

NANCY LEWIN

Plaintiff

v.

LINDA H LAMONE

Defendant

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IN THE

CIRCUIT COURT FOR

ANNE ARUNDEL COUNTY

MARYLAND

Case No.: C-02-CV-18-001013

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ORDER

This matter having come before the Court for reconsideration of the denial of a preliminary injunction, and having considered said motion and the response thereto, the Court has determined that grounds exist for such reconsideration due to the fact that Nathaniel T. Oaks is now disqualified for election to the offices for which he filed certificates of candidacy, by virtue of his voluntary removal from the voter registration rolls. For the reasons expressed by the Court at the original adversary hearing in this matter, the Court finds that the Board of Elections still has adequate time to reform the ballots in Baltimore City. Any actions taken by the Board of Elections since the adversary hearing to further their printing and testing process was done after notice that the instant matter remained in active litigation and thus cannot be deemed to have further prejudiced the Board of Elections' position in this matter. The harm to the voters by way of potential confusion, inadvertence, and/or mischief by the appearance of a disqualified name on the ballot far outweighs any inconvenience to the Board of Elections. No less comprehensive remedy, such as the posting of signs at polling places, can assure that the voters' rights to effectively exercise their franchise will be protected.

The Court further finds that there is a likelihood that the Plaintiffs will prevail on the merits of this case, and that the Plaintiffs have raised a substantial question concerning whether the Defendant is violating Maryland law and the Maryland Constitution by the refusal to remove Mr. Oaks' name from the ballot. The Court finds the balance of convenience favors the Plaintiffs and that the public interest would be served by the issuance of a preliminary injunction; wherefore:

ORDERED, the Motion for Preliminary Injunction is GRANTED. Linda H. Lamone, in her official capacity as State Administrator of the Maryland State Board of Elections shall immediately remove the name of Nathaniel T. Oaks from any and all ballots for elective office, in any form, to be distributed to voters in Legislative District 41, for the Democratic Party Primary Election to be held in June, 2018. This preliminary injunction shall apply to all persons under the direction of the State Administrator. No bond shall be required prior to or after the effectiveness of this Order.

Signed: 4/26/2018 11:13 AM

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

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 NANCY LEWIN, et al, :
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 Plaintiffs, : Civil No. C-02-CV-18-001013
 :
 v. :
 :
 LINDA LAMONE, :
 :
 Defendant. : Annapolis, Maryland
 :
 - - - - - x April 20, 2018

HEARING

WHEREUPON, proceedings in the above-entitled matter commenced.

BEFORE: THE HONORABLE GLENN L. KLAVANS, Judge

APPEARANCES:

FOR THE PLAINTIFF:

HENRY MARK STICHEL, Esq.
 ELIZABETH A. HARLAN, Esq.
 Astrachan, Gunst, Thomas PC
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 Baltimore, MD 21202

FOR THE DEFENDANT:

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<u>For the Defendant:</u>				

Natasha Walker	11(AF)	20(HS)	--	--
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Keynote: "----" indicates inaudible in transcript.

P R O C E E D I N G S

(Whereupon, at 1:34 p.m., the hearing began.)

THE COURT: You may be seated. Let me call the matter of Lewin et al versus Lamone, C-02-CV-18-1013. If counsel would each please state your full name and spell your full name for our recorded record.

MR. STICHEL: Your Honor, H. Mark Stichel, M-a-r-k S-t-i-c-h-e-l. Appearing for the plaintiffs, Nancy Lewin, Eleanor Mitchell and Christopher Urban.

MS. HARLAN: Good afternoon, Your Honor, Elizabeth Harlan, E-l-i-z-a-b-e-t-h H-a-r-l-a-n on behalf of the plaintiffs.

MR. TRENTO: Thank you, Your Honor. Andrea Trento, A-n-d-r-e-a T-r-e-n-t-o from the Office of the Attorney General on behalf of defendant, Linda Lamone.

MS. BERNHARDT: Good afternoon, Your Honor, Julia Doyle Bernhardt, J-u-l-i-a D-o-y-l-e B-e-r-n-h-a-r-d-t, Assistant Attorney General on behalf of the defendant.

THE COURT: All right, we are here today on the plaintiff's amended verified complaint for Mandamus, declaratory judgement and injunctive relief. I have had an opportunity to review all of the pleadings that have been filed in this matter and in the short amount of time that I have had since yesterday afternoon about 4:00 to digest what I can. And I am ready to hear from you. I would like to try to

1 limit presentations to 30 minutes each if at all possible.
2 Someone may want to run down the street before the end of the
3 day.

4 MR. STICHEL: Your Honor, Mark Stichel on behalf of
5 the plaintiffs. First before we begin, this morning we filed
6 three additional affidavits through the MDECK system. I have
7 given copies to Mr. Trento. I don't know if they have made it
8 to you yet or not, so I have paper copies here.

9 THE COURT: If they have been filed, I can accept
10 those. All right, let me take paper copies because I think
11 the last affidavit that I have -- was the Eleanor Mitchell
12 ones. So these are in addition to that?

13 MR. STICHEL: Correct, Your Honor.

14 THE COURT: All right. All right.

15 MR. STICHEL: Your Honor, you mentioned that we
16 would have 30 minutes each side to present. We have an
17 affidavit that Your Honor probably saw as well from Natasha
18 Walker --

19 THE COURT: Yes.

20 MR. STICHEL: -- we would like to move that and we
21 don't have objection from counsel but move that in as actual
22 testimony -- direct testimony on the record for Ms. Walker
23 with an additional opportunity to request to be able to put
24 Ms. Walker on the stand for 5 to 10 minutes of additional
25 testimony.

1 THE COURT: Is there any objection to that?

2 MR. TRENTO: I have no objection, Your Honor, with
3 the caveat that we would also ask if -- to verify complaint in
4 all of the affidavits that we be submitted also be considered
5 part of the evidentiary record for this hearing.

6 THE COURT: And I will do that and I will judicially
7 notice the entire record in this case -- in reaching the ---
8 all right.

9 MR. TRENTO: Thank you, Your Honor.

10 THE COURT: Very well, you may proceed.

11 MR. STICHEL: Your Honor, would you prefer that I
12 stand here or at the --

13 THE COURT: Wherever you are comfortable.

14 MR. STICHEL: I will stay here. Thank you, Your
15 Honor. Today's case is very simple. There is a candidate
16 that is going to appear on the ballot unless this Court orders
17 otherwise in District 41 who has pleaded guilty to crimes in
18 Federal Court. It is a virtual certainty that he will be
19 disqualified in the time of the general election and he has
20 also filed an affidavit in a related case in this Court
21 requesting that his name be taken off the ballot.

22 The State Board of Elections has taken the position
23 that because of the statutory language in the election code,
24 the State Board and State Administrator have no discretion
25 whatsoever that the ballot becomes frozen within 10 days of

1 the filing deadline which was back on February 27 and that is
2 that.

3 That construction makes no sense. We are going to
4 have someone on the ballot who will be unable to serve and
5 having his name on the ballot will cause a great deal of
6 confusion and will cause voters to cast votes that will be
7 wasted and it is argument that that situation deprives voters
8 of their Constitutional rights to vote which is protected by
9 both the Maryland Constitution and the United States
10 Constitution.

11 There is a construction of a statute that we believe
12 is correct, that this Court could use that would allow for
13 there to be come give here. And that is statutes can be
14 interpreted two different ways if you employ the word,
15 "Shall". The word "shall" can be construed as being
16 mandatory which would be the construction that the defendant
17 would put on it and that is there is just no discretion
18 whatsoever. We are stuck with this very difficult situation.

