STEPHEN N. ABRAMS   *   IN THE

v.   *   COURT OF APPEALS

LINDA H. LAMONE, *et al.*   *   OF MARYLAND

                            *   Case No.: 142

                            *   September Term, 2005

*   *   *   *   *   *   *   *   *   *   *   *   *

MOTION OF STUART O. SIMMS, CANDIDATE FOR ATTORNEY GENERAL IN THE DEMOCRATIC PRIMARY, TO INTERVENE OR, IN THE ALTERNATIVE, FOR PERMISSION OF THE COURT TO SUBMIT AN AMICUS CURIAE OPPOSITION TO MOTION TO MODIFY ORDER

Stuart O. Simms, by his counsel, Paul Mark Sandler, Robert B. Levin, and Shapiro Sher Guinot & Sandler pursuant to Rule 8-511 and the inherent power of the Court, moves to intervene in this case for the purpose of submitting his opposition to the Motion to Modify Order filed by Respondents Linda H. Lamone, the State Administrator of Elections, and the State Board of Elections (hereafter collectively the "State"), and as reasons states as follows:

1.   Movant Simms is a candidate in the Democratic primary election for the position of Attorney General of Maryland. Mr. Simms is a well-respected Maryland public official who has served as Baltimore City State's Attorney, and then as Secretary of Juvenile Services and Secretary of Public Safety and Correctional Services.

2.   Movant's interest in seeking to intervene or, in the alternative, to participate as an amicus curiae with respect to the pending requests to modify the Court's August 25, 2006 Order is two-fold: First, the State's request that it be excused

from compliance with the Court's Order, that "the name of Thomas Perez be removed from the ballot at the September 2006 primary election", would disenfranchise thousands of Maryland voters by permitting them to vote for a candidate (Mr. Perez) whom the Court has deemed not qualified to occupy the position of Attorney General. Disenfranchisement results from voters casting ballots for Perez, and then having their votes discounted because of Perez's disqualification from the ballot. It is highly unlikely that the State's request, if accepted, can prevent thousands of votes from being cast for Perez. The requested modification would transform the landscape of political inclusion. As people are able to register, vote, and elect qualified candidates of their choice, their interests receive attention and their rights are protected. The failure to remove from the ballot a candidate whom the Court has deemed ineligible for the Attorney General position is tantamount to erecting a barrier to many voters' participation in the political process. As a member of the Bar and former head of two vitally important State departments, Mr. Simms is acutely interested in preventing disenfranchisement of voters and removal of obstacles to full enjoyment of the franchise. Second, many people who would have voted for Mr. Perez are expected to vote for Movant, but if Mr. Perez remains on the ballot (contrary to the Court's Order), Movant's votes will be diluted and diminished. Retaining Perez on the ballot is unfair not only to Mr. Simms but also to the electorate.

3. Pursuant to Rule 8-511(b), Movant states that no person or entity, other than Movant and its counsel have made any contribution to the preparation and submission of this motion.

4.   The State's request to modify the Court's August 25, 2006 Order (a request joined by Mr. Abrams) rests on its unsupported assertion that "there is simply not enough time in the fifteen (15) days remaining before the primary for the twenty-four (24) local boards of elections to prepare an entirely new ballot." This is 2006, and information technology has progressed to the point that the State should be able to remove a single candidate from the ballot in accordance with the Court's Order.
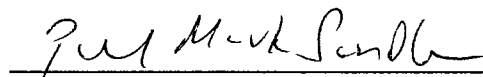
5.   While the State claims that it merely wishes to "modify" the Order, in reality the State seeks to undo the Order completely. Rather than comply with the directive that Mr. Perez's name be removed from the ballot, the State proposes an unprecedented and unworkable patchwork of "notices" in each polling location informing voters of the Court's Order and that any votes case for Mr. Perez will not be counted.

6.   The State's request would create at least two perverse incentives harmful to our democracy. First, the notion that a candidate deemed by Maryland's highest Court to be ineligible may remain on the ballot will incentivize vote dilution by permitting candidates to encourage legally unqualified persons to run, in hopes that an opponent's votes will be diluted. Second, the State's request raises at least the possibility that voters imbued with a mischievous or rebellious spirit might vote for the "unqualified" candidate in sufficient numbers to actually elect him, thereby causing serious constitutional problems.

7. When the citizenry's right to meaningful participation in the electorial process is at stake, logistical considerations cannot be permitted to triumph over the rule of law.

WHEREFORE, Movant Stuart O. Simms respectfully requests that the Court consider his opposition to the Motion to Modify, as set forth hereinabove, either by way of intervention or by permitting the filing of this motion as an amicus curiae, and that the motion to modify be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of August, 2006, a true and correct copy

of the foregoing document was served via facsimile, e-mail, and first-class mail postage

prepaid, to the following counsel of record:

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