

DENNIS WHITLEY III, *et al.*

Plaintiffs

v.

MARYLAND STATE BOARD OF
ELECTIONS, *et al.*

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* CASE NO.: 02-C-12-171365
*

* * * * *

MEMORANDUM OPINION

This matter came before the Court on August 10, 2012 for a hearing on Plaintiffs' Motion for Summary Judgment, Defendants' Cross-Motion for Summary Judgment, and Intervenor's Cross-Motion to Dismiss and/or for Summary Judgment. The Court held the matter *sub curia*. Upon consideration of the written and oral arguments of the parties, the Court presents its conclusions below.

BACKGROUND

On October 20, 2011, the General Assembly passed and the Governor signed into law Senate Bill 1 ("S.B. 1"), which established new congressional districts for the House of Representatives in the state of Maryland. Following the passage of S.B. 1, Intervenor MDPetitions.com began collecting signatures to petition the act to referendum on the 2012 general election ballot, pursuant to Article XVI of the Maryland Constitution.¹

In its signature collection efforts, Intervenor employed both volunteer circulators who obtained signatures in person and its website at <http://www.mdpetitions.com>, wherein those

¹ Article XVI § 1 states:

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

2012 AUG 10 P 3:59

CIVIL DEPT. COURT

interested in signing the petition could print out a signature page, sign it, sign the circulator's affidavit,² and return it to Intervenor for collection and transmission to the Secretary of State for certification of the petition.

On May 31, 2012, Intervenor submitted 28,477 signatures for the petition to refer S.B. 1. The local election boards certified 26,763 signatures as valid and 1,714 as invalid. Defendant Maryland State Board of Elections ("MSBE") accepted those figures without conducting its own review of the signatures. On June 30, 2012, Intervenor submitted an additional 36,267 signatures, out of which the local boards certified 32,438 as valid and 5,935 as invalid. MSBE again accepted the local boards' determination without further review. On July 20, 2012, MSBE concluded that MDPetitions.com had submitted 59,201 valid signatures and 7,649 invalid signatures, and certified S.B. 1 to be placed on the 2012 general election ballot. On July 24, 2012, Plaintiffs filed their Complaint for Declaratory and Injunctive Relief. On August 6, 2012, Plaintiffs filed their Motion for Summary Judgment. On August 8, 2012, Defendants MSBE, John P. McDonough, and Linda H. Lamone filed a Cross-Motion for Summary Judgment and Declaratory Judgment in Favor of Defendants. Also on August 8, Intervenor filed its Cross-Motion to Dismiss and/or for Summary Judgment.³ At the August 10 hearing, the Court heard arguments on the three Motions for Summary Judgment.

STANDARD OF REVIEW

Title 6 of the Election Law Article governs matters related to a State Board determination with respect to a petition for referendum, including judicial review and declaratory and

² An affidavit by the circulator of the signature pages of a petition is required by Article XVI § 4 of the Maryland Constitution, Section 6-204 of the Maryland Code, and COMAR 33.06.03.08. The requirements under each are substantially similar, and discussed in further detail *infra*.

³ Intervenor attempted to present a claim for affirmative relief in its Motion and at oral argument regarding MSBE's invalidation of 840 signatures based on the format of the petitions. Intervenor's claim to that point is not only untimely and improperly pleaded, but it is also regarding so few signatures that a ruling on the issue would have no bearing on the outcome of this case. The Court therefore did not consider this claim.

injunctive relief. *See* MD. CODE ANN., ELEC. LAW §§ 6-101 *et seq.* Under Section 6-209 of that Article, two different types of judicial review of a petition are possible. The first option allows a person aggrieved by the State Board’s certification of a statewide referendum petition of a General Assembly enactment to seek judicial review. MD. CODE ANN., ELEC. LAW § 6-209(a)(1)(i). In that situation, “[t]he court may grant relief as it considers appropriate to assure the integrity of the electoral process.” MD. CODE ANN., ELEC. LAW § 6-209(a)(2). Under the second option, pursuant to the Maryland Uniform Declaratory Judgments Act, MD. CODE ANN., CTS. & JUD. PROC. §§ 3-401 *et seq.*, any registered voter can seek declaratory relief as to any petition under Title 6 or other provision of law. MD. CODE ANN., ELEC. LAW § 6-209(b). When seeking relief under the Maryland Uniform Declaratory Judgments Act, a justiciable issue is a prerequisite to requesting declaratory relief. *Anne Arundel County v. Ebersberger*, 62 Md. App. 360, 367-68 (1985).