19 We contend that the -- in this situation, the
20 statute should be construed as being directory. That is that
21 it would allow some wiggle room -- some room here to correct a
22 situation like this which is a truly extraordinary situation.
23 You have read our papers. In 1963, the Court of Appeals held
24 that a withdrawal deadline was directory. Now there has been
25 a course of litigation and statutory changes since then.

1 It is our position that in 1998 when the General
2 Assembly rewrote the election laws, it took out what then was
3 a provision in the withdrawal provisions that said that they
4 were mandatory. It is our contention that by doing that, the
5 General Assembly left the field open for this Court to
6 construe the statute as being directory.

7 There are several reasons why the Court should do
8 that. One, is that allowing the discretion here to do that
9 would definitely serve the public good and would also prevent
10 a potential Constitutional issue. There have been a series of
11 cases beginning with Anderson versus Celebrese in 1980 where
12 the Federal Court has said that arbitrary early filing
13 deadlines are unconstitutional because they impact voters,
14 they affect a meaningful vote.

15 I will concede that I am aware of no case that has
16 flipped that and said that arbitrarily early withdrawal
17 deadlines or arbitrary early dates for freezing the ballot are
18 unconstitutional. But I think if you look at the reasoning of
19 those cases, it should apply here in this situation. There is
20 no reason whatsoever why Mr. Oakes name should appear on the
21 ballot other than defendant's arbitrary just very kind of
22 narrow view that the statute says shall and we have no choice
23 whatsoever but to live with this very bad situation.

24 Should the Court rule that Mr. Oakes' name should be
25 taken off of the ballot, it would not -- it would serve a very

1 public purpose but it would also prejudice no one. Right now,
2 there are three names on the ballot. Mr. Oakes and then J.D.
3 Merrill and Jill Carter. Among the two -- among the
4 affidavits that I have submitted to the Court today, the
5 affidavits from Ms. Carter and Mr. Merrill, both of them state
6 explicitly that they have no objection to the removal of
7 Mr. Oakes' name from the ballot.

8 I can't think of anyone else that could object.
9 Neither the candidates in the race, both of the other
10 candidates want his name off and Mr. Oakes wants his name off,
11 my clients want his name off. There is no one that wants
12 Mr. Oakes' name on the ballot except for the defendants who
13 say we just can't do it, our hands are tied. And we are here
14 to ask the Court to untie their hands.

15 There has also been an affidavit submitted from the
16 defendants in argument about the difficulty in changing the
17 ballot at this date. The statutory deadlines for changing a
18 ballot are still several weeks down the road. In this case,
19 we are dealing with the ballots in legislative district. I
20 think there are two ballots in the sense or maybe variations
21 but of the 400 some odd ballots that the State Board of
22 Elections have to contend with, we are talking with two
23 ballots.

24 I just find it very hard to believe that taking one
25 name off of two ballots is something that is so onerous that

1 it can't be accomplished at this date or even some date
2 reasonably thereafter. So therefore, Your Honor, we have read
3 the papers based on what we have said there, what I have said
4 here today and you know I would urge the Court to grant us the
5 relief we seek which is to order the State Board of Elections
6 to remove Mr. Oakes' name from the primary elections ballot.

7 THE COURT: And in that regard, what is your
8 suggestion as to a relief specifically I should grant should
9 it be a preliminary injunction? Should it be a declaratory
10 judgement or both?

11 MR. STICHEL: I guess, Your Honor, I would like the
12 belt with suspenders approach, Your Honor, which would be to
13 declare that the statute is directory and not mandatory. And
14 to grant a preliminary injunction with respect to the relief
15 we seek. I guess the other thing that I would say which I
16 have not discussed with opposing counsel, the rules governing
17 preliminary injunctions allow the Court to advance the trial
18 on the merits with the preliminary injunctions hearing.

19 Given the situation in which we face, which is that
20 the election is June 26, the deadline for sending military
21 ballots is May -- I think May 12 or something around there, I
22 think May 12 and 13, we are dealing with a relatively narrow
23 time frame. And it is my expectation that whoever loses here
24 today is probably going to seek to appeal the case, so I think
25 it would make sense after today's case for the Court to --

1 today for the Court to advance the trial on the merits so that
2 we get a final judgement.

3 We can appeal from the grant or the denial of the
4 injunction but --

5 THE COURT: That is what is unclear to me. Because
6 I am -- thought that Judge McCormick's order of two days ago
7 effectively advanced everything to today. That is what I am
8 trying to determine what the parties believe is the case.

9 MR. STICHEL: I don't have a belief one way or the
10 other as to what her order did. But I would have no objection
11 to the Court advancing the trial of the matter to today so
12 that we can final judgement.

13 THE COURT: Okay. Mr. Trento?

14 MR. TRENTO: Thank you, Your Honor. As we indicated
15 earlier, we would like to put on some testimony. I am happy
16 to address the Court's questions about where we are in the
17 case procedurally. First if the Court --

18 THE COURT: Why don't you do that first then.

19 MR. TRENTO: Okay. We would object to advancing the
20 trial on the merits today, Your Honor. As we understand it,
21 the motion that was filed on Monday was a motion for a
22 temporary restraining order or in the alternative, preliminary
23 injunction. Our view is that that part of the motion that
24 sought the TRO was denied on Monday but that motion is what is
25 pending before the Court today.

1 And so we have not filed an answer. This is not a
2 ruling on the merits of the ultimate claim. So that is what
3 we are prepared to litigate today.

4 THE COURT: All right. Why don't you proceed.

5 MR. TRENTO: Thank you, Your Honor. The defense
6 would like to call Natasha Walker.

7 Whereupon,

8 NATASHA WALKER

9 was called as a witness by the Defendant, having been first
10 duly sworn, was examined and testified as follows:

11 THE WITNESS: Yes.

12 THE CLERK: Thank you. You may be seated. Please
13 state your name and occupation and spell your name for the
14 record.

15 THE WITNESS: Natasha Walker, N-a-t-a-s-h-a
16 W-a-l-k-e-r and I am the project manager of Election
17 Management Systems for the Maryland State Board of Elections.

18 THE CLERK: Can you give your business address?

19 THE WITNESS: 151 West Street, Suite 200, Annapolis,
20 Maryland 21401.

21 THE CLERK: Thank you.

22 MR. TRENTO: Thank you.

23 DIRECT EXAMINATION

24 BY MR. TRENTO:

25 Q Thank you, Ms. Walker good afternoon.

1 A Hello.

2 Q Can you tell me a little bit about what your role as
3 project manager of Election Management System entails?

4 A Yes. So I am responsible for our internal agency
5 election management system which builds our ballots. I am in
6 the process of building the new election management system. I
7 lay out the ballots and I am responsible for sending all of
8 the ballot material to the printers. And I also manage the
9 website.

10 Q Thank you. And you are familiar with -- you are
11 aware that your testimony that was provided in an affidavit
12 has now been entered into evidence in this case, right?

13 A Yes.

14 (The document referred to was
15 marked for identification as
16 Defendant's Exhibit ?? and was
17 received in evidence.)

18 BY MR. TRENTO:

19 Q Do you recall testifying about the number of
20 candidates who have withdrawn their candidacies in this
21 election?

22 A Yes.

23 Q And do you remember what that number is?

24 A 77. Or 73, I am sorry. 70 something. 77 I believe
25 it is.

1 Q 70 something. And then there was a certain number
2 that was withdrawn -- certain number of candidates withdrew
3 their candidacies after the candidate filing deadline?

4 A 23.

5 Q And the candidate filing deadline was February 27?

6 A Correct.

7 Q And was there a deadline by which they had to
8 withdraw their candidacies?

9 A March 1, 2018.

10 Q So they had two days after the filing deadline?

11 A Yes, um hum.

12 Q Are you aware of any requests to withdraw
13 candidacies that have come in to the office since March 1?

14 A Approximately 10.

15 Q And what did the board do -- what did the State
16 Board do with those requests?

17 A We denied those requests.

18 Q Okay because?

19 A Because they didn't meet the deadline.

20 Q Okay. Now, one allegation in this case as you have
21 probably heard by now is that this withdraw deadline is too
22 early? It is arbitrarily early. And in this case, are you
23 aware of -- let me strike that, are you aware of when Mr.
24 Oakes plead guilty?

