
NO. _____

In The Court of Appeals of Maryland

MELISANDE C. FRITSZCHE, for herself and on behalf of Similarly Situated Voters,
MALCOLM G. VINZANT, JR., for himself and on behalf of Similarly Situated Voters,
Plaintiffs-Appellants,

v.

MARYLAND STATE BOARD OF ELECTIONS, LINDA H. LAMONE, State Administrator,
GILLES W. BURGER, Chairman, BOBBIE S. MACK, Vice Chairman, JOAN BECK,
Boardmember, ANDREW V. JEZIK, Boardmember, and SUSAN WIDERMAN, Boardmember,
in their official capacities as Administrators and Board Members of the Maryland State
Board of Elections,

Defendants-Appellees.

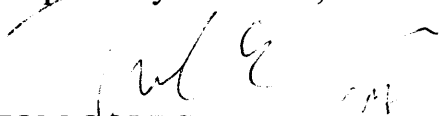
APPELLANTS' MOTION TO SUPPLEMENT THE RECORD

Pursuant to Maryland Rule 8-431(a),¹ Appellants hereby move this honorable Court to issue an order to supplement the record with the following documents: (1) an affidavit from Anthony T. Pierce, counsel for Appellants at the preliminary injunction hearing before the Circuit Court for Anne Arundel County, *see* Exhibit 1; and (2) an affidavit from Appellant Melisande C. Fritzsche updating her status as an absentee-ballot voter, *see* Exhibit 2. *See Stone v. State*, 344 Md. 97, 101 n.3 (1996).

¹ Rule 8-431(a) states: "An application to the Court for an order shall be by motion. The motion shall state briefly and clearly the facts upon which it is based, and if other parties to the appeal have agreed not to oppose the motion, it shall so state. The motion shall be accompanied by a proposed order."

The affidavit of Anthony T. Pierce describes the preliminary injunction hearing held before Judge Joseph P. Manck of the Circuit Court for Anne Arundel County on Monday, November 6, 2006. The judicial courts of Maryland were closed on Tuesday, November 7, 2006. Consequently, the current record does not contain a transcript of the lower court's proceeding. Mr. Pierce appeared at the preliminary injunction hearing on behalf of Appellants. His affidavit provides a truthful and accurate review of the proceeding. The affidavit of Appellant Melisande C. Fritzsche provides new information updating her status as an absentee voter relevant to this Court's understanding and disposition of the instant appeal.

Respectfully submitted,



TOM GOLDSTEIN

Counsel of Record

ANTHONY T. PIERCE*

Akin Gump Strauss Hauer & Feld, LLP
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036
(202) 887-4000

DEBORAH LIU

Deputy Director of Public Policy
PEOPLE FOR THE AMERICAN WAY
2000 M Street NW, Suite 400
Washington, DC 20036

Counsel for Appellants

November 8, 2004

* Pro hac vice application filed

DAVID ROCAH

DEBORAH JEON

AMERICAN CIVIL LIBERTIES

UNION OF MARYLAND

3600 Clipper Mill Road, Suite 350
Baltimore, Maryland 21211

JONAH H GOLDMAN

JON M. GREENBAUM**

BENJAMIN BLUSTEIN**

LAWYERS' COMMITTEE FOR CIVIL
RIGHTS UNDER LAW

1401 New York Avenue, NW, Suite 400
Washington, D.C. 20005

** Pro hac vice application to be filed

NO. _____

In The Court of Appeals of Maryland

MELISANDE C. FRITSZCHE, for herself and on behalf of Similarly Situated Voters,
MALCOLM G. VINZANT, JR., for himself and on behalf of Similarly Situated Voters,
Plaintiffs-Appellants,

v.

MARYLAND STATE BOARD OF ELECTIONS, LINDA H. LAMONE, State Administrator,
GILLES W. BURGER, Chairman, BOBBIE S. MACK, Vice Chairman, JOAN BECK,
Boardmember, ANDREW V. JEZIK, Boardmember, and SUSAN WIDERMAN, Boardmember,
in their official capacities as Administrators and Board Members of the Maryland State
Board of Elections,

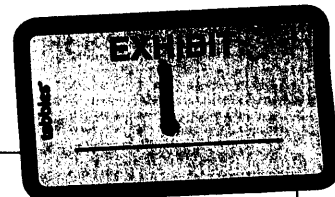
Defendants-Appellees.

**ORDER GRANTING APPELLANTS' MOTION TO SUPPLEMENT THE
RECORD**

The Court hereby **GRANTS** Appellants' Motion to Supplement the Record with
the affidavits of Melisande C. Fritzsche and Anthony T. Pierce.

SO ORDERED.