The scope of judicial review of an administrative decision “is narrow; it is limited to determining if there is substantial evidence in the record as a whole to support the agency's findings and conclusions, and to determin[ing] if the administrative decision is premised upon an erroneous conclusion of law.” *Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005). If a reviewing court could reasonably have reached the agency’s conclusion, it should not overturn that decision unless reversal is predicated solely on an error of law. *State Election Bd. v. Billhimer*, 314 Md. 46, 59 (1988).

In the instant case, the issues presented to the Court are of statutory interpretation, and therefore questions of law. *See Montgomery County Volunteer Fire-Rescue Ass’n v. Montgomery County Bd. of Elections*, 418 Md. 463, 469 (2011). Ordinarily,

[A] court’s task on review is *not* to substitute its judgment for the expertise of those persons who constitute the administrative agency. Even with regard to

some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts.

Aviation Admin. v. Noland, 386 Md. 556, 571-72 (2005) (internal quotation marks and citations omitted, emphasis in original). However, when a statute is clear and unambiguous, the Court does not defer to the Board's interpretation. *Fire-Rescue*, 418 Md. at 469. "When a statutory provision is entirely clear, with no ambiguity whatsoever, administrative constructions, no matter how well entrenched, are not given weight." *Id.* (quoting *Aviation Admin. v. Noland*, 386 Md. at 572).

Under Maryland Rule 2-501(a), "[a]ny party may make a motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." If the trier of fact can arrive at more than one conclusion based on a genuine issue of material fact, or any deduced inferences, summary judgment is not appropriate. *Sadler v. Dimensions Healthcare Corp.*, 378 Md. 509, 533 (2003). In the instant case, there are no disputed material facts,⁴ so the Court's determination is based on whether Plaintiffs are entitled to judgment as a matter of law. Md. Rule 2-501(a).

PRELIMINARY ISSUES

In its Cross-Motion for Summary Judgment, Intervenor challenges the standing of Plaintiffs Dennis Whitley III, Anne Neal, Karren Jo Pope-Onukwe, Joanna Hanes-Lahr, Matthew Thomas ("Registered Voter Plaintiffs"), and Maryland Democratic State Central Committee to

⁴ MSBE did not concede the accuracy of the number of signatures challenged by Plaintiffs, but stipulated in its Answer that "at least 5,000" signatures fell into each category, which is a sufficient number to prevent the certification of the petition if the signatures in either category were invalidated.

bring this action for judicial review.⁵

Intervenor contends that the Registered Voter Plaintiffs fail to establish who they are, how they claim to be aggrieved, and whether or not they are even registered voters. It also contends that the Registered Voter Plaintiffs have failed to establish that there is a justiciable controversy. Without these necessary requirements, Intervenor contends that Plaintiffs lack standing under Sections 6-209(a) and 6-209(b) of the Election Law Article, and the Court may not test the referability of the S.B. 1. Plaintiffs contend, and MSBE stipulates, that the Registered Voter Plaintiffs meet the standing requirements, and the Court properly has jurisdiction over this matter.

Section 6-209(a) Standing

Intervenor contends that the Registered Voter Plaintiffs failed to demonstrate that they are aggrieved within the meaning of section 6-209(a). Intervenor contends that they have failed to prove that they were aggrieved by a determination made under Sections 6-202, 6-206 or 6-208(a)(2). *See* MD. CODE ANN., ELEC. LAW § 6-209(a)(1). However, the alleged aggrievement resulted from MSBE's decision to certify the referendum petition under section 6-208(b)(1) of the subtitle. In order to do that, the chief election official needed to determine that the petition "satisfied all requirements established by law relating to that petition," which is a specific requirement of the chief election official in section 6-208(a)(2). *See* MD. CODE ANN., ELEC. LAW § 6-208. As the decision of the chief election official in Section 6-208(b)(1) necessarily hinges on a Section 6-208(a)(2) determination, Registered Voter Plaintiffs are aggrieved by a