25 A I am not aware of that.

1 Q Let me ask you this, if the deadline were to have
2 been extended to April 1, about a month after the current
3 deadline. What kind of impact would that have had on the
4 ballot preparation process?

5 A I would not have started the ballot preparation
6 process.

7 Q Why not?

8 A Because it -- you would have too many risks
9 introduced with that process. Because you are dealing with
10 separate independent systems. So you would have to make all
11 of those changes after you import into the voting system
12 manually.

13 Q So all of the steps that you have testified to that
14 took place during that period of -- I believe you testified
15 that you started preparing the ballots on March 12, so those,
16 the 19 or 20 days worth of steps you would not have undertaken
17 until after April 1 is that right?

18 A Correct. And actually would be further because of
19 the deadline to fill vacancies, I wait for that too.

20 Q And what does that refer to?

21 A So there is a deadline for --- to fill vacancies and
22 that happens after.

23 Q And if a withdrawal were to create a vacancy, then
24 that vacancy then there would be a period of time after the
25 withdrawal period for that vacancy to be filled?

1 A Yes, correct.

2 Q Okay, shifting gears. Do you recall testifying
3 about a test deck(sic)?

4 A Yes.

5 Q Can you tell the Court what is a test deck?

6 A So a test deck is a set of ballots, there is
7 multiple copies of each ballot style that the local Board of
8 Elections use to test their voting equipment. And it is
9 basically each ballot has an oval filled out for each
10 candidate so one ballot style can potentially have 20 copies
11 of it where each candidate has their vote basically.

12 And it also has a set of expected results. So it is
13 used during logic and accuracy testing of the voting system.
14 So we know that the voting system is properly tabulating.

15 Q So if I am understanding right, these are physical
16 ballots?

17 A Physical ballots.

18 Q And when you say test the voting system, what aspect
19 of the voting system do these test?

20 A So the ballots are scanned on the DS200 scanners
21 that are in the polling locations. And it is just -- they
22 print the tapes and compare them to the expected results that
23 are associated to that test deck.

24 Q And is every scanner tested in this manner?

25 A Yes.

1 Q Where are we today in the process of preparing test
2 decks?

3 A I have already prepared all of the test decks and --

4 Q The physical test decks?

5 A No, no the files that go to the printer so the
6 printer is expected to begin the process on Monday. Which is
7 the 23rd I believe -- whatever this upcoming Monday is. The
8 23rd.

9 THE COURT: That would be the 23rd.

10 THE WITNESS: 23rd okay.

11 BY MR. TRENTO:

12 Q And how long will that printing process take?

13 A It takes about two weeks.

14 Q So for the test decks alone, it takes two weeks?

15 A Yes.

16 Q And what happens next? What happens after the test
17 decks get printed?

18 A So the test decks get printed and sent to the Board
19 of Elections and once they have that -- those physical
20 ballots, they can begin that logic and accuracy testing. So
21 they start creating the media for the voting equipment and
22 start scanning these ballots.

23 Q If the Court were to order today that the ballots
24 affected by the removal of former Senator Oakes needed to be
25 changed to reflect that he was being removed from the ballot,

1 what would need to be done to effectuate that?

2 A So all of the ballots are produced from the same
3 data base. So it is not like you can go ahead and change one
4 or two ballots that are impacted. You have to make the change
5 to that contest and then regenerate the ballots in the voting
6 system software. I would have to do the same thing in my
7 election management system software and then the counties
8 would have to proof all of those ballots because again you
9 have to make sure that that regeneration of ballots didn't
10 impact the precinct to Ballot Style Associations because all
11 of that information is kind of fed into the other systems that
12 we have.

13 So pretty much for Baltimore City you would have to
14 start from the beginning of proofing their ballot, proofing
15 everything.

16 Q What kind of delay would that impose into the
17 system?

18 A Significant delay. I would say. Around a week I
19 would expect.

20 Q Does that mean that the test decks for those
21 jurisdictions in Baltimore City would not be printed until a
22 week later than the current?

23 A Correct.

24 Q And when do those ballots need to be printed by --
25 those test deck ballots?

1 A Well Baltimore City is scheduled to begin L&A I
2 believe around sometime in the beginning of May. I believe
3 early second week I am not sure. So obviously that would push
4 them back.

5 Q Is it even possible to accomplish this at this
6 point?

7 A It is very challenging. It just introduces a lot of
8 risks. It is doable but there are many risks involved.

9 Q And what kind of risks are you thinking of when you
10 say that?

11 A Well, the timeline -- it pushes back everything. So
12 we have to -- if this gets pushed back then the amount of
13 testing that can be done our ballot delivery system also gets
14 pushed back. And that has to be done by May 12 in order for
15 the ballot to go out to the military voters. So if you are
16 compressing the testing time there, you are impacting them.
17 You are impacting the possibility of absentees not being
18 polled in --- voters which and my testimony is, one of those
19 things that cannot be undone without the intervention of a
20 developer.

21 And obviously I have already generated everything.
22 I already have my different versions of all of the exports and
23 PDFs. So then you also are dealing with the human error
24 aspect where your version controls and you know there is like
25 22 different folders of exports and PDFs that I have to manage

1 each election and that is where you -- because you can't just
2 pull those two ballot styles. It is everything for that
3 county.

4 Q Shifting gears, last topic. Are you familiar with a
5 process by which nominees can decline the nomination after
6 they win a primary?

7 A Yes.

8 Q And so obviously that would happen after the
9 primary?

10 A Correct.

11 Q Do you know how many times that has happened in
12 recent years?

13 A 63 that I can account for going back to the late
14 90s.

15 Q Going back to the late 90s so in the last 20 years
16 or so 10 years worth of -- roughly 10 years worth of
17 elections, there have been 63 times where the voters choice
18 for an election, for a nomination withdrew from that
19 nomination?

20 A Correct.

21 Q I think you heard Mr. Stichel argue to the Court
22 that it is just a question of taking one name off of two
23 ballots. Do you agree with that statement?

24 A No.

25 Q Why not?

1 A Because again like I said, it is not about just
2 removing the name from the ballots. The ballots are the first
3 piece to the election puzzle and the removal of him from just
4 those two ballots impacts the other ballot styles in that
5 county because again everything is being produced from the
6 same application. You are having to regenerate everything.
7 You have to redo the audio ballot that we also have to produce
8 and the counties have to proof everything and you know, once
9 ballots are done and final then it feeds to all of the other
10 systems. So yes that is the most common misconception is that
11 changing a ballot is easy. They don't see what goes into
12 everything else.

13 Q Thank you very much, Ms. Walker, I don't have no
14 further questions.

15 THE COURT: Cross examination?

16 MR. STICHEL: Oh yes.

17 CROSS EXAMINATION

18 BY MR. STICHEL:

19 Q Ms. Walker, I am going to direct your attention to
20 what was Exhibit 1 to the amended verified complaint.

21 MR. STICHEL: Can I approach the witness, Your
22 Honor.

23 THE COURT: You may.

24 BY MR. STICHEL:

25 Q Ms. Walker, can you identify what I have shown you?

1 A It looks like the ballots that are posted on our
2 website, the Democratic Ballot Style 9.

3 Q And as far as that ballot, what we were seeking was
4 to remove just one name, the line with Nathaniel Oakes. And
5 are you saying to me that just removing that one little line
6 would cause all of this host of problems that you have
7 described here today?

