

PETITION OF WOMEN AGAINST
PRIVATE POLICE FOR JUDICIAL
REVIEW OF THE DECISION OF THE
MARYLAND STATE BOARD OF
ELECTIONS

* IN THE CIRCUIT COURT FOR
* ANNE ARUNDEL COUNTY

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* CIVIL ACTION NO: C-02-CV-19-001327

WOMEN AGAINST PRIVATE POLICE, *et*
al.,

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Plaintiffs,

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v.

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MARYLAND STATE BOARD OF
ELECTIONS, *et al.*,

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Defendants.

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS’
MOTION FOR PRELIMINARY INJUNCTION**

To determine whether the Plaintiffs have met the standard for a preliminary injunction, the Court must consider 1) the likelihood of success on the merits, 2) the balance of harms to the parties, 3) potential for irreparable harm to the Plaintiffs, and 4) the public interest. *Voters Organized for the Integrity of City Elections v. Balt. City Bd. of Elections*, 451 Md. 377, 391 (2017) (quoting *Fritzsche v. State Board of Elections*, 397 Md. 331, 339-40 (2007)).

The Plaintiffs seek a preliminary injunction requiring the Defendants, 1) pursuant to Md. Code, Elec. L. § 6-209(a)(2), and Md. Decl. Rts. Art. 19, to accept first- and second-tier petition signatures from the Plaintiffs for an additional nine days, through June 9, 2019, and July 9, 2019, respectively; and 2) pursuant to Md. Code, Elec. L. § 6-206(b)(2), to defer a final determination of sufficiency of the petition pending validation, verification and counting of signatures, and the

final judgment in this action, and to proceed with validation, verification, and counting of signatures without reference to the challenged Advance Determinations in this case.

The right of the Plaintiffs to obtain injunctive relief in this case is well supported by case law. Under Md. Elect. L. Code Ann. § 6-209, where a person is aggrieved by a determination of SBE pursuant to § 6-206, “the court may grant relief as it considers appropriate to assure the integrity of the electoral process.” *Doe v. Montgomery County Bd. of Elections*, 406 Md. 697, 715 (2002). Without relief in the form of the requested preliminary injunction, the Plaintiffs’ right to referendum on SB 793 will be forever lost.

As argued in their Memorandum in Support of Petition for Judicial Review and in Support of Plaintiffs’ Motion for Summary Judgment filed contemporaneously herewith and incorporated herein in full by reference (hereinafter “Memorandum”), the Plaintiffs will likely succeed on the merits. Defendants’ determination that the petition is insufficient is based upon an erroneous reading of Md. Const., Art, XVI, § 2. Based on the plain language of that provision, the relevant statutes and case law, Plaintiffs are able to demonstrate more than a real probability of succeeding on the merits and “not merely a remote *possibility* of doing so.” *Ehrlich v. Perez*, 394 Md. 691, 708 (2006) (quoting *Fogle v. H & G Restaurant*, 337 Md. 441 456 (1995) (emphasis in original)).

The actual and potential harm to the Plaintiffs is far greater than that to the Defendants in this case. In balancing the harms to the parties, the Court must weigh the harm to the Defendants if the Court issues an injunction against the harm to the Plaintiffs if the court does not issue an injunction. *Lamone v. Lewin*, 460 Md. 450, 466 (2018). The Plaintiffs have already been irreparably harmed by the Defendants’ actions in delaying a decision on the sufficiency of the petition’s bill summary in violation of Md. Code, Elec. L. §6-210(a)(2). As a result of the

Defendants' actions, the Plaintiffs have lost approximately 20 percent of the time to which they are entitled to collect the first tier of petition signatures and 12 percent of the total time available to gather the full number of required signatures. The only possible remedy for this clear violation is to extend the deadlines for submitting the signatures that would otherwise be due by May 31, 2019, and June 30, 2019, respectively.

As for future irrevocable harm, if the Defendants' erroneous decision of non-referability is allowed to stand, the Plaintiffs will have no other avenue to put the issue of the JHU Police Department to the voters of this state, a right guaranteed by Md. Const., Art. XVI, § 1. Violation of a constitutional right is itself irrevocable harm. *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) (citations omitted); *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009).

Most important, SB 793 will take effect on July 1, 2019, if not stayed by the referendum process outlined in Art. XVI, §§ 2 and 3(b). Thus, in order for there to be an orderly determination of all matters relating to the referendum petition, Defendants must be required to accept petition signatures for an additional nine days as described above, proceed with validation, verification, and counting of petition signatures as submitted by June 9, 2019 (for the first tier), and July 9, 2019 (for the second tier), while the question of first impression presented by this case is decided in the courts. Defendants have voluntarily proceeded with validation, verification, and counting of petition signatures in the past. *See Roskelly v. Lamone*, 396 Md. 27, 35 (2006). Without an injunction, there is no guarantee that Defendants will validate, verify, and count the signatures submitted by Plaintiffs by the statutory deadline, and the law will go into effect. Their rights will be determined by the clock rather than by the rule of law.