⁵ Intervenor raised these issues for the first time in its memorandum filed on August 8, 2012, only two days before oral argument, having failed to previously disclose them to the Court or Plaintiffs' counsel, who had already filed their Motion for Summary Judgment and did not address these issues. Notwithstanding the challenge presented by Intervenor's somewhat untimely raising of the standing issues, the parties were afforded an opportunity to address them at oral argument and the Court therefore finds that it is appropriate to consider Intervenor's claims as to this point.

“determination made under Section 6-208(a)(2)” as required by Section 6-209(a)(1) and have standing to pursue this action under Section 6-209(a). As such, the Court need not discuss further the standing of Plaintiff Maryland State Democratic Central Committee and can consider the referability issue on its merits. *See, e.g., Marcus v. Montgomery County Council*, 235 Md. 535 (1964) (stating that if any litigant is aggrieved, the court will consider the merits even if other litigants are not aggrieved).

Section 6-209(b) Standing

As stated, *supra*, Section 6-209(b) of the Election Law Article allows any registered voter, pursuant to the Maryland Uniform Declaratory Judgment Act, the right to seek declaratory relief as to a petition. When seeking relief under the Maryland Uniform Declaratory Judgment Act, MD. CODE ANN., CTS. & JUD. PROC. §§ 3-401 *et seq.*, a justiciable issue is a prerequisite to requesting declaratory relief. *Anne Arundel County v. Ebersberger*, 62 Md. App. 360, 367-68 (1985).

The issue of whether the Registered Voter Plaintiffs are, in fact, registered voters is not in serious dispute, despite Intervenor’s claims. Voter registration is a matter of public record and MSBE acknowledged in its Answer and stipulated on the record that it checked the database and that the Registered Voter Plaintiffs are exactly that, registered voters. Having resolved this issue, it is clear that any registered voter may seek declaratory judgment as to “any petition.”

Next, Intervenor alleges that the Registered Voter Plaintiffs have failed to meet the justiciable issue requirements of Section 3-409 of the Maryland Uniform Declaratory Judgment Act. Under Section 3-409, a Court may grant a declaratory judgment if it resolves the underlying issue that gave rise to the proceeding and if:

- (1) An actual controversy exists between contending parties;

(2) Antagonistic claims are present between the parties involved which indicate imminent and inevitable litigation; or

(3) A party asserts a legal relation, status, right, or privilege and this is challenged denied by an adversary party, who also has or asserts a concrete interest in it.

MD. CODE ANN., CTS. & JUD. PROC. § 3-409.

Intervenor contends that the Registered Voter Plaintiffs have failed to demonstrate the existence of an actual controversy, antagonistic claims, or any legal relation, status, right or privilege under the statute. It suggests that voting status alone does not establish eligibility for judicial review and that some level of aggrievement is necessary. *See Doe v. Montgomery County Bd. of Elections*, 406 Md. 697, 715-16 (2008).

While Intervenor is correct that the Maryland Uniform Declaratory Judgments Act guides Section 6-209(b) of the Election Law Article, thus creating a justiciable controversy prerequisite, Intervenor's interpretation of the justiciable controversy requirement cuts against the legislative intent of the statute. When determining legislative intent, the primary source is the language of the statute, which is to be "given its natural and ordinary signification." *Boulden v. Mayor & Comm'rs*, 311 Md. 411, 414 (1988). Here, the statute clearly authorizes "any registered voter" to seek judicial review in the form of declaratory relief "as to any petition." MD. CODE ANN., ELEC. LAW § 6-209(b). By using this broad language, in contrast to the stated aggrievement requirement of Section 6-209(a), the General Assembly expanded the class of persons authorized to seek declaratory relief.