8 A Yes. It is about the timeline. Because you can't
9 remove that line and not move up the contents below it. So
10 every single candidate where the voting system thinks that
11 candidate is is now different. So you can't just remove it
12 from the PDF or -- you have to go into the certified voting
13 system, remove that ballot, regenerate the ballots, export all
14 of the ballots and again it impacts all of the different
15 systems.

16 Q Could you just put a line through that name on the
17 ballot without changing everything else?

18 A I have never done that. I am not sure. I --

19 Q But it is possible?

20 A I don't know. I have never even tried to do that.

21 Q Ms. Walker, you walked us through kind of a schedule
22 and Mr. Trento asked you if a change could be made at a later
23 date and you testified that it would be very challenging but
24 doable?

25 A Um hum.

1 Q Were this Court to issue a ruling one way or the
2 other today and you had to wait until April 30 to give a week
3 for an appellate court to look at this and render a decision,
4 would you be able to make the change or not make the change if
5 your start date were April 30 rather than April 23?

6 A The problem is, it is larger than me. Changing the
7 physical ballots and producing the files, that is doable but
8 we are scheduled on April 25 to pull the absentees in our MD
9 Voters which is our voter registration application. And once
10 we do that, it cannot be undone. And that process has to be
11 done within a time frame that allows us to test our ballot
12 delivery system. And that requires two weeks and we can't
13 start that process until the absentees have been pulled
14 because we test with real absentee voters. So you know, it is
15 a matter of everything has to be pushed back and we don't have
16 the time.

17 Q But if you had to push things back by a week, it
18 would be challenging but you could be do it?

19 MR. TRENTO: Objection, asked and answered.

20 THE COURT: I think it has been asked and answered.

21 THE WITNESS: And I can't speak to what --

22 MR. STICHEL: There is no question.

23 THE WITNESS: Okay. Sorry.

24 MR. STICHEL: I have no further questions of the
25 witness, Your Honor.

1 THE COURT: All right, any redirect?

2 MR. TRENTO: I have no redirect, Your Honor.

3 THE COURT: All right, you may step down. Thank

4 you.

5 THE WITNESS: Thank you.

6 (Witness is excused.)

7 MR. TRENTO: Thank you, Your Honor, may it please
8 the Court. We, the defendant are not without sympathy to the
9 frustrations of the plaintiffs. This is not an ideal
10 circumstance and it is not something -- it is something that
11 we wish wasn't the case. But at this point, Your Honor we
12 are -- there is simply nothing in the code that allows us to
13 make the changes being requested of us.

14 Elections inevitably involve the drawing of lines
15 and in this case the lines have been drawn in a way clearly by
16 the legislature to preclude exceptions to the filing deadlines
17 and the withdrawal deadlines that are set forth in the
18 Election Law Article. There is no basis for the plaintiff's
19 statutory claims. We will go through the statutory language,
20 we will go through the legislative history and we will go
21 through this theory of mandatory versus directory that the
22 plaintiffs are seeking to impose on the statute and show that
23 none of it is well founded.

24 There is no basis for the plaintiff's Constitutional
25 claims. They are articulating a theory of Constitutional harm

1 that we have been unable to find a court -- a single court
2 recognize the cases that they cite from the Supreme Court are
3 cases that are in opposite. They deal with different
4 circumstances that frankly aren't at issue here. Finally, we
5 think that the -- those legal grounds demonstrate a clear
6 unlikelihood of success such that the Court does not need to
7 reach the other issues involved in analyzing whether
8 preliminary injunctions should be entered but should the Court
9 reach those issues we believe that the record reflects that
10 they too counsel a denial of preliminary injunction.

11 I think plaintiffs concede that the literal
12 application of the laws preclude the relief that they are
13 seeking. It is hard to imagine how legislatures in fact could
14 have been more clear than they were when drafting these
15 statutes. And section 5-504(b) addresses the effect of
16 withdraw. And it speaks specifically to the issue of whether
17 a name shall remain on the ballot.

18 This isn't whether somebody should remain eligible,
19 this isn't whether somebody shall be declared ineligible and
20 what the effects of that -- the language refers to the ballot.
21 And I quote, "The name of any individual who files a
22 certificate of candidacy and does not withdraw shall appear on
23 the primary election ballot unless by the 10th day after the
24 filing deadline specified under Section 5-303, that is the
25 February 27 deadline, the individual's death or

1 disqualification is known to the applicable board with which
2 their certificate of candidacy was filed."

3 In this case, there hasn't been a withdrawal under
4 the terms of Section 5. And there is not a disqualification
5 of the legislatures reference to names appearing on the ballot
6 are dispositive to this issue. Ultimately the mandatory
7 versus directory cases that the plaintiffs are seeking to
8 enlist in support of their claims ultimately the analysis
9 there and the question is there as to what the intent of the
10 legislature is.

11 And we would submit that the legislature could not
12 be more clear here. In any event, those cases deal with
13 circumstances that don't remotely resemble the ones here.
14 They tend to deal with circumstances where an agency is
15 charged with adjudicating a claim and a statute requires the
16 agency with language that says "Shall" to render its decision
17 within 30 days of submission. It parallels to similar
18 language in the Maryland Constitution which directs the
19 Circuit Court and the Courts of Appeal to issue opinions or to
20 render decisions that they shall issue opinions or shall
21 render decisions within a certain period of time.

22 Courts have consistently held those statutes to be
23 directory because what happens is the posture in which they
24 are presented is a party who is adversely effected by a ruling
25 seeks to invalidate it on the basis of the fact that it didn't

1 comply with apparently mandatory language requiring that those
2 decisions be rendered within a certain period of time.

3 And the courts have carved out an exception to the
4 rule that shall is a mandatory verb when those circumstances
5 present themselves. We don't have that here. Here the agency
6 is again, it is clear on its face. The statute refers to --
7 the statutes refer to when a name shall appear on the ballot
8 and when it shall be removed and we don't think that there is
9 any room for the use of this doctrine in this case.

10 THE COURT: I am more interested in the
11 Constitutional argument quite frankly. That there is a
12 potential disenfranchisement of voters if they were confused
13 or cast a ballot for someone who is functionally disqualified
14 in sense of taking office. So how do we balance that against
15 the technical needs of the board?

16 MR. TRENTO: Well I think there is an interesting
17 issue as to what functionally disqualified means in Your
18 Honor's question. Because as of the date of the primary,
19 former Senator Oakes is not going to be disqualified. He is a
20 eligible candidate after that date. Barring something
21 happened between now and then that would render him
22 ineligible.

23 But what we have here, the posture of this case is,
24 yes he is likely to be sentenced in July and that sentencing
25 is likely to render him ineligible from that point forward but

1 what we have here is Mr. Oakes indicating a desire to remove
2 himself from the candidacy at a time that is well passed the
3 withdrawal deadline in this case.

4 THE COURT: So it is your position that he is not
5 ineligible by virtue of the guilty pleas alone?

6 MR. TRENTO: That is the position that we believe
7 the statute requires. The statute of eligibility, the
8 relevant statute regarding eligibility flows from his
9 eligibility as a registered voter. And a registered voter in
10 this state, in order to be ineligible because of a criminal
11 record, one must be actually serving a term of imprisonment
12 for that felony to be ineligible as a voter. And Mr. Oakes as
13 of June 26, will not be.

14 THE COURT: All right.

15 MR. TRENTO: And then in terms of -- in terms of the
16 rights of voters to have their -- to have -- to not have other
17 eligible candidates who voted for because of their likely
18 ineligibility at a later date, there is just nothing in the
19 law that would support that. So we would submit that the
20 Constitutional arguments similar are just not well founded.
21 The case -- the principal case in this line of cases has to do
22 with a yes an early filing deadline with regard to the 1980
23 Presidential election brought by independent Presidential
24 candidate John Anderson and some of his supporters.