November _____, 2006



IN THE COURT OF APPEALS OF MARYLAND	
MELISANDE C. FRITSZCHE, 4046 Nathanial Rochester Hall, Rochester New York 14623, for herself and on behalf of SIMILARLY SITUATED VOTERS, and MALCOLM G. VINZANT, JR., 911 South Charles Street, Apt. 407, Baltimore Maryland, 21230, for himself and on behalf of SIMILARLY SITUATED VOTERS,	Index/File No.: _____
Petitioners-Appellants,	<u>AFFIDAVIT</u>
- against -	
MARYLAND STATE BOARD OF ELECTIONS, LINDA H. LAMONE, State Administrator, GILLES W. BURGER, Chairman, BOBBIE S. MACK, Vice Chairman, JOAN BECK, Boardmember, ANDREW V. JEZIK, Boardmember, and SUSAN WIDERMAN, Boardmember, in their official capacities as Administrators and Board Members of the Maryland State Board of Elections,	
Defendants-Appellees.	

AFFIDAVIT OF ANTHONY T. PIERCE

Anthony T. Pierce, being duly sworn, affirms and says:

1. My name is Anthony T. Pierce, and I am a practicing attorney with the Law Firm of Akin Gump Strauss Hauer and Feld, LLP.
2. I am an attorney in good standing under the District of Columbia bar and the Virginia bar.

3. On Monday, November 6, 2006, I along with Maryland co-counsel, David Rocah of the American Civil Liberties Union, filed our complaint with the Clerk of the Court at approximately 5:15 pm.

4. On Monday, November 6, 2006, I participated in a hearing before Judge Joseph P. Manck, at the Maryland Circuit Court for Anne Arundel County.

5. The hearing lasted approximately 15 minutes.

6. The Judge started the hearing by confirming that we were seeking two alternative forms of relief through the TRO (an out-right extension to the postmark date or a hold on the ballots dated November 7 pending further hearing).

7. Counsel for the Defendant clarified that the ballots would be maintained for 22 months regardless of the outcome of the TRO.

8. The Judge asked whether the second form of relief requested, preserving the ballots pending a further hearing, would meet our needs. We responded that we believed that the decision should be decided on the merits.

9. The Counsel for the Board of Elections made two arguments in opposition to the motion.

10. First, he argued that our plaintiffs had questionable standing, as they were not represented in the package by detailed affidavits or other supporting materials.

11. Second, he argued that the Plaintiffs had failed to meet the standards required to grant a TRO, specifically, injury in fact, redressability, causation, and likeliness to succeed on the merits. He argued that the actual harm to these plaintiffs was speculative; and even if they were injured, he questioned whether a one-day extension would do anything to redress that injury. He also questioned whether there was evidence

3. On Monday, November 6, 2006, I along with Maryland co-counsel, David Rocah of the American Civil Liberties Union, filed our complaint with the Clerk of the Court at approximately 5:15 pm.

4. On Monday, November 6, 2006, I participated in a hearing before Judge Joseph P. Manck, at the Maryland Circuit Court for Anne Arundel County.

5. The hearing lasted approximately 15 minutes.

6. The Judge started the hearing by confirming that we were seeking two alternative forms of relief through the TRO (an out-right extension to the postmark date or a hold on the ballots dated November 7 pending further hearing).

7. Counsel for the Defendant clarified that the ballots would be maintained for 22 months regardless of the outcome of the TRO.

8. The Judge asked whether the second form of relief requested, preserving the ballots pending a further hearing, would meet our needs. We responded that we believed that the decision should be decided on the merits.

9. The Counsel for the Board of Elections made two arguments in opposition to the motion.

10. First, he argued that our plaintiffs had questionable standing, as they were not represented in the package by detailed affidavits or other supporting materials.

11. Second, he argued that the Plaintiffs had failed to meet the standards required to grant a TRO, specifically, injury in fact, redressability, causation, and likeliness to succeed on the merits. He argued that the actual harm to these plaintiffs was speculative; and even if they were injured, he questioned whether a one-day extension would do anything to redress that injury. He also questioned whether there was evidence

that the Plaintiffs' delays were caused by the actual problems we had cited. Finally, he argued that we did not have a high likelihood of success on the merits but didn't provide much specificity.

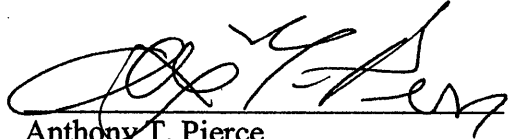
12. Judge Manck focused his questions and decision on the impact of the Case *Lamb v. Hammond*, 308 Md. 286, 518 A.2d 1057 (1987). He asked why that case didn't directly undermine the Plaintiff's right to claim a remedy for where the government had made a mistake.

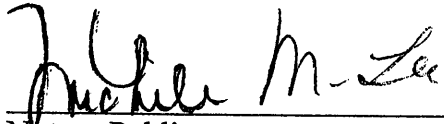
13. Judge Manck acknowledged that the *Hammond* case involved 12 voters while the instant proceeding involved 3,000 or more voters, but indicated that he could not identify any reason why that would change the impact of the law.