The justiciable controversy for Registered Voter Plaintiffs is simply that they don't agree that S.B. 1 is subject to referendum, so they argue that MSBE's decision to certify the referendum petition was in error. As a percentage of registered voters is required to successfully petition an act to referendum, and the decision of registered voters will be outcome determinative

should S.B. 1 be included on the general election ballot, registered voters have an immensely important status, right, or privilege in this process. The legislative intent is clearly to give them a broad grant of declaratory judgment actions. Through their status as registered voters, Registered Voter Plaintiffs are therefore eligible for relief under the Maryland Uniform Declaratory Judgments Act and thus section 6-209(b) of the Election Law Article. The Court therefore finds that the Registered Voter Plaintiffs have standing to seek declaratory relief regarding MSBE's certification of the petition to refer the Congressional Districting Plan to the November 2012 general election.

On the other hand, Plaintiff Maryland State Democratic Central Committee is not a registered voter and therefore cannot have standing under Section 6-209(b). Having found that the Registered Voter Plaintiffs have standing to pursue this action, the Court proceeds despite the fact that the Democratic Central Committee does not. *See, e.g., Marcus v. Montgomery County Council*, 235 Md. 535 (1964).

Conclusion as to Standing

The Court therefore finds that the Registered Voter Plaintiffs have standing to seek declaratory and injunctive relief regarding the State Board's certification of the petition to refer the Congressional Districting Plan to the November, 2012 general election. Further, this Court finds that the Registered Voter Plaintiffs are eligible to seek relief under both types of judicial review authorized by section 6-209 for reasons stated herein.⁶

DISCUSSION

Plaintiffs challenge the certification of S.B. 1 based on the certification of two groups, or "buckets," of signatures:

⁶ Counsel for MSBE made it clear that this Court need not even reach a determination regarding which review process will be followed since the analysis of two specific issues will essentially be the same.

1. Signatures of voters who attested to their own signatures as the circulator: 14,254
2. Signatures on forms that were pre-filled with the voter's name and address by Intervener's computer software: 7,578

Plaintiffs allege that MSBE erred as a matter of law when it certified the signatures in those two "buckets." As 55,736 signatures are necessary to petition an act to referendum, the disqualification of either of the two challenged "buckets" of signatures would prevent S.B. 1 from being placed on the ballot.⁷ In their Cross Motions for Summary Judgment, MSBE and Intervenor argue that MSBE was correct when it certified the challenged signatures.

The Court of Appeals has consistently stated that "constitutional and statutory provisions related to referendum petitions should be followed strictly." *Montgomery County Volunteer Fire-Rescue Ass'n v. Montgomery County Bd. of Elections*, 418 Md. 463, 477 n. 14 (2011). These provisions are contained within Article XVI of the Maryland Constitution and Title 6 of the Election Law Article of the Maryland Code. MSBE also has regulatory provisions governing the petition process in Title 33, Subtitle 06 of the Code of Maryland Regulations (COMAR).

I. Circulator's Affidavit

Plaintiffs allege that MSBE erred as a matter of law by certifying signatures where the signer attested to his or her own signature in the circulator's affidavit. The form and content of the circulator's affidavit is prescribed by Article XVI § 4 of the Maryland Constitution, Section 6-204 of the Election Law Article of the Maryland Code, and Title 33, Subtitle 06 of the Code of Maryland Regulations (COMAR). The Constitutional provision regarding the circulator's affidavit states that:

There shall be attached to each paper of signatures filed with a petition an affidavit of the person procuring those signatures that the signatures were affixed

⁷ The signatures of three percent of the qualified voters of the state, as calculated by the number of votes in the last gubernatorial election, are required to successfully petition an act to referendum. MD. CONST. ART. XVI § 3.

in his presence and that, based upon the person's best knowledge and belief, every signature on the paper is genuine and bona fide and that the signers are registered voters at the address set opposite or below their names.

MD. CONST. ART. XVI § 4. Section 6-204 of the Election Law Article is substantially similar in its requirements:

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

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

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

MD. CODE ANN., ELEC. LAW § 6-204 (emphasis added). Finally, COMAR 33.06.03.08 provides as follows:

.08 Circulator's Signed and Dated Affidavit.

A. Affidavit Required. Each signature page shall include an affidavit to be signed and dated by the circulator, as required by:

- (1) Election Law Article, § 6-204(a), Annotated Code of Maryland; and
- (2) This regulation.