25 But the issue there was not just the early filing

1 deadline but the early filing deadline as applied to an
2 independent candidate. He was required to file for -- file
3 his candidacy papers at the same time that the candidates for
4 the main parties were required even though he did not have to
5 compete in a primary. So he was required to file papers, 9 or
6 10 months -- I don't know what the exact date was but well in
7 advance in the general -- far advance in the general such that
8 the Supreme Court held he was actually being -- there was a
9 desperate treatment issue that was involved in that case.
10 That just isn't present here.

11 And so we would submit that these lines of cases
12 just generally don't address the issues that were confronted
13 here. Even if they did, the Constitutional analysis under
14 that Anderson and that verdict line of cases is one that
15 shifts based on the burden -- the burden on voting rights that
16 is imposed by the regulation. Every election regulation
17 imposes burdens. In this case, the burden as we articulate in
18 our papers, there is not a cognizable Constitutional right
19 along the lines of what they are asking for and what they are
20 beseeching the Court.

21 And so the burden on their voting rights, they can
22 continue to vote for the candidate of their desire. They can
23 continue to campaign on behalf of that candidate and can
24 campaign and say this guy is going to be ineligible and he
25 shouldn't be voted for. But their right to franchise is not

1 affected by the filing deadline in this case as it has been
2 applied.

3 Because the burden on their rights is relatively
4 minimal, more leeway is given to the State to regulate in this
5 area. The State just has to regulate in a way that supports
6 important State interests and otherwise is reasonable, modest
7 and non-discriminatory. As I said, Judge, it is clear that
8 the case law supports this. Every -- every election
9 regulation involves some form of line drawing where there are
10 going to be circumstances that don't seem to make sense. And
11 unfortunately this is one of those circumstances. But the
12 lines in this case are pretty clear.

13 You saw the testimony from Ms. Walker and both on
14 the stand and that is in the record, that there are ample
15 grounds to support the early filing deadline that is in place
16 here, such that it is certainly not an unconstitutional
17 arbitrary deadline. So we would submit that the
18 Constitutional claims are also not well founded.

19 Other factors also support the denial of the
20 preliminary injunction here. Judge, we don't believe that
21 there is an irreparable harm because it is hard to understand
22 what the plaintiff's harm is. They can continue to vote for
23 the candidates that they wish to vote for and campaign for the
24 candidates that they wish to campaign for. And so we don't
25 believe that there is much harm, much less any irreparable

1 harm on point 1.

2 The balance of interest on the other hand weigh
3 heavily in favor of the defendant's case here. You heard from
4 Ms. Walker, the difficulty that would entail having to change
5 the ballot at this late hour, again we accept that it is
6 doable but it gives rise to the possibility of error and it
7 would be a rushed situation that could impact voting rights in
8 other ways that we can't foresee right now. So we think the
9 ballots of interest weighs in favor of the defendants and for
10 the same reason the public interest weighs in favor of the
11 defendants.

12 Not only for the risk of error that would entail
13 from the entry of the PI here but also we believe that the
14 rules as they are written -- you know make for a clear,
15 understandable set of rules about filing and withdraw. It
16 eliminates the possibility of game playing. If the deadline
17 were to be extended, it would be more difficult for the
18 elections workers and the office here to do the work that they
19 need to do to prepare ballots. And would create uncertainty
20 with regard to how they would -- how they would be tasked with
21 exercising their discretion in those instances where somebody
22 comes forward with a pretty good reason for why their name
23 should be removed from the ballot after the filing deadline.

24 So unless the Court has questions we will submit.

25 THE COURT: I do not.

1 MR. TRENTO: Thank you.

2 THE COURT: Mr. Stichel, any final response?

3 MR. STICHEL: Yes, Your Honor.

4 THE COURT: Let me ask you to address the issue of
5 the provisional nature of Mr. Oakes' disqualification.

6 MR. STICHEL: Your Honor, it is correct. He is not
7 currently disqualified. Now he could withdraw his voter
8 registration and then he would be disqualified. But that has
9 not happened. He has filed an affidavit asking that his name
10 be taken off of the ballot but I would say effectively however
11 we look at this, he will be disqualified and he will not be
12 able to appear on the general election ballot. He will not be
13 able to serve.

14 Judge Bennett in his comments which were reported in
15 the press and I believe there is a letter in the Federal Court
16 file that makes it pretty clear that Mr. Oakes is not going to
17 be able to serve. So I think given that background, we are in
18 a situation where this case really does cry out for his name
19 to be removed from the ballot. I would just like to address
20 the practicalities that have come up through Ms. Walker's
21 testimony.

22 As I pointed out in the reply memorandum that I
23 filed, the dates for preparation for the ballot used to be
24 earlier. And in 2015, when the primary election date was
25 changed, the State Board agreed in fact, I think probably

1 drafted the bill that said that the certification and content
2 of the ballot shall be at least 55 days before the election.
3 If they have such concerns about timing, they could have put
4 in their bill a much earlier date which they didn't do.

5 I think it is Ms. Walker's testimony that -- that
6 she testified -- it would be great if they could do everything
7 beginning on Monday but if there was some additional time they
8 can accomplish the task and I think given the significant
9 issue here presented by Mr. Oakes' name being on the ballot,
10 that the case cries out for the relief that we seek and you
11 know as a practical matter, this case can be resolved very
12 quickly and then the printing of the ballots can go on.

13 And the other thing is I have to say and I don't
14 have any evidence here to dispute it but I still find it hard
15 to believe that taking one line out of one ballot some how
16 unravels the whole state election system. And if that is the
17 case, that isn't something that should be held against my
18 clients. If the state board has designed a system that is so
19 complex and so inflexible that taking one little line of print
20 off of a ballot undoes 400 and some ballots in the State of
21 Maryland, if there is a problem with that, that is the burden
22 that the state board should make because it should have
23 designed a better system. But that is all I have, Your Honor.

24 THE COURT: All right, thank you. Well I want to
25 give you some finality on the issue shortly so I am going to

1 take a brief recess and I expect to be about 20 minutes and
2 then I will render a decision.

3 MR. TRENTO: Thank you, Your Honor

4 (Whereupon, at 2:16 p.m., a brief recess was taken
5 and at 2:42 p.m. the case was recalled.)

6 THE COURT: We are resuming in Lewin et al versus
7 Lamone, C-02-CV-18-1013. And I am prepared to render a
8 decision in this matter as to the request for a preliminary
9 injunction. As we stand here today, Nathaniel Oakes is not
10 yet disqualified from holding the offices for which he is a
11 candidate. I can understand why Mr. Oakes would join if not
12 in this litigation in another case to put forth the -- his
13 assertion that he wishes to be removed from the ballot.

14 He has to stand up again before a Federal judge and
15 I am sure he would wish it to be clear that he does not intend
16 to participate or hold further office. I don't think that
17 point is dispositive of the issue. If he was currently
18 disqualified I believe that the interest of the voters in
19 District 41 particularly -- their interest to avoid the
20 potential of being constructively disenfranchised is quite
21 important. The harm attended(sic) to the rights of voters to
22 cast a meaningful vote for a qualified candidate rather than
23 potentially casting a meaningless vote by mistake or
24 inadvertence or election year mischief or a disqualified
25 candidate who cannot take the office would be in this case

1 greater than the minimal harm to the election process caused
2 the uncomfortable but adequate timing to reform the ballot in
3 this case.

4 But I am constrained by the singular fact while it
5 is virtually certain that Mr. Oakes will become disqualified
6 prior to the general election, it remains legally speculative
7 today. And close only counts in horseshoes. I cannot
8 determine such a fundamental voting issue with such a central
9 speculative fact and therefore I must reluctantly deny the
10 request for preliminary injunction in this matter. All right
11 and that will be my order as on the hearing sheet, as an order
12 of the Court. I thank you all and I know it is an interesting
13 issue -- yes, counsel?