By contrast, the harm to the Defendants if the preliminary injunction is issued is miniscule if not non-existent. The Defendants would simply be required to carry out their constitutional and statutory duties. Requiring defendants to follow the law does not constitute harm. *See, e.g., United States v. One*, 793 F. Supp. 2d 157, 163 (D.D.C. 2011); *Hess v. Hughes*, 500 F. Supp. 1054, 1061 (D. Md. 1980). SBE exists for the purpose of ensuring that all persons involved in the election process comply with the requirements of election laws, and yet this case centers around Defendants' own failure to comply with those same requirements.

As a practical matter as well, the burden on the Defendants is slight. There are no other election-related matters looming in the relevant timeframe and no other known petition initiatives, certainly not concerning laws set to take effect on July 1. Yet despite acknowledging this, as set forth in Plaintiffs' Verified Motion for Preliminary Injunction, Defendants have thus far refused to agree to the requested relief.¹

It must be noted that the important question presented in this case as to the scope of the appropriations exception to the right of referendum is one of first impression. The Defendants acknowledge as much. AR-10 ("The Act here does not map precisely onto any of these precedents...."). To the extent that Defendants will argue this reduces Plaintiffs' likelihood of success on the merits, the Court must also consider that the more decidedly the balance of harms tips in favor of the Plaintiffs, the less they must show in likelihood of success. It will "be enough that the Plaintiff[s] ha[ve] raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them fair ground for litigation and thus for more deliberate investigation." *See Blackwelder Furniture Co. of Statesville, Inc. v. Seilig Manufacturing Co.*,

¹ Plaintiffs did not request that Defendants agree to extend the deadlines for accepting signatures. Defendants would not even agree to proceed with validation, verification, and counting even under the existing deadlines of May 31, 2019, and June 30, 2019.

Inc., 550 F.2d 189, 195 (4th Cir. 1977). The Court of Appeals applies the same standard.

Eastside Vend Distributors, Inc. v. Pepsi Bottling Group, Inc., 396 Md. 219, 242 (2006); *Lerner v. Lerner*, 306 Md. 771, 783-85 (1986).

A preliminary injunction of this nature is certainly in the public interest. As discussed in Plaintiffs' Memorandum, SB 793 was highly controversial. Under SB 793, the JHU Police Department would have contact with a variety of community members, including JHU students, patients receiving services from the Johns Hopkins Hospital, and community members who reside in the patrol zones. They all deserve an orderly determination of whether JHU should be allowed to assume such awesome powers of the state.

For these reasons, Plaintiffs request that the Court preliminarily enjoin the Defendants, 1) pursuant to Md. Code, Elec. L. § 6-209(a)(2), and Md. Decl. Rts. Art. 19, to accept first- and second-tier petition signatures from the Plaintiffs for an additional nine days, through June 9, 2019, and July 9, 2019, respectively; and 2) pursuant to Md. Code, Elec. L. § 6-206(b)(2), to defer a final determination of sufficiency of the petition pending validation, verification and counting of signatures, and the final judgment in this action, and to proceed with validation, verification, and counting of signatures without reference to the challenged Advance Determinations in this case.

Dated May 14, 2019

Respectfully submitted,

/s/

Ashley Woolard Black
Staff Attorney
PUBLIC JUSTICE CENTER
1 North Charles Street, Suite 200
Baltimore, MD 21201
Tel: (410) 625-9409
Fax: (410) 625-9423
blacka@publicjustice.org
Client Protection Fund ID # 1512160363

/s/

David R. Rocah
Senior Staff Attorney
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF MARYLAND
3600 Clipper Mill Rd., Suite 350
Baltimore, MD 21211
Tel: (410) 889-8555
Fax: (410) 366-7838
rocah@aclu-md.org
Client Protection Fund ID # 0312050001

/s/

Debra Gardner
Legal Director
PUBLIC JUSTICE CENTER
1 North Charles Street, Suite 200
Baltimore, MD 21201
Tel: (410) 625-9409
Fax: (410) 625-9423
gardnerd@publicjustice.org
Client Protection Fund ID # 8509010013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 14th day of May, 2019, a copy of the foregoing Memorandum, including all attachments thereto, was filed and served on counsel of record by MDEC, and sent via e-mail to the following:

Andrea W. Trento
Assistant Attorney General
200 Saint Paul Place, 20th Floor
Baltimore, Maryland 21202
atrento@oag.state.md.us

_____/s/_____
David Rocah