B. Scope and Tenor. The affidavit shall state that:

- (1) All of the information given by the circulator under Regulation .07 of this chapter is true and correct;
- (2) The circulator was 18 years old or older when each signature was affixed to the page;
- (3) The circulator personally observed each signer as the page was signed; and
- (4) To the best of the circulator's knowledge and belief, all:
 - (a) Signatures on the petition are genuine, and

(b) Signers are registered voters in the State.

COMAR 33.06.03.08.

The Court of Appeals recently considered the purpose and construction of Sections 6-203 and 6-204 of the Election Law Article:

When read together, § 6-203 and § 6-204 are not ambiguous. Section 6-204 requires that every signature page of a petition include “an affidavit made and executed by the individual in whose presence all of the signatures on that page were affixed and who observed each of those signatures being affixed.” The purpose of the circulator’s attestation is to “assure the validity of the signatures and the fairness of the petition process.” § 6-204(b). This statutory provision for the affidavit of a circulator who attests under penalty of perjury that the signer affixed his or her information in the circulator’s presence clearly addresses prevention of fraud in the petitioning process and is plainly intended to bolster the validity of the signature entries.

Montgomery County Volunteer Fire-Rescue Ass’n v. Montgomery County Bd. of Elections, 418 Md. 463, 478-79 (2011).

Plaintiffs claim that the language used in the constitutional, statutory, and regulatory provisions governing the circulator’s affidavit contemplates a person other than the signer of the petition. MSBE and Intervenor counter that the Court should defer to MSBE’s interpretation of the statute it is charged with implementing and regulating. However, as noted *supra*, when a statute is clear and unambiguous, the reviewing court does not defer to the administrative agency’s statutory interpretation. *Fire-Rescue*, 418 Md. at 469. As the Court of Appeals explicitly stated just last year, “[w]hen read together, § 6-203 and § 6-204 are not ambiguous.” *Id.* at 478. Thus, the Court owes MSBE no deference in its interpretation of Section 6-204. The Court nonetheless agrees with MSBE and MDPetitions.com that Section 6-204 does not prohibit a circulator from serving as the affiant for his or her own signature.⁸

⁸ If the Court were to accept Plaintiffs’ argument that Section 6-204 is not clear on this point, the statute would not be clear and unambiguous, and the Court would therefore owe MSBE some deference in its interpretation of the statute. See *Aviation Admin. v. Noland, supra*, 386 Md. at 572 (stating that when a statute is not “entirely clear,” an

The language in Article XVI of the Maryland Constitution and Title 6 of the Election Law Article does not contain an express requirement that a person other than the signer of the petition serve as the circulator. Section 6-203(b)(4) requires that the “signature is attested by an affidavit appearing on the page on which the signature appears.” MD. CODE ANN., ELEC. LAW § 6-203(b)(4). It is undisputed that each of the signatures validated using the process developed by Intervenor contain an affidavit. Nothing in the Constitution, the statute, or the promulgated regulations requires that the affidavit be by someone other than the person signing the petition. *See* MD. CODE ANN., ELEC. LAW § 6-101(d) (“‘Circulator’ means an individual who attests to one or more signatures affixed to a petition.”). If the General Assembly wanted to include such a requirement, it could have done so, as it did when it required that the circulator be at least 18 years of age. *See* MD. CODE ANN., ELEC. LAW § 6-204(c). Plaintiffs argue that to allow an individual signer to attest to their own signature would invite fraud. MSBE counters by saying that no evidence or claim has ever been made that such fraud exists. Further, MSBE argues that the legislative framework provides for criminal penalties in the event that this might occur. *See* MD. CODE ANN., ELEC. LAW § 16-401. Even if this Court were to agree with Plaintiffs, who challenge the wisdom of allowing the signer of a petition to also sign the circulator’s affidavit, the legislature determined that the provisions of Title 6 of the Election Law Article would best serve the interests of preventing fraud. The Court finds no legal support for Plaintiffs’ assertion that a person other than the signer of the petition must serve as the circulator. MSBE was therefore correct in its application of the law and correct to certify these signatures.

administrative agency’s interpretation and application of the statute it administers should be given considerable weight); *Fire-Rescue, supra*, 418 Md. at 469. Accordingly, whether the statute is not “entirely clear” and the Court accepts MSBE’s interpretation, or it is unambiguous and the Court interprets it, the result is the same: that there is no prohibition on the challenged conduct.