14 MR. STICHEL: Your Honor, at this point I would like
15 to move for relief pursuant to Maryland Rule 2-3632 which
16 allows the Court to enter an injunction pending appeal. I
17 have a copy of the motion that I can hand up to the Court.

18 THE COURT: You may do so.

19 MR. STICHEL: Your Honor, the relief that I am
20 seeking in the motions is an injunction with respect to the
21 printing of the ballots basically to allow until Monday for me
22 to approach the Court of Appeals should my clients elect to
23 file those appeals to get further relief but just so Monday
24 morning the process doesn't start and then we get into the
25 situation that Ms. Walker said in her affidavit that once this

1 process begins, there would be substantial cost and whatever
2 to change it.

3 THE COURT: Your position counsel?

4 MR. TRENTO: Your Honor, we oppose the relief
5 requested.

6 THE COURT: I will decline to grant the motion. You
7 should, counsel take that up with the Court of Appeals or
8 Court of Special Appeals.

9 MR. STICHEL: Okay.

10 THE COURT: All right, thank you. Thank you all,
11 that will conclude this hearing.

12 (Whereupon, at 2:46 p.m., the hearing concluded.)

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CERTIFICATE OF TRANSCRIBER

I hereby certify that the proceedings in the matter of Nancy Lewin, et al versus Linda Lamone, Civil Number C-02-CV-18-001013, heard in the Circuit Court for Anne Arundel County, Maryland on April 20, 2018, were recorded by means of digital recording.

I further certify that, to the best of my knowledge and belief, page numbers 1 through 35 constitute a complete and accurate transcript of the proceedings as transcribed by me.

I further certify that I am neither a relative nor an employee of any attorney or party herein, and that I have no interest in the outcome of this case.

In witness whereof, I have affixed my signature of this 25th day of April, 2018.

By:

Lisa N. Contreras
Certified Transcriber
Certificate No. CET**D-474

NANCY LEWIN
212 Edgevale Road
Baltimore, Maryland 21210

* **IN THE**
* **CIRCUIT COURT**

ELINOR MITCHELL
2706 Sulgrave Avenue
Baltimore, Maryland 21215

* **FOR**
* **ANNE ARUNDEL COUNTY**

and,

CHRISTOPHER ERVIN
4301 Ridgewood Avenue
Baltimore, Maryland 21215

* **Case No. C-02-CV-18-001013**

Plaintiffs,

v.

LINDA H. LAMONE, in her official
capacity as State Administrator,
Maryland State Board of Elections
151 West Street, Suite 200
Annapolis, Maryland 21401

Defendant.

* * * * *

**SECOND AMENDED VERIFIED COMPLAINT FOR MANDAMUS,
DECLARATORY JUDGMENT and
INJUNCTIVE RELIEF**

Nancy Lewin, Elinor Mitchell, and Christopher Ervin, Plaintiffs, by their attorneys bring the following action against Linda H. Lamone, in her official capacity as State Administrator, Maryland State Board of Elections, and allege as follows:

Parties

1. Nancy Lewin (“Lewin”) is a registered voter in Maryland’s Legislative District 41.

2. Elinor Mitchell (“Mitchell”) is a registered voter in Maryland’s Legislative District 41 and a candidate for the Democratic State Central Committee for Legislative District 41.

3. Christopher Ervin (“Ervin”) is a registered voter in Maryland’s Legislative District 41 and a candidate for the Democratic State Central Committee for Legislative District 41.

4. Linda H. Lamone (“Lamone” or “State Administrator”) is the State Administrator, Maryland State Board of Elections (“State Board”).

Facts Common to All Counts

6. Nathaniel T. Oaks (“Oaks”) filed certificates of candidacy for Maryland State Senate, Legislative District 41, and Maryland Democratic State Central Committee, Legislative District 41, for the Democratic Party Primary Election to be held on June 26, 2018.

7. The State Board has listed Oaks on its website as being a candidate for election to the Maryland State Senate, Legislative District 41, and Maryland Democratic State Central Committee for the Democratic Primary to be held on June 26, 2018.

8. The State Board has listed Oaks on proof sample ballots that is has published on its website. See http://elections.state.md.us/elections/2018/primary_ballots/baltimorecity.pdf (last accessed on April 15, 2018). See also Exhibit A attached hereto.

9. On March 29, 2018, Oaks pleaded guilty to Counts Three and Four of the Superseding Indictment against him that was filed in the United States District Court for the District of Maryland in *United States v. Oaks*, Criminal No. RDB-17-0288 (“Federal Criminal Case”).

10. Count Three charged Oaks with wire fraud in violation of 18 U.S.C. §1343.

11. Count Four charged Oaks with honest services wire fraud in violation of 18 U.S.C. §1346.

12. The maximum statutory sentence of imprisonment for both offenses is 20 years. Pursuant to the plea agreement in the Federal Criminal Case, the final adjusted offense level for Oaks' crimes is 30, which under Federal Sentencing Guidelines, would mean that the minimum sentence Oaks faces pursuant to the Guidelines is 97 months.

13. Oaks' sentencing in the Federal Case is scheduled to take place on July 17, 2018.

14. On April 23, 2018, Oaks requested that his name be removed from the statewide voter registration list pursuant to Maryland Code, Election Law §3-501(1).

15. On April 23, 2018, the Baltimore City Board of Elections removed Oaks' name from the statewide voter registration list and, thus, he no longer is a registered voter in Maryland.

16. The Baltimore Sun reported on March 30, 2018, that Jared DiMarinis, chief of candidacy for the State Board, stated that Oaks would remain on the June 26, 2018, Primary Election Ballot, notwithstanding his guilty plea, because he met the qualifications for the office he sought at the time of the filing deadline, which was February 27, 2018.

17. Maryland Constitution, Article I, § 12, provides:

Except as otherwise specifically provided herein, a person is ineligible to enter upon the duties of, or to continue to serve in, an elective office created by or pursuant to the provisions of this Constitution if the person was not a registered voter in this State on the date of the person's election or appointment to that term or if, at any time thereafter and prior to completion of the term, the person ceases to be a registered voter.

18. Maryland Code, Election Law §3-102(b)(1) provides that an individual is not qualified to be a registered voter if the individual:

(1) has been convicted of a felony and is actually serving a court-ordered sentence of imprisonment.

19. Oaks' guilty plea is the equivalent of a conviction of a felony and he will be serving a court-ordered sentence of imprisonment on the date of the General Election for the office of Maryland State Senator for Legislative District 41.

20. The By-Laws of the Maryland Democratic Party provide that member of the Democratic State Central Committee shall be disqualified for office and removed as a member upon the conviction of a felony.

21. Oaks currently is disqualified from holding the offices for which his name currently is listed on the ballot by virtue of his no longer being a registered voter in the State of Maryland.

22. Pursuant to the operation of Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii), a name of a candidate shall remain on the ballot and be submitted to the voters at a primary election unless the candidate's death or disqualification is known to the applicable election board by the 10th day after the filing deadline.

23. Nearly simultaneously with the filing of the original Complaint in the present case, Laura Harpool filed an action in this Court against the Baltimore City Elections Board, Armstead B.C. Jones in his official capacity as Elections Director of the Baltimore City Elections Board, the Maryland State Board of Elections and Linda H. Lamone in her official capacity as State Administrator of the Maryland State Board of Elections. ("Harpool Action.")

24. Filed with the Complaint in the Harpool Action is an Affidavit of Nathaniel T. Oaks. ("Oaks Affidavit.") A copy of the Affidavit is attached hereto as Exhibit B. The Oaks Affidavit affirms under the penalty of perjury the following:

1. From on or about February 10, 2017 until March 29, 2018, I served in the Maryland State Senate representing Legislative District 41.

