmission;
- (3) the Internet; or
- (4) by hand during an in-person transaction.

(c)(1) *Deadline for receipt of ballot*—Not later than 43 days before an election, the local board shall send a ballot to each voter who qualifies to vote by absentee ballot and has made a request at least 60 days before the election to receive the ballot by mail, facsimile transmission, or the Internet.

(2) A local board shall provide a ballot to a voter who qualifies to vote by absentee ballot and makes a request less than 60 days before an election:

- (i) as soon as practicable after receipt of the request; or
- (ii) immediately for an in-person transaction with a voter or the voter's duly authorized agent.

(d)(1) *Rejection of application*—If the members of the local board determine that the applicant is not entitled to vote by absentee ballot, the local board shall notify the applicant as soon as practicable after receipt of the application of the reasons for the rejection.

(2)(i) The local board may delegate the determination under paragraph (1) of this subsection to the staff of the local board.

(ii) If the determination has been delegated, the applicant may appeal the rejection to the members of the local board, who shall decide the appeal as expeditiously as practicable.

(e) *Replacement ballots*—Not more than one absentee ballot may be issued to a voter unless the election director of the local board has reasonable grounds to believe that an absentee ballot previously issued to the voter has been lost, destroyed, or spoiled.

BENEDICT J. FREDERICK, III, *et al.*,

*Appellants,*

v.

BALTIMORE CITY BOARD OF  
ELECTIONS, *et al.*,

*Appellees.*

\* IN THE

\* SUPREME COURT

\* OF MARYLAND

\* September Term, 2023

\* No. 35

\* \* \* \* \*

**CERTIFICATE OF SERVICE**

I certify that, on this 26th day of August, 2024, the Brief of Appellee Maryland State Board of Elections in the captioned case was filed electronically and served electronically by the MDEC system on all persons entitled to service.

/s/ Julia Doyle

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Julia Doyle