II. Computer-Filled Identification Data

Plaintiffs argue that signatures from Intervenor's website were pre-filled by the software and therefore violate the provision of Section 6-203 of the Election Law Article that requires a signer to "include" his or her name and address. Section 6-203 states, in relevant part:

(a) In general. – To sign a petition, an individual shall. . .

(2) include the following information, printed or typed, in the spaces provided:

(i) the signer's name as it was signed;

(ii) the signer's address;

(iii) the date of signing; and

(iv) other information required by regulations adopted by the State Board.

MD. CODE ANN., ELEC. LAW § 6-203. The regulations adopted by the State Board as permitted by Section 6-203(a)(2)(iv) are found in COMAR 33.06.03.06:

.06 Signer Identification.

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

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

(1) Sign the individual's name as it appears on the Statewide voter registration list or the individual's surname of registration and at least one full given name and the initials of any other names; and

(2) Provide the following information, to be printed or typed in the appropriate spaces:

(a) Date of signing,

(b) Signer's name as it was signed, and

(c) Current residence address, including house number, street name, apartment number (if applicable), town, and ZIP code.

C. Optional information.

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

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

COMAR 33.06.03.06. The statute requires the signer to "include" name and address information, whereas the regulation requires the signer to "provide" it.

The process by which a signer interacted with the Intervenor's website is set forth in great detail in the affidavit of Neil C. Parrott, Chairman of MDPetitions.com, attached as Exhibit 1 to Intervenor's Cross Motion to Dismiss and/or for Summary Judgment. For the purpose of deciding these motions, the Court accepts the following relevant portion of that affidavit as an accurate description of the process:

In order to use the software program, a registered Maryland voter who wished to sign the petition had to log on to MDPetitions.com's internet website, www.MDPetitions.com, click on a box marked "redistricting petition" and follow a series of prompts or commands that led them through different screens. . . .

By clicking on either the "Sign the petition now" button or the underlined statement "sign the petition today," the second screen would appear.

The second screen contained two distinct fields.

The field on the left hand side of the screen stated, "Get Your Petition," and contained the following instructions:

Maryland has strict rules regarding how the petition is filled out.

This site will help insure that your petition is filled out properly in 5 easy steps.

Step 1 – Provide information requested on the petition, as indicated to the right.

Step 2 – Select members of your household who might also want to sign the petition.

- Step 3 – Download the petition
- Step 4 – Print the petition
- Step 5 – Sign and date the petition.

The field on the right hand side of the screen displayed a series of boxes where the user could enter unique identifiers:

Get Started – It’s Easy

Fill out the information form with **your** information.

First Name

Last Name

Suffix (optional)

Email Address

Phone Number

Zip Code (5 digit)

Birth Date Month (Dropdown) Date (Dropdown) Year (Dropdown)

Underneath “Birth Date” was a box that could be checked to receive updates about Intervener’s activities.

Underneath the “Updates” box was a button that stated “Continue,” followed by this acknowledgement: “By clicking “Continue” you agree to the terms and conditions.”

MDPetition.com’s internet-based program used the most current voter registration rolls made available by the Maryland State Board of Elections to identify whether a user was a registered Maryland voter.

If the user was not a registered Maryland voter, had entered his or her unique identifiers incorrectly, or if there was some other mismatch between the identifiers entered by the user and the voter rolls, the following screen appeared:

Oops, we couldn’t find you

This could happen for a couple of reasons:

1. You are not registered to vote in Maryland. If this is the case, you could register to vote and then sign the petition after you get your voter card.
2. The zip code you provided doesn’t match the zip code in the voter database.
3. The name entered does not match the name provided to the Board of Elections when you signed up. As an example, Debra may be required instead of Debbie.

If you feel that you’ve reached this message in error, please contact us (</redistricting/petitions/sb1/contact>). . . .

If the user was a registered Maryland voter, had entered his or her unique identifiers correctly, and these identifiers matched the voter rolls, the fourth screen appeared.