2. I resigned my senate seat effective March 29, 2018, because I plead guilty the same day to two felony offenses in a federal criminal case pending against me in the United States District Court for the District of Maryland (*United States v. Oaks*, RDB-17-00288 (D. Md)).

3. I am currently on the ballot for the primary election, scheduled for June 26, 2018, to represent Legislative District 41 in the Maryland Senate.

4. I consent to have my name removed from the ballot for the primary election on June 26, 2018.

5. It is in the best interest of the people of Legislative District 41 that my name be removed from the ballot following my recent guilty plea on federal court.

6. I am of sound mind and body in making these statements, and no one has forced me to make them.

25. Neither the Plaintiffs in the present case nor undersigned counsel were aware of the Harpool Action or the Oaks Affidavit until Wednesday, April 11, 2018.

26. On April 11, 2018, Oaks' counsel filed a letter on his behalf in the Federal Criminal Case. A copy of the letter is attached as Exhibit C. The introductory paragraph of the letter states:

I write in regard to the advisement regarding the consequences of a felony conviction that the Court provided Mr. Oaks during his Rule 11 re-arraignment on March 29, 2018. Specifically, **this letter concerns the Court's advisement that Mr. Oaks is barred from holding elected office in the future due to his conviction in this case.** ("Emphasis added.)

27. On the evening of April 11, 2018, undersigned counsel sent a letter to Andrea Trento, Assistant Attorney General of Maryland and counsel to the State Board, requesting that the State Board or the State Election Administrator remove the name of Nathaniel T. Oaks from the ballot for the Democratic Party Primary Election to be held on June 26, 2018. Undersigned

counsel also requested the opportunity to appear before the State Board at its scheduled meeting on the next day, Thursday, April 12, 2018. A copy of the letter is attached as Exhibit D.

28. Undersigned counsel appeared before the State Board on Thursday, April 12, 2018, and requested on behalf of the plaintiffs in the present case that the State Board remove Oaks' name from the Democratic Party Primary Election ballot. The board was advised publicly by Assistant Attorney General Trento that it was his opinion at that time that the State Board did not have the authority to remove Oaks' name from the ballot. State Administrator Lamone also expressed concern during the meeting about the impact of multiple and continuing requests by candidates to change the ballot and that there had to be a deadline for changes.

29. The State Board took no action at the conclusion of undersigned counsel's presentation. On Friday, April 13, 2018, undersigned counsel sent an email to Assistant Attorney General Trento asking that he advise undersigned counsel if there had been any change in the State Board's position. On Saturday, April 14, 2018, Assistant Attorney General Trento advised undersigned counsel by email that the State Board took no further action after undersigned counsel's presentation. A copy of the email exchange is attached hereto as Exhibit E.

30. In addition to Oaks' name, the names of two additional candidates for the office of State Senator representing Legislative District 41 are listed on the ballot for the Democratic Party Primary Election to be held on June 26, 2018: Jill P. Carter ("Carter") and J.D. Merrill ("Merrill"). Both Carter and Merrill have filed affidavits in this matter stating that they have no objection to the removal of Oaks' name from the Democratic Party Primary Election ballot.

COUNT ONE
(Judicial Challenge to State Board's Refusal to Remove Oaks' Name from the Primary Election Ballot – EL § 12-202)

31. Paragraphs 1-30 above are incorporated as if recited herein.

32. The State Board's allowing on the Democratic Primary Election Ballot the name of a person who currently is disqualified from being a candidate for public office or serving in the offices that he seeks will cause confusion and cause voters to cast votes for an ineligible candidate.

33. The State Board's refusing to remove the name of a candidate who has pleaded guilty to two felony counts in Federal Court, has been advised by the Federal Judge who will be sentencing him that he will be barred from holding public office, has signed an affidavit requesting that his name be removed from the ballot, and has cancelled his voter registration will cause confusion and cause voters to cast votes for a candidate who cannot and/or will not be able to serve in the offices that he seeks.

34. Those voters who mistakenly cast votes for Oaks would cast votes for qualified candidates were Oaks' name not on the ballot.

35. The State Board's failure to remove Oaks' name from the Primary Election Ballot deprives the plaintiffs, and all voters within Legislative District 41, of their rights under Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution.

WHEREFORE, the Plaintiffs seek judicial review by this Court and an order directing Ms. Lamone in her capacity State Administrator for the State Board to remove Oaks' name from any and all ballots to be distributed to voters in Maryland Legislative District 41 for the Democratic Primary Election to be held on June 26, 2018.

COUNT TWO
(Writ of Mandamus – Maryland Rule 15-701)

36. Paragraphs 1-35 above are incorporated as if recited herein.

37. The State Board has a duty imposed by the Maryland Declaration of Rights and the United States Constitution to protect the right of the people to cast ballots in elections effectively.

38. The State Board's refusal to remove Oaks' name from the Primary Election ballot denies the voters of Legislative District 41 to cast effective ballots.

WHEREFORE, the Plaintiffs request that the Court issue a Writ of Mandamus directing Ms. Lamone in her capacity State Administrator for the State Board to remove Oaks' name from any and all ballots to be distributed to voters in Maryland Legislative District 41 for the Democratic Primary Election to be held on June 26, 2018.

COUNT THREE

(Declaratory Judgment -- Md. Cts. & Jud. Proc. Code §§ 3-401 to 3-415)

39 Paragraphs 1-38 above are incorporated as if recited herein.

40. An actual controversy exists between the Plaintiffs and the Defendant within the meaning of the Maryland Uniform Declaratory Judgment Act, Md. Cts. & Jud. Proc. Code § 3-409(a)(1).

41. Antagonistic claims are present between the Plaintiffs and the Defendant.

42. The Plaintiffs allege upon information and belief that the State Administrator's and/or the State Board's refusal to remove Oaks' name from the ballot is based upon reliance upon the advice of counsel that Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) do not allow the State Administrator and/or State Board to make any change in the primary election ballot once ten days have passed from the filing deadline.

43. The provision of the Election Law code that pertain to the dates for the withdrawal of a candidate and the removal of a candidate's name from a primary election ballot are not mandatory, but directory. The State Election Administrator and/or the State Board has the power

to remove a candidate's name from the primary election ballot under the facts and circumstances that Oaks' guilty plea, affidavit and cancellation of his voter registration present.

44. The refusal of the State Election Administrator and/or the State Board to remove Oaks' name from the Democratic Party Primary Election Ballot on the facts and circumstances of Oaks' guilty plea, request that his name be removed from the ballot and cancellation of his voter registration is arbitrary, capricious and an abuse of discretion.

45. Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) violate Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution in that they set an artificially early deadline for removal of a disqualified candidate's name from the Primary Election Ballot.

WHEREFORE, the Plaintiffs request that the Court issue a declaration that: (1) The provisions of Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) and all other provisions of the Maryland Code that pertain to the removal of a name from an election ballot are not mandatory, but are directory; (2) the refusal of the State Election Administrator and/or the State Board to remove Oaks' name from the Democratic Party Primary Election Ballot on the facts and circumstances of Oaks' guilty plea, request that his name be removed from the ballot and cancellation of his voter registration is arbitrary, capricious and an abuse of discretion; and (3) Maryland Code, Election Law §§5-504(b) and 5-601(1)(ii) as applied on the facts of the present case violate Articles 7 and 24 of the Maryland Declaration of Rights and the First and Fourteenth Amendments to the United States Constitution.

COUNT FOUR
(Temporary Restraining Order)
(Maryland Rule 15-504)

46. The allegations of Paragraphs 1 to 44, above, are incorporated as if recited herein.

47. The actions of the State Board alleged above demonstrate that the State Board intends to distribute ballots to voters in the June 26, 2018, Democratic Primary Election that include Oaks' name as a candidate for State Senate and Democratic State Central Committee for Legislative District 41.