14. Judge Manck specifically cited the following passage from the case: "We were aware that the voters were innocent in the matter, but we were also aware that the requirement of initialing ballots had been regarded by the Legislature as an "important safeguard." We said, at 149, 49 A.2d 75: "It is unfortunate that voters should lose their votes by oversight of election officials--and by their own failure to notice that they have not been given authenticated ballots. But, as has often been said, it would be a greater evil for the courts to ignore the law itself by permitting election officials to ignore statutory requirements designed to safeguard the integrity of elections, *i.e.*, the rights of all the voters."

I have read the foregoing consisting of fourteen (14) numbered paragraphs and all of the facts contained herein are true and correct to the best of my personal knowledge.

Executed this 24 day of November 2006.


Anthony T. Pierce


Notary Public

Sworn to before me this 24 day of November, 2006.



Michele M. Lee
Notary Public, District of Columbia
My Commission Expires Jan. 01, 2011



**IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY
STATE OF MARYLAND**

MELISANDE C. FRITZSCHE, 4046 Nathaniel
Rochester Hall, Rochester New York 14623, for
herself and on behalf of SIMILARLY SITUATED
VOTERS, and MALCOLM G. VINZANT, JR., 911
South Charles Street, Apt. 407, Baltimore Maryland,
21230, for himself and on behalf of SIMILARLY
SITUATED VOTERS,

Plaintiff,

- against -

MARYLAND STATE BOARD OF ELECTIONS,
LINDA H. LAMONE, State Administrator, GILLES
W. BURGER, Chairman, BOBBIE S. MACK, Vice
Chairman, JOAN BECK, Boardmember, ANDREW
V. JEZIK, Boardmember, and SUSAN
WIDERMAN, Boardmember, in their official
capacities as Administrators and Board Members of
the Maryland State Board of Elections,

Defendants.

Index/File No.: _____

AFFIDAVIT OF MELISANDE C. FRITZSCHE

Melisande C. Fritzsche, being duly sworn, affirms and says:

1. I, Melisande C. Fritzsche, am a registered voter in Baltimore County at the
address of my parents, but I am temporarily residing at 4046 Nathaniel Rochester

Hall, Rochester, New York, where I am a student at the Rochester Institute of Technology ("RIT"). My Maryland address is 101 East Elm Avenue, Baltimore.

2. At RIT I live at the RIT Inn, a hotel owned by the University that houses students and also operates as a public hotel.
3. In mid-August 2006, I requested an Absentee Ballot for both the primary and general election, since I would be out of the state at school.
4. I made this request by faxing and mailing an absentee request to the Baltimore County Board of Elections in Catonsville, Maryland.
5. As of Sunday, November 5, 2006, I had not received an Absentee Ballot.
6. On Monday, November 6, 2006, I received my Absentee Ballot in the mail, with a postmark of Nov 1, 2006.
7. On Monday, November 6, 2006, I was out of my residence from 10 a.m. until 8:45 p.m.
8. Since I was out of my residence during the school day, I did not learn that I had received my Absentee Ballot in the mail until November 6, 2006, at 8:50 p.m.
9. The campus post office has mail pick up at 11 a.m. and 1:30 p.m. (local mail).
10. Because my mail had already been picked up, and I did not have an open post office within my area of familiarity, I was unable to submit a post-marked ballot at that late hour.

11. I will not be able to personally access my precinct polling station to vote by the normal course.
12. I will complete and submit my Absentee Ballot on Tuesday, November 7, in time to obtain a postmark for that date.
13. Because of the delay in mailing my Absentee Ballot and because I am unable to vote at my regular polling place, I have been denied the right to vote.
14. I authorize the Election Protection Coalition to identify me as a plaintiff in any litigation to extend the postmark date for submitting absentee ballots.

I have read the foregoing consisting of fourteen (14) numbered paragraphs and all of the facts contained herein are true and correct to the best of my personal knowledge.

Melinda

Sworn to me this 7 day of November, 2006.

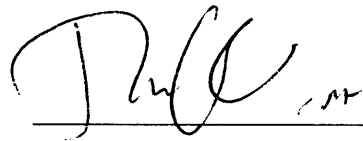
Notary Public

CERTIFICATE OF SERVICE

I hereby certify that I have this day served, by electronic mail and by first-class mail, postage pre-paid, 2 copies of the foregoing Appellants' Motion to Supplement the Record upon opposing counsel designated below.

Mark Davis
Office of the Maryland Attorney General
200 St. Paul Place
Baltimore, MD 21202

Dated at Washington, D.C., this 7th day of November, 2006.



Thomas C. Goldstein
Akin Gump Strauss Hauer and Feld, LLP
1333 New Hampshire Ave., NW
Telephone: (202) 887-4060
tgoldstein@akingump.com