The fourth screen identified each registered Maryland voter at the same address and instructed the user to deselect the name of any registered Maryland voter at the address not wishing to sign the petition by clicking on the box next to the voter's name:

Voters in Household

You're almost done **NAME!**

We've selected everyone who's registered to vote at your address. Please unselect anyone who will not be signing the petition:

Box Name 1

Box Name 2

Box Name 3

Beneath the name was a "Continue" button.

Affidavit of Neil C. Parrott at 3-7 (paragraph numbers and citations omitted). After clicking "Continue," the signer was taken through several additional screens and instructed to download, print, and sign the petition.


It is clear that by following Intervenor's process as described above, each signer "included" and "provided" his or her information for the petition as required by the statute and regulation, respectively. The plain language of Section 6-203 as set forth herein does not expressly provide *how* the individual signer must "include" his or her printed or typed name, address, and date of signing. Neither the statute nor the regulation requires that each person must physically print or type this information on the petition, thus the use of a computer to do so does not render the signature invalid.

While it might well be the case that a process like the one implemented by Intervenor was not contemplated by the legislature when the statute was written, the Court finds no legal support for the argument that Intervenor's process does not comply with the law. MSBE was therefore

correct in its application of the law and correct to certify these signatures.⁹

CONCLUSION

For the reasons set forth in this memorandum opinion, the Court shall enter the order attached hereto.


8/10/2012
RONALD A. SILKWORTH, Judge
Circuit Court for Anne Arundel County

⁹ The parties and the Court were under a greatly accelerated schedule for this matter, pursuant to MD. CODE ANN., ELEC. LAW § 6-209(a)(3). To the extent that the Court's analysis of the computer-filled data issue is less complete than it would otherwise prefer given a more typical schedule, the Court agrees with MSBE on this issue and adopts the analysis laid out in MSBE's Memorandum in Opposition to Plaintiffs' Motion.

DENNIS WHITLEY III, *et al.*

Plaintiffs

v.

MARYLAND STATE BOARD OF ELECTIONS, *et al.*

Defendants

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* CASE NO.: 02-C-12-171365
*

* * * * *

ORDER AND DECLARATORY JUDGMENT

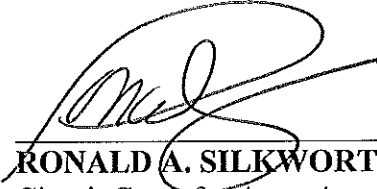
This matter came before the Court on August 10, 2012 for a hearing on Plaintiffs' Motion for Summary Judgment, Defendants' Cross-Motion for Summary Judgment, and Intervenor's Cross-Motion to Dismiss and/or for Summary Judgment. The Court held the matter *sub curia*. Upon consideration of the written and oral arguments of the parties, it is this 10th day of August, 2012, by the Circuit Court for Anne Arundel County, hereby

ORDERED, that Plaintiff's Motion for Summary Judgment is **DENIED**, Defendants' Cross-Motion for Summary Judgment is **GRANTED**, and Intervenor's Cross-Motion to Dismiss and/or for Summary Judgment is **GRANTED IN PART**, as it pertains to the sufficiency of the petition to refer Senate Bill 1, Chapter 1, of the 2011 Special Session of the General Assembly, and as it pertains to the standing of Plaintiff Maryland Democratic State Central Committee, and **DENIED IN PART**, as it pertains to the standing of Plaintiffs Dennis Whitley III, Anne Neal, Karren Jo Pope-Onwukwe, Joanna Hanes-Lahr, and Matthew Thomas; and it is further,

ORDERED AND DECLARED, that the petition submitted to the Maryland State Board of Elections to refer Senate Bill 1, Chapter 1, of the 2011 Special Session of the General Assembly, is legally sufficient to refer the laws to the voters under Article XVI of the Maryland Constitution; and it is further,

ORDERED, that Senate Bill 1, Chapter 1, of the 2011 Special Session of the General Assembly shall be placed on the November 2012 General Election Ballot; and it is further,

ORDERED, that any and all other requests for relief are **DENIED**.



RONALD A. SILKWORTH, Judge
Circuit Court for Anne Arundel County