48. Should the State Board distribute ballots to voters in June 26, 2018, Democratic Primary Election that include Oaks' name as a candidate, the Plaintiffs will suffer immediate, substantial and irreparable harm before a full adversary hearing can be held on the propriety of a preliminary or final injunction.

49. The Plaintiffs are likely to succeed on the merits of their claims in this action.

50. The balance of convenience favors the Plaintiffs in that the statutory deadline for printing the Primary Election Ballots is May 7, 2018, and the deadline for sending absentee ballots to the overseas and military voters is not until May 12, 2018. See State Election Board 2018 Gubernatorial Election Calendar, page 3. A copy of the Calendar is attached hereto as Exhibit F. The removal of one name from the Democratic Party ballots for one Legislative District can be accomplished well within the time remaining before those deadlines.

51. The public interest would be served by the entry of a temporary restraining order in this action which involves fundamental issues of constitutional law and executive power in derogation of the rights of the people. Further, should voters be given ballots with the name of a candidate who is ineligible to be a candidate, the votes of those persons who would vote for the ineligible candidate will be disregarded. Given the strong public interest in protecting the votes of all voters, such a disregarding of ballots cast would violate public policy.

WHEREFORE, the Plaintiffs request that the Court enter a Temporary Restraining Order that enjoins the State Board from listing Oaks' name on any and all ballots to be distributed to voters in the June 26, 2018, Democratic Primary Election.

COUNT FIVE
(Preliminary Injunction)
(Maryland Rule 15-505)

52. The allegations of Paragraphs 1 to 45, above, are incorporated as if recited herein.

53. The Plaintiffs are likely to succeed on the merits of their claims in this action.

54. The Plaintiffs will suffer substantial and irreparable harm should the State Board include Oaks' name as a candidate on the June 26, 2018, Democratic Primary Election Ballot.

55. The balance of convenience favors the Plaintiffs in that the Primary Election Ballots have not been printed yet. The statutory deadline for printing ballots is May 7, 2018, and the deadline for sending absentee ballots to the overseas and military voters is not until May 12, 2018. The removal of one name from the Democratic Party ballots for one Legislative District can be accomplished well within the time remaining before those deadlines.

56. The public interest would be served by the entry of a preliminary injunction in this action which involves fundamental issues of constitutional law and executive power in derogation of the rights of the people.

WHEREFORE, the Plaintiffs request that the Court enter a Preliminary Injunction that enjoins the State Board from listing Oaks' name on any and all ballots to be distributed to voters in the June 26, 2018, Democratic Primary Election.

COUNT SIX
(Permanent Injunction)

57. The allegations of Paragraphs 1 to 56, above, are incorporated as if recited herein.

58. Should the State Board list Oaks' name on ballots to be distributed to voters in in the June 26, 2018, Democratic Primary Election, the plaintiffs will suffer irreparable injury and have no adequate remedy at law.

WHEREFORE, the Plaintiffs request that the Court enter a Permanent Injunction that enjoins the State Board from listing Oaks' name on any and all ballots to be distributed to voters in the June 26, 2018, Democratic Primary Election.

**COUNT SEVEN
(Further Relief)**

59. The allegations of Paragraphs 1 to 58 above, are incorporated as if recited herein.

60. The Plaintiffs seek all such further relief to which they are entitled at law and in equity.

WHEREFORE, the Plaintiffs request that the Court award the Plaintiffs any and all such further relief as the Court may deem just and proper, including, but not limited to attorneys' fees and costs.

/s/

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ATTORNEY FOR PLAINTIFFS

MARYLAND RULE 20-201(f) CERTIFICATE

I HEREBY CERTIFY that this submission does not contain any restricted information.

/s/

H. MARK STICHEL

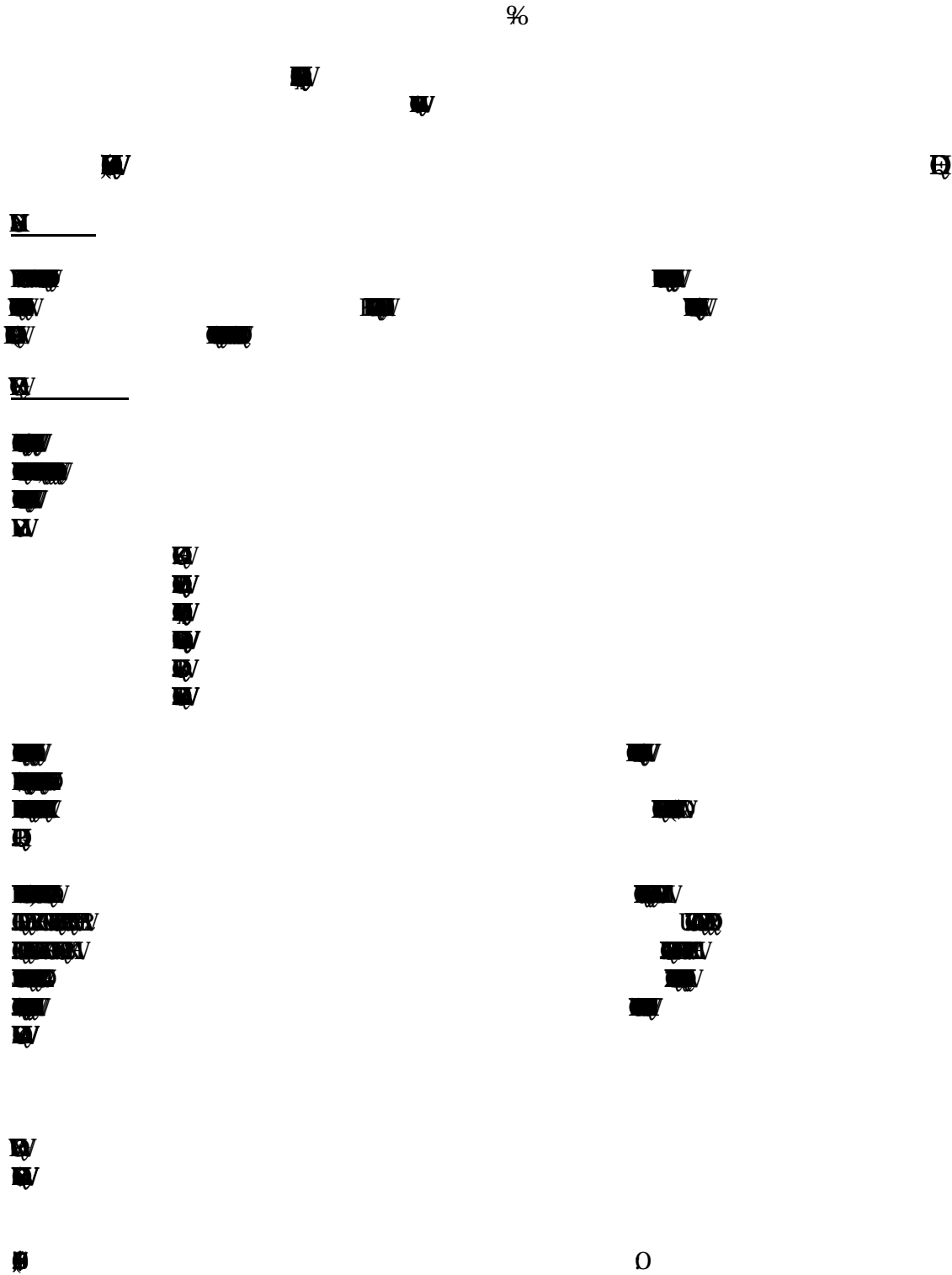
ATTORNEY FOR PLAINTIFFS

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Maryland State Board of Elections



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